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Fourth Judicial District, Ada County
Trent Tripple, Clerk of the Court
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

JENNIFER ADKINS; JILLAINE ST.MICHEL; KAYLA SMITH; REBECCA VINCEN-BROWN; EMILY CORRIGAN, M.D., on behalf of herself and her patients; JULIE LYONS, M.D., on behalf of herself and her patients; and IDAHO ACADEMY OF FAMILY PHYSICIANS, on behalf of itself, its members, and its members' patients,

Plaintiffs,

vs.

STATE OF IDAHO; BRAD LITTLE, in his official capacity as Governor of the State of Idaho; RAÚL LABRADOR, in his official capacity as Attorney General of the State of Idaho; and IDAHO STATE BOARD OF MEDICINE,

Defendants.

Case No. CV01-23-14744

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), the United States Supreme Court overruled *Roe v. Wade*, 410 U.S. 113 (1973), and, by doing so, gave effect to two Idaho statutes that severely restrict abortion (collectively, "Idaho's Abortion Laws"). One of them is the "General Abortion Ban," I.C. § 18-622, which broadly criminalizes abortion, but not when performed by a physician who "determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman," so long as the reason it was necessary wasn't to

avert a risk of self-harm by the pregnant woman and the manner of performing it "provided the best opportunity for the unborn child to survive, unless . . . termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman." I.C. § 18-622(2)(a)(i)–(ii). The other is the "Fetal Heartbeat Law," I.C. §§ 18-8801 to -8805, which criminalizes abortion performed after fetal cardiac activity is present, I.C. § 18-8804(1), unless, according to a "reasonable medical judgment," an "immediate abortion" is necessary to "avert [the pregnant woman's] death" or "a delay [in performing the abortion] will create serious risk of substantial and irreversible impairment of a major bodily function" of hers, I.C. § 18-8801(5).

Plaintiffs are four women prevented by Idaho's Abortion Laws from obtaining abortion care in Idaho during complicated or nonviable pregnancies, two physicians prevented from providing medically appropriate abortion care, and a medical association concerned about implications for patient care. On September 11, 2023, they sued the State of Idaho, Governor Brad Little, Attorney General Raúl Labrador, and the Idaho State Board of Medicine to challenge the constitutionality of Idaho's Abortion Laws and seek guidance concerning the medical circumstances in which abortion is still legal. After two dispositive motions, Claims I and III, as asserted against only the State, are Plaintiffs' surviving claims. (*See* Mem. Decision & Order Mot. Dismiss 9–22; Mem. Decision Order Mot. Summ J. 7–18.)

Claim I isn't a constitutional claim. It just seeks a declaratory judgment concerning the medical circumstances in which Idaho's Abortion Laws allow

abortion. (Compl. ¶¶ 315–21.) Plaintiffs contend that, despite their restrictive language, Idaho's Abortion Laws allow physicians to perform abortion when they determine in good faith that, for reasons other than hedging a risk of self-harm, it is within the medical standard of care to treat a high-risk or complicated pregnancy. (Pls.' Proposed Findings Fact & Conclusions Law ¶¶ 202, 206.)

Claim III seeks a declaratory judgment that the Idaho Constitution—by recognizing "enjoying and defending life" and "pursuing happiness and securing safety" as "inalienable rights," Idaho Const. art. I, § 1—grants pregnant women a constitutional right of access to abortion care if a physician determines that abortion is within the medical standard of care to treat their high-risk or complicated pregnancies. (Pls.' Proposed Findings Fact & Conclusions Law ¶ 137.) Plaintiffs say this constitutional right applies when abortion would alleviate (i) "a pre-existing or underlying physical or mental health condition that cannot effectively be treated during pregnancy, is exacerbated by pregnancy, requires recurrent invasive intervention, or otherwise makes continuing the pregnancy unsafe for the pregnant patient"; (ii) "a physical or mental health condition caused by pregnancy or a complication of pregnancy that poses a risk of infection, bleeding, or organ damage, or otherwise makes continuing the pregnancy unsafe for the pregnant patient"; or (iii) "a lethal fetal diagnosis, regardless of whether the fetal diagnosis increases the pregnant patient's health risks of continuing the pregnancy and giving birth." (*Id.*) They also say it applies when abortion would preserve the ability to procreate. (*Id.* ¶¶ 152–53.)

A six-day bench trial was held from November 12–21, 2024. Twenty-two witnesses testified: all six individual plaintiffs (Jennifer Adkins, Jilliane St.Michel, Kayla Smith, Rebecca Vincen-Brown, Dr. Emily Corrigan, and Dr. Julie Lyons), Kaelyn Coltrin, Caleb McInnis, Dr. Nichole Aker, Dr. Loren Colson, Dr. Katherine Wenstrom, Dr. Ali Raja, Dr. John Werdel, Dr. Duncan Harmon, Elizabeth Woodruff, Dr. Shannon Withycombe, Dr. Jennifer Payne, Jennifer Liposhak, Elke Shaw-Tulloch, Dr. Dustan Hughes, Dr. Rod Story, and Dr. Ingrid Skop. Additionally, the following exhibits were admitted into evidence: Plaintiffs' Exhibits 6, 10, 14–19, 39, 44, 104, 111, 112, 114, 117, 122, 127, 137, 138, 143, 146, 148, 153, 154, 155, 157, 213–18, 226, 245, 318, 486, 491, 565, and 582–86 and the State's Exhibits 1011, 1017, 1022, 1046, 1047, 1049, 1051, 1052, and 1056–58.[1]

On February 19, 2025, the parties filed timely proposed findings of fact and conclusions of law. The State's filing was accompanied by a request for judicial notice of the 2023 Idaho Maternal Mortality Review Committee Annual Report, to which Plaintiffs objected in filings on February 24, 2025, and February 28, 2025. Then, on April 7, 2025, Plaintiffs filed a request for judicial notice of a court order issued on March 20, 2025, in a federal case alleging that Idaho's Abortion Laws are unenforceable to the extent they conflict with a federal statute requiring hospitals

[1] Some of these exhibits were admitted only in part. Additionally, some of them some of them were admitted provisionally, as was some testimony, subject to relevance objections to be decided in rendering these findings of fact and conclusions of law. All such objections are overruled, so all provisionally admitted evidence stands as part of the trial record. The Court relies on no such evidence, however, unless it is expressly cited in these findings of fact and conclusions of law.

that receive Medicare funds to provide stabilizing treatment to patients with emergent medical conditions. This new filing reset the under-advisement date, which had been February 28, to April 7. In any event, judicial notice may be taken "at any stage of the proceeding," I.R.E. 201(d), so the parties' post-trial requests for judicial notice aren't necessarily untimely. Judicial notice may be taken, however, of only "a fact that is not subject to reasonable dispute," I.R.E. 201(b), so long as it is a relevant fact, *see* I.R.E. 402. The State's request is denied; the 2023 Idaho Maternal Mortality Review Committee Annual Report's issuance isn't subject to reasonable dispute, but the report is offered for conclusions, which, even if relevant, are subject to reasonable dispute. Plaintiffs' request is denied because the federal court order isn't relevant.

Having carefully reviewed the evidentiary record and the parties' proposed findings of fact and conclusions of law, the Court issues its findings of fact and conclusions of law.

I.

