No. 26-5360

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

STACY SEYB,
Plaintiff-Appellee,
v.
RAÚL R. LABRADOR, in his official capacity as Attorney General of Idaho,
Appellant.

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

APPELLANTS ATTORNEY GENERAL LABRADOR AND ADA COUNTY PROSECUTING ATTORNEY'S EMERGENCY MOTION FOR STAY PENDING APPEAL UNDER CIRCUIT RULE 27-3 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 Idaho from enforcing its democratically enacted laws to protect unborn babies and their mothers. This Court should stay the injunctions immediately.

Idaho will likely succeed on the merits. *Dobbs* allows states to "regulat[e] or prohibit[ ]" abortion and overruled the *Roe*/*Casey* framework that erected an absolute bar to restricting "therapeutic" abortions. *Id.* at 237. The Supreme Court did not limit its holding to "elective" abortions. *Contra* ER-42.

The district court's version of carefully defining a right involved (a) refusing to provide an "exhaustive" list of conditions it thought warranted abortion, (b) allowing pro-abortion doctors to subjectively decide risks to health sufficient to terminate a baby, and (c) allowing essentially *any* claim of mental-health struggles to allow for abortion. The district court even intimated that risk of a C-section would allow an abortion. ER-22.

Neither the district court nor Plaintiff cited *any* case until shortly before *Roe* that invalidated a state-abortion statute that didn't allow for "therapeutic" abortions. That's independently fatal to a fundamental-rights claim. Historically, states almost universally prohibited abortions unless to save the mother's "life." The district court thought "no matter the details of the statutory language," "life" meant "health." ER-54–55. But, as the district court conceded, "no nineteenth- or early twentieth-century decisions explicitly discuss[ ]" conflating those terms. ER-52. Similarly, the district court didn't cite any historical evidence for its right to abortions based on threats of suicide—a historically unlawful act that abortion does nothing to treat. With no fundamental rights at issue, Idaho's laws trigger and pass rational basis review. They would also meet heightened scrutiny.

Every day, the district court's injunctions irreparably harm Idaho's sovereign interest in protecting unborn children and their mothers. Plaintiff—asserting only the "rights" of third-party patients—testified that he planned to expand his abortion practice, placing even more lives at risk. Meanwhile, Idahoans will vote on an abortion law this fall. Just like in *Roe* and *Casey*, the district court arrogated the people's power to itself. This Court should heed *Dobbs* and stay the district court's injunctions to allow the democratic process to play out. Given the weighty interests at stake, Idaho respectfully requests a ruling by September 4 so it can seek further review if necessary.

BACKGROUND

A. Idaho's pro-life laws protect unborn children and their mothers.

To advance its "profound interest in preserving the life of preborn children," Idaho enacted the Defense of Life Act (the "Act") and the Fetal Heartbeat Preborn Child Protection Act.[1] Idaho Code § 18-601. The Defense of Life Act prohibits performing an "abortion" unless the "physician determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman." *Id.* § 18-622(2)(a). But no abortion is "necessary to prevent the death of the pregnant woman because the physician believes that the woman may or will take action to harm herself." *Id.* § 18-622(2)(a)(i).

In January 2023, the Idaho Supreme Court authoritatively interpreted the Act. *Planned Parenthood Great Nw. v. State*, 522 P.3d 1132 (Idaho 2023). It held that "the statute does not require *objective* certainty, or a particular level of immediacy, before the abortion can be 'necessary' to save the woman's life." *Id.* at 1203. The law also doesn't have a "'certain percent chance' requirement that death will occur." *Id.* at 1204. The Act's "broad language … allow[s] for the clinical judgment that physicians are

[1] Plaintiff challenged both laws, but the district court only analyzed the operative provisions of the Act because when enforceable it supersedes in relevant part the Fetal Heartbeat Act. ER-10. The district court nonetheless improperly enjoined both laws.

routinely called upon to make for proper treatment of their patients." *Id.* at 1203 (citation modified).

