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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO, NORTHWEST ABORTION ACCESS FUND, and INDIGENOUS IDAHO ALLIANCE,

Plaintiffs,

v.

RAÚL LABRADOR, in his capacity as the Attorney General for the State of Idaho,

Defendant.

Case No. 1:23-cv-00323-DKG

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Plaintiffs Lourdes Matsumoto, the Northwest Abortion Access Fund ("NWAAF"), and the Indigenous Idaho Alliance ("IIA") wish to honor the dignity and autonomy of minors to decide their reproductive futures. In furtherance of that mission, they speak openly about abortion, share information about how Idaho minors can obtain lawful care, provide funding, coordinate travel and other logistics, and/or when asked, accompany those who must leave Idaho to obtain that care. In short, Plaintiffs provide information, support, and community to, and in support of, young Idahoans navigating difficult circumstances and intend to continue doing so. Idaho has chosen to criminalize that support by making it a crime to "recruit[]," "transport[]," or "harbor[]" minors seeking abortion services with the "intent to conceal." Idaho Code § 18-623. By doing so, it has targeted speech, expression, and association that favor abortion access and the right to interstate travel for lawful medical care. The Constitution does not permit a state to silence speech, isolate minors from support, or obstruct travel to suppress disfavored conduct occurring lawfully elsewhere.

Section 18-623 violates multiple constitutional guarantees on its face and in its application to Plaintiffs. It criminalizes Plaintiffs' speech, expressive conduct, and association in violation of the First Amendment, targeting expression based on both its content and viewpoint. Its "recruiting" provision is facially overbroad, sweeping in a substantial amount of protected speech about lawful abortion care. It also infringes the right to interstate travel, a right long recognized as essential that protects individuals' ability to cross state borders to engage in conduct lawful where performed. Defendant disclosed no expert witnesses and identified no witnesses with knowledge contradicting Plaintiffs' claims. The only evidence in this case shows that the regulation has deterred Plaintiffs and their staff and volunteers from traveling, and that the law's purpose is to obstruct travel.

Moreover, the statute is impermissibly vague, failing to provide ordinary people fair notice of what conduct is criminal and inviting arbitrary enforcement, in violation of the Due Process Clause of the Fourteenth Amendment. Because there is no genuine dispute of any material fact and Plaintiffs are entitled to judgment as a matter of law, Plaintiffs respectfully request that the Court enter summary judgment in their favor.

LEGAL STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A factual issue is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Ochoa v. City of Mesa*, 26 F.4th 1050, 1055 (9th Cir. 2022) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "A material fact is one that is needed to prove . . . a claim, as determined by the applicable substantive law." *Id.* at 1055–56. "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *United States ex rel. Kelly v. Serco, Inc.*, 846 F.3d 325, 329 (9th Cir. 2017) (citing *Anderson*, 477 U.S. at 247–48). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 329–30 (citation omitted).

ARGUMENT

I. Plaintiffs Are Entitled to Summary Judgment on Their First Amendment Claims.

Plaintiffs engage in, or seek to engage in, protected speech, expressive conduct, and association by providing information, funding, and practical support to pregnant Idahoans seeking lawful abortion care outside of Idaho. Plaintiffs' Statement of Undisputed Material Facts ("SOF") ¶¶ 11, 15, 16, 17, 19–24. For decades, abortion has stood at the forefront of deeply political issues,

raising questions of bodily autonomy and complicated questions about the rights of pregnant patients to determine their reproductive futures. *Dobbs v. Jackson Women's Health Org*., 597 U.S. 215, 223 (2022) ("Abortion presents a profound moral issue on which Americans hold sharply conflicting views."). Idaho has been particularly aggressive in its position that pregnant people have no say in their reproductive futures within the state's borders, and state officials greatly disfavor speech to the contrary. Idaho Code § 18-601 ("[I]t is hereby declared to be the public policy of this state that all state statutes, rules and constitutional provisions shall be interpreted to prefer, by all legal means, live childbirth over abortion"); Idaho Code § 18-622 (prohibiting life-saving abortion when physicians are concerned about death by self-harm or maternal morbidity); *Planned Parenthood Great Nw., Hawaii, Alaska, Ind., Ky. v. Labrador*, 122 F.4th 825, 832 (9th Cir. 2024) (noting defendant Labrador wrote that "assists" in § 18-622(1) prohibited medical providers from "refer[ring]" a patient "across state lines to an abortion provider"); SOF ¶ 74.

This political and legal context directly affects NWAAF's operations, including its large volunteer base, its donor community, and the assistance it provides to individuals seeking abortion care. SOF ¶ 64. It likewise impacts IIA's work, particularly its efforts to support Indigenous survivors of gender-based violence and its recognition that the traditional lands of tribal communities in the Pacific Northwest do not conform to modern state boundaries. SOF ¶ 65. The same context also motivated Plaintiff Matsumoto to desire to dedicate a portion of her free time to serving as a trusted adult for minors in her community and to devote part of her private legal practice to advising individuals about abortion. SOF ¶¶ 20, 21, 23.

Because the law restricts Plaintiffs' speech, expressive conduct, and association based on content and viewpoint, and sweeps in a substantial amount of protected expression, it is subject to

strict scrutiny. Because the government cannot establish a compelling state interest or narrow tailoring, § 18-623 violates the First Amendment. Plaintiffs are entitled to summary judgment.

A. Section 18-623 Targets and Criminalizes Core First Amendment Activity.

Section 18-623 criminalizes "procur[ing] an abortion by recruiting, harboring, or transporting" a minor with "intent to conceal" the abortion from a parent. The Ninth Circuit construed "recruiting" broadly to mean "persuad[ing], enlist[ing], or induc[ing] someone … to engage in a particular activity or event." *Matsumoto v. Labrador*, 122 F.4th 787, 808 (9th Cir. 2024). It construed "harboring" to include "giving 'shelter' or 'refuge' to someone, including those who might be evading law enforcement or who need protection," and "transport[ing]" as the "carrying or conveyance of something or someone from one place to another." *Id.* at 807.

Under that construction, the statute reaches a wide range of protected expression—including providing information about lawful abortion care, offering advice or encouragement, connecting minors with resources, funding abortion care, or otherwise helping make an abortion feasible. *Id.* at 809–11. Even legal advice, informational materials, or broadly shared advocacy messages could fall within the statute's definition of "recruiting" and potentially subject someone to prosecution for violating the statute, attempting to violate the statute, or aiding-and-abetting a statutory violation. *Id.* at 810–11.

The First Amendment protects speech, expressive conduct, and the right to associate with others to advance shared ideas. U.S. Const. amends. I, XIV; *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1193 (9th Cir. 2018). Speech is protected unless it falls within a narrow set of historically recognized exceptions—such as obscenity, defamation, fraud, incitement, or speech integral to criminal conduct. *United States v. Stevens*, 559 U.S. 460, 468 (2010). Plaintiffs' communications—including advising minors about reproductive options, explaining where

abortion is lawful, and connecting them with resources or financial support—fall squarely within the First Amendment's protection and outside any recognized exception. *Matsumoto*, 122 F.4th at 811–14. Further, Plaintiffs' desired activities—accompanying abortion patients as they travel for lawful abortion care, funding care and travel, making their home available before or after a trip for lawful abortion care, and providing legal advice to domestic violence, intimate partner violence, and sexual assault survivors and those who advocate for them on abortion rights—are also within the First Amendment's protection. *See* SOF ¶¶ 11, 17–24, 48, 50; *see infra* at 15-17.

The government cannot suppress protected speech merely because minors are among the audience. As the Supreme Court has explained, "[s]peech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213–14 (1975); *see also Powell's Books, Inc. v. Kroger*, 622 F.3d 1202, 1212–13 (9th Cir. 2010). Speech providing truthful information about lawful medical care, including lawful abortion, is likewise protected. *Bigelow v. Virginia*, 421 U.S. 809, 824–25 (1975); *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 760–65 (1976). Indeed, even a "close, personal conversation" intended to persuade individuals entering abortion clinics is protected expression. *McCullen v. Coakley*, 573 U.S. 464, 487 (2014); *Hill v. Colorado*, 530 U.S. 703, 714 (2000). As the Ninth Circuit recognized, "[i]f counseling those who are about to obtain abortions to instead carry their pregnancies to term is undoubtedly protected speech, then surely the opposite is true as well." *Matsumoto*, 122 F.4th at 812.