FINDINGS OF FACT

Patient Plaintiffs

1. Plaintiffs Jennifer Adkins, Jillaine St.Michel, Kayla Smith, and Rebecca Vincen-Brown initially sought pregnancy-related medical care in Idaho. (Tr. 73:24–74:7 (Adkins), 98:20–25 (St.Michel), 121:8–13 (Smith), 143:3–22 (Vincen-Brown).) Maternal-health concerns, grave fetal anomalies, or both complicated their pregnancies. (Tr. 79:16–80:11 (Adkins), 100:22–101:25 (St.Michel), 123:12–16, 124:4–20, 125:7–18 (Smith), 146:6–19 (Vincen-Brown).) Each wanted abortion care,

but Idaho's Abortion Laws—by broadly criminalizing abortion, *see* I.C. §§ 18-622, -8801 to -8805—relegated them to leaving Idaho to get it. (Tr. 85:1–6 (Adkins), 102:16–22 (St.Michel), 130:8–131:4 (Smith), 148:5–23 (Vincen-Brown).)

Physician Plaintiffs

2. Plaintiff Emily Corrigan is a board-certified, licensed physician who has practiced medicine in Idaho for five years and works as an obstetric hospitalist at Saint Alphonsus Regional Medical Center in Boise. (Tr. 159:2–12, 160:20–161:15; Pls.' Ex. PX019.) Dr. Corrigan specializes in treating patients with complicated pregnancies, including by performing no more than a few abortions per year, both before and after Idaho's Abortion Laws took effect. (Tr. 161:7–15, 162:25–163:2, 311:12–15, 313:11–14, 318:4–6.) Some of her patients experience treatment delays and poorer-quality healthcare because of Idaho's Abortion Laws, including because of confusion about when abortion is still legal. (Tr. 172:12–21, 177:7–22, 180:7–20, 182:9–183:19).

3. Plaintiff Julie Lyons is a board-certified, licensed physician who has practiced rural family medicine in Hailey since 2009. (Tr. 807:19–25, 810:15–16; Pls.' Ex. PX015.) In that capacity, she provides obstetrical and gynecological care, (Tr. 815:5–816:1), but hasn't performed abortions, (Tr. 855:11–22).

Plaintiff Idaho Academy of Family Physicians

4. Plaintiff Idaho Academy of Family Physicians ("IAFP") is an organization whose members are physicians (including Dr. Lyons), medical residents, and medical students. (Tr. 725:21–727:19.) IAFP sees Idaho's Abortion

Laws as a source of member confusion and an impediment to providing high-quality healthcare to pregnant women in Idaho. (Tr. 736:14–738:6, 741:4–16, 744:6–19.)

Expert witnesses

5. Plaintiffs presented testimony by five expert witnesses: Dr. Corrigan; Dr. Jennifer Payne, a board-certified, licensed psychiatrist, (Tr. 1015:15–18; Pls.' Ex. PX017); Dr. Ali Raja, a board-certified emergency medicine physician and professor of emergency medicine at Harvard Medical School, (Tr. 583:19–25; Pls.' Ex. PX014); Dr. Katharine Wenstrom, a board-certified obstetrician-gynecologist, maternal-fetal medicine specialist, and clinical geneticist (Tr. 485:8–19; Pls.' Ex. PX016); and Dr. Shannon Withycombe, a professor of history at University of New Mexico, (Tr. 861:10–22; Pls.' Ex. PX018). The State presented expert testimony by one witness: Dr. Ingrid Skop, a licensed obstetrician-gynecologist and the Charlotte Lozier Institute's Director of Medical Affairs. (Tr. 1201:22–1203:12.)

Other physicians testifying as fact witnesses

6. Plaintiffs also called three Idaho physicians to testify as fact witnesses concerning the on-the-ground application of Idaho's Abortion Laws. Dr. Nichole Aker is a board-certified family medicine physician practicing in Mountain Home and Boise, where she performed abortions before Idaho's Abortion Laws took effect. (Tr. 421:5–8, 422:3–5, 423:22–23.) Dr. Loren Colson is a board-certified family physician practicing in Idaho who also performed abortions before Idaho's Abortion Laws took effect. (Tr. 441:10–11, 442:12–20.) Dr. Duncan Harmon is a board-certified obstetrician-gynecologist and maternal-fetal medicine specialist practicing

at St. Luke's Regional Medical Center in Boise. (Tr. 698:21–25.) The State called two Idaho physicians to try to impeach the testimony of physicians called by Plaintiffs (including Drs. Aker, Colson, and Harmon) that Idaho's Abortion Laws aren't well understood by physicians. Dr. Dustan Hughes is an obstetrician-gynecologist who practices in Nampa. (Tr. 1154:10–14.) Dr. Rod Story is a family physician who practices in Moscow. (Tr. 1174:17–21.)

Some pregnancies involve medical complications
that imperil the health and lives of pregnant women

7. Healthy pregnancies are common, but some women suffer grave pregnancy-related health complications or experience worsening of preexisting health conditions during pregnancy. (Tr. 247:12–20 (Corrigan), 426:17–427:7 (Aker), 499:1–9, 545:2–12 (Wenstrom).)

8. Preexisting health conditions that can worsen during pregnancy and pose significant health risks to pregnant women include hypertension, cardiac disease, renal insufficiency, diabetes, autoimmune diseases, vascular problems, coagulation disorders, sickle-cell disease, cancer, or susceptibility to stroke. (Tr. 197:7–9, 231:6–24 (Corrigan).) Denying or delaying abortion care in these instances not only imperils the patient's health but also can shorten her lifespan. (Tr. 235:15–24 (Corrigan), 498:22–500:4 (Wenstrom).)

9. Some pregnancy-related conditions imperil a pregnant woman's health without necessarily posing an imminent risk of her death, including PPROM (preterm premature rupture of membranes), advanced cervical dilation or cervical incompetence, placental abruption, preeclampsia, HHELP (hemolysis, elevated liver

enzymes, and low platelets) syndrome, and hyperemesis gravidarum (characterized by severe nausea and vomiting). (Tr. 199:1–204:8, 231:6–233:3, 235:4–24 (Corrigan), 611:3–22 (Raja), 499:1–19 (Wenstrom).)

10. Plaintiffs' witnesses presented on-the-ground examples of pregnant women denied essential emergency care because their medical conditions weren't an imminent death risk. (Tr. 179:22–180:6 (Corrigan), 429:8–432:1 (Aker), 703:9–715:6 (Harmon).)

11. Take Dr. Harmon's testimony as an example. He recounted a patient who presented with previable PPROM at approximately fifteen weeks of gestation. (Tr. 703:9–704:11.) PPROM is a condition in which the amniotic sac ruptures and amniotic fluid leaks from the vagina before the onset of labor. (Tr. 198:11–25 (Corrigan).) According to both sides' experts, if left untreated, previable PPROM can cause a pregnant woman to suffer infection, sepsis, hemorrhage, infertility, and, ultimately, death. (Tr. 199:12–200:12, 204:2–8, 204:23–205:4 (Corrigan), 501:15–502:7 (Wenstrom), 1248:17–25, 1357:14–18, 1375:15–19 (Skop).) Because Dr. Harmon's patient presented with "no signs of bleeding, labor, no vital sign abnormalities and no clinical signs of infection," he considered her "clinically stable" and, at that moment, "an abortion was not necessary to prevent her death," so he believed Idaho's Abortion Laws prohibited performing an abortion, despite the apparent nonviability of the pregnancy. (Tr. 705:5–25, 709:11–15, 718:15–719:4.) Consequently, the patient was transferred out of state. (Tr. 706:20–24.)

12. Dr. Harmon also told of a woman pregnant with triplets, one of which had anencephaly, a lethal fetal diagnosis. (Tr. 713:1–24.) Dr. Harmon advised a selective-reduction procedure, in which that fetus would be removed to decrease gestational risks to the other two fetuses. (Tr. 714:8–22.) Because selective reduction is an abortion, however, Idaho's Abortion Laws relegated the patient to leaving Idaho to obtain abortion care, even though selective reduction would improve her chances of birthing healthy twins. (Tr. 714:23–715:6.)