B. Idaho has lowered its maternal mortality rate under the Defense of Life Act.

Since Idaho's abortion laws took effect after *Dobbs*, maternal mortality rates have plummeted. Excluding the 2020–22 pandemic years, Idaho's pregnancy-related mortality ratio (PRMR) has decreased from 18.7 deaths per 100,000 live births in 2018 to 4.29 deaths in 2024, a 77% decrease. ER-225. With a larger sample size, the ratio for 2018/2019 combined (16.11) is also 21.9% higher than the ratio for 2023/2024 combined (13.22). ER-106, 132, 133–238, 274–75. Idaho also compares favorably to the rest of the country: the 13.22 ratio is substantially lower than the 18.7 ratio for the United States in 2023. ER-225.

C. The district court permanently enjoins Idaho's laws.

The district court became the first post-*Dobbs* court to discover a federal constitutional right to abortion. It first held—based on discredited abortion-law precedent—that Plaintiff could raise the constitutional rights of his hypothetical future patients. It then ruled that history established a broad "right to an abortion when necessary to prevent serious and lasting harm to the health of the pregnant woman." ER-40. Without separately analyzing the history, the court also recognized a fundamental right to abortion based on a risk of "the death of the pregnant woman from self-harm." ER-80.

Contrary to *Dobbs*'s directive to focus on the history surrounding the 14th Amendment's ratification, the court assessed abortion law developments in the 1960s up to modern judicial rulings on state constitutional provisions. ER-61–68. It analyzed the ratification-era statutes but—"no matter the details of the statutory language"—ruled that the statutes' life-preserving exemptions and mens rea requirements *sub silentio* protected "therapeutic" abortions. ER-54–55. It also misread doctors' subjective opinions of what they thought they could do under the abortion laws—which almost universally showed doctors understood the mother's life had to be at risk. ER-58–61.

The district court then applied strict scrutiny. ER-72. The Act lacked narrow tailoring, the court said, because Idaho could use more "targeted" legislation. ER-73. But the court didn't identify such legislation's terms or how it would serve Idaho's interests. ER-73. Ignoring that abortion is inevitably fatal for the unborn child and that Idaho provided contrary evidence, the court also declared that "[a]bortion is statistically far safer than childbirth." ER-73. The court thus enjoined the Attorney General and Ada County Prosecuting Attorney from enforcing Idaho's pro-life laws to the extent they conflict with these unknown third-parties' "rights." ER-80.[2]

[2] Ada County Prosecuting Attorney has also appealed. She joins in the Attorney General's motion to stay the district court's injunctions and will also file a motion in her separately docketed appeal. As an enjoined constitutional officer, the Prosecuting Attorney has an interest in

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" Idaho's favor warrants a stay. *Leiva-Perez v. Holder*, 640 F.3d 962, 964 (9th Cir. 2011) (per curiam) (citation modified).

After a bench trial, this Court reviews legal conclusions de novo and the scope of injunction for abuse of discretion. *Ariz. Att'ys for Crim. Just. v. Mayes*, 127 F.4th 105, 109 (9th Cir. 2025). In assessing whether the Fourteenth Amendment protects an asserted fundamental right, *all* relevant facts are legislative facts. *United States v. $124,570 U.S. Currency*, 873 F.2d 1240, 1244 (9th Cir. 1989) ("legislative facts" are "those applicable to the entire class of cases—rather than adjudicative facts," which are "those applicable only to the case before" the court).

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resolving this appeal on the merits. She leaves it to the Attorney General to express the legal arguments regarding the constitutionality of the challenged statute. The Prosecuting Attorney requests a stay of the injunctions on the merits while preserving her procedural and jurisdictional objections to Plaintiff's suit.

"Only adjudicative facts are determined in trials, and only legislative facts are relevant to the constitutionality of a challenged law." *Nathan v. Alamo Heights Indep. Sch. Dist.*, 173 F.4th 576, 608 n.57 (5th Cir. 2026) (en banc) (quoting *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012)). So while it's unclear why the district court had a trial at all, this Court reviews de novo the district court's "findings" related to the constitutionality of Idaho's laws. *See id.* at 607–08; *Dunagin v. City of Oxford*, 718 F.2d 738, 748 n.8 (5th Cir. 1983) (en banc) (plurality); ER-12–23 (purportedly finding facts).