The First Amendment also protects expressive conduct. "[T]he Constitution looks beyond written or spoken words as mediums of expression." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 569 (1995). Conduct is protected when it is intended to convey a

message and likely to be understood as such. *Spence v. Washington*, 418 U.S. 405, 410–11 (1974). A "narrow, succinctly articulable message is not a condition of constitutional protection." *Porter v. Martinez*, 68 F.4th 429, 438 (9th Cir. 2023) (quoting *Hurley*, 515 U.S. at 569). Nor does the First Amendment require expression to be directed to a large audience; communication with even a single person lies at the core of protected speech. *McCullen*, 573 U.S. at 488; *see Givhan v. W. Line Consol. Sch. Dist.*, 439 U.S. 410, 415–16 (1979). Conduct must be "sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments." *Texas v. Johnson*, 491 U.S. 397, 404 (1989) (citation omitted). The activity, combined with the factual context and environment in which it was undertaken, needs only to sufficiently lead to the conclusion that a plaintiff engaged in a form of protected expression. *See Spence*, 418 U.S. at 409–11 (citing *United States v. O'Brien*, 391 U.S. 367, 376 (1968)). Acts of support—such as funding travel, providing transportation, or accompanying someone to obtain care—can thus constitute protected expression conveying solidarity, assistance, and support for lawful abortion access in the context in which they are made. *See Yellowhammer Fund v. Marshall*, 776 F. Supp. 3d 1071, 1111, 1083–84 (M.D. Ala. 2025); *see infra* at 17-21.

Here, the relevant context involves minors seeking abortion support in a state that criminalizes nearly all abortion care. In this environment—where Idaho law severely restricts abortion and state officials have taken openly hostile positions toward abortion access—messages of support for abortion care carry clear expressive meaning. When a trusted adult offers assistance to a young person navigating these circumstances, that assistance communicates solidarity, support, and affirmation of the young person's autonomy. Even if the audience consists of only a single individual—the young person receiving the help—the message conveyed is readily understood within the surrounding social and legal context and requires no additional verbal

context to be understood by that young person. Yet § 18-623 places these forms of expression at risk of criminalization. If a trusted adult accompanies a young person to obtain lawful abortion care, offers temporary shelter before or after the trip, or provides funding to facilitate travel, the adult could arguably be accused of "recruiting," "harboring," or "transporting" a minor for the purpose of procuring an abortion. Section 18-623 thus threatens criminal penalties for conduct that, in context, conveys a clear and particularly important message in all circumstances, but even more so in instances of domestic violence. *See* SOF ¶¶ 51, 61.

Finally, the First Amendment protects the right of expressive association. The Supreme Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). That freedom is "an indispensable means of preserving other individual liberties," *id.* at 618, and restrictions on expressive association are permissible only if they "serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms", *id.* at 623; *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000). In this case, the factual record now reflects that the statute is a government effort to impose penalties on individuals based on their participation in disfavored social networks. *See Roberts*, 468 U.S. at 622 (citing *Healy v. James*, 408 U.S. 169, 180–84 (1972)); SOF ¶ 74. It is also an attempt to interfere with the internal organization and affairs of a group. *Roberts*, 468 U.S. at 623 (citing *Cousins v. Wigoda*, 419 U.S. 477, 487–88 (1975)).

By criminalizing the act of assisting a minor in accessing lawful abortion care—including providing information, financial assistance, transportation, or lodging—§ 18-623 targets the network of advocates, counselors, and support organizations that associate to help pregnant people

exercise their reproductive autonomy. The statute penalizes participation in a disfavored advocacy community and intrudes upon the internal functioning of organizations that coordinate resources, volunteers, and counseling to support abortion access, precisely the type of governmental interference with expressive association the First Amendment forbids.

Section 18-623 burdens all three forms of protected First Amendment activity. It criminalizes speech advocating for lawful abortion care, expressive conduct that helps individuals obtain that care, and the associational networks through which advocates, volunteers, and community members work together to support access to reproductive health services.

B. Section 18-623 Discriminates Based on Content and Viewpoint.

The First Amendment forbids the government from restricting expression based on "its message, its ideas, its subject matter, or its content." *Stevens*, 559 U.S. at 468 (quoting *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002)). Section 18-623 does exactly that. The statute criminalizes expression on a single subject—lawful abortion—and only when the speech supports obtaining abortion care. Plaintiffs remain free to encourage minors to continue a pregnancy or provide information about prenatal care regardless of whether a parent is informed, but they face criminal penalties if they express support for abortion access. This is classic content and viewpoint discrimination. "It is rare that a regulation restricting speech because of its content will ever be permissible." *Porter*, 68 F.4th at 439 (quoting *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 818 (2000)). And "[v]iewpoint discrimination is . . . an egregious form of content discrimination." *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). By permitting speech that discourages abortion options while criminalizing speech that supports abortion, § 18-623 regulates expression based on both subject matter and viewpoint. *See Reed v.*

Town of Gilbert, 576 U.S. 155, 163 (2015); *Nat'l Inst. of Fam. & Life Advocates v. Becerra*, 585 U.S. 755, 756 (2018).

Courts have already addressed this type of impermissible viewpoint discrimination in the abortion context. *See Planned Parenthood Greater Nw. v. Labrador*, 684 F. Supp. 3d 1062, 1093–94 (D. Idaho 2023) ("[P]rohibition of medical providers offering 'support or aid' to a woman seeking an abortion, including 'refer[ring] a woman across state lines to an abortion provider[,]' is content-based because health care providers are silenced on a single topic—abortion—and is viewpoint discretionary because health care providers can provide information and referrals about out-of-state resources like anti-abortion counseling centers or prenatal care."), *aff'd sub nom. Planned Parenthood Great Nw., Hawaii, Alaska, Ind., Ky. v. Labrador*, 122 F.4th 825 (9th Cir. 2024). It is indisputable that the law draws a content-based distinction on its face by prohibiting "recruiting" someone to have an abortion. *See* Idaho Code § 18-623; *see also Boos v. Barry*, 485 U.S. 312, 316, 318 (1988) (holding that an ordinance prohibiting the display within 500 feet of a foreign embassy of any sign that tends to bring the foreign government into "public odium or public disrepute" was a content-based restriction).

The statute is also impermissible viewpoint discrimination. It permits Plaintiffs to offer guidance about medical providers, specialized care, or financial assistance when that guidance supports continuing a pregnancy but prohibits them from providing the same kinds of information when it supports lawful abortion care outside Idaho. By allowing speech that encourages one reproductive outcome while suppressing speech that supports another, the policy singles out and criminalizes a particular perspective—one favorable to individuals seeking to terminate a pregnancy. *Cf. Conant v. Walters*, 309 F.3d 629, 637 (9th Cir. 2002).

The statute's "intent to conceal" *mens rea* sharpens this discrimination. Under § 18-623, Plaintiffs may speak freely with minors about abortion only when the minor involves a parent or guardian. But when a minor seeks confidential guidance and does not wish to involve a parent—the very circumstance in which minors most often seek advice from trusted adults who are not their parents—the statute exposes Plaintiffs to criminal prosecution for expressing support for abortion care but no penalty for discouraging abortion care. In other words, the law permits Plaintiffs to share their full message with minors only when the minor's decision is not confidential; when a minor wishes to keep the decision private from a parent, Plaintiffs must withhold the same message or risk prosecution.

The First Amendment does not permit the State to condition protected speech on whether a listener chooses to disclose a conversation to a third party. By tying criminal liability to whether speech supporting abortion occurs in a confidential discussion with a minor, § 18-623 singles out one side of a sensitive conversation between minors and trusted adults and suppresses it. That is viewpoint discrimination of the clearest kind.

C. Section 18-623 Cannot Survive Strict Scrutiny.

Because § 18-623 singles out speech based on content and viewpoint, it is subject to strict scrutiny—a standard it cannot meet. Strict scrutiny requires the State to prove that the law is narrowly tailored to serve a compelling government interest. *Reed*, 576 U.S. at 163. A compelling interest is an interest of the "highest order," and the State bears the burden of proof. *Id*. at 172; *see also Pierce v. Jacobsen*, 44 F.4th 853, 862 (9th Cir. 2022). That burden is rightfully demanding. The State must identify an actual problem and show that restricting speech is necessary to solve it. *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 799 (2011). "[A]mbiguous proof will not suffice,"

and courts cannot rely on legislative speculation or "predictive judgment." *Id.* at 799–800. Here, Defendant produced no satisfactory evidence.

Defendant has offered no evidence supporting any compelling interest that would justify criminalizing Plaintiffs' speech and advocacy. At most, three potential and entirely speculative interests appear in the legislative record and public statements: protecting minors from harm, protecting parental rights, and protecting potential life. As explained below, none withstands scrutiny and the Supreme Court has made clear that the government may not restrict speech based on unsupported conjecture or legislative speculation. *Id.*

While the state has a legitimate interest in protecting children from harm, that interest does not grant it free-floating authority to limit the ideas to which children may be exposed. *Id.* at 794. Regardless, the only evidence in the record shows the law does not protect children from harm; in fact, the record evidence shows the opposite. The overwhelming evidence demonstrates that parental involvement laws harm minors rather than protect them. Most minors already involve a parent or guardian in their abortion decisions. SOF ¶ 53. When they do not, it is typically because doing so would be unsafe. SOF ¶ 54. Forcing parental involvement in those circumstances exposes minors to trauma, delay, stigma, isolation, and abuse. SOF ¶ 55. Parental involvement laws also disproportionately harm adolescents who are low-income, adolescents of color, and survivors of violence. SOF ¶ 56. Such laws isolate vulnerable minors from trusted adults and support networks precisely when they most need assistance. SOF ¶ 57.

