

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 HEATHER  
WITT IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

Peter Trombly\*<sup>†</sup>  
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*

<sup>†</sup> *Admitted to practice in Virginia only*

*Attorneys for Plaintiffs*

**DECLARATION OF HEATHER WITT IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Heather Witt, hereby declare that:

1. My name is Heather Witt. 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 detailed below, the No Public Funds for Abortion Act (“NPFAA”) has chilled my academic speech. It has affected my teaching of social work courses that include instruction on the topic of abortion, limiting my ability to provide my students with information that I consider significant to their development as social work professionals. And it has also directly impacted my ability to publicize my scholarship related to abortion, negatively affecting my career, students’ ability to connect with me as an academic resource, and other faculty and academics’ opportunity to identify me as an academic expert on the topic of abortion access and social work.

**Background**

3. I currently serve as an Associate Professor of Social Work and as the Coordinator of the Bachelor of Social Work program at Boise State University.

4. I received a Bachelor of Science degree in Psychology from Boise State University in 2003. I received Master of Social Work and Master of Education degrees from Widener University in 2009. I received a PhD in Human Sexuality Education from Widener University in 2017.

5. I have twelve years of professional experience in higher education. From 2011 to 2016, I was an adjunct instructor at the College of Western Idaho. In 2016, I joined Boise State University’s faculty, and the following academic year, I became an Assistant Professor at Boise State University. In August 2023, I received tenure and was promoted to Associate Professor of Social Work.

6. My coursework and research center on social work and human rights related to human sexuality. I teach courses on social welfare, human behavior, and human sexuality. In my research, I focus on human rights related to human sexuality, and a large portion of my work therefore relates to reproductive justice, including access to abortion. My teaching and scholarship focus, in particular, on macro, systemic issues that impact the well-being of clients, including access to services that promote self-determination. This focus often implicates the issue of abortion access and state-imposed restrictions on that access. Additionally, I am particularly interested in the National Association of Social Workers' Code of Ethics, which is a set of standards that guide the conduct of social workers, and in ensuring that my students are informed of the standards and prepared to apply them in their social work practice.

7. I have co-authored a book, entitled *The Social Work Field Placement: A Competency-Based Approach*,<sup>1</sup> and a book chapter that discusses reproductive justice: "Self-Determination and Abortion Access: A Pro-Choice Perspective on the International Statement of Ethical Principles," which is included in *The Routledge Handbook on Social Work Ethics and Values*<sup>2</sup>. I have also co-authored several peer-reviewed journal publications, including, among others, "The Moral Conundrum of Reproductive Justice in Social Work," currently under review for the *Journal of Teaching in Social Work*; "Abortion in social work education: Examining Social Work Students' Exposure to and Attitudes on Abortion and Curriculum Coverage in Social Work

---

<sup>1</sup> John Poulin, Selina Matis, & Heather Witt, *The Social Work Field Placement: A Competency-Based Approach* (2018).

<sup>2</sup> Heather Witt et al., *Self-Determination and Abortion Access: A Pro-Choice Perspective on the International Statement of Ethical Principles*, in *The Routledge Handbook on Social Work Ethics and Values* 101 (Stephen Marson & Jr. McKinney eds., 2019).

Education,” in *Affilia: Feminist Inquiry in Social Work*;<sup>3</sup> “Transgender Rights & the Urgent Need for Social Work Advocacy,” in *Social Work in Public Health*;<sup>4</sup> and “Ethical Dilemmas in Human Rights Field Education: A Case Study on Macro Practice in a Reproductive-Rights Policy Setting,” in *Journal of Human Rights and Social Work*.<sup>5</sup>

8. I was the winner of the Associated Students of Boise State University Golden Apple Teaching Award in 2020. I was also nominated for the same award in 2022. I was also a finalist for the Student Organization Advisor of the Year Award in 2019.

### **The No Public Funds for Abortion Act and My Academic Speech**

9. On May 10, 2021, Idaho Governor Brad Little signed the NPFAA into law and the Act went into effect that same day.

10. 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).

11. 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-

---

<sup>3</sup> Heather Witt et al. *Abortion in Social Work Education: Examining Social Work Students’ Exposure to and Attitudes on Abortion and Curriculum Coverage in Social Work Education*, 37 *Affilia: Feminist Inquiry in Soc. Work* 215 (2022).

<sup>4</sup> Heather Witt & Kai Medina-Martinez, *Transgender Rights & the Urgent Need for Social Work Advocacy*, 37 *Soc. Work in Pub. Health* 28 (2021).

<sup>5</sup> Heather Witt & Karyn Levin, *Ethical Dilemmas in Human Rights Field Education: A Case Study on Macro Practice in a Reproductive-Rights Policy Setting*, 6 *J. of Hum. Rts. and Soc. Work* 78 (2021).

