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Over the Legal Limit: One State's Attempt to Control Abortion Healthcare Access Outside Its Borders

Wendy Heipt

William Mitchell

Kelly O'Neill

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**OVER THE LEGAL LIMIT: ONE STATE’S ATTEMPT TO
CONTROL ABORTION HEALTHCARE ACCESS OUTSIDE
ITS BORDERS**

Wendy Heipt, William Mitchell and Kelly O’Neill*

I. INTRODUCTION	196
II. THE STATE OF THE STATE: WHY IDAHO IS THE TESTING GROUND.....	198
III. THE ABORTION TRAVEL BAN.....	204
IV. MATSUMOTO V. LABRADOR: THE CASE	211
V. FOLLOWING IDAHO’S LEAD TO THE BOTTOM.....	216
VI. CONCLUSION	223

I. INTRODUCTION

In the aftermath of *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), states across the country rushed to either secure or abolish reproductive healthcare,¹ resulting in today's erratic and often changing patchwork of abortion healthcare availability. In fact, far from providing a more "workable" landscape,² the *Dobbs* decision created a shifting landscape and widespread confusion that make any ambiguities that existed under *Roe v. Wade*, 401 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) comparatively insignificant.³ In the three years since *Dobbs*, numerous states have considered, and sometimes passed, laws that seek to deter and punish a variety of actors involved in providing or helping to provide access to reproductive healthcare.⁴ Front and center in these efforts has been Idaho, whose lawmakers passed laws that have essentially abolished abortion healthcare in the state.⁵ Then, not content with denying their residents the ability to access reproductive healthcare in-state, lawmakers sought to reach across their borders and stop their state's residents from leaving to access abortion health care where it remained legal.⁶ One glaring example occurred in 2023, when the

* Wendy S. Heipt is the Senior Reproductive Justice Counsel at Legal Voice. William Mitchell is the lead Idaho Policy Counsel and Lobbyist at Legal Voice. Kelly O'Neill is the lead Idaho Litigation Attorney at Legal Voice. This article is an educational tool that relates only the facts and posture of the case at issue and does not constitute legal advice or provide any privileged materials. This article reflects developments through mid-December 2025, when it was finalized for publication.

1 Larissa Jimenez, *60 Days After Dobbs: State Legal Developments on Abortion*, BRENNAN CTR. FOR JUST. (Aug. 24, 2022), <https://www.brennancenter.org/our-work/research-reports/60-days-after-dobbs-state-legal-developments-abortion> [<https://perma.cc/6KAF-YDUJ>].

2 *But see* *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 280–81 (2022) (asserting that—because the “undue burden” test from *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992), “scored poorly on the workability scale”—the *Dobbs* opinion is more workable).

3 *But see id.* at 279–83 (asserting that, because the court was faced with “confusion and disagreement” in the abortion healthcare landscape, the *Dobbs* opinion clarifies the confusion).

4 *See* Jimenez, *supra* note 1.

5 *See* IDAHO CODE § 18-8804 (2025).

6 *See id.* § 18-623, *partially invalidated by*, *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024); *see also* Letter from Raúl Labrador, Idaho Att’y Gen., to Brent Crane, Idaho State Rep. (Mar. 27, 2023) (opining that “Idaho law prohibits an Idaho medical provider from either referring a woman across state lines to access abortion services or prescribing abortion pills for the woman to pick up across state lines”).

Idaho state legislature made up a new crime that sought to stop adults in the state from even speaking to pregnant minors about abortion healthcare options legal in other states.⁷ This new law, labeled by the misnomer “abortion trafficking,” made Idaho the first state in the country to pass an abortion travel ban in an attempt to prevent minors from physically reaching abortion providers in other states.⁸

It is no surprise that Idaho was the first state in the nation to go this far. The state has long been viewed as the canary in the coal mine for extremist laws that undercut its citizens’ ability to make their own decisions about everything from literature to what flags can be flown.⁹ Below, we describe the social and political conditions in Idaho, the ways the state has been a forerunner in the efforts to limit the availability of abortion healthcare, and the legal challenges to these laws.¹⁰ We also explain the significant impact these laws have had on the availability of medical care in the state.¹¹ We then turn to Idaho’s abortion travel ban. After explaining how this law passed in Idaho,¹² we describe how the first case in the nation challenging this

7 See IDAHO CODE § 18-623(1), *partially invalidated by*, *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024) (linking “recruiting” from § 18-623 to speech).

8 Press Release, Planned Parenthood, Idaho Enacts Dangerous Law Banning So-Called “Abortion Trafficking” (Apr. 5, 2023).

9 Amanda Rodgers, *Worried. Tired. Frustrated. The Impact of Idaho’s Abortion Ban: A Canary in the Coalmine for the Nation*, ATRÓMITOS (Sep. 25, 2024), <https://www.atromitosconsulting.com/worried-tired-frustrated-2024/abortion/> [https://perma.cc/7TLM-2744]. For example, the Idaho Legislature passed House Bill 710 in 2024. *House Bill 710*, IDAHO LEG., <https://legislature.idaho.gov/sessioninfo/2024/legislation/H0710/> [https://perma.cc/D3VC-5SN3] (last visited Nov. 24, 2025). This bill imposes civil penalties when a minor is exposed to “harmful material” in a public library. *Id.*; IDAHO CODE §§ 18-1514, -1517(B). And in 2025, the Idaho Legislature passed House Bill 96. *2025 Legislation: House Bill 96*, IDAHO LEG., <https://legislature.idaho.gov/sessioninfo/2025/legislation/H0096/> [https://perma.cc/S635-WVRV] (last visited Nov. 24, 2025). This “emergency” law amends Idaho’s statutory flag protocol and, by omission in its language, prohibits Idaho government entities from flying LGBTQ Pride flags. *Id.*; see IDAHO CODE § 67-2303(A) (2025). Idaho Attorney General Raúl Labrador then sent an open letter to Boise Mayor Lauren McLean stating that flying a Pride flag in front of the Boise City Hall violated state law, an assertion the Boise Mayor rejected. Sarah Cutler, *Boise Mayor Threatens Legal Action on Idaho Law that Bans Pride Flag*, IDAHO STATESMAN (May 16, 2025, at 19:29 ET), <https://www.idahostatesman.com/news/politics-government/state-politics/article304985001.html> [https://perma.cc/4LQ5-XXJC].

10 See *infra* Part II.

11 See *infra* Part II.

12 See *infra* Part III.

law came to be, identifying the causes of action, the plaintiffs, and the status of the litigation.¹³ We also show how Idaho's "lead" has since been mimicked by more than a dozen other states in the two legislative sessions that have passed since Idaho enacted its law.¹⁴ As of this writing, only one of these other states has passed a similar law. We explain that law and the lawsuits challenging it.¹⁵ We conclude by making it clear that Idaho's foray to reach over its borders and control legal behavior may have been the first such attempt, but will not be the last, an effort that has consequences that resonate far beyond reproductive justice.¹⁶

II. THE STATE OF THE STATE: WHY IDAHO IS THE TESTING GROUND

Even before passage of the abortion travel ban, Idaho had some of the most oppressive abortion laws in the nation,¹⁷ a result of the state's conservative supermajority.¹⁸ Idaho's abortion laws create a complex and confusing legal landscape that produces a clear and likely intentional result: a chilling effect.¹⁹ As the number of laws and the severity of penalties increase, individuals and medical

13 See *infra* Part IV.

14 See *infra* Part V.

15 See *infra* notes 145–50 and accompanying text.

16 See *infra* Part VI.

17 Ayesha Rascoe & Sarah Varney, *Idaho's Abortion Ban, One of the Strictest in the U.S., is Being Challenged in Court*, NPR (Nov. 17, 2024, at 08:13 ET), <https://www.npr.org/2024/11/17/nx-s1-5192608/idahos-abortion-ban-one-of-the-strictest-in-the-u-s-is-being-challenged-in-court> [<https://perma.cc/5EVA-HVYE>].

18 Since 2023, the Idaho Legislature has been controlled by an 86% Republican supermajority, which is sufficient to control chairmanships of every committee and guarantee a gubernatorial veto override, if necessary. See *2023 Legislative Directory*, IDAHO LEG. (Jan. 25, 2023), https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2023/directory/Legislative_Directory.pdf [<https://perma.cc/ASH9-2QA3>]; *2024 Legislative Directory*, IDAHO LEG. (Feb. 29, 2024), https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2024/directory/Legislative_Directory.pdf [<https://perma.cc/XUP7-T7DU>]; *2025 Legislative Directory*, IDAHO LEG. (Jan. 2025), https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2025/directory/Legislative_Directory.pdf [<https://perma.cc/2ZCY-FMHM>].

19 Jack Resneck Jr., *Idaho Abortion Law Undermines Core Medical Ethics*, AMA (Apr. 22, 2024), <https://www.ama-assn.org/about/leadership/idaho-abortion-law-undermines-core-medical-ethics> [<https://perma.cc/E9H6-LNFE>].

professionals are more likely to avoid seeking or providing care out of fear or uncertainty, even when certain actions may still be legal.²⁰

In 2020, Idaho passed its Total Abortion Ban,²¹ which the *Dobbs* decision triggered in 2022.²² The ban states that “[e]very person who performs or attempts to perform an abortion . . . commits the crime of criminal abortion.”²³ Nevertheless, the ban includes exceptions for cases of rape or incest that have been reported to law enforcement within the first trimester of pregnancy, and for actions taken to prevent the death of the pregnant person.²⁴ There are no state-mandated exceptions to protect the health or fertility of the pregnant person.²⁵ For the medical providers who performed the “illegal” abortions, violations carry a mandatory minimum of two years in prison and up to five years total for each conviction, along with a medical license suspension or revocation for the medical provider who performed the “criminal abortion.”²⁶ Additionally, Idaho also has a “Fetal Heartbeat Preborn Child Protection Act,”²⁷ a further restriction fashioned after Texas’s effort to deputize private citizens to enforce abortion restrictions.²⁸ This “Fetal Heartbeat Act” permits family members of a person who obtained an abortion to sue the healthcare provider who performed, or attempted to perform, the

20 See Libby Denkmann & Hans Anderson, *Along WA-ID Border, Abortion Laws Create Confusion for Healthcare Providers*, KUOW (Feb. 27, 2023, at 17:12 ET), <https://www.kuow.org/stories/along-wa-id-border-abortion-laws-create-confusion-for-health-care-providers> [<https://perma.cc/8CPW-8BWV>].