Nor does restricting abortion access improve health outcomes. Abortion is significantly safer than carrying a pregnancy to term. SOF ¶ 62. When access is blocked, minors may seek unsafe alternatives or delay care until it becomes more dangerous. SOF ¶ 63. A law that exacerbates harm cannot be justified as protecting minors.

The State may also invoke parental rights, but that theory misunderstands constitutional doctrine. The parental right "to make decisions concerning the care, custody, and control of their children" is a defensive liberty interest against government interference—not an affirmative power requiring the State to criminalize private actors. *Troxel v. Granville*, 530 U.S. 57, 66 (2000). Private individuals cannot violate parental constitutional rights. Only the government can.

At most, the State may claim an interest in encouraging parental involvement. But the record evidence shows that parental involvement laws do not improve parent-child relationships or increase parental participation in abortion decisions. SOF ¶ 58. Instead, forcing disclosure where a minor fears harm as a consequence has resulted in abuse, abandonment, and long-term damage to family relationships. SOF ¶ 59.

Even the State's framing of this statute reveals the weakness of the parental-rights justification. The legislation's sponsor repeatedly characterized § 18-623 as a parental consent measure: a description echoed by the RLI lobbyist, Idaho's governor upon signing the bill, and the Defendant throughout this litigation. SOF ¶¶ 9, 73.[1] Yet the statute does not require parental

[1] *See* Committee Consideration of H.B. 242, Idaho S. State Affs. Comm., Audio/Video Recording at 00:01:44 (Idaho Leg. Digital Media Archive, Mar. 27, 2023) ("March 27 Hearing") (statement of Rep. Barbara Ehardt), https://insession.idaho.gov/IIS/2023/Senate/Committee/State%20Affairs/230327_ssta_0800AM-Meeting.mp4 (sponsor Representative Ehardt: "Let me just say a couple things from my perspective, this is 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."); *see* also *id.* at 2:11 ("Now, let me be clear that if a parent wants to take that minor to another state because, unfortunately, their child ended up pregnant, that parent can do this. This does not prohibit the parental rights of the parent doing that. If that parent wanted to cede their rights to an aunt or an uncle or a grandparent to do the same thing, that parent can do it. But somebody unbeknownst to that parent cannot do that."); Letter from Governor Brad Little to

consent. It instead turns on a vague "intent to conceal" standard that criminalizes speech and assistance without regulating parental notice or consent at all. Plus, Defendant in this case has offered shifting interpretations of how the "intent to conceal" element could be proven. *See* Mem. Decision & Order [Dkt. 40] at 52 (noting "Defendant's varied and conflating arguments concerning when culpability attaches"); *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 563 (2011) (noting that a state's change in position on the correct interpretation of a statute is particularly troubling in a First Amendment case). A law genuinely designed to protect parental authority would regulate notice directly. Section 18-623 does not. Further, § 18-623 does not regulate minors' decision-making or actions—it criminalizes third-party speech and actions, and even then, only the third-party actions that promote a specific viewpoint. Even a true parental rights motivation does not give a state the authority to silence disfavored third-party viewpoints or prevent lawful assistance.

The State, likewise, lacks any legitimate interest in suppressing speech that encourages access to lawful abortion care in other states. *See Bigelow*, 421 U.S. at 827–28. Because the State lacks such an interest, it cannot further its interest in potential life by seeking to prevent lawful abortions in other states.

Speaker of the House Mike Moyle (Apr. 5, 2023) (transmitting signed bill) ("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"), https://gov.idaho.gov/wp-content/uploads/2023/04/transmittal_h-242aaS_2023.pdf. Plaintiffs previously sought clarification as to whether the Court would require judicial notice or would consider legislative facts without formal notice, despite the right to travel being a more evidentiary showing ([Dkt. 70]; [Dkt. 112].) To the extent the Court requires judicial notice, Plaintiffs respectfully request that the Court take judicial notice of statements, made during the legislative process, as cited within the brief, and re-urge their motion for judicial notice. Plaintiffs' position is that the Court should be able to consider these statements under either path.

The Supreme Court has long rejected the idea that a state may shield its residents from information about lawful activity elsewhere. *Id.* A state does not acquire regulatory authority over another state's lawful conduct merely because its residents may travel there. *Id.* at 824. Section 18-623 does precisely what *Bigelow* forbids: it criminalizes speech and assistance relating to abortions that are lawful outside Idaho. Idaho cannot extend its regulatory reach beyond its borders by silencing speech about lawful medical care available elsewhere.

Indeed, the First Amendment is especially protective when speech concerns lawful options under other states' laws. People routinely rely on friends, advocates, and community organizations to learn where medical care can be obtained. Criminalizing those conversations would transform ordinary discussions about health care into criminal acts. Nor can the State justify the law by invoking travel concerns. The Constitution protects the right to interstate travel, including travel to obtain lawful medical care. *See infra* at 24-29. Criminalizing speech and advocacy supporting such travel would undermine that fundamental constitutional protection.

Even if the State could identify a compelling interest—which it has not—§ 18-623 is far from narrowly tailored. A statute is narrowly tailored only if it eliminates no more speech than necessary to address the problem it targets. *Victory Processing, LLC v. Fox*, 937 F.3d 1218, 1227 (9th Cir. 2019). The State must show why less restrictive alternatives would not suffice. *Id.* at 1228. Laws that are overinclusive or underinclusive fail this requirement. *IMDb.com Inc. v. Becerra*, 962 F.3d 1111, 1125 (9th Cir. 2020). Section 18-623 fails on multiple fronts.

First, the law burdens all minors—including those who cannot safely involve a parent—while offering no alternative means of obtaining assistance. SOF ¶ 60. The minors most affected are those already isolated from safe family support. Second, the law suppresses speech about lawful activity beyond Idaho's borders. Rather than addressing any concrete harm, it attempts to

shield Idaho residents from information about lawful conduct elsewhere. *Bigelow*, 421 U.S. at 827–28; *see also Rutan v. Republican Party of Ill.*, 497 U.S. 62, 75 (1990). Third, the statute's structure confirms it is not tailored to parental interests. Legislators described the law as protecting parental authority, yet the statute does not regulate consent or notice. *See supra* at 12-13. Instead, it criminalizes speech and assistance related to lawful out-of-state abortions based on an "intent to conceal" standard. That mismatch reveals that the law targets abortion advocacy, not parental decision-making. Finally, the statute is underinclusive. It singles out speech about abortion while leaving speech about other medical procedures entirely untouched. Such selective regulation raises doubts about whether the statute aims to address the problems identified by the government or instead to hinder discussion of certain topics. *Victory Processing*, 937 F.3d at 1229. For all these reasons, § 18-623 cannot satisfy strict scrutiny.

D. The Court Should Grant Plaintiffs As-Applied Relief.

Because Plaintiffs' ordinary and desired activities—providing information, assistance, and community support related to lawful abortion care in other states—fall within the statute's reach, enforcement of § 18-623 against them violates the First Amendment. The Court should therefore grant as-applied relief.

1. Section 18-623 Criminalizes Plaintiffs' Speech.

Plaintiffs' core activities consist of providing information, advice, advocacy, and logistical coordination to individuals considering abortion care. Those activities are protected speech. Plaintiff NWAAF is a nonprofit organization that provides emotional, financial, logistical, and informational support to individuals considering abortion. SOF ¶ 11. It has a network of more than 100 current volunteers, including volunteers in Idaho, who coordinate values-aligned support for abortion seekers. SOF ¶ 13. It serves individuals across several states, including Idaho. SOF ¶ 14.

Since 2021, NWAAF has assisted at least eight Idaho minors seeking abortion care, sometimes in situations where a parent may not have been aware of the pregnancy or abortion. SOF ¶ 15. It also sets up tables around the Pacific Northwest sharing that it provides these services to anyone who needs them, including minors. SOF ¶ 32. Under the Ninth Circuit's construction of § 18-623, however, NWAAF's core speech—providing information about lawful abortion care, advising minors about their options, and connecting them with resources—falls within the statute's definition of "recruiting." *Matsumoto*, 122 F.4th at 808–11. Idaho's aiding-and-abetting and attempt doctrines further expand that risk. *Id.* at 810–11. As a result, NWAAF must either refrain from speaking or risk criminal prosecution for engaging in constitutionally protected advocacy.

Plaintiff IIA faces the same dilemma. IIA provides information, advice, and assistance to individuals—including minors—about accessing abortion and other medical care. SOF ¶ 16. It also provides financial assistance through community networks in which trusted adults seek help on behalf of minors, including survivors of gender-based violence. SOF ¶ 17. In some instances, IIA has understood that a parent was not aware of the minor's abortion for which IIA provided funds. SOF ¶ 18. Under § 18-623, those communications and assistance efforts risk being treated as unlawful "recruiting."