13. Dr. Aker provided another example: a pregnant woman with bulging membranes before fetal viability—a condition that inevitably results in a miscarriage—who, it was believed, couldn't be offered abortion care under Idaho's Abortion Laws because a fetal heartbeat was detected. (Tr. 429:8–432:1.) The woman was sent home, only to return within the hour because, by then, her water had broken and, as it turned out, fetal cardiac activity had ceased. (*Id.*)

14. Additionally, Dr. Corrigan has on occasion treated pregnant women "denied stabilizing abortion care at other hospitals in Idaho," resulting in "increased complications" to their health. (Tr. 179:22–180:6.)

15. As these examples illustrate, Idaho's Abortion Laws have caused women with nonviable or health-threatening pregnancies to be denied abortion care because a physician couldn't conclude it was then necessary to prevent the patient's death. (Tr. 703:9–706:24, 708:3–710:23.) Dr. Harmon recalled "six or seven" instances in 2024 alone where patients in need of non-life-saving emergency

abortion care were transported out of state from St. Luke's Regional Medical Center in Boise to get that care elsewhere. (Tr. 710:12–23.)

Pregnant women who receive lethal fetal diagnoses face a terrible choice: continue with hopeless pregnancies or leave Idaho for abortion care

16. A lethal fetal diagnosis is a condition known to have "no significant chance of sustained life after delivery" and a "very high risk of fetus demise in-uteri or during birth. (Tr. 280:8–20 (Corrigan).)

17. Examples of lethal fetal diagnoses include certain chromosomal disorders, such as triploidy, trisomies 13 and 18, and those causing hydrops fetalis (profound edema) or anasarca of the fetus; anencephaly and acrania; and combinations of anatomical disorders, such as limb body wall complex (also known as body stalk anomaly). (Tr. 235:25–236:21 (Corrigan), 507:16–508:17, 525:10–15, 1455:1–1468:18 (Wenstrom).)

18. A lethal fetal diagnosis means not only that the pregnancy isn't viable but also that the pregnant woman's health is imperiled by continuing it. The longer women with certain lethal fetus diagnoses are pregnant, "the higher likelihood they [have] of developing further pregnancy complications, which can lead to things like future infertility and damage of other parts of their body." (Tr. 841:20–842:5.) These complications include the mental-health risks associated with appearing to the world to have a viable pregnancy while knowing otherwise. (Tr. 1441:7–19 (Payne) & Pls.' Ex. 35, at 6.)

19. For example, a pregnant woman treated by Dr. Harmon received a lethal fetal diagnosis of body stalk anomaly. (Tr. 710:24–712:6.) Body stalk anomaly is a rare, severe congenital malformation where the "fetal abdominal wall is fused to the placenta" and, though the fetus can survive to term, the result is "incompatible with life." (Tr. 1462:4–19 (Wenstrom).) Dr. Harmon advised the patient that expectant management was an option but, if she chose that option, she "may require . . . a [cesarean] section . . . to deliver the fetus that will not survive." (Tr. 711:19–712:6.) The patient chose to terminate her pregnancy but had to travel out of state to do so because an abortion wasn't considered necessary to prevent her death. (Tr. 712:7–13, 722:16–20.)

Some pregnancies jeopardize future fertility

20. Previable PPROM, if not treated with abortion care, risks a patient's future fertility because it could lead to an intrauterine infection that progresses to sepsis and necessitates a hysterectomy. (Tr. 199:12–201:4 (Corrigan), 1248:17–25 (Skop), 466:5–16 (Aker), 598:25–599:10 (Raja).)

21. In all three of the Dr. Harmon examples recounted above—patients with previable PPROM, anencephaly, and body stalk anomaly—pregnant women risked grave harm to their health and future fertility, though their lives weren't in imminent danger. (Tr. 703:9–706:24, 710:24–712:13, 716:1–24.)

Physicians are unsure when performing an abortion might jeopardize their freedom and livelihood

22. Confusion about Idaho's Abortion Laws is common among physicians for several reasons: (i) the use of non-medical terminology—"necessary to prevent

the death of the pregnant woman," I.C. § 18-622(2)(a)—to establish the legal standard for when abortion is allowed; (ii) the legal standard's imprecision; (iii) the mismatch between the legal standard and the way physicians are trained to address medical problems (they are trained to identify and provide the healthcare the patient wants and needs, life-saving or not); and (iv) the difficulty of ascertaining whether the legal standard is met. (Tr. 241:2–6, 246:18–247:17 (Corrigan), 610:10–611:2 (Raja), 701:12–703:5 (Harmon).)

23. Physician confusion about Idaho's Abortion Laws sometimes delays needed and wanted abortion care, (Tr. 243:19–25, 851:24–853:5), with potentially tragic implications. Consider, for example, a pregnant woman with previable PPROM. A physician may not know when abortion care becomes "absolutely necessary to prevent that patient's death," and the patient can progress quickly from merely facing a "health risk" to facing a "significant risk of . . . dying," but by then "it may be too late because the disease has progressed basically past the point of no return." (Tr. 248:21–249:1, 245:4–20.)

II.

CONCLUSIONS OF LAW

Idaho's Abortion Laws

1. Subject to two exceptions, the General Abortion Ban, I.C. § 18-622, makes performing an abortion a felony punishable by prison time and, if the defendant is a licensed healthcare provider, a mandatory license suspension (for a first offense) or revocation (for a subsequent offense). I.C. § 18-622(1).

2. The first exception is that an abortion performed by a physician isn't a crime if "[t]he physician determined, in his good faith medical judgment and based on the facts known to [him] at the time, that the abortion was necessary to prevent the death of the pregnant woman," so long as the reason it was necessary wasn't to avert a risk that the pregnant woman will "take action to harm herself" and the manner of performing it "provided the best opportunity for the unborn child to survive, unless . . . termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman." I.C. § 18-622(2)(a)(i)–(ii) (emphasis added). The second exception is that an abortion isn't a crime if performed by a physician during a pregnancy's first trimester and the patient had reported to authorities that she was a victim of rape or incest. I.C. § 18-622(2)(b).

3. The Fetal Heartbeat Law, I.C. §§ 18-8801 to -8805, criminalizes performing abortions after fetal cardiac activity is present, making them punishable like those prohibited by the General Abortion Ban, I.C. §§ 18-8804(1), -8805(2)–(3), unless, according to a "reasonable medical judgment," an "immediate abortion" is necessary to "avert [the pregnant woman's] death" or "a delay [in performing the abortion] will create serious risk of substantial and irreversible impairment of a major bodily function" of hers, I.C. § 18-8801(5).

4. The General Abortion Ban has primacy over the Fetal Heartbeat Law; the Fetal Heartbeat Law says that "[i]n the event both [laws] are enforceable," it is "supersede[d]" by the General Abortion Ban. I.C. § 18-8805(4); *see also Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 403, 522 P.3d 1132, 1161 (2023).

Standing

5. The State contends that Claims I and III should be dismissed because Plaintiffs lack standing to assert them. (Def. State of Idaho's Proposed Findings Fact & Conclusions Law ¶¶ 1–103.) "Concepts of justiciability, including standing, identify appropriate or suitable occasions for adjudication by a court." *Associated Press v. Second Jud. Dist.*, 172 Idaho 113, 118, 529 P.3d 1259, 1264 (2023) (quoting *Coeur d'Alene Tribe v. Denney*, 161 Idaho 508, 513, 387 P.3d 761, 766 (2015)). "[S]tanding is a threshold determination that must be addressed before reaching the merits." *Zeyen v. Pocatello/Chubbuck Sch. Dist. No. 25*, 165 Idaho 690, 698, 451 P.3d 25, 33 (2019) (citing *Martin v. Camas Cty. ex rel. Bd. Comm'rs*, 150 Idaho 508, 513, 248 P.3d 1243, 1248 (2011)).