5702. It further provides that a violation of these provisions will result in termination for cause from public employment and require “restitution of any public moneys misused.” *Id.* § 18-5702(5).

12. I am worried that the NPFAA’s bar on promoting and counseling in favor of abortion applies to the content of some of my courses, publications, and research. As a result, I fear prosecution if I continue to teach my courses in the same fashion as I did prior to the law’s passage. Specifically, I am worried that assigning materials that could be perceived as promoting or counseling in favor of abortion, particularly material that I authored, violates the NPFAA. Further, because the scope of the NPFAA is unclear, I cannot safely determine what academic speech might be construed as promoting abortion or counseling in favor of abortion. Accordingly, as discussed below, I have changed my courses and the material discussed in those courses to the detriment of my teaching and my students’ learning.

13. Although I fear prosecution, I have chosen, in certain instances, to continue assigning some material discussing abortion and reproductive rights, and permitting class discussion on these topics because I believe they are crucial to my students’ academic and professional development. Entirely removing these topics from the curriculum of my courses would be a grave disservice to my students, and despite my serious concerns about the risk of prosecution, I am unwilling to completely cease discussing these topics.

### **Guidance from Boise State University and My Academic Speech**

14. Boise State University has issued limited guidance related to the NPFAA, and it has not alleviated my concerns regarding the risk of prosecution for my academic speech.

15. In September 2022, following the U.S. Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), Boise State University shared via e-mail a Frequently Asked Questions (“FAQ”) document on the NPFAA and Idaho’s abortion

laws with all faculty. Kim Decl. Ex. 4. The guidance regarding abortion-related speech was minimal. In response to the question, “Can curriculum include information or training regarding abortion . . . ?,” the FAQ stated that “curriculum and training could include general information and educational materials that discuss abortion, so long as it does not engage in prohibited activity in doing so” and provided as an example that “the material should not promote abortion.” *Id.* at 2. The guidance encouraged faculty “to contact [the Office of General Counsel] with any specific questions regarding curriculum and training materials.” *Id.*

16. Given the unclear nature of the NPFAA, I spoke with attorneys employed by the University after the FAQ was circulated regarding certain materials that I had previously discussed or was planning to discuss in my courses and whether they were potentially subject to the NPFAA. Those communications did not offer clarity on the scope or meaning of the law.

17. Boise State University’s response to the NPFAA has only affirmed my fear of prosecution under the Act. Neither the guidance, nor my communications with attorneys employed by the University, has provided any clarity on the law’s applicability to professors and our classrooms. I therefore continue to fear that teaching content related to abortion will expose me to prosecution under the NPFAA.

### **The NPFAA’s Impact on My Courses**

18. Since 2021, I have taught “Human Sexuality for Helping Professionals,” which contains an entire unit related to reproductive justice and abortion, and how the law impacts the practice of social work. I am scheduled to teach the course in Spring 2024. I also coordinate the teaching of a course called “Human Sexuality in Social Work,” and am responsible for creating the syllabus for this course.

19. In “Human Sexuality for Helping Professionals,” we explore human sexuality from a range of psychological, social, cultural, and spiritual perspectives. The course uses individual values, codes of ethics, and professional codes to ensure future social workers and other helping professionals can spread the benefits of accurate and positive sexual health education to the individuals, groups, and communities they serve. “Human Sexuality in Social Work” covers similar topics but is open only to social work students, while “Human Sexuality for Helping Professionals” is open to other students, including counseling, teaching, and nursing students.

20. The courses are discussion-based, and students engage with the assigned materials and chosen topics by sharing their views, reactions, and analysis of the materials, as well as by demonstrating that they have considered the application of the principles covered to their current and future practice.

21. I have previously taught those two courses using a book chapter that I co-authored, entitled “Self-Determination and Abortion access: A Pro-Choice Perspective on the International Statement of Ethical Principles.” *See* Ex. A. The piece discusses guidelines from the International Federation of Social Workers’ and International Association of Schools of Social Work’s Statement of Ethical Principles (2018). In particular, the chapter includes “a discussion of the most relevant International Ethical Principles underlying the rationale of the pro-choice argument, followed by implications on language and culture.” *Id.*

22. Because of the NPFAA, I have removed that material from the courses out of concern that it promotes or counsels in favor of abortion within the meaning of the statute. In its place, I had to substitute material that is different in coverage as it relates only to social work principles in the United States. This substitution negatively impacted the courses because social work accreditations require a focus on international application and impact, not just the application



and impact of principles domestically. While I regret having to remove this material from the courses, I felt it was necessary in order to mitigate my risk of prosecution under the NPFSA.