The law also directly burdens Plaintiff Matsumoto. For years, she has worked with young people between the ages of 11 and 24 who have experienced domestic violence, sexual assault, and related harms. SOF ¶ 19. When Idaho's abortion laws changed, she knew she would need to address these laws with minors and advocates. SOF ¶ 20. She began drafting materials to distribute to the community, started planning to provide transportation and support in her free time, and started talking to those who support minors who may need assistance to lawfully fulfill their reproductive wishes. SOF ¶¶ 20– 21. She had to abruptly stop her efforts to start providing this

assistance when Idaho passed § 18-623. SOF ¶ 22. While she has not directly counseled *pregnant* domestic violence and sexual assault minor-survivors on their legal rights relating to abortion, she has counseled those whose pregnancy status she did not know and trusted adults seeking to help pregnant domestic violence and sexual assault survivors access abortion care. SOF ¶ 23. She would serve as a trusted adult for pregnant minors in the future, but for this law. SOF ¶ 24.

But under the Ninth Circuit's interpretation of § 18-623, providing legal advice and know-your-rights materials about accessing lawful abortion care could be "recruiting." *Matsumoto*, 122 F.4th at 808–11. Expanding her practice to continue serving vulnerable youth would therefore expose her to potential criminal liability. SOF ¶ 71. It would also hinder her desire to provide whatever support she can in her community to support minors obtaining lawful medical care. SOF ¶ 23. The statute thus forces each Plaintiff into the same unconstitutional choice: cease engaging in protected speech or risk prosecution. The First Amendment does not permit such a burden.

2. Section 18-623 Criminalizes Plaintiffs' Expressive Conduct.

Plaintiffs' work also includes expressive acts that communicate support for bodily autonomy and access to lawful medical care. Providing financial support, transportation, accompaniment, or temporary housing for individuals seeking abortion care conveys a clear message: that people seeking abortion are entitled to dignity, solidarity, and practical support. *See Hurley*, 515 U.S. at 569; *Spence*, 418 U.S. at 410–11 ("[T]he context in which a symbol is used for purposes of expression is important, for the context may give meaning to the symbol.") (citing *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969)); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1241–42 (11th Cir. 2018) (holding that food sharing events were expressive conduct that intended to convey the message that food is a human right); *VoteAmerica v. Schwab*, 576 F. Supp. 3d 862, 875 (D. Kan. 2021) ("Public endeavors which

'assist people with voter registration are intended to convey a message that voting is important,' and which expend resources 'to broaden the electorate to include allegedly under-served communities,' qualify as expressive conduct . . . ."); *c.f. Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 808 n.17 (9th Cir. 2006) (whether food distribution can be an expressive activity protected by the First Amendment under particular circumstances must be decided in an as-applied challenge rather than a facial challenge).

Moreover, "since *all* speech inherently involves choices of what to say and what to leave unsaid," *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 11 (1986) (plurality opinion) (emphasis in original), "one important manifestation of the principle of free speech is that one who chooses to speak may also decide 'what not to say,'" *Hurley*, 515 U.S. at 573 (quoting *Pac. Gas & Elec. Co.*, 475 U.S. at 16).

NWAAF exists to communicate and advance a clear normative message: that abortion is lawful health care and that people deserve the freedom and support necessary to exercise their reproductive autonomy. SOF ¶¶ 12, 26, 27. NWAAF's mission is "to fund abortion and break down barriers to abortion access," and its stated values emphasize autonomy, reproductive justice, and respect for individuals' decisions about their bodies and lives. SOF ¶ 12. Its activities—funding abortion care, helping Idaho patients travel to clinics, and ensuring they have a safe place to stay—are not merely logistical services. SOF ¶ 27. They are the practical expression of NWAAF's message that abortion care is legitimate, necessary health care and that individuals seeking it deserve dignity, compassion, and community support. SOF ¶¶ 26, 27.

Indeed, NWAAF's actions communicate a message that is widely understood in context. By paying clinics directly for abortion care, arranging transportation to appointments, and providing lodging for those traveling to obtain abortions, NWAAF publicly manifests its

commitment to reproductive autonomy and its belief that abortion access should be facilitated rather than obstructed. SOF ¶¶ 27–29. Observers—including patients, volunteers, and the public—readily understand this conduct as an expression of solidarity with people seeking abortions and as an affirmation that abortion care should be accessible and supported. SOF ¶ 30.

NWAAF's conduct is expressive, as reflected in its stated values and goals. NWAAF explicitly seeks to "shift culture so abortion is seen as ordinary" health care and to "break down barriers to abortion access." SOF ¶ 28. Its funding decisions, travel coordination, and housing assistance are the mechanisms through which it communicates and advances that message. SOF ¶ 29. Just as advocacy organizations communicate their viewpoints through charitable assistance, counseling, or coordinated aid to marginalized communities, NWAAF's activities embody and convey its core message that individuals should be free to decide whether to continue a pregnancy and should be able to receive support and affirmation in exercising that autonomy. Because NWAAF's assistance is undertaken to convey and advance that viewpoint—and because that message is readily understood by those who observe or benefit from the conduct—its funding, transportation coordination, and lodging assistance constitute expressive conduct protected by the First Amendment. SOF ¶ 31.

Paying for transportation and housing is expressive conduct criminalized by the "recruiting" portion of the statute. The narrower definitions of "transporting" and "harboring" prohibit the expressive conduct of actually transporting or housing a young person. For NWAAF, directly providing transportation, in addition to funding transportation, has long been part of its expressive mission. Volunteers have historically driven individuals—including minors—to and from abortion appointments when other transportation was unavailable. SOF ¶ 33. Those acts communicated solidarity with abortion seekers and affirmed their right to obtain lawful medical

care. SOF ¶ 34. After § 18-623 took effect, and a portion of the injunction was vacated, NWAAF cannot restart such assistance without risking criminal liability.

IIA similarly participates in expressive conduct rooted in cultural traditions of community care. SOF ¶ 35. It is driven by its desire to serve the storied culture of its people through trust-based mutual care and aid, led by those who need the care and those in the community already providing other care, which includes ensuring access to abortions, including access for minors. SOF ¶ 36. All of its words and actions are in furtherance of these beliefs. SOF ¶ 37. Within the communities IIA serves, trusted adults—including extended family members and "aunties"—often provide transportation, housing, or other assistance to minors seeking medical care. SOF ¶ 37. When IIA supports those efforts, it expresses the community's shared commitment to protecting vulnerable youth. SOF ¶ 38. Section 18-623 threatens to criminalize these culturally grounded acts of care and solidarity by putting them within the radius of aiding and abetting and the "transporting" and "harboring" prongs.

Plaintiff Matsumoto likewise seeks to express support for vulnerable minors through acts of accompaniment and care, such as driving them to medical appointments or providing a safe place to recover. SOF ¶ 39. Her acts will communicate a clear message: that minors have trusted adults who will stand with them during difficult moments and that they are not alone and they can make the decisions they desire for themselves. SOF ¶ 40. Yet the statute exposes those expressive acts to criminal prosecution under the "transporting" and "harboring" prongs of § 18-623.

The law's "intent to conceal" element intensifies this burden. It effectively allows Plaintiffs to provide support only when a minor involves a parent, dictating what Plaintiffs can say and requiring them to say things they otherwise would not. When a minor seeks confidentiality—the very circumstance in which trusted adults are often most needed—Plaintiffs must withdraw their

assistance. The law thus forces Plaintiffs to alter the message conveyed by their conduct, transforming expressions of solidarity into silence. The First Amendment does not permit the State to compel expression and distort Plaintiffs' chosen speech in this way.

Also, as the Ninth Circuit recognized in the order upholding the preliminary injunction, the Court must also consider how partial acts under the statute will chill conduct because of fear of prosecution under attempt and aiding-and-abetting doctrines. *Matsumoto*, 122 F.4th at 811.

3. Section 18-623 Criminalizes Plaintiffs' Expressive Association.

Finally, the statute burdens Plaintiffs' right to expressive association. Plaintiffs acknowledge that the Ninth Circuit held that they did not have a likelihood of success on the merits of the association claim pursuant to the limited briefing from the preliminary injunction and preliminary injunction appeal. *Matsumoto*, 122 F.4th at 806. However, the developed record supports the assertion that § 18-623 violates Plaintiffs' associational rights. Since the preliminary injunction stage, Plaintiffs have advanced undisputed evidence that their work does not just involve but also depends on networks of volunteers, advocates, community members, and community organizations who collaborate to support individuals seeking abortion care. SOF ¶ 25. The developed evidence demonstrates, without dispute, that through those relationships, Plaintiffs collectively convey a shared message: abortion is lawful medical care in other states, personal autonomy matters, and communities will support those who seek it. SOF ¶ 26.