21 *Medical Emergency Exceptions to State Abortion Bans*: Adkins v. State of Idaho, CTR. FOR REPROD. RTS., <https://reproductiverights.org/case/emergency-exceptions-abortion-bans-idaho-tennessee-oklahoma/adkins-v-state-of-idaho/> [<https://perma.cc/T42P-MSEA>] (last visited Nov. 24, 2025); see also IDAHO CODE § 18-622 (2025) (criminalizing performing or attempting to perform an abortion under the title, “Defense of life act”).

22 See S.B. 1385, 65th Leg., 2d Reg. Sess. (Idaho 2020).

23 *Id.*

24 See IDAHO CODE § 18-622(2)(a)(i), (3).

25 See *id.* § 18-622(2).

26 *Id.* § 18-622(1).

27 *Id.* §§ 18-8801 to -8805. Note that the Total Abortion Ban has primacy over the Fetal Heartbeat Law. See *id.* § 18-8805(4) (“In the event both [laws] are enforceable,” the Fetal Heartbeat law is “supersede[d].”).

28 TEX. HEALTH & SAFETY CODE §§ 171.201–.212 (2025); see also Kate Zernike, *Idaho Is First State to Pass Abortion Ban Based on Texas’ Law*, N.Y. TIMES (Mar. 14, 2022), <https://www.nytimes.com/2022/03/14/us/idaho-abortion-bill-texas.html> (on file with the University of Baltimore Law Review) (“Idaho . . . became the first state to adopt a copycat of an unusual new Texas law that relies on ordinary citizens to enforce a ban on abortions.”).

abortion, for at least \$20,000 per claim—up to four years later.²⁹ Together these two statutes “severely restrict abortion.”³⁰ In fact, Idaho interpreted these abortion bans to have no boundaries within the state and sought to have them adhered to everywhere, including in hospital emergency rooms subject to the “Emergency Medical Treatment and Active Labor Act” (EMTALA).³¹ In August 2022, the United States Department of Justice, under the Biden Administration, sued the State of Idaho in federal court, alleging that Idaho’s total abortion ban violated federally mandated access to abortion in certain situations under EMTALA.³² While that lawsuit was eventually dropped, the abortion access issues raised continue to be litigated in a related lawsuit involving the state’s largest healthcare system.³³

While the state’s abortion laws plainly serve to make abortion healthcare almost impossible to obtain within the state, the laws were not clearly written, and the reach of their prohibition remained unclear.³⁴ In 2022, prior to *Dobbs*, a lawsuit was filed against the

29 IDAHO CODE § 18-8807 (2025); see also Sarah Varney & Maea Lenei Buhre, *Idaho Criminalizes Helping Minors Travel Out of State to Get an Abortion*, PBS NEWS (May 5, 2023, at 18:35 ET), <https://www.pbs.org/newshour/show/idaho-criminalizes-helping-minors-travel-out-of-state-to-get-an-abortion> (on file with the University of Baltimore Law Review) (stating that family members of pregnant minors can sue for at least \$20,000 per claim).

30 Findings of Fact & Conclusions of Law at 1, *Adkins v. Idaho*, No. CV01-23-14744 (Idaho Dist. Ct. Apr. 11, 2025). In addition to these anti-abortion healthcare statutes, Idaho has a ban on using public funds for abortion healthcare, known as the “No Public Funds for Abortion Act.” § 18-8701. The ban can carry a punishment of up to fourteen years in prison, employment termination, and restitution of public funds. *Id.* §§ 18-5702, -8709.

31 EMTALA is a federal law enacted by Congress in 1986 as part of the “Consolidated Omnibus Budget Reconciliation Act.” In exchange for receiving federal Medicare dollars, EMTALA mandates that covered ERs must appropriately screen, stabilize, or transfer presenting patients. 42 U.S.C. § 1395dd(a)–(b)(1); see generally Wendy Heipt, *EMTALA in a Post-Dobbs World: The March Towards Fetal Personhood Continues*, 59 IDAHO L. REV. 369 (2023) (providing a deeper discussion on how federal lawsuits over EMTALA and abortion implicate reproductive justice issues).

32 See generally Complaint, *United States v. Idaho*, No. 1:22-cv-329 (D. Idaho, Aug. 2, 2022) (alleging *inter alia* that Idaho’s lack of health exceptions in its Total Abortion Ban violated EMTALA). After the case made its way to the Supreme Court, the justices dismissed the case as improvidently heard and never reached the merits. See *Moyle v. United States*, 603 U.S. 324, 325 (2024).

33 St. Luke’s hospital network sued Idaho regarding EMTALA preemption and secured injunctive relief. See *St. Luke’s Health Sys., Ltd. v. Labrador*, 782 F. Supp. 3d 953, 962 (D. Idaho 2025).

34 As noted earlier, when it is unclear what a law forbids, and that law has criminal penalties, Idahoans will naturally step back from the line to avoid criminal behavior, which in this case will further isolate Idaho minors in crisis. See Bryan Clark, *Abortion to Book Bans: Legislature is Using this Tactic to End-Run the*

state challenging Idaho's abortion scheme on a number of grounds.³⁵ In that case, the Idaho Supreme Court eventually clarified what the legislature had meant, and *inter alia*, concluded that an exception to the bans existed when a doctor subjectively believed, in good faith medical judgment, that an abortion was necessary to prevent the pregnant person's death.³⁶ Although confusion remained, a later lawsuit largely confirmed this holding under the precedential impact of *Planned Parenthood*, stating that the bans' exceptions can be stated as:

Idaho's Abortion Laws do not make it a crime to perform an "abortion" as defined . . . 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 increasing the risk of her death, best facilitates the unborn child's survival outside the uterus, if feasible.³⁷

Idaho's State Attorney General, Raúl Labrador, provided a legal analysis to a state legislator on the impact of the state's abortion bans after issuance of the *Planned Parenthood* decision.³⁸ In this opinion, AG Labrador opined, *inter alia*, that, "Idaho law prohibits an Idaho medical provider from either referring a woman across state lines to

Constitution, IDAHO STATESMAN (May 8, 2024, at 04:00 ET), <https://www.idahostatesman.com/opinion/readers-opinion/article288392865.html> (on file with the University of Baltimore Law Review).

35 The case went through a number of iterations, and the laws were, overall, challenged on the following grounds: (1) separation of powers doctrine, (2) special law prohibition, (3) informational privacy, (4) due process, (5) equal protection, (6) a fundamental right to abortion healthcare, (7) a violation of the state Human Rights Act. *Planned Parenthood Great Nw. v. State*, 522 P.3d 1132, 1153–54 (Idaho 2023).

36 *Id.* at 1203.

37 Findings of Fact and Conclusions of Law at 39, *Adkins v. State*, Case No. CV01-23-14744 (Apr. 11, 2025). The court also noted that as the plaintiffs had not argued the "deeply rooted" test, the court was unable to reach claims under Idaho Const. art. I, § 1. *Id.* at 36. The reach of this decision will no doubt be resolved in the coming years.

38 Letter from Raúl R., Idaho Att'y Gen., to Brent Crane, Idaho State Rep. (Mar. 27, 2023).

access abortion services or prescribing medication abortion pills for the woman to pick up across state lines.”³⁹ This opinion was the ‘opening shot’ in the state’s efforts to claim that it had a legal basis to reach across its borders and prevent its citizens from accessing abortion healthcare.⁴⁰ Before turning to the state’s abortion travel ban and the legal challenge to it, it is worth highlighting that Idaho’s efforts to criminalize abortion healthcare have led to fewer medical facilities serving maternity patients.⁴¹ At least three hospitals have closed their labor and delivery units since Idaho’s abortion trigger laws went into effect in 2022.⁴² In a March 2023 press release on its discontinuation of labor and delivery services, Bonner General Hospital in Sandpoint, Idaho, stated, “the Idaho Legislature continues to introduce and pass bills that criminalize physicians for medical care nationally recognized as the standard of care. Consequences for Idaho physicians providing the standard of care may include civil litigation and criminal prosecution, leading to jail time or fines.”⁴³ In addition to entire medical units closing, these anti-abortion laws have also resulted in a mass exodus of medical providers willing to see or

39 *Id.* In his analysis, AG Labrador opined that “abortion pills” fall under Idaho’s abortion ban proscription and that the law would criminalize assistance provided in accessing medication abortion. *Id.*

40 Note that while the state began attempting to reach across its borders, engendering the *Matsumoto* lawsuit, it also continued to face lawsuits for ongoing efforts to suppress dissension with its borders. For example, in 2023, a group of University of Idaho professors and unions representing faculty filed suit alleging, *inter alia*, that the law violated their First Amendment free speech rights. See Memorandum Decision and Order at *1, Idaho Fed’n of Tchrs. v. Labrador, No. 1:23-CV-00353-DCN, 2024 WL 3276835 (D. Idaho July 2, 2024). Although the court had “concerns about the statute,” the case was ultimately dismissed due to Plaintiffs’ lack of standing. *Id.* at *1, *15. The state is also currently embroiled in litigation over whether there exists a Constitutional right to “medically indicated abortion care.” See Complaint at 13, Seyb v. Members of the Idaho Bd. of Med., Case 1:24-cv-00244-DKG (D. Idaho May 14, 2024).

41 See Cara Tabachnick, *Second Idaho Hospital Stops Labor and Delivery Services, Citing “Staff Shortages,”* CBS NEWS (Apr. 5, 2023), <https://www.cbsnews.com/news/idaho-valor-health-hospital-stops-labor-and-delivery-staff-shortages/> [<https://perma.cc/2LKQ-8K5L>].

42 See e.g., Press Release, Brad Turpen, CEO & Staci Carr, Pub. Info., Valor Health, Discontinuation of Lab. and Delivery Servs. at Valor Health Hosp. (Mar. 29, 2023); Haadiya Tariq, *Caldwell Hospital Announces End to Labor and Delivery Services*, IDAHO PRESS (Feb. 23, 2024), https://www.idahopress.com/news/local/caldwell-hospital-announces-end-to-labor-and-delivery-services/article_847a1748-d27a-11ee-8206-5f25311c54fc.html [<https://perma.cc/D6VH-YHS8>].