23. I also removed two prompts from the curricula that I had previously included when teaching the courses. At the close of each module, I ask students to submit a written assignment that involves selecting and answering several questions from a list that reflects the various subjects we have covered in the module. Following enactment of the NPFSA, I removed two prompts that covered abortion and access to abortion out of fear that they could be viewed as promoting abortion. One of those prompts explained the research finding that “women in the US are 14 times more likely to die during childbirth than during a legal abortion” and posed the question whether it is “ever appropriate for the government to require a person to continue a pregnancy to full term.” The other prompt asked students to reflect on abortion later in pregnancy in the context of a case study on pregnancy loss and fatal fetal anomalies. I believe removing these prompts was detrimental to my students’ education, because it limited their ability to reflect on and analyze important issues and principles in social work, including the right of clients to self-determination.

24. The NPFSA has also altered how I interact with students in class. In my experience, students will sometimes ask for an instructor’s opinion on the topic of abortion, and I have been asked about it in the past. As a result of the NPFSA, I would no longer feel comfortable sharing my perspective and opinion in the classroom even when directly asked by a student. While I do not generally volunteer my own perspectives without being asked, I believe it is important to candidly represent them and share my considered opinions when directly asked as a way to prompt further discussion. Because of the NPFSA, however, I feel that I cannot speak freely on my academic viewpoints and scholarship on this single topic—despite the fact that, if asked for my own perspectives on other relevant subjects, I could offer them without fear of being prosecuted.

This deprives my students of the ability to gain a deeper understanding of their own professor's academic perspectives on difficult issues in social work, to the detriment of their education.

25. Notwithstanding these changes to my courses, I continue to include some materials and discussion on the topic of abortion despite my fear of prosecution. I do not feel that I can responsibly teach a course on human sexuality that omits all instruction on abortion or that presents only negative views of abortion. The issue of abortion access is one of paramount importance to helping professionals, and especially to social workers, because of the potential harm to future clients and potential for implications of licensure requirements. Because of this, I cannot equip my students to competently practice in the field without teaching on the topic. I have therefore decided to continue teaching on abortion in a modified way, even with the risk of prosecution under the NPFAA.

#### **The NPFAA's Impact on My Research and Scholarship**

26. The NPFAA has also impacted my research and scholarship activities. I currently have one journal article under review for the *Journal of Teaching in Social Work*. It concerns how *Dobbs* and the subsequent criminalization of abortion impacts the teaching of social work, particularly with respect to reproductive health.

27. Ordinarily, I would announce publication of the article at a faculty meeting or via e-mail to other faculty, as is a regular occurrence at the university. However, due to the NPFAA, I will not be comfortable announcing the piece as I normally would and as other faculty members typically do for their research and publications.

28. I also do not feel comfortable sharing the article with my students as a result of the NPFAA, despite its relevance to the courses that I teach. As a result, I am concerned that students are missing out on valuable information.

29. The NPFAA also inhibits my ability to present my scholarship to a broader audience. Publicizing scholarship and research is an important part of an academic's career. I used to include a link to my curriculum vitae, which includes a list of my publications, on my university biography page. But, because of the NPFAA, I had that document removed because I was concerned that linking to my publications on the university website could result in prosecution and that some of my work could be construed as promoting or counseling in favor of abortion. I also, as many scholars do, post my research and articles on a website called ResearchGate, which includes reference to my university affiliation. Students and faculty at other institutions use the website to find information and to identify individuals that are experts in certain areas. Previously, I had set my ResearchGate profile to public access, as is common, to make it easy to locate me and to identify my areas of academic expertise and interest. As a result of the NPFAA, I have now limited access to my profile and scholarship to private, meaning the broader public cannot access this information.

30. Effectively publicizing scholarship also involves traveling to conferences and presenting my work. Previously, I would apply for grants from the university to help defray the costs of attending those conferences. Because of the NPFAA, I am now reluctant to apply for those grants for any conferences where I am presenting on scholarship related to abortion or abortion access out of fear that my scholarship or presentations could be viewed as promoting or counseling in favor of abortion.

31. These changes and concerns do not just impact my career as an academic. They also impact students and academics who are not familiar with my scholarship. Students can use website biography pages, as well as ResearchGate, to identify potential advisors for dissertations and other academic research. Now, students who do not know me personally might not be able to

readily identify me as a potential academic resource. The same is true of other academics. With restricted access to my scholarship, other academics are less likely to identify me as an individual with expertise in reproductive rights and access to abortion as it relates to social work.

### **Conclusion**

32. As a professor in the field of social work, I am often required to teach on topics that are controversial, including abortion. It is imperative for my students to learn about many perspectives on these topics to become effective and responsible social workers. As an educator and academic researcher in the discipline of social work, my responsibility is also to prepare my students for future practice. But the NPFAA keeps me from speaking openly and freely and prevents me from fulfilling that role.

33. As a result of the NPFAA, I fear that I might be prosecuted for teaching my courses and publicizing my research in the manner that I previously did. The NPFAA should not be allowed to stifle my speech and deprive my students of an effective education.

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

Executed on July 31, 2023 in Meridian, Idaho.

  
Heather Witt