Section 18-623 fractures and isolates those networks. SOF ¶ 66. Volunteers who transport individuals, organizations that provide lodging, and advocates who coordinate support all risk criminal prosecution if a minor seeks abortion care without involving a parent. As a result, individuals and organizations who would otherwise collaborate to assist minors must withdraw from those relationships and community support networks. SOF ¶ 66.

For NWAAF, this means its volunteers in Idaho have stopped assisting minors in the state and instead help minors in neighboring states. SOF ¶ 67. For IIA, it threatens the community caregiving networks through which minors access medical care. SOF ¶ 68. And for Plaintiff Matsumoto, it chills her ability to communicate with advocates and trusted adults seeking guidance for vulnerable youth out of concern that she might learn that a parent does not know or a young person does not want to communicate abortion plans to a parent. SOF ¶ 69. The First Amendment protects the right to work together with others to advance shared beliefs and advocacy goals. *Roberts*, 468 U.S. at 622. By criminalizing the collaborative relationships through which Plaintiffs carry out their mission, § 18-623 burdens that constitutional right.

As applied to Plaintiffs, § 18-623 criminalizes protected speech, expressive conduct, and expressive association. The Constitution does not permit the State to silence Plaintiffs' advocacy, distort their expressive activities, or fracture the networks through which they work together to support vulnerable minors. Plaintiffs are therefore entitled to the as-applied relief they seek.

E. Plaintiffs Are Entitled to Facial Relief Invalidating the "Recruiting" Portion of the Statute.

The unconstitutional application of § 18-623 to Plaintiffs warrants as-applied relief. Facial relief is also appropriate as to the term "recruiting," which is invalid under the First Amendment overbreadth doctrine.

When Plaintiffs seek facial relief because a statute is overbroad, the question is whether "a substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (quoting *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021)). That standard is "less demanding" in First Amendment cases because it exists to provide "'breathing room for free

expression.'" *Id.* (citation omitted). Even a law with some legitimate applications must be invalidated if its unconstitutional ones substantially outweigh them. *Id.* at 723–24.

The analysis begins with the statute's scope and then asks which of its applications violate the First Amendment. *Id.* at 724. Here, the Ninth Circuit has already supplied the controlling construction of § 18-623. It held that "recruiting" means "to persuade, enlist, or induce someone to join an undertaking or organization, to participate in an endeavor, or to engage in a particular activity or event." *Matsumoto*, 122 F.4th at 808. Under that definition, the statute reaches speech that encourages, advises, or otherwise persuades a minor to obtain abortion care, including advocacy, counseling, and informational speech about lawful abortion care in other states. *Id.* at 809–11.

Measured against that construction, the "recruiting" prohibition sweeps far beyond any constitutionally permissible regulation of conduct. It does not merely target coercion, fraud, or speech integral to criminal conduct. It criminalizes ordinary advocacy and counseling about lawful medical care. A teacher who explains that abortion is lawful in a neighboring state, a community advocate who encourages a minor to seek care, or a volunteer who tells a young person that support exists outside Idaho could all fall within the statute's definition of "recruiting." Because liability attaches when such speech occurs with "intent to conceal" from a parent, the statute reaches a substantial amount of protected speech directed to minors seeking confidential guidance.

Those unconstitutional applications are numerous. Advocacy organizations, clergy, teachers, community health workers, and trusted adults routinely provide minors with advice, encouragement, and information about health care. Under the Ninth Circuit's construction, that speech may constitute "recruiting" whenever it persuades a minor to obtain an abortion and the

minor has chosen not to involve a parent. In those circumstances, the statute criminalizes speech precisely because it supports access to lawful out-of-state care.

By contrast, the statute's legitimate sweep is narrow. To the extent Idaho may prohibit coercion, fraud, or conduct integral to a crime, existing criminal laws already do so. Section 18-623 reaches far beyond those narrow categories and instead targets speech encouraging the exercise of lawful rights in other states. Its unconstitutional applications therefore substantially outweigh any legitimate ones. For that reason, the "recruiting" prong of § 18-623 is facially overbroad. Because it "prohibits a substantial amount of protected speech relative to its plainly legitimate sweep," it must be invalidated under the First Amendment overbreadth doctrine. *Moody*, 603 U.S. at 723–24 (citation omitted). The Court should therefore grant both as-applied relief by enjoining application of § 18-623 to Plaintiffs as a whole, as well as facial relief as to the term "recruiting" by enjoining enforcement of that provision.

II. Section 18-623 Violates the Right to Travel.

Section 18-623 independently violates the right to travel. It criminalizes assistance that enables Idahoans to travel to other states to obtain lawful health care. The undisputed record shows that the statute was enacted to do just this—impede interstate travel—and that it has in fact deterred interstate travel. The Constitution does not permit a state to criminalize unfavored but legal conduct in a sister state by penalizing interstate travel. Plaintiffs are therefore entitled to summary judgment on their right to travel claim.

A. The U.S. Constitution Protects the Right to Interstate Travel.

The Supreme Court has firmly established and repeatedly recognized a right to travel. *Shapiro v. Thompson*, 394 U.S. 618, 630 (1969), *overruled on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974). It ensures people can enter and leave any state. *Saenz v. Roe*, 526

U.S. 489, 500 (1999).[2] The right to travel is "so elementary" that it inherently accompanies the Union that the Constitution established. *United States v. Guest*, 383 U.S. 745, 757–58 (1966).

The freedom to travel includes the "freedom to enter and abide in any State in the Union." *Att'y Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 902 (1986) (quoting *Dunn v. Blumstein*, 405 U.S. 330, 338 (1972), and citing *Guest*, 383 U.S. at 758). In the absence of the right to travel, how else could a loose confederation of states be transformed into one nation? *See Zobel v. Williams*, 457 U.S. 55, 67 (1982) (Brennan, J., concurring); *Soto-Lopez*, 476 U.S. at 902 (noting "the important role [the right to travel] . . . has played in transforming many States into a single Nation"); *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 43 (1867) ("The people of these United States constitute one nation.").

In fact, "personal liberty" has always "consist[ed] in the power of locomotion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct." 1

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[2] "Because the right to travel has been assumed from our nation's founding, the Supreme Court has persistently refused to delineate precisely from where in the Constitution the right derives." *Yellowhammer Fund*, 776 F. Supp. 3d at 1097. Courts have declined to cabin the origin of the right to travel to one particular constitutional source. *See, e.g., Zobel*, 457 U.S. at 66–67 (Brennan, J., concurring). In fact, over the last two centuries, justices have suggested at least seven different sources. For some, it has been the Article IV Privileges and Immunities Clause. U.S. Const. art. IV, § 2, cl. 1.; *see, e.g.*, *Zobel*, 457 U.S. at 73–74 (O'Connor, J., concurring in the judgment). For others, it has been the Fourteenth Amendment Privileges and Immunities Clause. U.S. Const. amend. XIV, § 1; *see Edwards v. California*, 314 U.S. 160, 178 (1941) (Douglas, J., concurring). It has been rooted in a conception of national citizenship implicit in "the structural logic of the Constitution itself." *Membership Has Its Privileges and Immunities: Congressional Power to Define and Enforce the Rights of National Citizenship*, 102 Harv. L. Rev. 1925, 1935 (1989); *see Crandall*, 73 U.S. (6 Wall.) at 43. In *Edwards*, sourcing within the Commerce Clause featured prominently. U.S. Const. art. I, § 8, cl. 3; *see Edwards*, 314 U.S. at 172–73. The Equal Protection Clause has been mentioned, U.S. Const. amend. XIV, § 1; *see, e.g.*, *Zobel*, 457 U.S. at 60 n.6, as have each of the Due Process Clauses, U.S. Const. amend. V; U.S. Const. amend. XIV, § 1; *Kent v. Dulles*, 357 U.S. 116, 125 (1958) (Fifth Amendment Due Process Clause); *Williams v. Fears*, 179 U.S. 270, 274 (1900) (Fourteenth Amendment Due Process Clause).

William Blackstone Commentaries *130. "[T]ravel is one of our most fundamental constitutional rights" as it "cultivates national citizenship and curbs state provincialism." *Yellowhammer Fund*, 776 F. Supp. 3d at 1096. "[T]he nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." *Saenz*, 526 U.S. at 499 (quoting *Shapiro*, 394 U.S. at 629).

"A state law implicates the right to travel when it actually deters such travel, . . . when impeding travel is its primary objective, . . . or when it uses '"any classification which serves to penalize the exercise of that right."'" *Soto-Lopez*, 476 U.S. at 903 (citation omitted); *Yellowhammer Fund*, 776 F. Supp. 3d at 1101 ("State restrictions with the primary objective of preventing specific lawful out-of-state conduct are just as constitutionally impermissible as restrictions aimed at preventing travel generally.").