6. "Idaho courts have, again and again, reaffirmed a commitment to the federal standards for Idaho's standing doctrine." *Tidwell v. Blaine Cnty.*, 172 Idaho 851, 860, 537 P.3d 1212, 1221 (2023) (collecting cases). Under federal standards, "[t]he standing inquiry focuses on whether the plaintiff is the proper party to bring this suit." *Raines v. Byrd*, 521 U.S. 811, 818 (1997). As the Idaho Supreme Court recently put it, "[w]hen an issue of standing is raised, the focus is not on the merits of the issues raised, but upon the party who is seeking the relief," because "a party can have standing to bring an action, but then lose on the merits." *Midtown Ventures, LLC v. Capone*, 173 Idaho 172, 180, 539 P.3d 992, 1000 (2023) (quoting *Bagley v. Thomason*, 149 Idaho 806, 808, 241 P.3d 979, 981 (2010)).

7. To establish standing, a plaintiff must show "(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision." *Planned Parenthood*, 171 Idaho at 401, 522 P.3d at 1159. An injury sufficient to satisfy the requirement of an injury in fact must be concrete and particularized and actual or imminent, not conjectural or hypothetical. *Id.*

8. When multiple plaintiffs seek the same relief, the case may proceed so long as at least one plaintiff has standing to seek that relief. *E.g.*, *Farrell v. Bd. of Comm'rs, Lemhi Cnty.*, 138 Idaho 378, 383, 64 P.3d 304, 309 (2002) ("That all appellants may not have standing as to all issues in a brief written on behalf of all appellants is of no consequence if at least one appellant, as is the case, has standing for each issue argued."), *overruled on other grounds by City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012); *Gibbons v. Cenarrusa*, 140 Idaho 316, 318, 92 P.3d 1063, 1065 (2002) (rejecting lack-of-standing defense because "[r]egardless of whether [Plaintiff A] has standing, it is clear that [Plaintiff B] has standing"); *Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017) ("At least one plaintiff must have standing to seek each form of relief requested in the complaint."). The Court concludes below that Dr. Corrigan has standing to assert Claims I and III. That conclusion leaves no need to determine whether other plaintiffs also have standing; either way, Claims I and III may not be dismissed on standing grounds.

9. Dr. Corrigan, a board-certified OB-GYN whose work includes providing abortion care, testified that uncertainty about the meaning of Idaho's Abortion

Laws—when, precisely, is abortion still legal in Idaho?—and the resulting fear of criminal prosecution has negatively affected her ability to practice her profession. (Tr. 180:15–181:3.) This testimony isn't just credible but predictable. Idaho's Abortion Laws use medically imprecise language in dramatically changing the legal landscape under which obstetrical physicians like Dr. Corrigan practice medicine, creating uncertainty and fear as unintended byproducts of the legislative goals they seek to achieve. That's an injury in fact caused by Idaho's Abortion Laws (the first two elements of the standing test described in Conclusion of Law 3). Indeed, in *Planned Parenthood*, the same injury gave a physician standing to challenge the constitutionality of the Fetal Heartbeat Law's civil-liability provisions. 171 Idaho at 401, 522 P.3d at 1159. It follows that a physician whose practice is affected by the criminal-liability provisions of Idaho's Abortion Laws has standing to seek certainty as to their meaning. Further, Dr. Corrigan's injury will be redressed by deciding Claim I on the merits (the third and last element of the standing test); a decision will give her greater certainty about the meaning of Idaho's Abortion Laws, helping her navigate practicing her profession under the restrictive regime they create. Dr. Corrigan has standing to pursue Claim I.

10. The premise of Claim III is that pregnant women have a constitutional right to obtain abortion care in circumstances in which Idaho's Abortion Laws prohibit providing it. Hence, in pursuing Claim III, Dr. Corrigan seeks to vindicate the constitutional rights of women in need of abortion care, implicating the doctrine of third-party standing. Under that doctrine, a litigant has standing to assert the

rights of third parties if three elements are satisfied: "(1) the litigant suffered injury in fact, providing a significantly concrete interest in the outcome of the matter in dispute; (2) a sufficiently close relationship to the party whose rights are being asserted; and (3) a bar to the third parties' ability to protect their interests." *Id.* at 402, 522 P.3d at 1160.

11. *Planned Parenthood* is instructive here as well. There, the Idaho Supreme Court held that a physician had standing to assert the constitutional rights of Idaho women in challenging Idaho's Abortion Laws. *Id.* Dr. Corrigan's case for third-party standing isn't materially different.

12. In *Planned Parenthood*, the first element of the test for third-party standing—the litigant suffered an injury fact—was satisfied "[b]ased on the severe consequences of performing abortions after the enactment of these laws, the potential financial liabilities, and the governmental control on an allegedly constitutionally protected activity." *Id.* Likewise, Idaho's Abortion Laws cause an injury in fact to Dr. Corrigan by preventing her from providing abortion care in situations in which she otherwise would provide it to pregnant women she contends have a constitutional right to it. (Tr. 177:7–9, 181:4–8, 183:9–19.)

13. The second element of the test—a sufficiently close relationship between the plaintiff and the third party whose rights are being asserted—was satisfied in *Planned Parenthood* because "the doctor-patient relationship has long been held to be a sufficiently close relationship to meet the requirements for third-party standing in the abortion context," and "[t]he *Dobbs* decision did not . . .

abrogate the basic third-party standing principle that aside from the woman herself the physician is uniquely qualified to litigate the constitutionality of the State's interference with, or discrimination against, th[e] decision to get an abortion." 171 Idaho at 402, 522 P.3d at 1160 (internal quotation marks, brackets, and ellipsis points omitted). So too it is satisfied here.

14. Finally, the test's third element was satisfied in *Planned Parenthood* based on privacy and stigmatization concerns "in a post-*Dobbs* world." *Id.* Those same concerns are equally present here. Further, "the inherent time limitation in which a woman may obtain an abortion" is a serious impediment, even if not an absolute bar, to the woman's assertion of her constitutional rights. *Kootenai Med. Ctr. ex rel. Teresa K. v. Idaho Dep't of Health & Welfare*, 147 Idaho 872, 879, 216 P.3d 630, 637 (2009) (citing *Singleton v. Wulff*, 428 U.S. 106, 117 (1977)). For these reasons, the third element is satisfied here.

15. Dr. Corrigan has standing to pursue Claim III on behalf of Idaho women in need of abortion care.

Ripeness

16. Ripeness is another justiciability doctrine. *E.g.*, *Tucker v. State*, 162 Idaho 11, 18, 394 P.3d 54, 61 (2017). The State invokes it, saying Claims I and III are unripe because Plaintiffs don't include (or even identify) a pregnant woman now in need of an abortion that might or would be prohibited by Idaho's Abortion Laws. (Def. State of Idaho's Proposed Findings Fact & Conclusions Law ¶¶ 103–16.) For the reasons explained below, the Court disagrees.