43 Press Release, Erin Binnall, Pub. Info. Officer, Bonner Gen. Health, Discontinuation of Lab. & Delivery Servs. at Bonner Gen. Hosp. (Mar. 17, 2023).

treat pregnant patients.⁴⁴ Idaho, which has no in-state Obstetrics and Gynecology (OB-GYN) medical residency program,⁴⁵ already had a physician shortage pre-*Dobbs*.⁴⁶ Now the state holds the dubious distinction of having the fewest active physicians in the United States,⁴⁷ and sits far behind other states regarding its number of physicians per capita.⁴⁸ More than fifty obstetrician-gynecologists have stopped practicing in the state since August 2022,⁴⁹ and half of

44 See U.S. DEP'T OF HEALTH & HUMAN SERVS. ET AL., PROJECTIONS OF SUPPLY AND DEMAND FOR WOMEN'S HEALTH SERVICE PROVIDERS: 2018-2030, at 19 (2021), <https://bit.ly/3PhGagh> [<https://perma.cc/MPF5-ANWP>] (projecting the demand of OB-GYNs to exceed the supply in Idaho by 2030).

45 See Kelcie Moseley-Morris, *Idaho Medical School Director to Budget Committee: Residencies Still a Challenge for Students*, IDAHO CAP. SUN (Jan. 27, 2023, at 15:14 ET), <https://idahocapitalsun.com/2023/01/27/idaho-medical-school-director-to-budget-committee-residencies-still-a-challenge-for-students/> (on file with the University of Baltimore Law Review). This means that every OB-GYN physician must be recruited to Idaho from out of state. See Edward McEachern, Leslie Kelly Hall & Wendy Heipt, *EMTALA Must be Upheld to Protect the Sacred Space Between Idaho Doctors and Patients*, IDAHO STATESMAN (June 12, 2024, at 04:00 ET), <https://www.idahostatesman.com/opinion/readers-opinion/article289188199.html> (on file with the University of Baltimore Law Review).

46 See IDAHO DIV. OF PUB. HEALTH, BUREAU OF RURAL HEALTH & PRIMARY CARE BRIEF 1 (2023).

47 See U.S. Physician Workforce Data Dashboard, AAMC, <https://www.aamc.org/data-reports/data/2023-key-findings-and-definitions> [<https://perma.cc/27LZ-JSTJ>] (last visited Nov. 24, 2025). Idaho is also the only state “without a legal requirement or specialized committee to review maternal deaths related to pregnancy.” Natalie Schachar, *As US Maternal Mortality Rates Surge, Idaho Abandons Panel Investigating Pregnancy-Related Deaths*, IDAHO CAP. SUN (June 30, 2023, at 04:05 ET), <https://idahocapitalsun.com/2023/06/30/as-us-maternal-mortality-rates-surge-idaho-abandons-panel-investigating-pregnancy-related-deaths/> (on file with the University of Baltimore Law Review).

48 *Understanding Idaho's Doctor Shortage*, BOISE STATE PUB. RADIO: NPR, <https://www.boisestatepublicradio.org/understanding-idahos-doctor-shortage> [<https://perma.cc/727D-ERTA>] (last visited Nov. 24, 2025).

49 See J. Edward McEachern, T. Allen Traylor & Deb Roman, *Change in Number of OB/GYN Physicians Practicing Obstetrics After the Dobbs Decision*, 8 JAMA NETWORK OPEN, no. 7, July 31, 2025, at 1, 2, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2837058> [doi:10.1001/jamanetworkopen.2025.24893]; *Dozens of Idaho Obstetricians Have Stopped Practicing There Since Abortions Were Banned, Study Says*, AP (Feb 21, 2024, at 21:45 ET), <https://apnews.com/article/idaho-abortion-ban-doctors-leaving-f34e901599f5eabed56ae96599c0e5c2> (on file with the University of Baltimore Law Review); see also Kylie Cooper, *I Came to Provide Care for Complicated Pregnancies; I'm Leaving Because of Idaho's Abortion Bans*, IDAHO CAP. SUN (Feb. 10, 2023, at 04:10 ET), <https://idahocapitalsun.com/2023/02/10/i-came-to-provide-care-for-complicated-pregnancies-im-leaving-because-of-idahos-abortion-bans/> (on

the state's maternal-fetal medicine specialists have left Idaho since *Dobbs*.⁵⁰ Those practitioners remaining face increasing caseloads and sicker patients, whom they must treat while trying to stay on the correct side of increasingly suffocating and ambiguous laws.⁵¹

III. THE ABORTION TRAVEL BAN

It is within this context that, on February 7, 2023, in the first Idaho legislative session since the *Dobbs* decision, State Republican Representative Barbara Ehardt introduced House Bill 98 (HB 98), a proposed addition to the state's statutes on the crime of trafficking.⁵² However, this first legislative attempt to equate legal abortion healthcare with illegal sex trafficking proved futile.⁵³ The day after Rep. Ehardt introduced HB 98, the Idaho Anti-Trafficking Coalition (IATC), a nonprofit organization that provides policy study and direct support to survivors of actual trafficking, came out against the bill.⁵⁴ In an Op-Ed published in *The Idaho Statesman*, the IATC

file with the University of Baltimore Law Review) (one obstetrician's reasoning for leaving Idaho).

50 Abigail Abrams, 'It's Demoralizing': Idaho Abortion Ban Takes Toll on Medical Providers, *THE GUARDIAN* (July 16, 2023, at 06:00 ET), <https://www.theguardian.com/us-news/2023/jul/16/idaho-abortion-ban-ob-gyn-doctors> (on file with the University of Baltimore Law Review).

51 We note the patients most impacted include those already facing systematic barriers. Liza Fuentes, *Inequity in US Abortion Rights and Access: The End of Roe is Deepening Existing Divides*, *GUTTMACHER* (Jan. 17, 2023), <https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-ro-deepening-existing-divides> [<https://perma.cc/D3NE-X3VU>]. Additionally, the lack of appropriate medical services in Idaho puts pressure on neighboring states, who must now treat Idaho patients able to travel, who would have previously been treated closer to home. Danny Westneat, *In the WA v. Idaho Abortion Wars, Data Shows Idaho is Losing*, *THE SEATTLE TIMES* (June 28, 2023, at 06:00 ET), <https://www.seattletimes.com/seattle-news/politics/in-the-wa-v-idaho-abortion-wars-data-shows-idaho-is-losing/> (on file with the University of Baltimore Law Review); Annette Cary, *Huge Out-of-State Surge in E. Washington Abortions Since Idaho, Texas Bans*, *TRI-CITY HERALD* (June 26, 2023, at 16:11 ET), <https://www.tri-cityherald.com/news/local/article276713511.html> [<https://perma.cc/3FDP-LK7L>].

52 H.B. 98, 67th Leg., 1st Reg. Sess. (Idaho 2023).

53 *See id.* By using the word trafficking, legislators could seek to tap into public enmity around actual trafficking. *See generally* Ieke De Vries et. al., *Anti-Immigration Sentiment and Public Opinion on Human Trafficking*, 72 *CRIME, L. & SOC. CHANGE* 125 (2019) (finding that individual sentiment "does not impact public support for a general governmental prioritization of human trafficking policies").

54 Bryan Clark, *Rep. Ehardt's Anti-Abortion Bill is Trivializing Real Human Trafficking in Idaho*, *IDAHO STATESMAN* (Feb. 8, 2023, at 10:12 ET),

stated that HB 98 would prevent actual anti-trafficking efforts from, “successfully moving forward, and in Idaho we’re already at least 20 years behind.”⁵⁵

HB 98 stalled in its originating committee, and Rep. Ehardt requested no public hearing or further consideration.⁵⁶ Only twenty days later, Rep. Ehardt introduced House Bill 242 (HB 242), a new bill with the same intent as HB 98.⁵⁷ No longer offered as an amendment to the state’s existing anti-trafficking scheme, the bill was re-drafted and re-introduced as a new stand-alone section in Idaho’s criminal code.⁵⁸ In this renewed effort, Republican State Senator Todd Lakey joined Rep. Ehardt as a co-sponsor.⁵⁹ The proposal included two primary sections: (1) a new crime called ‘Abortion Trafficking’; and, (2) within Idaho’s criminal code, an amended section to enable certain relatives of an aborted fetus to bring a civil claim for damages.⁶⁰

ABORTION TRAFFICKING. (1) An adult who, with the intent to conceal an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion, . . . or obtains an abortion-inducing drug for the pregnant minor to use for an abortion by recruiting, harboring, or transporting the pregnant minor within this state commits the crime of abortion trafficking. As used in this subsection, the terms “procure” and “obtain” shall not

<https://www.idahostatesman.com/opinion/opn-columns-blogs/article272242153.html>
[<https://perma.cc/ZX8F-U9ZM>].

55 *Id.*

56 *See House Bill 98, IDAHO LEG.*,
<https://legislature.idaho.gov/sessioninfo/2023/legislation/h0098/>
[<https://perma.cc/VL9M-5Z3J>] (last visited Nov. 24, 2025).

57 H.B. 242, 67th Leg., 1st Reg. Sess. (Idaho 2023).

58 *Id.*

59 *See House Bill 98, supra* note 56 (click on Legislative Co-sponsors). It is important to note that Sen. Lakey was a finalist to become the next U.S. Attorney for the federal district in Idaho. Ashley Fredde, *Former U.S. Attorney Bart Davis Nominated for Idaho Role Once More by President Trump*, IDAHO STATESMAN (Apr. 8, 2025, at 09:19 ET), <https://www.idahostatesman.com/news/politics-government/article303694206.html> [<https://perma.cc/9JUF-A6Q2>].

60 *See* Idaho H.B. 242. While not the focus of this article, we note that the “private deputization” aspect of the statute allows for, *inter alia*, civil actions to be brought by the father, grandparent, sibling, aunt or uncle of the fetus, for a variety of damages, against the medical professionals involved in the procedure. *See* IDAHO CODE § 18-8807.

include the providing of information regarding a health benefit plan.

(2) It shall be an affirmative defense to a prosecution under subsection (1) of this section that a parent or guardian of the pregnant minor consented to trafficking of the minor.

(3) It shall not be an affirmative defense to a prosecution under subsection (1) of this section that the abortion provider or the abortion-inducing drug provider is located in another state.

(4) The Idaho attorney general has the authority, at the attorney general's sole discretion, to prosecute a person for a criminal violation of this section if the prosecuting attorney authorized to prosecute criminal violations of this section refuses to prosecute violations of any of the provisions of this section by any person without regard to the facts or circumstances.