B. The Right to Travel Protects Not Only Physical Interstate Movement but Also the Ability to Engage in Lawful Activities in the Destination State.

The right to travel protects more than crossing state lines. It guarantees that individuals may engage in lawful activities in other states free from their home state's restrictions. Indeed, the legal foundations of the right to travel developed specifically to ensure that individuals could move freely in order to engage in lawful pursuits in other jurisdictions. The protection of free movement has deep roots in Anglo-American law. The Magna Carta recognized the freedom of merchants to travel "for buy[ing] and sell[ing," and commentators have traced the emergence of a right of locomotion to this early guarantee of personal liberty. Magna Carta cl. 41 (1215); *Kent v. Dulles*, 357 U.S. 116, 125–26 (1958).

The same principle was embedded in the structure of the early United States. Article IV of the Articles of Confederation protected the right of the "people of each State" to enjoy "free ingress and regress to and from any other State," ensuring that travelers could pursue commerce and other lawful endeavors without discriminatory restrictions. Articles of Confederation of 1781, art. IV. When the Constitution was adopted, this commitment to interstate mobility was carried forward through provisions such as the Privileges and Immunities Clause.

Consistent with that history, the Supreme Court has repeatedly recognized that interstate travel protects people's ability to enter another state and pursue lawful activities there on the same footing as local residents. *See Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180–81 (1869) (holding the Privileges and Immunities Clause protects people's right to enjoy the same freedoms as locals in other states). Early federal decisions likewise described the right as including the ability to pass through or reside in another state "for purposes of trade, agriculture, professional pursuits, or otherwise." *Corfield v. Coryell*, 6 F. Cas. 546, 552 (C.C.E.D. Pa. 1823).

Other cases reinforce that principle. States may not criminalize bringing indigent persons across state lines in search of a better life, *Edwards v. California*, 314 U.S. 160, 177 (1941), nor may states impose barriers that penalize individuals for traveling to obtain medical care, *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 269 (1974). The constitutional protection of interstate travel, therefore, encompasses travel undertaken for many purposes—including the pursuit of employment, commerce, and medical services available in another state.

The Constitution has long held that a state may not extend its criminal authority beyond its borders by penalizing its residents for traveling elsewhere and engaging in conduct that is lawful where it occurs. *See, e.g., Nielsen v. Oregon*, 212 U.S. 315, 321 (1909) (holding that Oregon could not punish a person for conduct Washington had expressly authorized within its own territory).

That understanding continues, and the Supreme Court continues to uphold the principle that a state cannot punish residents based on conduct that occurs in a sister state and is legal in that sister state. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 421 (2003) (explaining that a state may not impose punishment for conduct that was lawful where it occurred); *BMW of N. Am. v. Gore*, 517 U.S. 559, 571 (1996) (recognizing a state may not impose its policy choices on neighboring states); *N.Y. Life Ins. Co. v. Head*, 234 U.S. 149, 161 (1914) (warning that extraterritorial state law would undermine federalism limits).

The Supreme Court has specifically recognized that this principle applies to travel undertaken to obtain abortion care where such care is lawful in the destination state. *See Doe v. Bolton*, 410 U.S. 179, 200 (1973), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org*., 597 U.S. 215 (2022). More recently, Justice Kavanaugh reaffirmed that principle, explaining that a state may not "bar a resident of that State from traveling to another State to obtain an abortion" because of the constitutional right to interstate travel. *Dobbs*, 597 U.S. at 345 (Kavanaugh, J., concurring). And as scholars have explained, a right that allows one's body to cross state lines while restricting the freedom to act lawfully in the destination state would be "a hollow shell." Seth F. Kreimer, *Lines in the Sand: The Importance of Borders in American Federalism*, 150 U. Pa. L. Rev. 973, 1007 (2002). The Constitution does not permit such a result.

A district court in the Middle District of Alabama recently reaffirmed this core principle. In *Yellowhammer Fund*, the court explained that "[t]he right to travel includes both the right to move physically between two States and to do what is legal in the destination State." 776 F. Supp. 3d at 1098. The court further held that "state restrictions with the primary objective of preventing specific lawful out-of-state conduct" are "constitutionally impermissible." *Id.* at 1101. The decision squarely rejected efforts by a state to threaten prosecution against individuals who assist

others in traveling to obtain lawful abortion care elsewhere, concluding that such threats impermissibly burden the constitutional right to interstate travel.

C. The Right to Travel Also Protects Those Who Facilitate Interstate Travel for Lawful Purposes.

The protections of the right to travel are not limited to the individual traveler. Laws that criminalize or penalize those who assist interstate movement also burden the constitutional right. As the Supreme Court recognized in *Edwards*, criminalizing those who bring individuals across state lines impermissibly interferes with the right to interstate travel. 314 U.S. at 177.

That principle applies here. Plaintiffs wish to accompany minors through Idaho, transport them across state lines, and provide temporary lodging while they travel to obtain abortion care that is lawful in the destination state. SOF ¶ 41. Section 18-623 impedes each of these activities with the specter of criminal prosecution. It therefore does more than just burden the young person's travel; it criminalizes Plaintiffs' ability to participate in and facilitate lawful interstate travel. Just as the Constitution forbids a state from penalizing those who transport travelers across state lines in pursuit of opportunity or safety, it likewise forbids a state from threatening criminal penalties against individuals who accompany, host, or transport travelers seeking lawful medical care elsewhere. If states could prohibit such assistance, the right to travel would become meaningless in practice. Laws that threaten prosecution for facilitating such travel, therefore, impermissibly burden a fundamental right.

Here, the travel itself is lawful. Plaintiffs' conduct—driving, accompanying, or providing temporary lodging to facilitate interstate travel—remains lawful until the moment a lawful medical procedure occurs in another state. Under § 18-623, however, that lawful act in the destination state retroactively transforms otherwise lawful interstate travel into criminal conduct. That cannot be

the law. The constitutional right to interstate travel would be meaningless if a state could declare travel unlawful solely because the traveler ultimately engages in conduct that is legal where it occurs. Such a rule would allow a state to project its criminal law beyond its borders and penalize residents for taking advantage of another state's lawful regime. The Constitution does not permit states to convert lawful interstate movement into criminal activity merely because the traveler's destination offers legal opportunities that the home state disapproves of. Idahoans routinely cross state lines as part of their economic and social lives, as is their right. SOF ¶ 10. It is only the lawful reason for that travel that transforms the act into unlawful activity and criminalizes the assistance of helpers such as Plaintiffs.

D. The Primary Objective of § 18-623 Is to Impede Interstate Travel.

Extensive, unrebutted evidence demonstrates that the primary objective of § 18-623 is to impede travel. Section 18-623's legislative history and the influence of lobbying organizations help demonstrate the law's primary objective. The involvement of outside interests is relevant to the statute's motivation. *See Animal Legal Def. Fund*, 878 F.3d at 1191–92 (discussing how industry association drafted a law and considering how it articulated the various goals of the legislation, revealing the "complex series of motivations behind the statute"); *Mi Familia Vota v. Fontes*, 129 F.4th 691, 728 (9th Cir. 2025) (finding third-party organization involvement in developing and passing state legislation provided sufficient evidence of animus).

Before its introduction and passage in the Idaho Legislature, § 18-623 began as model legislation that was proposed by the National Right to Life Committee, Inc. ("NRLC"). SOF ¶¶ 1–8. NRLC made clear that the model legislation was to prevent travel of people across state borders for the purpose of obtaining lawful abortion care. SOF ¶ 3. ("[T]he abortion industry can be expected to exploit . . . the proximity of States with less protective laws to circumvent pro-life laws

in a particular State."). NRLC's local affiliate, the Right to Life of Idaho ("RLI"), solicited the model legislation to members of the Idaho Legislature. SOF ¶ 6. This model "trafficking" bill was designed to respond to Idaho's geographic reality: it was the only state in the region enforcing a near-total abortion ban, while all six of its bordering states continued to permit and provide abortion care. Representative Barbara Ehardt accepted NRLC and RLI's invitation and introduced what would become § 18-623, and RLI and the sponsors worked to pass the legislation. SOF ¶¶ 6–7. Information provided from RLI to Idaho legislators made clear that the law could punish a person even if the abortion ultimately occurs in another state.[3] Testimony in support of the law demonstrates that the primary objective is to impede interstate travel.[4] Representative Ehardt testified to the purpose of the legislation during a Senate State Affairs Committee hearing, stating, "it's all about parental permission, taking a minor from Idaho and trafficking that minor to another state to receive an abortion."[5] The legislature had all of this information at its disposal when it voted to pass § 18-623. Governor Little also explained the legislation he signed as seeking to

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[3] March 27 Hearing at 0:02:11 (statement of Rep. Barbara Ehardt), ("Now, let me be clear that if a parent wants to take that minor to another state … that parent can do this. …If that parent wanted to cede their rights to an aunt or an uncle or a grandparent to do the same thing, that parent can do it. But somebody unbeknownst to that parent cannot do that."); H.R. Consideration of H.B. 242, Idaho H.R., 67th Leg., 1st Reg. Sess., Audio/Video Recording at 03:47:23 (Idaho Leg. Media Archive, Mar. 30, 2023) (statement of Rep. Barbara Ehardt) ("It would be wrong of you to take it upon yourself to transport that minor across the border.") https://insession.idaho.gov/IIS/2023/House/Chambers/HouseChambers03-30-2023.mp4.