ARGUMENT

I. Idaho is likely to succeed on the merits.

A. Plaintiff lacks third-party standing.[3]

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.

Federal courts should "not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect." *Clark v. Kansas City,* 176 U.S. 114, 118 (1900). The modern third-party standing rule requires a litigant to assert his own rights unless he "has

[3] This Court has held that abortionists can assert the third-party rights of clients despite the lack of a close connection between them and the obvious conflict of interest. *See McCormack v. Herzog*, 788 F.3d 1017, 1027 (9th Cir. 2015). Idaho preserves this issue for appeal.

a close relationship with the person who possesses the right" and that person has a "hindrance" to protecting his rights. *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). Neither exists for abortionists. An abortionist's relationship with the pregnant woman "is generally brief and very limited." *June Med. Servs. L.L.C. v. Russo*, 591 U.S. 299, 403 (2020) (Alito, J., dissenting). Abortionists' interest in the absence of regulation and promoting abortion also 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. And nothing prevents pregnant women from asserting their own claimed rights. *Roe v. Wade*, 410 U.S. 113, 125 (1973).

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

Dobbs forecloses Plaintiff's claims. 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).

Dobbs did not limit its holding to "elective abortions." *Contra* ER-42. The question presented asked about "pre-viability prohibitions on elective abortions." *Dobbs*, 597 U.S. at 234. But the holding exceeded that question's scope—drawing criticism from the concurrence—by overruling

Roe and *Casey*. *Id.*; *see id.* at 348–49 (Roberts, C.J., concurring in judgment). *Dobbs* rejected a constitutional right to an abortion "for the preservation of the life *or health* of the mother" as part of that now "overruled" framework. *Id.* at 271, 292 (majority op.) (emphasis added) (citation modified); *see Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 879 (1992) (joint op.) (allowing the states to "regulate, and even proscribe, abortion" post-viability "except where it is necessary, in appropriate medical judgment, for the preservation of the life *or health* of the mother") (citation modified) (emphasis added).

The district court's expansive right to a "therapeutic" abortion returns to the *Casey* understanding of life or health exceptions that *Dobbs* expressly rejected. Indeed, the district court cited *Casey* in support of its finding of a fundamental right to "therapeutic" abortion. ER-64. But *Dobbs* made clear that the Constitution allows the people of Idaho to protect life by recognizing "that a human person comes into being at conception and that abortion ends an innocent life." 597 U.S. at 223–24.

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 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). "[T]his [C]ourt must exercise the utmost care whenever … asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed into" judges' "policy preferences." *Reach Cmty.*, 174 F.4th at 1147 (citation modified).

1. The district court didn't carefully define the rights.

The court 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. It favorably cited the "standard of care" defined by pro-abortion medical groups like ACOG when discussing medical issues during pregnancy. ER-13–15. Of course, ACOG thinks *all* abortions are medically indicated. ER-276–77. The court's order even indicates that the "risk of infection" from commonly performed cesarean sections could allow for abortion. ER-22. Ultimately, the court left it to doctors to decide, since "[d]octors exercising good-faith professional judgment may reasonably disagree as to which abortions are medically necessary." ER-17.

The district court similarly failed to carefully define the fundamental right to a mental-health abortion. ER-75. Its injunction broadly prevents Idaho from enforcing its laws based on a doctor's subjective determination of a "non-negligible risk" of "death … from self-harm." ER-80. The district court did not limit its injunction to conditions for which it thought doctors could "objectively evaluate the risk of suicide." ER-19. The injunction has no requirement that the physician try other effective treatments, like medication changes or hospitalization that don't require abortion. ER-20. Nor does the abortionist have to determine the threats are credible or require a mental-health diagnosis from an expert. Doctors choose—in their discretion—whether to terminate life.

Allowing the "possibility of suicide" to trigger a life-preserving exception "would render the statute virtually meaningless." *People v. Belous*, 458 P.2d 194, 204 (Cal. 1969). Abortion for threats of self-harm becomes abortion on demand. In the United Kingdom nearly *every* abortion—almost 250,000 per year—occurs for mental health reasons. ER-112. Before *Roe*, California attributed over 88% of abortions in one year to mental-health reasons. ER-112.