(5) Any person who commits the crime of abortion trafficking, as provided in subsection (1) of this section, shall be punished by imprisonment in the state prison for no less than two (2) years and no more than five (5) years.⁶¹

On the ground in Idaho, the fact that HB 242 was introduced so quickly after the demise of HB 98 led many to wonder if the bills were being pushed by out-of-state interest groups.⁶² Because Idaho is a largely rural state with an extremist legislative supermajority, the state is often viewed as a prime breeding ground for the introduction and testing of new ultra conservative laws such as this one.⁶³ In fact,

61 IDAHO CODE § 18-623, *partially invalidated by*, *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024).

62 See Ximena Bustillo, *Who and What is Behind Abortion Ban Trigger Law Bills? Two Groups Laid the Groundwork*, NPR (Jul. 8, 2022, at 05:01 ET), <https://www.npr.org/2022/07/08/1110299496/trigger-laws-13-states-two-groups-laid-groundwork> [<https://perma.cc/5NDN-38SV>] (noting that Americans United for Life and the National Right to Life Committee provide model bills and advocacy efforts for state anti-abortion legislators); Steve Vladeck, *Bonus 67: Private Interest Groups *as* State Attorneys General*, ONE FIRST (Feb. 22, 2024), <https://www.stevevladeck.com/p/bonus-67-private-interest-groups> [<https://perma.cc/3ZMH-Y3DN>] (noting that another group opposed to abortion healthcare, the Alliance Defending Freedom, is representing Idaho in two cases seeking to limit gender equity rights).

63 As examples, in 2024 Idaho's legislature passed a law allowing parents access to *all* healthcare records of a minor, including past records, and forbid the provision (or solicitation) of broadly defined healthcare services to young adults unless parental consent is obtained beforehand. See IDAHO CODE § 32-1015. In 2025, legislators passed HB 59, allowing healthcare providers and payers to refuse to treat a patient or

in July 2022, just after the *Dobbs* opinion was issued, the National Right to Life Committee distributed a memo forwarding a “Post-Roe Model Abortion Law Version 2.”⁶⁴ Touted by the group as providing a “roadmap” for states to follow,⁶⁵ the authors call for, *inter alia*, “new laws to prevent trafficking of minors for unlawful abortions”⁶⁶ and proposed the following specific language:

- (a) An adult who, with the intent to:
 - (1) conceal an unlawful abortion from the parents or guardian of a minor; and (2) procure an unlawful abortion or obtain an abortion inducing drug for the pregnant minor to use for an unlawful abortion; recruits, harbors, or transports a pregnant minor within this state, commits unlawful abortion trafficking of a minor, a [Level 3] felony.
- (b) It is a defense to a prosecution under this section that a parent or guardian of the pregnant minor consented to trafficking of the minor.
- (c) It is not a defense to a prosecution under this section that the abortion provider or the abortion inducing drug provider is located in another state.⁶⁷

HB 242 got its introductory “print hearing” on February 28, 2023.⁶⁸ The bill then sailed through the House State Affairs Committee, only

pay for treatment when that treatment does not align with a provider’s or payer’s conscience. *See* H.B. 59, 68th Leg., 1st Reg. Sess. (Idaho 2025) (to be codified as IDAHO CODE §§ 54-1301 to -1308).

64 Letter from James Bopp Jr., NRLC Gen. Couns., Courtney Turner Milbank & Joseph D. Maughon, to Nat’l Right to Life Comm. 1 (July 4, 2022), <https://nrlc.org/wp-content/uploads/NRLC-Post-Roe-Model-Abortion-Law-Version-2-1.pdf> (on file with the University of Baltimore Law Review) [hereinafter Letter from Bopp Jr.].

65 *See National Right to Life Committee Proposes Legislation to Protect the Unborn Post-Roe*, NAT’L RIGHT TO LIFE (June 15, 2022), <https://nrlc.org/communications/national-right-to-life-committee-proposes-legislation-to-protect-the-unborn-post-roe/> [https://perma.cc/8SE8-53M7].

66 Letter from Bopp Jr., *supra* note 64, at 3.

67 *Id.* at 16–17. The model offered even forwarded three options for the legislature to choose regarding the enforcement power of the AG, including the exact one HB 242’s co-sponsors chose. *See id.* at 17; H.B. 242, 67th Leg., 1st Reg. Sess. (Idaho 2023).

68 The Idaho legislative process does not include new bill prefiling. Instead, sponsors provide hard-copy forms of the proposed legislation and make a short oral pitch before the appropriate committee. If the committee votes to print the draft, the proposal is presented to the originating chamber and assigned a bill number. It is then introduced on the floor, either in the 8th Order of Business in the House or the 11th Order of Business in the Senate. After a bill has passed one chamber it is transmitted to the other, where it is introduced, referred to a committee for review and

three days after being introduced.⁶⁹ At that hearing, Rep. Ehardt ceded time to the Right to Life of Idaho, who told the legislators that the bill was really about “parents’ rights,” even though HB 242 does not seem to require parental consent (although consent appears to be an affirmative defense).⁷⁰ The Idaho House of Representatives then suspended its own procedural rules, a legislative technique often used by a controlling majority to hasten passage of bills that might be considered particularly delicate, controversial, or favored, and passed HB 242 on March 7, 2023, only five legislative days after it was first introduced.⁷¹ Shortly after that, AG Labrador issued an opinion stating that HB 242 was constitutionally sound.⁷²

In the opposite chamber, HB 242 was given a public hearing in the Senate State Affairs Committee on March 27, 2023.⁷³ During a hearing before this Committee, Rep. Ehardt testified that HB 242 was,

a parental rights bill, it really, it’s a parental rights bill and as we just basically lay this out, this does have to do with abortion trafficking and that would be taking a minor from, without parental permission, it’s all about parental permission, taking a minor from Idaho and trafficking that minor to another state to receive an abortion.⁷⁴

recommendation, and then possibly sent to the floor to flow through the reading calendars until reaching a final vote at the Third Reading Calendar. *How a Bill Becomes a Law*, IDAHO LEG., <https://legislature.idaho.gov/resources/howabillbecomesalaw/> [<https://perma.cc/ZNQ7-PK7BJ>] (last visited Nov. 24, 2025).

69 House Bill 242 was scheduled for public testimony only two days after first approved for printing. When public testimony is scheduled on short notice, very few members of the public can contribute. In this instance, only two individuals were able to testify. *Minutes: H. State Affs. Comm.*, 67th Leg., 1st Reg. Sess. (Idaho Mar. 3, 2023).

70 *Id.* (statement of Reps. Ehardt, Andrus & Wold).

71 H. JOURNAL OF THE IDAHO LEG., 67th Leg., 1st Reg. Sess. 183 (2023).

72 Letter from Raúl Labrador, Idaho Att’y Gen., to Ilana Rubel, Minority Leader, Idaho H.R. (Mar. 13, 2023) (on file with the University of Baltimore Law Review’).

73 *Minutes: S. State Affs. Comm.*, 67th Leg., 1st Reg. Sess. (Idaho Mar. 27, 2023).

74 *Id.* (statement of Rep. Ehardt). We also note that “parental rights” are a selective rationale at best – in that same legislative session the state passed HB 71, a law which bans gender affirming medical care for transgender minors, even where a parent affirmatively wants their child to receive that care. *See* IDAHO CODE §§ 18-1506B, 19-5307 (2025). Two families of transgender girls sued the state alleging *inter alia* that it violates parental rights. *Poe v. Labrador*, 709 F. Supp. 3d 1169, 1179 (D. Idaho 2023); Audrey Dutton, *Families of Transgender Teen Girls Sue over Idaho’s Ban on Gender Care for Youth*, IDAHO CAP. SUN (June 1, 2023, at 15:06 ET), <https://idahocapitalsun.com/2023/06/01/families-of-transgender-teen-girls-sue-over->

At that same hearing, Sen. Lakey acknowledged that even he, as the co-sponsor of the bill, did not fully understand its reach, saying “recruiting, harboring and transporting, those are descriptive words, I guess the court would have to decide if the conduct constitutes one of those three things.”⁷⁵

HB 242 was then sent to the Senate for amendments, which were heard the very next day.⁷⁶ There were two key amendments at this stage: (1) to exempt health insurers from criminal culpability when advising a pregnant minor about abortion options;⁷⁷ and, (2) preservation of the statutory civil cause of action against helpers, but rejection of that right for persons who impregnated a minor by the criminal acts of rape or incest.⁷⁸ With these amendments, the bill was re-calendared by the Idaho Senate on another suspended-rules calendar, and debated in full on the Senate floor on March 30, 2023, passing handily with twenty-seven in favor, seven opposed, and one absent, strictly along party lines.⁷⁹

Once the amended bill was approved by the Senate, it was delivered back to the House of Representatives the same day, where it was enrolled.⁸⁰ The amendments were approved by the Idaho House by a vote of fifty-eight in favor, eleven opposed, and one absent, once again along party lines.⁸¹ The bill was then transmitted to Governor Brad Little for his consideration on March 31, 2023.⁸²

At this point, Gov. Little was faced with a bill that purported to do what no law had done before: stop adults in one state from supporting pregnant minors in accessing legal healthcare in another state by

idahos-ban-on-gender-care-for-youth/ (on file with the University of Baltimore Law Review). As of this writing, the case was voluntarily dismissed, and the law is fully enforceable in Idaho. *Poe v. Labrador*, 709 F. Supp. 3d 1169 (D. Idaho 2023), *appeal dismissed*, No. 24-142, 2025 WL 1872749 (9th Cir. June 18, 2025).

75 *Minutes: S. State Affs. Comm.*, *supra* note 73 at 4 (statement of Sen. Lakey).

76 S. JOURNAL OF THE IDAHO LEG., 67th Leg., 1st Reg. Sess. 251 (2023).

77 *Id.*

78 *Id.* HB 242 also proposed a new criminal code amendment. H.B. 242, 67th Leg., 1st Reg. Sess. (Idaho 2023); *see also* IDAHO CODE § 18-8807 (2023) (authorizing civil causes of action). The two separate amendments to HB 242 are archived. H.B. 242, 67th Leg., 1st Reg. Sess. (Idaho 2023).