17. The ripeness doctrine keeps courts from "entangling themselves in purely abstract disagreements," *Tucker*, 162 Idaho at 27, 394 P.3d at 70, or, in other words, "deciding cases which are purely hypothetical or advisory," *ABC Agra, LLC v. Critical Access Grp., Inc.*, 156 Idaho 781, 783, 331 P.3d 523, 525 (2014) (quoting *Bettwieser v. N.Y. Irrigation Dist.*, 154 Idaho 317, 326, 297 P.3d 1134, 1143 (2013)). To that end, it "asks whether a case is brought too early." *Tucker*, 162 Idaho at 27, 394 P.3d at 70. An asserted injury "too contingent or remote" doesn't "support present adjudication." *State v. Philip Morris, Inc.*, 158 Idaho 874, 883 n.6, 354 P.3d 187, 196 n.6 (2015) (quoting 13B Charles A. Wright et al., *Federal Practice & Procedure* § 3532.1 (3d ed. 2014)).

18. A three-pronged test is used to assess ripeness: "[A] claim is ripe when '(1) the case presents definite and concrete issues; (2) a real and substantial controversy exists (as opposed to hypothetical facts); and (3) there is a present need for adjudication.'" *PHH Mortg. v. Nickerson*, 164 Idaho 33, 40, 423 P.3d 454, 461 (2018) (quoting *State v. Manley*, 142 Idaho 338, 342, 127 P.3d 954, 958 (2005)). The test applies to cases seeking a declaratory judgment no differently than others. *E.g.*, *Paddison Scenic Props., Family Tr., L.C. v. Idaho Cnty.*, 153 Idaho 1, 4, 278 P.3d 403, 406 (2012) ("Idaho courts will only issue declaratory judgments in actions that are ripe for adjudication.").

19. Under this test, Claim I is ripe. Dr. Corrigan treats obstetrical patients, some of whom, her experience shows, need abortion care. To do her work the best she can, she needs the best information she can get concerning the medical

circumstances in which Idaho's Abortion Laws allow abortion. The declaratory judgment Plaintiffs seek is that Idaho's Abortion Laws, despite their restrictive language, allow physicians to perform abortion when they determine in good faith that, for reasons other than hedging a risk of self-harm, it is within the medical standard of care to treat a high-risk or complicated pregnancy. (Pls.' Proposed Findings Fact & Conclusions Law ¶¶ 202, 206.) The State disagrees. (*See* Def. State of Idaho's Proposed Findings Fact & Conclusions Law ¶¶ 124–58.) Whether Plaintiffs' interpretation is right is a definite and concrete issue for the Court to decide, not some abstract dispute. Deciding it doesn't require applying the law to hypothetical facts. And, as just noted, Dr. Corrigan needs to know the answer.

20. Claim III is ripe too. Through Claim III, Plaintiffs seek a declaratory judgment that pregnant women have a constitutional right of access to abortion care when a physician determines that abortion is within the medical standard of care to treat their high-risk or complicated pregnancies. (Pls.' Proposed Findings Fact & Conclusions Law ¶ 137.) In particular, they say this constitutional right applies when an abortion would alleviate (i) "a pre-existing or underlying physical or mental health condition that cannot effectively be treated during pregnancy, is exacerbated by pregnancy, requires recurrent invasive intervention, or otherwise makes continuing the pregnancy unsafe for the pregnant patient"; (ii) "a physical or mental health condition caused by pregnancy or a complication of pregnancy that poses a risk of infection, bleeding, or organ damage, or otherwise makes continuing the pregnancy unsafe for the pregnant patient"; or (iii) "a lethal fetal diagnosis,

regardless of whether the fetal diagnosis increases the pregnant patient's health risks of continuing the pregnancy and giving birth." (*Id.*) The State denies the existence of any such constitutional right. (*See* Def. State of Idaho's Proposed Findings Fact & Conclusions Law ¶¶ 159–232.) Whether this constitutional right exists is a definite and concrete issue for the Court to decide, not some abstract dispute. Deciding it doesn't require applying the law to hypothetical facts. And, again, Dr. Corrigan needs to know the answer.

Sovereign Immunity

21. The State contends that Claim I should be dismissed based on the doctrine of sovereign immunity,[2] (Def. State of Idaho's Proposed Findings Fact & Conclusions Law ¶¶ 117–23), which generally bars suits against the State to which it hasn't consented (statutorily or otherwise), *e.g.*, *Von Lossberg v. State*, 170 Idaho 15, 20, 506 P.3d 251, 256 (2022). In two ways, however, the State consented to be sued on Claim I, waiving any sovereign-immunity defense it otherwise had.

22. First, in a motion filed on October 31, 2023, near the outset of this litigation, the State sought the dismissal of the other defendants (Governor Little, Attorney General Labrador, and the Idaho State Board of Medicine)—but not its dismissal—on standing grounds, saying that "while the State of Idaho is a proper defendant in this action, the same cannot be said for the other defendants." (Mem.

[2] The doctrine of sovereign immunity doesn't provide a defense to constitutional claims, *see Tucker*, 162 Idaho at 18, 394 P.3d at 61, so the State doesn't invoke it as a defense to Claim III.

Supp. Defs.' Mot. Dismiss 19–20.) The State's representation that it is a proper defendant to this action is a clear expression of its consent to be sued on Claim I.

23. Second, the State failed to pursue a sovereign-immunity defense not only in making the just-mentioned motion to dismiss but also in moving for summary judgment the better part of a year later, on August 19, 2024. Indeed, the only time the State mentioned sovereign immunity before raising it as a defense in the trial brief it filed on November 6, 2024, (Def. State of Idaho's Trial Br. 18–19), just six days before the trial began, was in the answer it filed ten months earlier, on January 12, 2024, (Def. State of Idaho's Answer 55). The State may not begin defending itself on sovereign-immunity grounds at trial, after other lines of defense fail to end the litigation short of trial.

24. That approach to litigation is a waiver of a state's Eleventh Amendment immunity from suit in the federal courts. *See, e.g.*, *Hill v. Blind Indus. & Servs. of Maryland*, 179 F.3d 754, 756 (9th Cir. 1999) (holding that a state agency waived its Eleventh Amendment immunity "by participating in extensive pre-trial activities and waiting until the first day of trial before objecting to the federal court's jurisdiction on Eleventh Amendment grounds"). The result should be no different in state court. Indeed, "the Eleventh Amendment confirm[s], rather than establish[es], sovereign immunity as a constitutional principle." *Alden v. Maine*, 527 U.S. 706, 728 (1999) (noting that "the scope of the States' immunity from suit is demarcated not by the text of the [Eleventh] Amendment alone but by fundamental postulates implicit in the constitutional design."). The principle doesn't extend so

far as to permit treating sovereign immunity as a defense of last resort. It is, after all, an immunity "from suit," *e.g.*, *id.*; *Bliss v. Minidoka Irrigation Dist.*, 167 Idaho 141, 152, 468 P.3d 271, 282 (2020), not from an adverse judgment. A state waives its right to immunity "from suit" by participating extensively in a suit before invoking sovereign immunity as an escape hatch, as the State did here.

Claim I, for a declaratory judgment

25. Claim I, again, isn't a constitutional challenge to Idaho's Abortion Laws but, instead, a claim under Idaho's Uniform Declaratory Judgment Act ("IDJA"), I.C. §§ 10-1201 to -1217, for a declaratory judgment concerning the medical circumstances in which Idaho's Abortion Laws allow abortion. It seeks essentially the same relief as Claim III. (*Compare* Pls.' Proposed Findings Fact & Conclusions Law ¶ 137, *with id.* ¶¶ 202, 206.) A victory for Plaintiffs on Claim I would, then, at least partly obviate the need to consider Claim III, a constitutional challenge to Idaho's Abortion Laws. Consequently, the doctrine of constitutional avoidance requires the Court to decide Claim I first. *See, e.g.*, *Miller v. Idaho State Patrol*, 150 Idaho 856, 864, 252 P.3d 1274, 1282 (2011). Another reason to decide Claim I first is that, as a practical matter, the Court can't determine whether, as Plaintiffs say, Idaho's Abortion Laws unconstitutionally restrict abortion without first ascertaining the medical circumstances in which they allow abortion.