[4] Committee Consideration of H.B. 242, Idaho S. State Affs. Comm., Audio/Video Recording at 00:35:53 (Idaho Leg. Media Archive, Mar. 27, 2023) (statement of Sen. James Ruchti discussing the drive to the border), https://insession.idaho.gov/IIS/2023/Senate/Committee/State%20Affairs/230327_ssta_0800AM-Meeting.mp4; S. Consideration of H.B. 242, Idaho S., 67th Leg., 1st Reg. Sess., Audio/Video Recording at 01:36:30 (Idaho Leg. Media Archive, Mar. 30, 2023) (statement of Sen. Todd Lakey confirming its about criminalizing the drive to the border), https://insession.idaho.gov/IIS/2023/Senate/Chambers/SenateChambers03-30-2023.mp4.

[5] March 27 Hearing at 00:01:44 (statement of Rep. Barbara Ehardt).

"prevent unemancipated minor girls from being taken across state lines for an abortion without the knowledge and consent of her parent or guardian."[6] Its Senate sponsor, Sen. Todd Lakey, explained, "[a]nd what we're saying is, abortion is illegal in Idaho, if you're furthering that, without the knowledge of the parents, then that conduct is illegal."[7]

Even the face of the statute itself indicates that the primary objective of the law is to impede travel. *See* Idaho Code § 18-623 (criminalizing an adult who "procures an abortion . . . or obtains an abortion-inducing drug for the pregnant minor to use for an abortion by . . . *transporting* the pregnant minor" even if "the abortion provider or the abortion-inducing drug provider *is located in another state*" (emphasis added)). Nor does it matter that § 18-623 targets travel only for a particular purpose. A state may not evade constitutional limits by prohibiting travel for a particular reason rather than on travel generally. Laws aimed at preventing residents from engaging in lawful conduct in another state are just as unconstitutional as laws that prohibit interstate travel. *See Yellowhammer Fund*, 776 F. Supp. 3d at 1102.

The record shows the primary objective of § 18-623 is to impede travel for the purpose of engaging in lawful conduct in another state. There is no evidence to the contrary. It prohibits Plaintiffs from traveling with a young person within Idaho in order to cross Idaho's borders to obtain lawful abortion care. The law specifically states that it is not an affirmative defense that the abortion provider is located in another state. Section 18-623(3). The Court should declare § 18-623 a violation of the right to travel and enter summary judgment in Plaintiffs' favor on this claim.

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[6] Letter from Governor Brad Little to Speaker of the House Mike Moyle (Apr. 5, 2023) (transmitting signed bill), https://gov.idaho.gov/wp-content/uploads/2023/04/transmittal_h-242aaS_2023.pdf.

[7] March 27 Hearing at 00:34:17 (exchange between Sen. James Ruchti and Sen. Todd Lakey).

E. Section § 18-623 Has Deterred the Travel of the Plaintiffs.

In addition to proving that the primary objective of the law is to impede travel, the unrebutted evidence reflects that § 18-623 has also "actually deter[red]" such travel. *See Soto-Lopez*, 476 U.S. at 902-03. In the past, NWAAF offered assistance whereby volunteers drove Idaho patients who needed transportation to a medical appointment, even across state lines. SOF ¶ 44. It does not do so anymore. SOF ¶ 45. IIA's organizer has driven patients to abortion appointments across state lines in the past, as have community advocates to whom IIA provides financial support. SOF ¶ 46. IIA wants to, but cannot, advance plans to continue driving patients to abortion appointments in other states while the law is in effect. SOF ¶ 47. Lourdes Matsumoto would like to volunteer to drive minors to medical appointments and had been planning before the legislation to start volunteering to do so. SOF ¶ 48. Currently, she is not doing so because of § 18-623. SOF ¶ 49. Section 18-623 has and is continuing to deter the travel of Plaintiffs. The law not only impedes travel but also successfully deters it.

III. Plaintiffs Should Also Prevail on Their Claim That Section 18-623 Is Void-for-Vagueness.

Section 18-623 also violates the Due Process Clause because it is unconstitutionally vague. It fails to provide Plaintiffs with fair notice of what behavior is criminalized and invites arbitrary enforcement. This is particularly troubling considering the statute's encroachments on First Amendment rights. Plaintiffs recognize that the Ninth Circuit held at the preliminary-injunction stage that Plaintiffs were unlikely to prevail on a facial vagueness challenge. *Matsumoto*, 122 F.4th at 805. But that holding does not erase the statute's constitutional deficiencies on a developed record. "Abortion trafficking" is not a settled legal category, and, as the panel itself recognized,

"[c]alling the statute 'abortion trafficking' does not make it so." *Id.* Based on the uncontroverted evidence before the Court, Plaintiffs are entitled to summary judgment on this claim.

A. The Due Process Clause Prohibits Vague Criminal Laws.

The Fourteenth Amendment's Due Process Clause forbids enforcement of a criminal statute so vague that it "fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *Johnson v. United States*, 576 U.S. 591, 595 (2015) (citing *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983)). The "essential purpose of the 'void for vagueness' doctrine is to warn individuals of the criminal consequences of their conduct." *Jordan v. De George*, 341 U.S. 223, 230 (1951). And vagueness concerns are especially acute where, as here, a statute threatens to chill the exercise of First Amendment rights. *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982); *see also Holder v. Humanitarian L. Project*, 561 U.S. 1, 18 (2010). The operative question is whether a reasonable person can tell what the law prohibits without resort to "wholly subjective judgments." *Tingley v. Ferguson*, 47 F.4th 1055, 1089 (9th Cir. 2022) (quoting *Holder*, 561 U.S. at 20), *abrogated on other grounds by Chiles v. Salazar*, 146 S.Ct. 1010 (2026). The doctrine also guards against "arbitrary and discriminatory enforcement" by requiring laws to "provide explicit standards for those who apply them." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). A criminal prohibition that turns on subjective impressions rather than objective criteria is "constitutionally suspect." *Edge v. City of Everett*, 929 F.3d 657, 665 (9th Cir. 2019); *Tingley*, 47 F.4th at 1089-90.

B. Intent to Conceal Is an Unconstitutional Vague Standard.

Most notably, the statute's *mens rea*—the requirement that the adult possess an "intent to conceal" an abortion from a parent or guardian—provides no objective benchmark for speakers, helpers, prosecutors, or courts. The statute does not say what degree of parental involvement

defeats the "intent to conceal," what steps a person must take to avoid being deemed as having the intent to conceal an abortion, or whether mere confidentiality requested by the minor is enough to constitute an intent to conceal. Section 18-623 also provides no indication regarding whether the adult must have the "intent to conceal" the abortion from one or both parents. What if one parent supports the abortion, and the other objects? Idaho has at times suggested that "intent to conceal" should be assessed under the "totality of the circumstances," (Prelim. Ing. Hr'g Tr. at 32:10-21, 33:16-14), but that formation only confirms the problem: it supplies no rule at all. A criminal law cannot leave speakers to guess whether maintaining a minor's confidence, declining to contact a parent, speaking through an intermediary, or helping arrange lawful care without parental involvement will later be characterized by a prosecutor, judge, or jury as "intent to conceal."

C. The Statute Is Unconstitutionally Vague When It Links Conduct to Liability.

The statute is also vague in the way it links conduct to liability. Section 18-623 does not criminalize "recruiting," "harboring" or "transporting" in the abstract. It criminalizes an adult who "procures an abortion . . . by recruiting, harboring, or transporting the pregnant minor." How does one "procure" an abortion by "recruiting, harboring, or transporting?" That formulation leaves ordinary people without meaningful guidance as to when lawful support becomes criminal procurement. NWAAF testified it does not know what "procure" means in the context of abortion. SOF ¶ 72. As Plaintiffs testified, they do not understand if "procuring" an abortion includes giving a ride, offering a place to stay, sharing information, or helping a minor connect with support. SOF ¶ 70. Nor do they understand at what point ordinary assistance becomes the legal cause of the abortion rather than support for a decision the minor has already made. *See* SOF ¶ 70. The statute does not say, and Plaintiffs have offered unrebutted testimony that they fear prosecution because they do not understand when their legal support turns into criminal conduct. SOF ¶ 70.

The statute is also unclear under the inchoate crime of attempt. Even if a young person does not end up obtaining an abortion in another state, or someone else is the adult who ultimately "procures" the abortion for the young person, what level of speech, support, or assistance could render a trusted adult criminally liable for an attempt to violate § 18-623? No reasonable person would be able to discern this dividing line under the terms of the statute.