79 S. JOURNAL OF THE IDAHO LEG., 67th Leg., 1st Reg. Sess. 266 (2023).

80 H. JOURNAL OF THE IDAHO LEG., 67th Leg., 1st Reg. Sess. 353 (2023).

81 *Id.*

82 2023 *Legislation: House Bill 242*, Idaho Leg., <https://legislature.idaho.gov/sessioninfo/2023/legislation/H0242/> [<https://perma.cc/HL2R-2JTB>] (last visited Nov. 24, 2025).

seeking to criminalize their speech, support, and free movement.⁸³ Free movement within and between what would become the United States was a right sacrosanct since at least 1777.⁸⁴ Nevertheless, the conservative supermajority in the Idaho Legislature was willing to pass a bill that arguably subverted these deeply rooted rights in order to ensure that at least some of their own citizens would not be able to access elsewhere the reproductive healthcare they had so effectively banned in their home state.⁸⁵ This could not only disrupt the rights of its own citizens to travel, it would also impact those of Idaho's neighboring states that still upheld the right of individuals to control their reproductive health.⁸⁶

Recognizing this, then-Washington state Governor, Jay Inslee transmitted an open letter to Governor Little, imploring him to veto

83 Dessie Otachliska, *Free Speech Post-Dobbs: The Constitutionality of State and Federal Restrictions on the Dissemination of Abortion-Related Information*, N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM (2023) (noting that to date there are no examples of convictions based on inciting abortion through speech).

84 ARTICLES OF CONFEDERATION of 1777, art. IV, para. 1. ("The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, . . . shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state . . ."). We note that this right was only available to "free inhabitants" and excluded "fugitives," placing this important fundamental right out of reach of enslaved people in the United States.

85 Idaho is home to many so-called abortion abolitionist organizations, including the Foundation to Abolish Abortion, Americans United for Life, and Students for Life of America. *Idaho*, FOUND. TO ABOLISH ABORTION, <https://faa.life/idaho> (last visited Aug. 5, 2025) (on file with the University of Baltimore Law Review); *Idaho Pro-Life Laws*, AMERICANS UNITED FOR LIFE, <https://aul.org/law-and-policy/state-spotlight/idaho/> (last visited Aug. 5, 2025) (on file with the University of Baltimore Law Review); STUDENTS FOR LIFE OF AM., <https://studentsforlife.org> [<https://perma.cc/3S25-YWEZ>] (last visited Nov. 24, 2025). We note that using the term, "abolition" does an injustice to the progressive humanist movements in the 19th century that sought to shame and frustrate the trade of enslaved peoples. Hannah Silver & Cloee Cooper, *101: Abortion Abolitionists*, POL. RSCH. ASSOCIATES (Oct. 26, 2023), <https://politicalresearch.org/2023/10/26/101-abortion-abolitionists> [<https://perma.cc/KK7N-ULEM>]. We also note HB 242 is an additional step in the national movement to require increasingly strict documentation in order to control or limit full democratic participation. For example, U.S. House Bill 22 (SB 128) would restrict how Americans could vote by requiring additional documentation. Safeguard American Voter Eligibility Act, H.R. 22, 119th Cong. (2025). The Resolution has already passed the House of Representatives. *Id.*

86 See, e.g., Sara Heath, *Abortion Bans Affect Access in States Without Restrictions*, TECHTARGET (Feb. 19, 2025), <https://www.techtarget.com/patientengagement/news/366619424/Abortion-bans-affect-access-in-states-without-restrictions> [<https://perma.cc/5QFE-QATR>].

House Bill 242.⁸⁷ In that letter, Gov. Inslee wrote that HB 242 was likely unconstitutional, would impact Washington residents traveling to Idaho and that, if it were signed, Washingtonians would “harbor and comfort your residents who seek healthcare services that are denied to them in Idaho.”⁸⁸ Gov. Little responded to this letter with one of his own, mocking Washington state under Gov. Inslee’s leadership, as having “sky-high taxes, crime and public encampments.”⁸⁹ Gov. Little also claimed HB 242 did not interfere with interstate travel; instead, it “seeks only to prevent unemancipated minor girls from being taken across state lines for an abortion without the knowledge and consent of her parent or guardian.”⁹⁰ Gov. Little signed the bill into law on April 5, 2023.⁹¹ As HB 242 contained an emergency implementation provision, the new criminal code took effect on May 5, 2023, and was codified at Idaho Code § 18- 623.⁹²

IV. MATSUMOTO V. LABRADOR: THE CASE

The complaint challenging the Abortion Ban was filed on July 11, 2023, in federal district court.⁹³ The case was brought on behalf of two organizational plaintiffs and one individual, all of whom alleged the same four causes of action.⁹⁴ The plaintiffs alleged that Idaho

87 Brett Davis, *Idaho Gov. Little Responds to Gov. Inslee’s Request to Veto Abortion Trafficking Bill*, WASHINGTON (Apr. 20, 2023), https://www.thecentersquare.com/washington/article_ccb7c0be-dfb9-11ed-ab86-4b585780147a.html [https://perma.cc/MNG7-XUYX].

88 Ruth Brown, *‘Abortion Trafficking’ Bill Signed, Despite Washington Governor’s Plea*, IDAHO REPS. (Apr. 5, 2023), <https://blog.idahoreports.idahoptv.org/2023/04/05/abortion-trafficking-bill-signed-despite-washington-governors-plea/> [https://perma.cc/PK23-AB5T].

89 Davis, *supra* note 87.

90 Letter from Brad Little, Governor, Idaho, to Mike Moyle, Speaker, Idaho H.R. (Apr. 5, 2023).

91 *Id.* Note that many states have enacted data privacy and litigation shield laws to protect their citizens from out-of-state laws seeking to punish their residents for legal behavior related to abortion healthcare. *See e.g.*, Pam Belluck, *Abortion Shield Laws: A New War Between the States*, N.Y. TIMES (Feb. 22, 2024) <https://www.nytimes.com/2024/02/22/health/abortion-shield-laws-telemedicine.html> (on file with the University of Baltimore Law Review).

92 H.B. 242, 67th Leg., 1st Reg. Sess. (Idaho 2023).

93 *See* Complaint for Declaratory Judgment at 1, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032 (D. Idaho 2023) (No. 1:23-cv-00323-DKG).

94 The case was assigned to Debora K. Grasham, a United States Magistrate Judge appointed to the bench on April 1, 2022. *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032, 1042 (D. Idaho 2023); *U.S. Magistrate Judge Debora K. Grasham*, U.S.

Code § 18-623 was unconstitutionally vague in both scope and effect in violation of the Fourteenth Amendment to the U.S. Constitution, that Idaho Code § 18-623 was an unconstitutional burden on the right to interstate travel, that Idaho Code § 18-623 was an unconstitutional burden on the right to intrastate travel, and that Idaho Code § 18-623 infringed on the plaintiffs' First Amendment rights of speech, expressive conduct, and association.⁹⁵ That same month, plaintiffs also filed for injunctive relief on their vagueness and First Amendment claims.⁹⁶ In this motion, the plaintiffs detailed why they were likely to succeed on their claims, why they would be irreparably harmed without relief, and how granting injunctive relief was in the public interest.⁹⁷ The plaintiffs also explained how challenging healthcare access was for Idahoans in general, and for minors from historically marginalized communities in particular.⁹⁸ The passage of § 18-623 would impact all minors negatively, but especially those from these communities or who became pregnant from incest or who had parents that were violent or that they could not trust.⁹⁹

The Defendant replied to the Motion for Injunctive Relief on August 28, 2023 and also filed a motion to dismiss on September 12, 2023.¹⁰⁰ In his motion to dismiss, the Idaho AG alleged that the plaintiffs had failed to state a claim and that the court lacked subject matter jurisdiction because the plaintiffs did not have standing and

DISTRICT COURT OF IDAHO,
https://www.id.uscourts.gov/district/judges/grasham/General_Information.cfm
 [https://perma.cc/4JXG-B5DX] (last visited Nov. 24, 2025). In Idaho, when a case is assigned, the Clerk of the Court sends a notice and consent form whereby parties can consent to the jurisdiction of a Magistrate Judge. Idaho Gen. Ord. 457, In Re: Assignment of Civil Cases and Amending Local Civil Rule 73.1 (Jan. 6, 2025); 28 U.S.C. § 636(c)(1).

95 For all counts, plaintiffs sought declaratory relief, injunctive relief, and attorneys' fees and costs, as well as any other relief the court deemed just and appropriate. Complaint for Declaratory Judgment, *supra* note 93, at 28–33.

96 Memorandum in Support of Plaintiff's Motion for a Temporary Restraining Order or Preliminary Injunction, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032 (D. Idaho 2023) (No. 1:23-cv-00323-DKG).

97 Plaintiffs did not move for injunctive relief on either of their travel claims. *See id.*

98 Complaint for Declaratory Judgment, *supra* note 93, at 8–13.

99 Pre-*Dobbs*, Idaho had recognized that there were situations in which a minor needed a non-parental option and created a judicial bypass statute so that pregnant minors could obtain abortions without parental consent. *See* IDAHO CODE § 18-609A.

100 Defendant's Opposition to Plaintiff's Motion for Temporary Restraining Order or Preliminary Injunction, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032 (D. Idaho 2023) (No. 1:23-cv-00323-DKG); Defendant's Memorandum in Support of Motion to Dismiss, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032 (D. Idaho 2023) (No. 1:23-cv-00323-DKG).

were barred from bringing suit by sovereign immunity protections of the Eleventh Amendment to the Constitution.¹⁰¹ The court held a hearing on the request for injunctive relief in Boise, in September 2023,¹⁰² and issued opinions on both outstanding motions that November.¹⁰³ In the order on the motion to dismiss, the court found against the Idaho AG on three of the four claims but granted the motion with respect to the intrastate travel claim.¹⁰⁴ In the order on injunctive relief, the court determined that the plaintiffs had successfully met their burden and granted the relief sought.¹⁰⁵

Significantly, the court found that § 18-623 was a content-based regulation of protected speech and expression subject to a strict scrutiny analysis.¹⁰⁶ Because the statute was not narrowly tailored to serve a compelling government interest, and as the plaintiffs had sufficiently shown that their protected activities would be infringed upon, the court held that plaintiffs demonstrated a likelihood of success on their First Amendment claim.¹⁰⁷ The court also found that the plaintiffs had demonstrated a likelihood of success on their

101 Defendant's Memorandum in Support of Motion to Dismiss at 3, 6, 11, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032 (D. Idaho 2023) (No. 1:23-cv-00323-DKG).

102 The transcript of the September 14, 2023 hearing is filed at Docket Number 36. Transcript of Hearing on Request for Injunctive Relief, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032 (D. Idaho, 2023) (No. 1:23-cv-00323-DKG).