26. Because Claim I must be decided before Claim III, Idaho's Abortion Laws effectively must be presumed constitutional in deciding Claim I. That presumption makes both laws enforceable, so the General Abortion Ban has

primacy over the Fetal Heartbeat Law. (*See* Conclusion of Law 4.) The outcome of Claim I is, as a result, determined by the General Abortion Ban alone.[3]

27. IDJA empowers courts to "declare rights, status, and other legal relations, whether or not further relief is or could be claimed." I.C. § 10-1201. Given its remedial purpose—"to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations"—it "is to be liberally construed and administered." I.C. § 10-1212; *see also Lingnaw v. Lumpkin*, 167 Idaho 600, 605, 474 P.3d 274, 279 (2020).

28. Still, "a declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists." *Harris v. Cassia County,* 106 Idaho 513, 516, 681 P.2d 988, 991 (1984). "This concept precludes courts from deciding cases which are purely hypothetical or advisory." *State v. Rhoades,* 119 Idaho 594, 597, 809 P.2d 455, 458 (1991). To that end, an IDJA plaintiff who seeks to settle an uncertainty concerning the meaning of a statute must be "[a] person . . . whose rights, status or other legal relations are affected by [the] statute." I.C. § 10-1202. Such a person "may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status or other legal relations thereunder." *Id.*

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[3] If, in deciding Claim III, the Court concludes that one or both of Idaho's Abortion Laws are unconstitutional in some respect, the Court will revisit whether the General Abortion Ban retains its primacy over the Fetal Heartbeat Law.

29. Claim I is a proper IDJA claim brought by at least one proper IDJA plaintiff, not an impermissible request for an advisory opinion on how Idaho's Abortion Laws apply to hypothetical situations. It seeks to settle uncertainty about the medical circumstances in which abortion is legal. Among Plaintiffs, at least Dr. Corrigan is a person whose rights, status, or other legal relations are affected by Idaho's Abortion Laws; she performs abortions, giving her an interest in alleviating the confusion she experiences (and other physicians experience) in trying to discern the medical circumstances in which abortion is legal. (Tr. 241:2–6, 246:18–22 (Corrigan), 610:10–611:2 (Raja), 701:12–703:5 (Harmon).)

30. The aim of interpreting statutes—to "determine and give effect to the legislative intent"—is advanced by giving the statutory language its "plain, usual, and ordinary meaning." *Kaseburg v. State Bd. of Land Comm'rs*, 154 Idaho 570, 577, 300 P.3d 1058, 1065 (2013) (first quoting *Idaho Cardiology Assocs., P.A. v. Idaho Physicians Network, Inc.*, 141 Idaho 223, 227, 108 P.3d 370, 374 (2005); and then quoting *Two Jinn, Inc. v. Idaho Dep't of Ins.*, 154 Idaho 1, 3, 293 P.3d 150, 152 (2013)). Statutes must be considered "as a whole," *e.g.*, *State v. Casper*, 169 Idaho 793, 797, 503 P.3d 1009, 1013 (2022), not as assemblages of "isolated provisions," *e.g.*, *State v. Burke*, 166 Idaho 621, 623, 462 P.3d 599, 601 (2020). If a statute is unambiguous, statutory interpretation "begins and ends with [its] plain language." *IDHW v. John Doe (2022-32)*, 171 Idaho 677, 680–81, 525 P.3d 715, 718–19 (2023). In that case, the court "follows the law as written." *Id.* (quoting *Breckenridge Prop. Fund 2016, LLC v. Wally Enters., Inc.*, 170 Idaho 649, 657, 516 P.3d 73, 81 (2022)).

If, however, a statute is ambiguous, the court considers the "language used, the reasonableness of proposed interpretations, and the policy behind the statute" to determine legislative intent. *Kaseburg*, 154 Idaho at 577, 300 P.3d at 1065 (quoting *Ward v. Portneuf Med. Ctr., Inc.*, 150 Idaho 501, 504, 248 P.3d 1236, 1239 (2011)). A statute is ambiguous if its "meaning is so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning." *Hamberlin v. Bradford*, 165 Idaho 947, 951, 454 P.3d 589, 593 (2019).

31. Again, the General Abortion Ban allows abortions performed by a physician who "determined, in his good faith medical judgment and based on the facts known to [him] at the time, that the abortion was necessary to prevent the death of the pregnant woman," so long as it wasn't performed to avert a risk of self-harm by the pregnant woman and the manner of performing it "provided the best opportunity for the unborn child to survive, unless . . . termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman." I.C. § 18-622(2)(a)(i)–(ii). Plaintiffs propose interpreting this "prevent the death" exception to allow physicians to perform abortion when they determine in good faith that, for reasons other than averting a risk of self-harm, it is within the medical standard of care for a high-risk or complicated pregnancy.[4] (Pls.' Proposed

[4] Plaintiffs may want a declaratory judgment that specifies at least some of the medical circumstances in which the standard of care calls for abortion care. (*See* Pls.' Proposed Findings Fact & Conclusions Law ¶¶ 24–27, 202, 203.) Such a granular approach to formulating a declaratory judgment, however, is neither necessary nor appropriate. Among other concerns with a granular approach is that the standard of care isn't static; it changes as medical science develops.

Findings Fact & Conclusions Law ¶¶ 202, 206.) Plaintiffs' proposed interpretation isn't, however, a reasonable interpretation of the statutory language. The standard the legislature chose for determining an abortion's lawfulness unambiguously isn't whether the medical standard of care calls for performing it. Further, the legislature's "prevent the death" phrasing evinces no concern for maternal-health complications not dire enough to pose a death risk, yet Plaintiffs' proposed interpretation seemingly would allow physicians to perform abortion in response to maternal-health complications not so dire, contrary to the legislature's intent.

32. Plaintiffs call the "prevent the death" exception "ambiguous." (Pls.' Proposed Findings Fact & Conclusions Law 1.) They are right, as the Court determined in Finding of Fact 22, that the medical community finds it confusing (and understandably so). Nevertheless, the Court isn't convinced that the "prevent the death" exception is, as a legal matter, ambiguous. It is ostensibly ambiguous because it doesn't specify (i) how certain a physician must be that a pregnant woman will die without an abortion, or (ii) how imminent her death must be. But it allows physicians to make a subjective determination, according to their "good faith medical judgment," concerning whether an abortion is necessary to prevent a pregnant woman's death, without imposing certainty or imminence requirements. I.C. § 18-622(2)(a)(i). By committing that determination to the good faith medical judgment of the performing physician, the "prevent the death" exception resolves the ostensible ambiguity. This conclusion is explained more fully below.

33. In interpreting the "prevent the death" exception, the Court doesn't write on a blank slate because the Idaho Supreme Court interpreted it in *Planned Parenthood*, *see* 171 Idaho at 445–46, 522 P.3d at 1203–04, though less extensively than this case calls on this Court to interpret it. This Court's interpretation must be consistent with *Planned Parenthood*.

34. *Planned Parenthood*'s existence, though, doesn't obviate the need for the requested declaratory judgment. *Planned Parenthood* is a precedential opinion concerning the "prevent the death" exception's meaning. It isn't, however, equivalent to a declaratory judgment—particularly not one that further clarifies the exception at the margins.