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.

2. History doesn't show a right to a "therapeutic" abortion.

The unenumerated "right" the district court discovered doesn't have the required historical pedigree. As Plaintiff's experts conceded, *no* historical source identifies a "therapeutic" abortion as a legal right. ER-251, 272. 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; *see Reach Cmty.*, 174 F.4th at 1147 (rejecting unenumerated right claim when "no federal or state court … recognized the Plaintiffs' claimed right" and no "scholarly treatise … support[ed] such a right") (citation modified).

To the contrary, history shows that the states almost universally prohibited "therapeutic" abortions. At the Fourteenth Amendment's ratification, 19 states' abortion prohibitions contained exceptions only when necessary to save the "life" of the mother, and six states' prohibitions were accompanied only by a *mens rea* requirement (like "maliciously" or "unlawfully") without an express life exception. *Dobbs*, 597 U.S. at 302–23. Only *one* state (Illinois) allowed abortion for "bona fide medical or surgical purposes." ER-48. The district court claimed that

"safety" in the Maryland statute meant "health," but it cited no authority. ER-48.

The Fourteenth Amendment's ratification did not result in a legal challenge overturning any of these many laws. Instead, a supermajority of states continued to criminalize "therapeutic" abortions through 1966: 42 states allowed abortions to save the life of the mother, five allowed them to preserve a mother's "health" or "safety" or "to prevent serious permanent bodily injury," and three retained a *mens rea* requirement without explicit exemptions. ER-93.

The district court thought that this case's "heart" is the "gap" between abortions to save the mother's "life" and those to preserve her "health." ER-29. But its historical analysis collapsed that crucial distinction. "[N]o matter the details of the statutory language," the district court assumed "life" automatically included "health." ER-54–55. None of its six categories of historical analysis supports its atextual and ahistorical reading.

a. Before the Fourteenth Amendment, states almost universally prohibited health-preserving abortions.

As discussed, most states prohibited abortion unless to preserve the mother's "life." But in 1869, the Colorado and Wyoming territories permitted abortion to prevent "serious and permanent bodily injury" to the mother. ER-93. That and the Illinois statute show people in 1868 could—and did—conceptually distinguish abortions to preserve the

mother's life and those to preserve her health. That's what subsequent history confirms. Shortly after ratification, Illinois and Wyoming amended their statutes to allow for only life-preserving abortions. ER-93. "[N]o one, as far as [Appellants are] aware, argued that the laws … enacted violated a fundamental right." *See Dobbs*, 597 U.S. at 253.

The district court's recognition of some widening in abortion laws pre-*Roe* era further supports the life/health distinction. ER-61–62. Some states explicitly added a health exception, showing that their previous exemption for "life" did not mean "health." *See* ER-61–62. What's more, 24 states *rejected* bills adding an explicit health-related exemption to the existing life exemption. ER-93–94. That legislative back-and-forth shows that the difference between life and health is far more than a careless "drafting ambiguity." *Contra* ER-63.

Mens rea requirements didn't implicitly permit health-preserving abortions. *Contra* ER-47. To support that conclusion, the district court relied on a Depression-era set of jury instructions from England of admittedly "limited utility," ER-47, 55, which the Supreme Court said is unlikely to "shed light on the meaning of the Constitution" given its timing and foreign origin, *Dobbs*, 597 U.S. at 273. The *mens rea* language did not create an unwritten "therapeutic" exception; it just referred to the mental state necessary for the crime. ER-264.

Only one state court interpreted the *mens rea* requirement to allow for health-of-the-mother abortions. *Kudish v. Bd. of Registration in Med.*,

248 N.E.2d 264, 266 (Mass. 1969). Two others held that the requirements allowed for life-preserving abortions, *State v. Moretti*, 244 A.2d 499, 504 (N.J. 1968); *Commonwealth v. Bingaman*, 51 Pa. Super. 336, 342 (1912), and "there is no clear support in" those states' case law "for the proposition that abortion was lawful where the mother's life was not at risk." *Dobbs*, 597 U.S. at 249 n.35. The district court's Pennsylvania life-insurance case did not interpret the state's abortion statute. *Wells v. New England Mut. Life Ins. Co. of Bos.*, 43 A. 126, 127 (Pa. 1899). And the Vermont case affirmed the focus on life: it discussed the "lawful operation of the medical man" "where it becomes matter of *certainty* that" the baby cannot continue in utero "without the *destruction* of either the mother or the child." *State v. Howard*, 32 Vt. 380, 401 (1859) (emphases added).

