

Erika Birch (ISB No. 7831)
Strindberg Scholnick Birch
Hallam Harstad Thorne
American Civil Liberties Union of
Idaho Foundation Cooperating Attorney
1516 W. Hays Street
Boise, Idaho 83702
Tel: (208) 336-1788
erika@idahojobjustice.com

Danielle Conley*
Margaret A. Upshaw*
Cherish A. Drain*
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: (202) 637-2200
Fax: (202) 637-2201
danielle.conley@lw.com
maggie.upshaw@lw.com
cherish.drain@lw.com

Scarlet Kim*
Andrew Beck*
Elizabeth Gyori*
American Civil Liberties
Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2633
Fax: (212) 549-2649
scarletk@aclu.org
abeck@aclu.org
egyori@aclu.org

Samir Deger-Sen*
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Tel: (212) 906-1200
Fax: (212) 751-4864
samir.deger-sen@lw.com

Attorneys for Plaintiffs

Additional attorneys listed on next page

** Pro hac vice applications forthcoming*

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

IDAHO FEDERATION OF TEACHERS et al.,

Plaintiffs,

v.

RAÚL LABRADOR, in his official capacity as
Attorney General of the State of Idaho, et al.,

Defendants.

Case No. 1:23-CV-353

**DECLARATION OF ZACHARY
TURPIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Peter Trombly*[†]
Margaret Babad*
Emily True*
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Tel: (212) 906-1200
Fax: (212) 751-4864
peter.trombly@lw.com
molly.babad@lw.com
emily.true@lw.com

Marissa Marandola*
Latham & Watkins LLP
200 Clarendon Street
Boston, MA 02116
Tel: (617) 948-6000
Fax: (617) 948-6001
marissa.marandola@lw.com

Dina Flores-Brewer (ISB No. 6141)
American Civil Liberties Union of
Idaho Foundation
P.O. Box 1897
Boise, ID 83701
Tel: (208) 344-9750
dfloresbrewer@acluidaho.org

Amanda Barnett*
Latham & Watkins LLP
355 S. Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Tel: (213) 485-1234
Fax: (213) 891-8763
amanda.barnett@lw.com

Seth Kreimer*
3501 Sansom St.
Philadelphia, PA
skreimer@law.upenn.edu

* *Pro hac vice applications forthcoming*

[†] *Admitted to practice in Virginia only*

Attorneys for Plaintiffs

**DECLARATION OF ZACHARY TURPIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Zachary Turpin, hereby declare that:

1. My name is Zachary Turpin. I am over the age of 18 years. I have personal knowledge of the following facts and if called to testify could and would competently do so.

2. As I explain more fully below, the No Public Funds for Abortion Act (“NPFAA”) has chilled my academic speech related to my English courses and interfered with my teaching of core principles of literary study and critical thinking through material related to abortion. Because of the NPFAA, I cannot freely teach my classes in the manner I find most effective, and I am limited in my ability to help my students engage with literature related to abortion. The NPFAA thus diminishes my role as an educator and deprives my students of opportunities to think critically about and analyze relevant class materials, impairing their educational experience.

Background

3. I currently serve as an Associate Professor of American Literature for the English Department at the University of Idaho.

4. I received a Bachelor of Arts degree in English Literature from New York University in 2004. I received a Master’s degree in English Literature from the College of Charleston and the Citadel in 2007. I received a PhD in English Language and Literature from the University of Houston in 2017.

5. I have ten years of professional teaching experience in higher education. From 2013 to 2016, I was an instructor at the University of Houston. In 2017, I joined the University of Idaho faculty as an Assistant Professor of American Literature. From 2019 to July 2023, I was the Director of Graduate Studies for the English Department. In March 2023, I received tenure to become an Associate Professor of American Literature.

6. My teaching and research focus on nineteenth-century American literature. I regularly teach introductory courses, including “Introduction to English Studies” and “Introduction to Literary Genres,” as well as more specialized courses, like “American Transcendentalism” and “American Women’s Literature.” In my research, I focus in particular on nineteenth-century periodical culture, digital humanities, textual recovery, and the history of epistemology and the sciences.