35. *Planned Parenthood* holds that the "prevent the death" exception's "good faith medical judgment" language "clearly" establishes "a subjective standard"—one that "leaves wide room for the physician's good faith medical judgment" rather than imposes a standard of "objective certainty"—concerning whether an abortion is necessary to prevent a pregnant woman's death. *Id.* at 445, 522 P.3d at 1203 (emphasis and internal quotation marks omitted). In other words, the "good faith medical judgment" language allows room "for the 'clinical judgment that physicians are routinely called upon to make for proper treatment of their patients'"—"room that operates for the benefit, not the disadvantage, of the pregnant woman." *Id.* at 445–46, 522 P.3d at 1203–04 (quoting *Spears v. State*, 278 So. 2d 443, 445 (Miss. 1973)). In setting a subjective standard rather than an objective one, the "prevent the death" exception is unambiguous—even if it is

ambiguous, as Plaintiffs suggest, because it doesn't specify how certain a physician must be that a pregnant woman will die without an abortion or how imminent her death must be.

36. The Idaho Supreme Court addressed the ostensible ambiguity in *Planned Parenthood*, holding that the "prevent the death" exception requires neither "a particular level of immediacy" of the death to be prevented by an abortion nor a "certain percent chance" that, without an abortion, the death will occur. *Id.* It also held that imminence or certainty requirements would be at odds with the "subjective nature" of the legal standard for determining an abortion's lawfulness because they would "add an objective component." *Id.* at 446, 522 P.3d at 1204. The Idaho Supreme Court seems, then, to have considered the "prevent the death" exception clear—in other words, unambiguous—in not requiring that the death to be prevented by an abortion must be either imminent or assured.

37. Even if the "prevent the death" exception were ambiguous on this point, the ambiguity must be resolved by construing the exception broadly, such that the death to be prevented by an abortion need be neither imminent nor assured. A broad construction is appropriate for three reasons.

38. First, the just-described holdings of the Idaho Supreme Court—that the exception requires neither "a particular level of immediacy" nor a "certain percent chance" of the death to be prevented by an abortion—suggest a broad construction rather than a narrow one.

39. Second, a narrow construction wouldn't serve the legislative policy of Idaho's Abortion Laws, which are rooted in respect for human life. The legislature sought to protect fetal life because, in its view, "[t]he life of each human being begins at fertilization." I.C. § 18-8802(1). A narrow construction, though, would risk the extant, fully formed human lives of pregnant women. The legislature presumably didn't intend to gamble with the lives of pregnant women by conditioning access to abortion care on a high likelihood a pregnant woman will die without it or on her arrival at death's door before it can be provided. Indeed, even a modest likelihood that a pregnant woman will die without abortion care is a huge risk to take with her life, which the legislature surely didn't intend to deem less worthy of protection than the fetal life growing in her uterus. So, any ambiguity in the "prevent the death" exception's statutory language should be resolved in favor of a broad construction, which would better promote the statutory policy of respect for human life. *See Kaseburg*, 154 Idaho at 577, 300 P.3d at 1065 (favoring an interpretation of an ambiguous statute that furthers the statutory policy).

40. Third, if the ostensible ambiguity can't be resolved, as the Court suggests, "by looking at the text, context, history or policy of the statute," the rule of lenity would kick in, compelling a construction of a "grievously ambiguous" criminal statute that favors the accused rather than the government. *State v. Pizzuto*, 171 Idaho 100, 112–13, 518 P.3d 796, 808–09 (2022) (brackets omitted) (quoting *State v. Bradshaw*, 155 Idaho 437, 440, 313 P.3d 765, 768 (Ct. App. 2013)). A broad construction of the exception favors an accused physician.

41. Consistent with all these conclusions, the Court interprets the "prevent the death" exception—whether it is unambiguous (as the Court concludes) or ambiguous (as Plaintiffs suggest)—as follows: (i) whether an abortion is necessary to prevent the patient's death is determined subjectively, according to the performing physician's good faith medical judgment based on the facts known to the physician at the time of the abortion; and (ii) because the "prevent the death" exception doesn't require a "certain percent chance" that the patient will die without an abortion or "a particular level of immediacy" of the patient's death, and because the underlying legislative policy is better furthered by a broad (rather than narrow) construction of the exception, the exception is satisfied by the presence of a non-negligible risk, in the good faith medical judgment of the performing physician, that—because of an existing medical condition or pregnancy complication that would be alleviated by an abortion—the patient will die sooner if an abortion isn't performed than she will die if an abortion is performed.[5]

42. In sum, on Claim I, Plaintiffs are entitled to a declaratory judgment that Idaho's Abortion Laws don't make it a crime to perform an "abortion" as

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[5] Since *Planned Parenthood*'s issuance on January 5, 2023, three annual legislative sessions have come and gone. During the 2023 legislative session, the legislature amended the General Abortion Ban in apparent reaction to some aspects of *Planned Parenthood*. *See* 2023 Idaho Sess. Laws ch. 298. The legislature is presumed to know about *Planned Parenthood*'s interpretation of the "prevent the death" exception, including that the patient's death need be neither imminent nor assured for the exception to apply. Had the legislature intended the exception to apply only if the patient assuredly will die imminently without an abortion, presumably it would've amended the General Abortion Ban accordingly.

defined in I.C. § 18-604(1)[6] if, in the performing physician's good faith medical judgment (based on the facts known to the physician at the time of the abortion), the patient—because of an existing medical condition or pregnancy complication that would be alleviated by an abortion—faces a non-negligible risk of dying sooner without an abortion (even if her death is neither imminent nor assured), so long as (i) the risk of her death doesn't arise from a risk of self-harm, and (ii) the manner of pregnancy termination is the one that, without risk increasing the risk of her death, best facilitates the unborn child's survival outside the uterus, if feasible.

Claim III, for violation of article I, § 1

43. Again, Claim III seeks a declaratory judgment that article I, § 1 of the Idaho Constitution grants pregnant women a constitutional right of access to abortion care if a physician determines that abortion is within the medical standard of care to treat their high-risk or complicated pregnancies. (Pls.' Proposed Findings Fact & Conclusions Law ¶ 137.) In particular, Plaintiffs say this constitutional right applies when an abortion would alleviate (i) "a pre-existing or underlying physical or mental health condition that cannot effectively be treated during pregnancy, is exacerbated by pregnancy, requires recurrent invasive intervention, or otherwise makes continuing the pregnancy unsafe for the pregnant patient"; (ii) "a physical or mental health condition caused by pregnancy or a complication of

[6] According to *Planned Parenthood*, "non-viable pregnancies (i.e., where the unborn child is no longer developing) are plainly not within the definition of 'abortion.'" 171 Idaho at 445, 522 P.3d at 1203.

pregnancy that poses a risk of infection, bleeding, or organ damage, or otherwise makes continuing the pregnancy unsafe for the pregnant patient"; or (iii) "a lethal fetal diagnosis, regardless of whether the fetal diagnosis increases the pregnant patient's health risks of continuing the pregnancy and giving birth." (*Id.*) They also say it applies when an abortion is necessary to preserve the ability to procreate. (*Id.* ¶¶ 152–53.)

44. The declaratory relief awarded to Plaintiffs on Claim I (*see* Conclusion of Law 42) is narrower than that sought through Claim III, so Claim III must be decided on the merits, despite the doctrine of constitutional avoidance mentioned in Conclusion of Law 25. Claim III is rendered partly moot, though, by the declaratory relief granted on Claim I; Plaintiffs don't need—and the Court won't entertain granting—a declaration that it would be unconstitutional to prohibit abortion in circumstances in which abortion isn't prohibited in the first place.