103 *Matsumoto v. Labrador*, 701 F. Supp. 3d 1069, 1072 (D. Idaho 2023); *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032, 1042 (D. Idaho 2023). The court also took into consideration an *amici curiae* brief filed by the Attorney General for the state of Washington, on behalf of nineteen states and the District of Columbia (Amici States). *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032, 1043 (D. Idaho 2023). The Amici States argued that the Idaho AG's interpretation of IDAHO CODE § 18-623 would negatively impact providers and trusted adults in their states, by criminalizing them for assisting Idaho minors, and by further taxing their healthcare systems. States Amicus Brief in Support of Plaintiffs Motion for a Temporary Restraining Order or Preliminary Injunction at 8, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032 (D. Idaho 2023) (No. 1:23-cv-00323-DKG).

104 While noting that other circuits have recognized an intrastate right to travel (2nd, 3rd, 6th), the court saw no precedent mandating that same conclusion in the Ninth Circuit and declined plaintiffs' invitation to recognize such a fundamental right. *Matsumoto v. Labrador*, 701 F. Supp. 3d 1069, 1079 (D. Idaho 2023).

105 "A party seeking a preliminary injunction must establish: (1) a likelihood of success on the merits; (2) likely irreparable harm in the absence of a preliminary injunction; (3) that the balance of equities weighs in favor of an injunction; and (4) that an injunction is in the public interest." *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032, 1044 (D. Idaho 2023) (quoting *Hecox v. Little*, 479 F. Supp. 3d 930, 971 (D. Idaho 2020)).

106 *Id.* at 1062–63.

107 *Id.* at 1064.

vagueness claim, finding that the law failed to provide fair notice and was ripe for arbitrary enforcement.¹⁰⁸ Once the court reached these conclusions, it then found that the plaintiffs had established irreparable harm and that the balance of equities and the public interest leaned in their favor.¹⁰⁹ When analyzing the equities and public interest at stake, the court noted that the defendant could not advance whatever interests he may have had by means of an unconstitutional statute.¹¹⁰ In summation, the court held that Idaho was overstepping its constitutional boundaries by attempting to “craft a statute muzzling the speech and expressive activities of a particular viewpoint with which the state disagrees under the guise of parental rights,”¹¹¹ and preliminarily enjoined the AG from enforcing § 18-623.¹¹²

After a few attempts to lift the district court’s injunction,¹¹³ the Idaho AG filed a notice of appeal, and the case went up to the Ninth Circuit Court of Appeals.¹¹⁴ A three judge panel of that court, sitting in Seattle, heard oral argument on May 7, 2024, and issued its opinion that December.¹¹⁵ A majority of the court upheld the

108 *Id.* at 1065–66.

109 Note that “[w]hen the government is a party, the last two factors [of the injunctive standard] merge.” *Id.* at 1044 (citation omitted).

110 *Id.* at 1068. It is unclear what legitimate interest Idaho has in ensuring that minors seeking legal abortion healthcare do not receive that care, or in ensuring that pregnant minors be compelled to tell their parents or guardians, even those that are violent or abusive, of their pregnancy status. Further, to the extent that the state of Idaho has any interest in protecting minors, those concerns are already codified in Idaho law, as recognized by the court. *See, e.g.*, IDAHO CODE § 16-1605 (Reporting of Abuse, Abandonment or Neglect); § 18-1509 (Enticing of Children); § 18-1510 (Providing Shelter to Runaway Children); § 18-4501 (Kidnapping); § 18-4506 (Child Custody Interference); § 32-1011 (Parental Rights); *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032, 1068 n.23.

111 *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032, 1069.

112 The court also held that the plaintiffs had named the proper defendant and demonstrated both subject matter jurisdiction and Article III justiciability. *Id.* at 1042.

113 The Idaho AG’s motion to stay the district court was denied, and he then made an emergency motion to the ninth circuit, seeking to stay the district court’s order, which was summarily denied by a three-judge panel. Motion to Stay Injunction Pending Appeal, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1069 (2023) (No. 1:23-cv-00323-DKG); Order at 1, *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024) (No. 23-3787).

114 The Idaho AG indicated he was appealing both the grant of the preliminary injunction and the denial of Eleventh Amendment immunity. Notice of Appeal at 1, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1069 (2023) (No. 1:23-cv-00323-DKG).

115 The case was heard and decided by Circuit Judges M. Margaret McKeown, Carlos T. Bea, and John B. Owens. The court also accepted and considered *amicus curiae* briefs in support of plaintiffs from (a) The Idaho Association of Criminal Defense

injunctive relief, but only on the recruiting aspect of the statute, as the court found that the recruiting section of § 18-623 impermissibly restricted the plaintiffs First Amendment speech rights.¹¹⁶ The court held that since § 18-623 uses a disjunctive list to enumerate the activities targeted, there should be an “or” implied between each word. The court then read the statute as if it said recruiting, OR harboring, OR transporting, and held that plaintiffs were not likely to prevail on a facial First Amendment claim under either of the latter two prohibitions, as the court did not think the majority of conduct under “harboring or transporting” was expressive on its face.¹¹⁷ In finding in favor of plaintiffs on ‘recruiting,’ the court delved into what actions the word could encompass, noting that recruiting could, *inter alia*, cover “information—especially information trying to persuade a girl to have an abortion or regarding the provider, time, place, or cost of an available abortion,”¹¹⁸ “subsidizing or fully funding an abortion . . . making the abortion more attractive (persuading) or more feasible (inducing),”¹¹⁹ “[l]egal advice . . . even if that advice persuades a minor to obtain a legal abortion,”¹²⁰ and “[e]ven expressions of persuasive encouragement.”¹²¹ The court recognized that, even beyond these direct acts, more passive expressive activity could also be within the statute’s reach under Idaho’s existing criminal aiding and abetting law.¹²² As the conduct

Attorneys, (b) The Parachute Project, Gina Whitney, Shahily Negron, and Jonathan Wallace, (c) Amici States, as noted in FN 107, and (d) Advocates for Youth, If/When/How, Lawyering for Reproductive Justice, and the National Network of Abortion Funds. *Matsumoto v. Labrador*, 122 F.4th 787, 793, 823 & n.3 (9th Cir. 2024).

116 At the injunctive stage of the proceedings, the court found that the law did not improperly burden the right to expressive association and that, despite its “awkward construction,” the law did not “fall afoul of the vagueness line.” *Id.* at 795–805. The court also held that the plaintiffs had standing, and that the Idaho attorney general was a proper defendant. *Id.* at 795.

117 *Id.* at 807.

118 *Id.* at 809.

119 *Id.*

120 *Id.* at 810.

121 *Id.* The court noted that the statute could also cover a course of conduct occurring completely within Idaho. *Id.*

122 As just one example, aiding and abetting charges could be brought against “an employee of an advocacy organization counseling a minor about her healthcare options, providing the minor with the contact information of a partner organization in a neighboring state that can provide logistical or financial assistance in procuring or obtaining an abortion, and promising to keep the conversation a secret from the minor’s parents.” *Id.* at 811.

and speech at issue were expressive activities under the First Amendment, the court held that the recruiting piece of § 18-623 was an unconstitutional infringement on protected speech.¹²³ The court remanded to the district court to modify the existing preliminary injunction in line with its opinion.¹²⁴ The district court did so, providing a list of activities the Idaho AG is currently enjoined from enforcing against plaintiffs, which includes *inter alia*, providing encouragement, providing financial assistance, and providing resources and instructions regarding abortion healthcare to minors.¹²⁵ The case remains active, with a scheduling order in place and a likely trial date on the merits to take place in 2026.¹²⁶

V. FOLLOWING IDAHO'S LEAD TO THE BOTTOM

Idaho was the first state in the nation to forward a made-up law that seeks to prevent pregnant minors from engaging in, or even learning about, legal behavior.¹²⁷ It's no surprise, as the state has a history of seeking to control the behavior of pregnant people,¹²⁸ and of minors.¹²⁹ And since *Dobbs* gave the state the chance to further

123 The court also noted that Idaho appeared to have no problem when adults sought to recruit pregnant minors away from obtaining abortion healthcare, regardless of whether their parents knew. *Id.* at 811–15.

124 *Id.* at 816.

125 Order Modifying Preliminary Injunction at 4–7, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032 (D. Idaho 2023) (No. 1:23-cv-00323-DKG).

126 Scheduling Order at 5–6, *Matsumoto v. Labrador*, 701 F. Supp. 3d 1032 (D. Idaho 2023) (No 1:23-cv- 00323-DKG).

127 Although this article focuses on post-*Dobbs* state responses seeking to curtail minors access to information or procurement of abortion healthcare, we note that even in the pre-*Dobbs* era, there were unsuccessful attempts to pass similar laws. For example, in 2006, the U.S. Congress debated S.403, which would have provided for monetary fines and/or incarceration for adults who transported minors across state lines to access legal abortion healthcare and avoid state laws requiring parental notification. Child Interstate Abortion Notification Act, S. 403, 109th Cong. § 2431(a) (2006).

128 As one example, in 1991 Governor Cecil Andrus requested an AG opinion on whether, when a woman was “suspected” of using drugs, the state could intervene, “to control the woman’s conduct.” IDAHO ATT’Y GEN. ANN. REP., OPINIONS AND SELECTED INFORMAL GUIDELINES FOR THE YEAR 1991, at 5 (1991). Although AG Larry Echohawk acknowledged that controlling a pregnant woman’s conduct was not allowed in the state’s statutory scheme, the AG nevertheless concluded that the state’s interests “override the woman’s interest.” *Id.* at 5, 13. See Wendy Heipt & Julia Littell, *Fetal Personhood Creep*, 28 UNIV. OF IOWA J. OF GENDER, RACE AND JUST. 284, 303–04, 306 for a more in-depth discussion on how this opinion foreshadowed more current efforts to control the behavior of pregnant people using or suspected of using drugs.

129 As one example, in 2024 Idaho passed a law that allows parents access to all healthcare records of a minor, including past records, and forbids the provision (or

regulate abortion healthcare, “Idaho has heeded this invitation with gusto.”¹³⁰ But other states have followed Idaho’s lead.¹³¹ As emerging data show, because of the high barriers minors face in accessing reproductive care, the spread of post-*Dobbs* restrictions such as Idaho’s travel ban has impacted this group particularly severely.¹³² Below we provide an overview of the legislative efforts forwarded by other states in the wake of Idaho’s passage of § 18-623.

In 2024, the first legislative session occurring after Idaho’s passage of § 18-623, a number of other states introduced Idaho-style abortion travel bans in their respective state legislatures, almost all of which failed to pass.¹³³ In Alabama, nine Republican house members co-sponsored the “Safeguarding Teens from Out-of-State Abortion Procedures (STOP) Act,” a proposal touted as preventing the secret harboring or transporting of a minor in order to help her procure abortion healthcare.¹³⁴ However, the language of the bill went

solicitation) of broadly defined “healthcare services” to young adults unless parental consent is obtained beforehand. IDAHO CODE § 32-1015 (2024).

