

No. 26-5558

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

STACY SEYB, *Plaintiff-Appellee*,

v.

ADA COUNTY PROSECUTING ATTORNEY, in her official capacity,
Defendant-Appellant.

On Appeal from the U.S. District Court for the District of Idaho
Case No. 1:24-cv-00244-BLW

**APPELLANTS ATTORNEY GENERAL AND ADA COUNTY
PROSECUTING ATTORNEY'S EMERGENCY MOTION FOR
STAY PENDING APPEAL UNDER CIRCUIT RULE 27-3 AND
FOR CONSOLIDATION
RELIEF REQUESTED BY SEPTEMBER 4, 2026**

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INTRODUCTION

Just four years after the Supreme Court “return[ed] the issue of abortion to the people’s elected representatives,” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 232 (2022), the district court below has become the first to re-constitutionalize abortion. Its injunctions defy *Dobbs*, create expansive rights based on a doctor’s subjective assessment of risk, and contradict the vast history of state prohibitions on “therapeutic” abortions. They prevent enforcement of Idaho’s two pro-life laws. This Court should stay the injunctions immediately.

Appellant Ada County Prosecuting Attorney joined Idaho Attorney General Raúl Labrador’s motion to stay the district court’s injunctions in the Attorney General’s appeal. *See* Doc. 14.1, case no. 26-5360 (9th Cir. Aug. 26, 2026) (“Mot.”). Appellant now files this motion in this separately docketed appeal incorporating by reference the arguments made by the Attorney General. To promote judicial economy, Appellant also requests the Court consolidate this appeal with the Attorney General’s. The Attorney General consents to consolidation, and Plaintiff does not oppose. Appellant respectfully requests that this Court rule on this motion and the Attorney General’s motion together and no later than September 4.

LEGAL STANDARD

“[A] stay turns on four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay;

(3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Reach Cmty. Dev. v. U.S. Dep’t of Homeland Sec.*, 174 F.4th 1143, 1146 (9th Cir. 2026) (citation modified). Under this Court’s “sliding scale” analysis, “serious legal questions” and a “balance of hardships” that “tips sharply in” the applicant’s favor warrants a stay. *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011) (per curiam) (citation modified).

ARGUMENT

The Prosecuting Attorney meets all the factors for a stay. Appellant hereby incorporates by reference all arguments made in the Attorney General’s motion to stay in the Attorney General’s appeal (no. 26-5360). *See* Fed. R. App. P. 28(i). Appellant also summarizes those arguments made by the Attorney General below, without prejudice to her right to make additional arguments at merits briefing. The Court should consolidate this appeal with the Attorney General’s because both arise from the same district court proceeding and involve many of the same legal issues.

I. Appellant is likely to succeed on the merits.

A. Plaintiff lacks third-party standing.¹

The district court incorrectly ruled that Plaintiff can raise the rights of his hypothetical future patients. ER-37–38. The court relied on precedent that “ignored” proper “third-party standing doctrine.” *Dobbs*, 597 U.S. at 286–87. Abortionists’ interest in the absence of regulation and promoting abortion conflicts with their duty to the unborn child and restrictions on abortion to protect the mother’s health. *See Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 15 (2004); ER-255.

B. *Dobbs* established that states can prohibit abortions.

Dobbs forecloses Plaintiff’s claims. Mot. 8–9. The *Dobbs* Court exhaustively surveyed the history of *all* abortions, including abortions “to save the life of the mother,” and held “that the Constitution does not confer a *right to abortion*,” and “does not prohibit the citizens of each State from *regulating or prohibiting abortion*.” 597 U.S. at 249, 292, 302 (emphases added).

C. No deeply rooted right to abortion exists.

The Due Process Clause protects unenumerated rights only if they are “objectively, deeply rooted in this Nation’s history and tradition and implicit in the concept of ordered liberty such that neither liberty nor

¹ This Court has held that abortionists can assert the third-party rights of clients. *See McCormack v. Herzog*, 788 F.3d 1017, 1027 (9th Cir. 2015). Appellant preserves this issue for appeal.

justice would exist if they were sacrificed.” *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) (citation modified). To “guard against the natural human tendency to confuse what [the Fourteenth] Amendment protects with [a judge’s] own ardent views about the liberty that Americans should enjoy,” *Dobbs*, 597 U.S. at 239, a court must provide “a careful description of the asserted fundamental liberty interest,” *Khachatryan v. Blinken*, 4 F.4th 841, 856 (9th Cir. 2021) (citation modified). The district court failed to carefully define the right, and no deeply rooted history supports any such right.

The court below refused to provide an “exhaustive” list of medical issues it thought justified abortion, leaving it to abortionists to decide what presents a “non-negligible risk of serious and lasting harm.” ER-17, 80; Mot. 10–12. Licensing the subjective judgment of individual abortionists to fill in a fundamental right’s contours shows the need for a careful description. The district court’s definition serves certain doctors’ “policy preferences.” *Reach Cmty.*, 174 F.4th at 1147 (citation modified). But that “usurp[s] authority that the Constitution entrusts to the people[].” *Dobbs*, 597 U.S. at 239–40.