7. I have authored and edited several publications, including *Radicals: Audacious Writings by American Women, 1830–1930* (Vols. 1 & 2, 2021), a two-volume work I co-edited with Meredith Stabel, which collects writings of American women of the nineteenth and early twentieth century and pays particular attention to the voices of Black, Indigenous, and Asian American women.

8. I have also received a variety of fellowships and grants to fund my research. In 2017, I was awarded a Kluge Fellowship at the Library of Congress. In 2018, I received a University of Idaho Seed Grant and a University of Idaho Summer Fellowship from the Center for Digital Inquiry and Learning. In 2019, I received a Digital Scholarship Fellowship from the University of Idaho Center for Digital Inquiry and Learning. In 2020, I received a Peterson Fellowship from the American Antiquarian Society.

9. In 2018, I received the University of Idaho Alumni Award for Excellence in Teaching.

The NPFAA and My Academic Speech

10. On May 10, 2021, the NPFAA went into effect.

11. The NPFAA states that “[n]o public funds . . . shall be used in any way to . . . promote abortion [or] counsel in favor of abortion.” Idaho Code § 18-8705(1) (2021).

Additionally, “[n]o person, agency, organization, or any other party that receives [public] funds . . . may use those funds to . . . promote abortion.” *Id.* § 18-8705(2).

12. The NPFAA provides that a violation of these provisions by a public employee “shall be considered a misuse of public moneys punishable under section 18-5702,” which authorizes criminal punishments, including fines and terms of imprisonment. *Id.* §§ 18-8709, 18-5702. It further provides that a violation of these provisions will result in “terminat[ion] for cause from public . . . employment” and require “restitution of any public moneys misused.” *Id.* § 18-5702(5).

13. I am concerned that the NPFAA’s prohibitions on promoting and counseling in favor of abortion apply to the content of some of my courses, as described below. I fear that I could be subject to prosecution for teaching the abortion-related material that I use in my courses, facilitating classroom debate on this material, or grading and giving feedback on assignments where students choose to write about abortion. Further, I cannot confidently determine what academic speech might be construed as promoting or counseling in favor of abortion in violation of the NPFAA. For these reasons, and as described below, I have changed the way I teach my courses to the detriment of my teaching and my students’ learning.

Guidance from the University of Idaho and My Academic Speech

14. The University of Idaho has issued various forms of guidance related to the NPFAA since the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022). The University has stated that faculty “have academic freedom,” Kim Decl. Ex. 3 at 2, but has also cautioned that “[a]cademic freedom is not a defense to violation of law” and that faculty leading classroom discussion must “remain neutral” on the topic of abortion, Kim

Decl. Ex. 1 at 6. The University has also explained that the “language of the law is vague in many respects which creates uncertainty as to the extent of the law.” Kim Decl. Ex. 3 at 2.

15. The University of Idaho’s response to the NPFAA has not assuaged my concern that I could be at risk of prosecution based on my academic speech. In fact, based on discussions with faculty colleagues and students, I repeatedly emailed the University of Idaho’s General Counsel’s Office seeking additional guidance on the scope of the NPFAA. I explained that colleagues and students were concerned that they did not know when or how to speak within the bounds of academic freedom without being charged with a felony. I did not receive any substantive response from the University.

16. Because I am concerned about the risk of prosecution under the NPFAA, I have altered my academic speech, departing from the approach that I believe best reflects my pedagogical goals and serves my students.

The NPFAA’s Impact on My Introductory Courses

17. I teach two introductory courses, “Introduction to Literary Genres” and “Introduction to English Studies.” I taught “Introduction to Literary Genres” during the Spring 2019 semester, and “Introduction to English Studies” during the Spring 2023 semester. “Introduction to Literary Genres” explores major literary types, teaches the practice of close reading, and introduces students to the basic terminology of literature. “Introduction to English Studies,” a required course for all English majors, also teaches the practice of close reading, as well as educating students on critical terms and issues central to English studies, and developing basic research and writing practices for literary study.

18. A major goal of both courses is to encourage students to think outside of a dualistic framework in which an issue or question has only two sides. The courses encourage students to

instead embrace a dialectical framework wherein multiple viewpoints are exchanged and considered. This exchange is intended to forge a new, more nuanced understanding. The new understanding that results from this exchange ideally incorporates and synthesizes multiple perspectives, rather than reflecting just one viewpoint.