D. As the Statute Is Unconstitutionally Vague Regarding Lawful Conduct, It Unconstitutionally Invites Arbitrary Enforcement.

Section 18-623 is not a conventional trafficking law. Sex trafficking statutes prohibit conduct that brings vulnerable people into the commercial sex trade through some sort of coercion or force. Human trafficking statutes prohibit conduct that forces people into labor through force, fraud, or coercion. The conduct into which the person is brought is illegal, and it is done in some fashion against the will of the trafficked person. Plaintiffs are not traffickers. There is no evidence that Plaintiffs scout for vulnerable young women to bring into illegal activity. The people whom Plaintiffs assist seek them out, not the other way around. The undisputed evidence shows that Plaintiffs engage in none of the behaviors associated with trafficking. It is also undisputed that, despite Defendant's wishes to the contrary, abortion care remains legal in nearly all the states that border Idaho: Washington, Oregon, Nevada, Utah, and Montana.[8] Helping someone to travel to receive abortion care in a state where it is legal is not trafficking. It is simply speech and travel.

Yet § 18-623 purports to backdoor criminalize lawful conduct by labeling it "abortion trafficking." It is in this context, that "harboring," "recruiting," and "transporting" are unconstitutionally vague. This forces Plaintiffs, and other adults who wish to assist pregnant Idaho

[8] Wash. Rev. Code § 9.02.100; Or. Rev. Stat. § 659.880; Or. Rev. Stat. § 435.210; Nev. Rev. Stat. § 442.250; Utah Code Ann. § 76-7-302; Mont. Const. art. 2, § 36.

minors, to discern how or when ordinary acts of assistance become "harboring," "recruiting," and "transporting" for purposes of the statute.[9] In short, abortion trafficking is not a thing, and § 18-623 is unconstitutionally vague regarding the limits of lawful conduct.

Nor are these constitutional defects cured by the State's invocation of parental interests. Failure to obtain parental consent is not an element of the statute. It turns instead on a speaker's supposed "intent to conceal," a standard that depends on after-the-fact inferences about motive and circumstance, not on clear statutory lines. That invites selective enforcement against disfavored speakers—precisely the evil the vagueness doctrine is meant to prevent. Plaintiffs are disfavored speakers to be sure. Defendant—the highest law enforcement official in Idaho—has called them radical groups and "anti-Idaho" factions in the media and to lawmakers. SOF ¶ 74. Here, the minor seeks lawful medical care; the conduct at issue consists of support, information, travel assistance, shelter, and related aid. In that context, ordinary Idahoans must discern for themselves when helping becomes "harboring," when accompaniment becomes "transporting," and when support becomes "procurement." The statute gives no objective answer and as such, invites arbitrary prosecution against Idahoans, like Plaintiffs, who represent politically unpopular viewpoints.

E. The Record Developed Since the Ninth Circuit's Decision Supports Plaintiffs' Claim That the Statute Is Unconstitutionally Vague.

The evidence developed during discovery, and unchallenged by Defendant, demonstrates that Plaintiffs, and other Idahoans, cannot determine the behavior necessary to comply with § 18-623's retroactive criminalization of legal behavior and undefined *mens rea* requirement. The Ninth

[9] Copying these terms from actual trafficking laws does not make them clear in this context. As the Ninth Circuit noted, the law reaches noncoercive assistance for legal abortions, unlike trafficking statutes aimed at force, fraud, or coercion. *Matsumoto*, 122 F.4th at 804.

Circuit panel itself recognized that this is a particularly difficult task, with severe consequences for missteps, in a brand-new legal category, noting that "abortion trafficking" is not a settled legal category, and "[c]alling the statute 'abortion trafficking' does not make it so." *Matsumoto*, 122 F.4th at 805. The Ninth Circuit recognized that § 18-623 reaches noncoercive assistance related to abortions that are lawful in other states, and also recognized that its applications can extend well beyond paradigmatic trafficking concepts. The panel further observed that the statute's text can reach a wide array of speech and conduct and warned that Idaho's narrowing assurances about the times it would use the statute cannot substitute for limiting statutory language.

Plaintiffs, in their depositions and declarations have developed the record to further explain the ways that the statute is unclear, the fears they hold around targeted enforcement, and how they have been forced to alter their mission-driven behaviors to comply with a law they do not fully comprehend. SOF ¶¶ 70–72. The uncontroverted evidence now shows that this law creates precisely the uncertainty the vagueness doctrine is designed to prevent. Plaintiffs are entitled to summary judgment on this issue.

IV. Plaintiffs Have Standing to Bring Each Claim.

Plaintiffs have standing to bring their First Amendment, right-to-travel, and vagueness claims. To establish Article III standing, Plaintiffs must show an injury in fact that is fairly traceable to Defendant's conduct and likely to be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). In a pre-enforcement challenge, injury in fact exists where a plaintiff intends to engage in conduct arguably protected by the Constitution but proscribed by statute, and faces a credible threat of prosecution. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159–63 (2014). Plaintiffs satisfy that standard here.

As to their First Amendment claim, Plaintiffs intend to continue providing, return to providing, or begin providing information, financial and logistical assistance, and community support to help minors access lawful abortion care in other states—conduct protected by the First Amendment. *See Bigelow*, 421 U.S. at 818–25; SOF ¶¶ 11, 13, 15–21, 23-24, 39, 42, 44, 46-47. Section 18-623 reaches that conduct, sweeping in "encouragement, counseling, and emotional support" as well as public advocacy. *Matsumoto*, 122 F.4th at 814–15. The statute also reaches Plaintiffs' expressive conduct with its "transporting" and "harboring" provisions.

As to their right-to-travel claim, Plaintiffs face prosecution for conduct that implicates the constitutional right to interstate travel, including transporting and assisting minors to obtain lawful out-of-state care. The Constitution protects that right, and the protection extends to those who assist others in exercising it. *See Edwards*, 314 U.S. at 170–71; *Crandall*, 73 U.S. (6 Wall.) at 39. Plaintiff Matsumoto independently has standing to assert this claim, SOF ¶¶ 19, 21–22, 24, 39, 48, 49, and the Court need only find that one plaintiff has standing per claim. *See Biden v. Nebraska*, 600 U.S. 477, 489 (2023). But Plaintiffs NWAAF and IIA also have standing to assert the right to travel on behalf of their employees and volunteers. *See Craig v. Boren*, 429 U.S. 190, 195–97 (1976) (litigants threatened with enforcement may assert the rights of third parties where those rights are intertwined with the conduct the litigants seek to advance). Here, the organizations' missions depend on staff and volunteers assisting minors in traveling for lawful abortion care, including sometimes accompanying them across state lines. SOF ¶ 43. Enforcement against those individuals would functionally be enforcement against the organizations themselves, which cannot carry out their work without them. *See Yellowhammer Fund*, 776 F. Supp. at 1090; *see also Yellowhammer Fund*, 733 F. Supp. 3d at 1192. Because § 18-623 exposes those staff and volunteers to prosecution, Plaintiffs face a concrete injury sufficient to confer standing.

Plaintiffs also independently have standing to bring a void-for-vagueness challenge. A law is unconstitutionally vague if it fails to give ordinary people fair notice of what conduct it prohibits or invites arbitrary enforcement, and plaintiffs suffer injury where that uncertainty chills their conduct. *See FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253–54 (2012). Plaintiffs cannot determine which activities are prohibited and have curtailed their conduct, establishing injury in fact. *See Humanitarian L. Project v. U.S. Treasury Dep't*, 578 F.3d 1133, 1146 (9th Cir. 2009), *aff'd in part, rev'd in part on other grounds sub nom. Holder v. Humanitarian L. Project*, 561 U.S. 1 (2010).

Faced with that breadth, Plaintiffs have curtailed their activities for fear of prosecution. *See Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 392–93 (1988). Further, across all claims, the threat of enforcement is credible. The Attorney General has not disavowed enforcement and continues to defend the statute, and he retains authority to prosecute violations. *See* Idaho Code § 18-623(4); *Tingley*, 47 F.4th at 1068; *Matsumoto*, 122 F.4th at 798. Plaintiffs' injuries are traceable to that enforcement authority and would be redressed by an injunction barring enforcement. *See Lujan*, 504 U.S. at 560–61. Finally, the Ninth Circuit has already held that Plaintiffs have standing to pursue these claims. *Matsumoto*, 122 F.4th at 797–802. Plaintiffs, therefore, have standing, and the Court should grant as-applied relief.

CONCLUSION

Because Plaintiffs have established that they should succeed on their claims as a matter of law and no genuine dispute of any material fact exists, Plaintiffs respectfully request the Court grant their motion for summary judgment.

DATED: April 16, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that, on April 16, 2026, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will cause a copy to be served upon all counsel of record.

/s/ Wendy J. Olson
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