130 Matsumoto v. Labrador, 122 F.4th 787, 794 (9th Cir. 2024).

131 While this article focuses on state level bans seeking to prevent adult helpers from assisting pregnant minors access, or even learn about, legal abortion healthcare options in other locations, we note that substate localities are also attempting to curb the right to travel when that travel is in pursuit of abortion healthcare. This has most notably happened in Texas, where, as of this writing, thirteen municipalities have banned transporting anyone through their city or county if *en route* to abortion healthcare. See Meg O’Connor, *Idaho Can Now Arrest People Who Help Kids Get Abortions in Other States*, THE APPEAL (Dec. 3, 2024), <https://theappeal.org/idaho-abortion-trafficking-ban/> [<https://perma.cc/YR5D-BW7C>]; see also Laura Hermer, *Municipal Abortion Bans: When Local Control Clashes with State Power*, 32 AM. U. J. GENDER SOC. POL’Y L. 279, 302 (2024) (detailing the strategy of enforcing limits on reproductive healthcare availability at the most local levels).

132 Laura D. Lindberg et al., *Implications of Abortion Restrictions for Adolescents*, 179 JAMA PEDIATRICS 675, 675.

133 Note that even in states that did not introduce Idaho-style efforts, and in those that sought to solidify protections for abortion healthcare, the issue of so-called “abortion trafficking” came up repeatedly. For example, in the 2024 legislative session Maine passed a bill to protect in-state abortion healthcare practitioners from out of state interference. See ME. STAT. tit. 14, §§ 9001–07 (2024). Opponents of the bill said that the law would protect those who “traffic minors” into the state for abortions. Legally Protected Healthcare Activity. See Bridget Sielicki, *Maine Lawmakers Pass Bill to Protect Law-Breaking Abortionists*, LIVE ACTION (Apr. 18, 2024, at 15:37 ET), <https://www.liveaction.org/news/maine-lawmakers-pass-bill-protect-abortionists> (on file with the University of Baltimore Law Review).

134 Alander Rocha, *Alabama House Bill Would Criminalize Some Assistance to Minors Seeking an Abortion*, ALA. REFLECTOR (Mar. 29, 2024, at 06:59 ET), <https://alabamareflector.com/2024/03/29/alabama-house-bill-would-criminalize->

further, barring “providing lodging, shelter, transportation, or money to a minor girl that could help her procure an abortion or abortion-inducing drug without the knowledge, consent, or involvement of her parents or legal guardian.”¹³⁵ Thus, although the Alabama STOP Act did not use the word “recruit,” it clearly covered at least one activity that both the Ninth Circuit and the district court in *Matsumoto* found to be protected.¹³⁶ The STOP Act died in the House Judiciary Committee, but Alabama continued to try to deter and punish its residents from providing assistance to abortion healthcare patients.¹³⁷ That same year, Mississippi state representative Dan Eubanks, introduced HB 713, a carbon copy of Idaho’s abortion travel ban.¹³⁸ That attempt died in committee, but Rep. Eubanks reintroduced the bill this year, an attempt which also failed.¹³⁹ That same legislative session, Oklahoma state Senator Nathan Dahm,¹⁴⁰ introduced SB 1778, which was also an exact replica of Idaho’s abortion travel ban.¹⁴¹ That bill, which opponents resisted for opening the door to prosecuting an aunt who gives a niece gas money for a trip to access legal abortion healthcare,¹⁴² died in committee and did not pass.¹⁴³

someassistance-to-minors-seeking-an-abortion/ (on file with the University of Baltimore Law Review).

- 135 H.B. 378, 2024 Leg., Reg. Sess. (Ala. 2024). The bill would have made it a class A misdemeanor for the helper and given the minor’s parents a private right of action against them. *Id.*
- 136 *Matsumoto v. Labrador*, 122 F.4th 787, 809 (9th Cir. 2024).
- 137 *See Yellowhammer Fund v. Marshall*, 776 F. Supp. 3d 1071, 1082 (M.D. Ala. 2024).
- 138 H.B. 713, 2024 Leg., Reg. Sess. (Miss. 2024). That same session Rep. Eubanks also unsuccessfully introduced HB 735, which would have made it a felony to manufacture abortion medication within Mississippi or distribute the medication via mail order – even from out of state. H.B. 735, 2024 Leg., Reg. Sess. (Miss. 2024).
- 139 *Mississippi House Bill 713 (Prior Session Legislation)*, LEGISCAN, <https://legiscan.com/MS/bill/HB713/2024> (last visited Sep. 25, 2025) (on file with the University of Baltimore Law Review). The 2025 version was HB1041, which died in February 2025. *Mississippi House Bill 1041*, LEGISCAN, <https://legiscan.com/MS/bill/HB1041/2025> (last visited Sep. 25, 2025) (on file with the University of Baltimore Law Review).
- 140 Sen. Dahm “has been ranked the most conservative legislator in Oklahoma’s lifetime.” *Dahm Gets 100% Conservative Score*, Tulsa Beacon (Feb 17, 2022), <https://tulsabeacon.com/dahm-gets-100-on-conservative-list/> [<https://perma.cc/37H6-TPNG>]. In 2016, before *Dobbs*, Sen. Dahm co-sponsored a bill that would make it a felony to perform an abortion in the state. S.B. 1552, 55th Leg., 2d Sess. (Okla. 2016).
- 141 S.B. 1778, 59th Leg., 2d Sess. (Okla. 2024).
- 142 Mckenzie Richmond & KTUL Staff, *Senate Bill Could Imprison Someone Who Helps a Minor get an Abortion for “Trafficking”*, NEWS CHANNEL 8 TULSA ABC (Jan. 31, 2024, at 19:20 ET), <https://ktul.com/news/local/proposed-oklahoma-bill-could-charge-someone-who-helps-a-minor-get-an-abortion-with-trafficking> (on file with the University of Baltimore Law Review).

Also in 2024, Tennessee introduced their version of Idaho's abortion travel ban and became the second state in the country to create and then ban the new crime of abortion trafficking.¹⁴⁴ While Tennessee's law largely tracks Idaho's, there are several significant differences.¹⁴⁵ Both laws contain criminal sanctions, but Idaho's law is a felony, threatening up to five years in prison, with a mandatory minimum two-year period of incarceration, whereas Tennessee's law is a misdemeanor with a possible confinement of up to eleven months and twenty-nine days.¹⁴⁶ Tennessee also provides for civil actions aimed at helpers, allowing wrongful death suits to be brought by the biological would-be father, the parent or guardian of the minor, and the would-be biological mother.¹⁴⁷ After Tennessee passed its version of the abortion travel ban, two lawsuits challenging the law were

143 *Oklahoma Senate Bill 1778 (Prior Session Legislation)*, LEGISCAN, <https://legiscan.com/OK/text/SB1778/id/2886575> (last visited Aug. 3, 2025) (on file with the University of Baltimore Law Review). Note that other Oklahoma legislators have continued to introduce new facets of the word 'trafficking.' In the current legislative session, HB1168 is the latest attempt to prevent "trafficking" of "abortion-inducing" drugs and would make it a felony to deliver that drug to another person or possess the drug with the intention to deliver it. *See* H.B. 1168, 60th Leg., 1st Sess. (Okla. 2025). As of this writing, that bill has passed the House. *Id.* An identical bill, HB3013, was introduced in 2024, and also passed the House, but was never heard in the Senate. *See* H.B. 3013, 59th Leg., 2d Sess. (Okla. 2024).

144 *See* S.B. 1971, 113th Gen. Assemb., Reg. Sess. (Tenn. 2024).

145 In addition to the differences detailed herein, we note that Tennessee also specifically excludes common carriers and emergency services personnel from liability, neither of which are exempted from Idaho's reach. *Id.* Further, while Idaho provides a perhaps fatally vague affirmative defense in their law—that a parent or guardian consented—Tennessee declared their law inapplicable to a person "who has obtained the written, notarized consent of the unemancipated minor's parent or legal guardian." *See id.*; IDAHO CODE § 18-623(2) (2025), *partially invalidated by*, *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024). We also note that while Tennessee seems to set the bar higher, Idaho's affirmative defense is undefined and unclear. For example, does the consent of one parent satisfy the requirement? What happens if a second parent is opposed? Because these, and many other, questions remain unanswered, the parameters and availability of the affirmative defense are unknown.

146 *See* IDAHO CODE § 18-623(5), *partially invalidated by*, *Matsumoto v. Labrador*, 122 F.4th 787 (9th Cir. 2024); Tenn. S.B. 1971.

147 Tenn. S.B. 1971. We note that the Tennessee law specifically states that a criminal prosecution can proceed regardless of whether the pregnant minor consented to any proscribed actions. *Id.* So, under the plain language of the statute a friend or relative could tell a minor about her legal options, or provide financial support, that minor could procure a legal abortion, and then bring a civil action seeking economic, noneconomic and punitive damages against the friend or family member who gave her the information or money. *Id.*

filed.¹⁴⁸ While there is overlap between the two Tennessee lawsuits and the *Matsumoto* case, plaintiffs are also alleging other claims.¹⁴⁹ As of this writing, both of the Tennessee cases remain active.¹⁵⁰

Although only one of the Idaho copycat bills became law in the 2024 state legislative session, the push towards spreading and cementing this crime has continued, with several states forwarding abortion travel ban bills in the 2025 legislative session. In addition to Mississippi's attempt to reintroduce their bill that failed last year, New Hampshire and Texas also introduced travel bans aimed at preventing minors from even learning about legal options.¹⁵¹ In addition, several additional states also introduced or passed laws attempting to create and expand other crimes to prevent their citizens from accessing abortion healthcare.¹⁵²

In New Hampshire, multiple sponsors forwarded HB 191, a bill that largely tracks Idaho's abortion travel ban with a few differences.¹⁵³ First, the bill provides for civil damages in addition to criminal penalties, and the criminal consequences are liability for

148 Verified Complaint at ¶ 1, *Welty v. Dunaway*, 791 F. Supp. 3d 818 (M.D. Tenn. 2025); Complaint at ¶ 1, *SisterReach, Inc. v. Skrmetti*, No. 2:24-CV-02446 (W.D. Tenn. June 27, 2024).