19. I use similar materials for both “Introduction to Literary Genres” and “Introduction to English Studies.” For example, in both courses, I include units on personal narratives and “polemic” writings. Polemic writings are non-fictional essays that typically address hot-button issues or taboo topics on which students likely already have set feelings. I incorporate polemic writings into my courses because careful study of polemic writings pushes students to re-examine their own positions on difficult, contentious issues and allows them to gain insight into the considerations that drive their thinking on these issues.

20. One work that qualifies as both a personal narrative and a polemic work is Sallie Tisdale’s essay, “We Do Abortions Here: A Nurse’s Story,” which was published in the October 1987 issue of *Harper’s Magazine*. See Ex. A. I assigned this essay in both my “Introduction to Literary Genres” course in Spring 2019, and in my “Introduction to English Studies” course in Spring 2023. The essay provides the perspective of a nurse at an abortion clinic on the mixed emotions inherent in providing abortions, her perceptions of her patients seeking abortions, and the ethical dilemmas that she faces as an abortion provider. After exploring Tisdale’s ambivalence about abortion, the essay closes with the lines: “Abortion requires of me an entirely new set of assumptions. It requires a willingness to live with conflict, fearlessness, and grief. . . . I imagine a world where this won’t be necessary, and then return to the world where it is.” Ex. A at 70.

21. I teach Tisdale’s essay because it is a well-written essay on a controversial topic. Tisdale’s essay is also well regarded, and editors regularly include it in literary anthologies.

Because it is provocative, the essay prompts students to speak up and offer reactions. Tisdale's essay provides fodder for discussion of arguments for and against abortion, as well as the ethical quandaries of abortion; discussion of the rhetorical techniques Tisdale employs (*e.g.*, appeals to logic, emotion, and authority); and discussion of the formal qualities of Tisdale's essay (*e.g.*, sentence length, structure, use of oxymorons).

22. I do not understand Tisdale's essay to convey a one-sided perspective in favor of abortion. Rather, Tisdale's essay expresses deep ambivalence about abortion. But that ambivalence also makes the essay more powerful. The essay asks the reader to engage with the nuances of abortion, from the perspective of someone whose chosen work is performing abortions.

23. These qualities of Tisdale's essay make it much better suited than other works to my pedagogical goal of encouraging students to think outside of a dualistic framework on a challenging subject. Because Tisdale's discussion of abortion presents both personal feelings and dispassionate arguments about abortion, students studying the essay must, in turn, grapple with their own feelings and views about arguments regarding abortion and experience the difficulty of separating their feelings from their analysis of an argument. Tisdale's essay helps me teach students that both feelings and dispassionate arguments matter in discussions of difficult, contentious topics.

24. After the NPFSA became effective, I still chose to teach Tisdale's essay in my "Introduction to English Studies" course because I believe it is a critical polemic work on a topic of great social importance. However, I think it is possible that a reader could view aspects of Tisdale's essay, such as its characterization of abortion as "necessary," as promoting or counseling in favor of abortion for purposes of the NPFSA.

25. For that reason, even though I assigned Tisdale's essay, I did not present it to students in the way I would have absent the NPFAA. Without the NPFAA, I would have chosen to teach the essay through a structured classroom debate. In my introductory courses, I have my students participate in several structured classroom debates in order to illustrate the value of dialectical, rather than dualistic, thinking. I randomly divide students into two groups and assign each group a position on a question related to a reading assignment. The students then prepare arguments together in support of their assigned position and, during class, debate the question. I act as a moderator, occasionally interjecting to raise a point or to play "devil's advocate" if the conversation stalls or has become one-sided before the students have addressed a major argument. Once I have ended the debate and declared a "winner," I then have students stop and reflect on how they think about engaging in a debate, as opposed to how they think about engaging in dialectical discussion. In other words, students think about and discuss how it felt to present arguments about a difficult question in an either-or, all-or-nothing fashion in a debate, versus how it feels to be able to voice (if they choose) their actual opinion, which is usually somewhat more nuanced, in a dialectical discussion. During this section of the class, students may share whether they currently believe, or at one time believed, in the side they were assigned to argue. The students also reflect on which points they saw as the most compelling counter-arguments to their assigned positions. I view the exercise of requiring students to engage in a binary debate before analyzing its shortcomings as an important part of equipping students to think carefully about difficult topics. In my view, that is an overarching goal of the college experience and integral to sophisticated literary analysis.