45. A party challenging a statute's constitutionality "must overcome a strong presumption of validity" to carry the burden of proving it unconstitutional. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 709, 791 P.2d 1285, 1288 (1990).

46. The "fundamental object in construing constitutional provisions is to ascertain the intent of the drafters by reading the words as written, employing their natural and ordinary meaning, and construing them to fulfill the intent of the drafters." *Sweeney v. Otter*, 119 Idaho 135, 139, 804 P.2d 308, 312 (1990). "In interpreting the Idaho Constitution, the rules of statutory construction apply." *Reclaim Idaho v. Denney*, 169 Idaho 406, 427, 497 P.3d 160, 181 (2021).

47. As Plaintiffs say, article I, § 1 of the Idaho Constitution grants the citizenry "certain inalienable rights," including "enjoying and defending life" and "pursuing happiness and securing safety." Idaho Const. art. I, § 1. The Idaho Supreme Court has held that article I, § 1 doesn't make abortion a fundamental right. *Planned Parenthood*, 171 Idaho at 418–37, 522 P.3d at 1176–95. This Court is bound by that holding.

48. Realizing as much, Plaintiffs don't contend article I, § 1 makes abortion a fundamental right per se. They contend, instead, that the rights explicitly recognized by article I, § 1—which are fundamental rights because all individual rights explicitly recognized by the Idaho Constitution are fundamental rights—encompass the right to seek medical care for health- and life-threatening conditions, including abortion care when medically indicated. This is, in substance, a contention that implicit in the rights explicitly recognized by article I, § 1 is a right—also a fundamental one; individual rights implicitly recognized by the Idaho Constitution are fundamental rights too—to seek medical care for health- and life-threatening conditions, including abortion care when medically indicated.

49. According to *Planned Parenthood*, "for [a court] to read a fundamental right into the Idaho Constitution, [the court] must examine whether the alleged right is so 'deeply rooted' in the traditions and history of Idaho at the time of statehood that [the court] can fairly conclude that the framers and adopters of the Inalienable Rights Clause [article I, § 1] intended to implicitly protect that right." 171 Idaho at 390, 522 P.3d at 1148. Presumably believing they can rest their case

on rights explicitly recognized by article 1, § 1—without showing that part and parcel of those explicit rights is a deeply rooted right to seek medical care for health- and life-threatening conditions, including abortion care when medically indicated—Plaintiffs don't apply this legal test in their 167-page post-trial submission. The phrase "deeply rooted," for example, appears nowhere in that submission. The Court should not try to construct for Plaintiffs an argument by which the applicable legal test, which they fail to apply, is satisfied. Claim III fails for this reason. Indeed, because Plaintiffs haven't proved a deeply rooted right to seek medical care for health- and life-threatening conditions, including abortion care when medically indicated, the Court has no occasion to review the propriety of Idaho's Abortion Laws' infringement of that unproven right according to a "strict scrutiny" or "rational basis" test.

50. Claim III also fails because, even assuming the existence of an implicit constitutional right to seek medical care for health- and life-threatening conditions, the Court can't conclude, for reasons explained below, that this implicit right is broad enough to encompass a right to abortion care to alleviate medical conditions that aren't life-threatening (including, inter alia, any conditions that put a pregnant woman's future fertility at risk without threatening her life).

51. *Planned Parenthood* makes clear that article I, § 1 must be understood in light of the abortion restrictions in force when the Idaho Constitution was adopted because it "was framed, in part, by those same individuals" involved in enacting the abortion restrictions. 171 Idaho at 421, 522 P.3d at 1179 (emphasis

omitted). When the Idaho Constitution was adopted, performing or obtaining an abortion was, under Idaho law, a crime punishable by prison time unless the abortion was "necessary to preserve [the pregnant woman's] life." *Id.* at 392, 522 P.3d at 1150 (emphasis omitted) (quoting Idaho Rev. Stat. §§ 6794, 6795 (1887)). Plaintiffs say this restriction, despite its plain language, was always understood to allow any "therapeutic" abortion, meaning an abortion that protects a pregnant woman's health whether or not considered necessary to preserve her life. The Court isn't convinced that this proposition is true or, in any event, reconcilable with *Planned Parenthood*, which rejected a dissenting justice's view that article I, § 1 recognizes "an implicit fundamental right to abortion to prevent the death of the mother and to protect her health from injury, harm, or destruction," observing that "an exception to the criminalization of abortion does not necessarily mean that the framers of our Constitution intended to enshrine the excepted conduct as a fundamental right." 171 Idaho at 435–36, 522 P.3d at 1193–94.

52. According to *Planned Parenthood*, courts must "interpret the Idaho Constitution based on its meaning at the time it was adopted by those who framed and adopted it," so they "cannot ignore the historic laws criminalizing abortion in Idaho . . . at the time the Inalienable Rights Clause [article I, §1] was framed and adopted." *Id.* at 428, 522 P.3d at 1186. Hence, *Planned Parenthood* compels the conclusion that even if article I, § 1 implicitly recognizes a right to seek medical care for health- and life-threatening conditions, that right is circumscribed to exclude the

right of pregnant women to seek abortion care to alleviate medical conditions that aren't life-threatening.

53. What's left of Claim III is Plaintiffs' assertion that Idaho's Abortion Laws violate article I, § 1 by prohibiting physicians from deeming an abortion "necessary to prevent the death of the pregnant woman," thus authorizing the abortion under the General Abortion Ban, when the reason for deeming the abortion necessary is "the physician believes that the woman may or will take action to harm herself" without an abortion. I.C. § 18-622(2)(a). Accepting this assertion would require the Court to reach two conclusions. First, the Court would have to conclude that article I, § 1 implicitly recognizes a general right to seek life-saving abortion care, despite *Planned Parenthood*'s caution that the existence of the territorial-era "exception to the criminalization of abortion [for abortions necessary to preserve the pregnant woman's life] does not necessarily mean that the framers of our Constitution intended to enshrine the excepted conduct as a fundamental right." 171 Idaho at 435–36, 522 P.3d at 1193–94. Second, the Court would have to conclude that the implicit general right to seek life-saving abortion care applies even when the risk of a pregnant woman's death is strictly a suicide risk, despite the absence of evidence that the territorial-era exception was understood to apply in that situation and despite that its language hardly suggests it applies in that situation. Perhaps the first conclusion could be justified despite the cautionary language in *Planned Parenthood*. Regardless, on this record, the second conclusion isn't justified.

54. For these reasons, Claim III fails.

Accordingly,

IT IS ORDERED that, on Claim I, Plaintiffs are entitled to a declaratory judgment that Idaho's Abortion Laws do not make it a crime to perform an "abortion" as defined in I.C. § 18-604(1) if, in the performing physician's good faith medical judgment (based on the facts known to the physician at the time of the abortion), the patient—because of an existing medical condition or pregnancy complication that would be alleviated by an abortion—faces a non-negligible risk of dying sooner without an abortion (even if her death is neither imminent nor assured), so long as (i) the risk of her death doesn't arise from a risk of self-harm, and (ii) the manner of pregnancy termination is the one that, without risk increasing the risk of her death, best facilitates the unborn child's survival outside the uterus, if feasible.

IT IS FURTHER ORDERED that judgment will be entered in favor of the State on Claim III.

Jason D. Scott 4/11/2025 1:55:23 PM

Jason D. Scott
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on 4/11/2025, I served a copy of this document as follows:

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Clerk of the District Court
4/11/2025 2:03:49 PM

By: Sabrina Stokes
Deputy Court Clerk

CLERK OF THE DISTRICT COURT FOURTH JUDICIAL DISTRICT ADA COUNTY, IDAHO