149 The plaintiffs in *Welty* have three claims: vagueness and two 42 U.S.C. §1983 claims (that the law is an impermissible First Amendment content-based restriction on speech and that it is unconstitutionally overbroad). Verified Complaint at ¶ 47–79, *Welty v. Dunaway*, 791 F. Supp. 3d 818 (M.D. Tenn. 2025). In *SisterReach*, the plaintiffs also allege vagueness and bring two First Amendment claims (that the law is a content-based restriction on speech that doesn't meet the applicable standard and that it unconstitutionally restricts expressive association). Complaint at ¶ 133–141, *SisterReach, Inc. v. Skrmetti*, No. 2:24-CV-02446 (W.D. Tenn. June 27, 2024).

150 In the *Welty* case, cross motions for summary judgment were filed and the court granted in part and denied in part both motions. *Welty v. Dunaway*, 791 F. Supp. 3d 818, 843 (M.D. Tenn. 2025) (holding that the abortion statute unconstitutionally regulates speech, the recruitment provision is not unconstitutionally vague, and plaintiffs are entitled to an injunction enjoining all enforcement of the recruitment provision). Both parties have appealed. See Scheduling Order, *Welty v. Dunaway*, 25-5739 (6th Cir. Sep. 9, 2025). In the *SisterReach* case, defendants have a pending motion to dismiss and in July 2025 the opinion from *Welty* was added as an attachment. Docket Entry 34, 45, *SisterReach, Inc. v. Skrmetti*, 2:24-CV-02446 (W.D. Tenn. June 27, 2024).

151 See *infra* notes 153–58 and accompanying text.

152 See, e.g., Deidre McPhillips & CNN, *Post-Roe, Pregnant Women Face Growing Risk of Criminal Prosecution for Charges Much Broader than Abortion*, CNN (Sep. 24, 2024, at 12:35 ET), <https://www.cnn.com/2024/09/24/health/criminal-charges-during-pregnancy-increase/index.html> (on file with the University of Baltimore Law Review).

153 H.B. 191, 2025 Gen. Ct., 2025 Reg. Sess. (N.H. 2025).

either a Class A or a Class B misdemeanor.¹⁵⁴ As of this writing, the bill, now amended, is in the state Senate Judiciary Committee.¹⁵⁵ In Texas, state Senator Phil King introduced a last-minute bill that sought to criminalize transporting or providing financial support for a pregnant minor in order for them to access legal abortion healthcare in another state.¹⁵⁶ Unlike Idaho, Texas did not seek to forbid “recruiting” or “harboring” broadly, although the Ninth Circuit in *Matsumoto* did hold that “funding” or “subsidizing” an abortion could properly be categorized as a protected First Amendment activity under “recruiting.”¹⁵⁷ The Texas bill, which as of this writing sits in the state’s Senate Affairs Committee, provides for civil, criminal, and professional disciplinary sanctions.¹⁵⁸

It is clear that Idaho, and the states that followed, have created the new crime of “abortion trafficking,” aimed at minors, as the first step in ensuring that even adult state residents are unable to receive information or support related to legal abortion healthcare in the wake of *Dobbs*.¹⁵⁹ As noted above, the word ‘trafficking’ is used in these bills to create the impression that young pregnant girls from loving homes are being taken against their will and forced to undergo illegal abortions.¹⁶⁰ This builds on traditional trafficking prohibitions, which apply to coercive behaviors in pursuit of illegal purposes.¹⁶¹ In

154 *Id.* In New Hampshire, a Class A misdemeanor has a maximum jail sentence of one year, a Class B felony has a maximum jail sentence of seven years. N.H. REV. STAT. § 625:9(III)(a)(2), (IV)(a).

155 *See New Hampshire House Bill 191*, LEGISCAN, <https://legiscan.com/NH/research/HB191/2025> (last visited Aug. 5, 2025) (on file with the University of Baltimore Law Review).

156 S.B. 2352, 89th Leg., Reg. Sess. (Tex. 2025).

157 *Matsumoto v. Labrador*, 122 F.4th 787, 809 (9th Cir. 2024).

158 *Texas Senate Bill 2352 (Prior Session Legislation)*, LEGISCAN, <https://legiscan.com/TX/bill/SB2352/2025> (last visited Aug. 7, 2025) (on file with the University of Baltimore Law Review).

159 In reproductive justice, laws targeting minors never stop at minors. *See, e.g.*, Mary Ziegler, *Abortion Restrictions Targeted at Minors Never End There*, THE ATL. (Apr. 28, 2023), <https://www.theatlantic.com/ideas/archive/2023/04/idaho-abortion-trafficking-law-criminalizing-minors/673877/> [<https://web.archive.org/web/20230428214645/https://www.theatlantic.com/ideas/archive/2023/04/idaho-abortion-trafficking-law-criminalizing-minors/673877/>].

160 Judith Levine, *An Abortion-Seeker Is Not a Victim*, THE INTERCEPT (Feb. 28, 2024, at 12:05 ET), <https://theintercept.com/2024/02/28/abortion-trafficking-rape-victims/> (on file with the University of Baltimore Law Review).

161 In line with other states, Idaho has a statutory scheme for combatting human trafficking which defines traffic as, “to transport, entice, recruit, harbor, detain, hold, provide, or otherwise obtain another person by any means.” *See* IDAHO CODE § 18-8602(11) (2025).

contrast, § 18-623 is not limited to coercive conduct, nor does it target behavior that is illegal where it occurs.¹⁶² Additionally, human trafficking generally occurs for the economic benefit of the trafficker, and § 18-623 does not target or even contemplate monetary enrichment.¹⁶³ In short, Idaho and her followers used the *Dobbs* decision as a catalyst to exploit the very real crime of trafficking to try and criminalize abortion access beyond their boundaries, a move that exploits actual trafficking survivors and undermines the autonomy of pregnant people.¹⁶⁴

It also bears noting that a number of other states are attempting other ways to refashion criminal law to stop state residents from learning about or accessing abortion healthcare in the wake of *Dobbs*.¹⁶⁵ For example, Louisiana, which passed a bill creating the crime of abortion coercion in 2018,¹⁶⁶ has since tried to expand that law in the post-*Roe* era. First, in 2024, the state added the crime of “coerced criminal abortion by means of fraud,” and reclassified mifepristone and misoprostol as Schedule IV drugs.¹⁶⁷ Not content to

162 See *What Is Human Trafficking?*, U.S. DEP’T OF HOMELAND SEC. (Sep. 22, 2022), <https://www.dhs.gov/blue-campaign/what-human-trafficking> (on file with the University of Baltimore Law Review) (stating that “Human trafficking involves the use of force, fraud, or coercion”).

163 *Understanding Human Trafficking*, U.S. DEP’T OF STATE (Jan. 20, 2025), <https://www.state.gov/what-is-trafficking-in-persons/> [<https://perma.cc/MK24-ENL2>] (noting that human trafficking “refer[s] to a crime whereby traffickers exploit and profit at the expense of adults or children by compelling them to perform labor or engage in commercial sex.”).

164 See, e.g., *Equating Abortion and Human Trafficking Creates Barriers to Services for Survivors*, FREEDOM NETWORK USA, <https://freedomnetworkusa.org/2023/07/28/equating-abortion-and-human-trafficking-creates-barriers-to-services-for-survivors/> [<https://perma.cc/2NB6-4TPX>] (last visited Nov. 24, 2025).

165 This is in line with broader political goals to limit reproductive healthcare access. See generally Anna Bernstein, Amy Friedrich-Karnik & Samira Damavandi, *How Project 2025 Seeks to Obliterate Sexual and Reproductive Health and Rights*, GUTTMACHER (Oct. 2024), <https://www.guttmacher.org/fact-sheet/how-project-2025-seeks-obliterate-srhr> [<https://perma.cc/2L4S-JX6D>] (noting Project 2025 plan to dismantle abortion access).

166 LA. STAT. § 14:87.6 (2024).

167 S.B. 276, 2024 Leg., Reg. Sess. (La. 2024). We note that schedule IV drugs have specific storage and prescription requirements, making them less available for use. With SB 276, Louisiana became the first state to classify these drugs in the same family as addictive painkillers. See *id.* The bill’s sponsor proclaimed he was inspired by his brother-in-law’s attempt to abort his sister’s pregnancy by surreptitiously giving her abortion medication. *Shreveport Senator’s Brother-in-law’s Unlawful Attempt to Induce Abortion Spurs New Legislation*, HERE SHREVEPORT (Mar. 7,

stop there, in the 2025 session there is a Louisiana bill that seeks to further expand this law, which is still alive as of this writing.¹⁶⁸ Following suit, in 2024 Kansas also created the crime of “abortion coercion,”¹⁶⁹ overriding the Governor’s veto of the bill.¹⁷⁰ In Indiana, lawmakers unsuccessfully attempted to ban mutual aid, by *inter alia*, prohibiting nonprofits in the state from even offering to offset the cost of abortion medication.¹⁷¹

VI. CONCLUSION

The *Dobbs* opinion opened the door to a confusing array of state level responses seeking to protect or destroy reproductive health options. Among states that sought to restrict the availability of healthcare for its citizens, Idaho took the lead when it passed the first law that sought to restrict the ability of its pregnant minors to access legal healthcare options.¹⁷² Part and parcel of a larger agenda to restrict all abortion care, the state relied on a national group’s attempt to conflate the dreadfulness of actual trafficking with legitimate healthcare, a move that could serve to undercut long held rights of travel and free speech.¹⁷³ Sadly, Idaho’s attempt has been copied by other states,¹⁷⁴ which we fear is likely to continue.

2024), <https://www.hereshreveport.com/senator-relative-secretly-abortion-baby-sparks-law/> [<https://perma.cc/B7SJ-9MFF>].

168 *Louisiana House Bill 425*, LEGISCAN, <https://legiscan.com/LA/text/HB425/id/3201158> (last visited Aug. 9, 2025) (on file with the University of Baltimore Law Review). Note that the law’s expansive language would criminalize “exploitation of needs” for “affection, or intimate or marital relationships.” H.B. 2425, 2025 Leg., Reg. Sess. (La. 2025).

169 KAN. STAT. § 21-5433 (2025).

170 Laura Kelly, Kan. Governor, Message from Governor Regarding Veto of Senate Substitute for House Bill 2436 (Apr. 12, 2024).

171 *Indiana Senate Bill 217 (Prior Session Legislation)*, LEGISCAN, <https://legiscan.com/IN/text/SB0217/id/2877600> (last visited Aug. 9, 2025) (on file with the University of Baltimore Law Review).

172 *See supra* Part III.

173 *See discussion supra* Part III.

174 *See supra* Part V.