26. Given the constraints of the NPFAA, I did not feel I could teach Tisdale's essay through a structured debate that required students to speak "for" and "against" abortion and

required me to moderate that debate, even though I believe Tisdale's essay would be a particularly effective vehicle for illustrating how dualistic thinking can oversimplify difficult questions. Instead, I told my students that under different circumstances, I would have used Tisdale's essay as the basis for a structured classroom debate, but explained that the NPFAA makes it a crime for public employees to "promote" abortion and that the debate might be construed as unlawfully promoting abortion. We instead analyzed the course material without a structured debate.

27. I believe using Tisdale's essay as a basis for a structured classroom debate would have been more effective in encouraging my students not only to engage with the essay's arguments, rhetoric, and form, but also to improve their critical thinking skills and their approach to discussing difficult questions. But I was limited by the NPFAA in how I could engage with Tisdale's text. In this way, the NPFAA impaired my ability to teach freely and diminished my students' educational experience.

28. I am one of several professors who regularly teach these introductory courses, and I anticipate that I will teach one or both courses again in the Spring 2024 or Spring 2025 semesters. As long as the NPFAA operates in its current form, I do not intend to use Tisdale's essay as the basis for a structured debate. Rather, I will continue to assign the essay and lead class discussion about this material, while forgoing the educational benefits of a structured debate on abortion. And even in assigning and teaching Tisdale's essay, I feel nervous that someone could interpret the assignment or my facilitation of discussion about the essay as promoting abortion and seek to prosecute me under the NPFAA.

29. The NPFAA has also impacted the way in which I grade and provide feedback on student work. In my "Introduction to English Studies" course, I assign students a final paper that asks them to choose one literary text we read during the semester and deliver their own critical

perspective regarding that text. I ask students to develop a research question and thesis related to their chosen text, closely read that text to prove their thesis, and use at least three secondary sources (such as scholarly articles, literary journals, or news magazines containing criticism) to analyze their question.

30. During the Spring 2023 semester, some of my “Introduction to English Studies” students chose Tisdale’s essay as the basis for their final paper. The students’ papers presented a range of perspectives spanning from pro-abortion to anti-abortion. Because of the NPFAA, however, I felt limited in my ability to give feedback on and evaluate student work about abortion as I normally would. I was aware that during the Fall 2022 semester, another member of the University of Idaho faculty, Markie McBrayer, was informed by the University of Idaho General Counsel’s Office that the NPFAA created a risk that a professor’s grading of assignments related to abortion could lead to accusations that a professor is favoring abortion. I became concerned that offering specific written feedback on papers about abortion could be construed as promoting abortion if I gave positive feedback on a pro-abortion essay or negative feedback on an anti-abortion essay. I also worried that my grading decisions could be viewed as favoring one viewpoint about abortion over another. Because of these concerns, I gave identical, generic feedback on essays addressing abortion and graded those essays based on completion, instead of substance.

31. I do not think that altering my normal feedback and evaluation practices on papers addressing abortion is fair or helpful to my students. But I view these changes as a necessary precaution to avoid the appearance of promoting or counseling in favor abortion in violation of the NPFAA and subjecting myself to potential prosecution.

32. As long as the NPFAA is in force, I will continue to modify the way I teach Tisdale's essay and my feedback on and grading of student work related to abortion when I teach my introductory courses in the future.

Conclusion

33. In my experience, the NPFAA inhibits academic and intellectual discussion on abortion. My goal as a college professor is to equip my students to engage in conversations on difficult subjects and to carefully analyze and craft arguments regarding those subjects. I cannot effectively prepare my students to confront challenging topics when I must carefully censor my academic speech about certain issues so as not to broach viewpoints that are disapproved by the Idaho legislature.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 26, 2023 in Moscow, Idaho.



Zachary Turpin