The unenumerated “right” the district court discovered doesn’t have the required historical pedigree. Mot. 12–13 The district court did not cite any case striking down a state-abortion statute because it didn’t allow for “therapeutic” abortions. The absence of any case or source establishing a “legal *right*” is fatal to Plaintiff’s claim. *Dobbs*, 597 U.S. at 243, 245.

History shows that the states almost universally prohibited “therapeutic” abortions at the Fourteenth Amendment’s ratification. Mot. 12–14. None of the district court’s cited sources can overcome that insurmountable obstacle to an unenumerated right. Mot. 14–21.

D. Plaintiff’s equal-protection challenge lacks merit.

With no fundamental right at stake, Plaintiff’s equal-protection challenge will likely fail. As the district court recognized, mental illness is not a suspect class. ER-75 (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985)). The self-harm exception thus triggers and easily passes rational-basis review.

E. Idaho’s pro-life laws satisfy any level of scrutiny.

“A law regulating abortion, like other health and welfare laws, is entitled to a strong presumption of validity” and triggers only rational basis review. *Dobbs*, 597 U.S. at 301 (citation modified); see *Raidoo v. Moylan*, 75 F.4th 1115, 1121 (9th Cir. 2023). The district court properly recognized the government’s legitimate—and compelling—interests in protecting unborn life and maternal health, preserving the integrity of the medical profession, eliminating gruesome and barbaric procedures, preventing fetal pain, and stopping discrimination. ER-73. The Defense of Life Act rationally serves all those ends. Mot. 21–22.

The Defense of Life Act also passes strict scrutiny. The district court devalued the government interest in protecting unborn life and maternal health. ER-73. The only way to protect prenatal life is to stop the

intentional taking of it. No less restrictive means exist to regulate mental-health abortions. *Contra* ER-75–76. Abortion doesn’t treat mental health problems, and there are always effective alternative treatments. Mot. 19–20.

II. Appellant satisfies the other stay factors.

The district court’s injunctions broadside the government interest in protecting life. “Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (citation modified). The balance of equities and public interest also tip heavily in Appellant’s favor. These factors merge, and the public interest favors enforcing duly enacted laws. *Nken v. Holder*, 556 U.S. 418, 436 (2009).

At the least, this Court’s “utmost care before breaking new ground in the area of unenumerated fundamental rights,” *Khachatryan*, 4 F.4th at 856 (citation modified), and *Dobbs*’s restoration of Idaho’s sovereign power to prohibit abortion raise serious merits questions. Post-*Dobbs*, no court had rediscovered a constitutional abortion right. Until now. The novelty and expansiveness of the injunctions, coupled with the large threats to governmental interests and prenatal lives, mean that this Court should grant the stay. *See Collins v. Kemp*, 792 F.2d 987, 989 (11th Cir. 1986) (granting stay “to allow full briefing of this issue of first impression”).

III. The Court should consolidate the appeals.

The Court should consolidate this appeal with the Attorney General's appeal. The Attorney General consents to consolidation. Plaintiff does not oppose consolidation.

Federal Rule of Appellate Procedure 3(b)(2) "encourage[s] consolidation of appeals whenever feasible." Notes of Advisory Committee on Rules—1967. This Court commonly consolidates appeals that arise from the same district court proceeding and involve similar legal issues. *E.g.*, *Snoqualmie Indian Tribe v. Washington*, 8 F.4th 853, 860 (9th Cir. 2021); *Orr v. Plumb*, 884 F.3d 923, 926 (9th Cir. 2018); *People of State of Cal. v. Mesa*, 813 F.2d 960, 961 n.1 (9th Cir. 1987).

This Court should consolidate these appeals because they arise from the same case and share common legal issues, as discussed above. Deciding both cases together will promote judicial economy and won't prejudice any party. Consolidating the appeals will allow the Court to decide these similar appeals at the same time while avoiding potentially duplicative briefing and oral argument.

CONCLUSION

Appellant respectfully requests that the Court grant a stay in this appeal and the Attorney General's appeal by September 4 and consolidate the appeals for all further proceedings.

Dated: August 31, 2026

s/Mathew W. Hoffmann

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CERTIFICATE OF COMPLIANCE

This motion complies with the word limit of Circuit Rules 27-1(1)(d) and 32-3 because it contains 1,500 words, excluding parts exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Word 365 using a proportionally spaced typeface, 14-point Century Schoolbook.

Dated: August 31, 2026

s/Mathew W. Hoffmann

Mathew W. Hoffmann

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2026, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate ACMS system. I certify that all participants in the case are registered ACMS users, and that service will be accomplished by the ACMS system.

s/Mathew W. Hoffmann
Mathew W. Hoffmann