The district court's reading also relegates to surplusage the life-preserving exception in the 11 ratification-era statutes that also had a *mens rea* requirement. ER-94–95. An "implicit" "therapeutic" exception would render the life exemption superfluous. *See* ER-49.

b. State courts did not establish an implied right to a "therapeutic" abortion.

Not a *single* case cited by the district court recognized a fundamental right to a "therapeutic" abortion. As the district court admitted, it couldn't find *any* "nineteenth- or early twentieth-century decisions explicitly discussing" whether "life" includes "health." ER-52. That means no fundamental "therapeutic" abortion right exists.

The cited opinions also don't support the district court's ruling. The Indiana court held that a doctor could only perform an abortion if he "honestly believed the operation to be necessary to save the mother's life, but on no other." *Gunder v. Tibbitts*, 55 N.E. 762, 766 (Ind. 1899). The Ohio court concluded that any abortion would be unlawful unless "necessary to preserve her life." *State v. Tippie*, 105 N.E. 75, 77 (Ohio 1913). The Iowa and Missouri cases stand for the unremarkable proposition that the state must prove beyond a reasonable doubt that the abortionist did not act "to save the life of the mother." *State v. De Groat*, 168 S.W. 702, 707 (Mo. 1914); *State v. Aiken*, 80 N.W. 1073, 1074 (Iowa 1899).

c. Medical sources don't establish a fundamental right.

What doctors thought they could do under statutory law can't establish a fundamental right. *See Dobbs*, 597 U.S. at 243, 253 (that states may not have criminalized some abortions "does not mean that anyone thought the States lacked the authority to do so"). And numerous medical sources discuss the impermissibility of abortion except to save the mother's life. ER-96–97.

The district court's evidence agrees. Dr. Storer affirmed that abortion was illegal "except absolutely to save a woman's life" and noted severe cases in which abortion might by indicated. ER-126–27. Dr. Eve emphasized the same point. ER-128. Dr. Russell defined the "indications

for therapeutic abortion" as something that "imperils" the mother's "life." ER-129. Dr. Bedford treated a patient experiencing life-threatening vomiting that "resisted every remedy," whose "death [was] hourly expected." ER-124–25. A post-ratification source discusses the author's view of when abortion "in a general way" "should" be available. ER-130. That evidence shows a broad consensus that doctors could only perform life-preserving abortions. At best, some physicians may have disagreed. That can't establish a fundamental right. *Dobbs*, 597 U.S. at 272–73 (criticizing *Roe*'s reliance on medical associations' positions).

d. Post-ratification developments don't create a fundamental right.

The district court's tour of 20th-century abortion law again has no relevance to the fundamental rights analysis. No doubt some states weakened their abortion laws before *Roe*, *Roe* allowed for abortion-on-demand, and some states today allow far more abortions than Idaho does. But that can't establish a fundamental right contrary to "how the States regulated abortion when the Fourteenth Amendment was adopted." *Dobbs*, 597 U.S. at 272. Instead, it shows that abortion law properly belongs to the democratic process. *Id.* at 232.

e. Argument by analogy to self-defense fails.

As the district court recognized, to establish a fundamental right, "general analogy to inapposite caselaw is insufficient." *Reach Cmty.*, 174 F.4th at 1147; ER-71. The historical sources must "address the specific

right at issue." *Reach Cmty.*, 174 F.4th at 1147. "One cannot simply pluck a 'right' as general and abstract as 'bodily integrity'" or self-defense "from the caselaw, and then carefully describe that right on one's own terms without regard to whether that right is in fact grounded in history." *Id.* at 1148. *Dobbs* rejected attempts to derive a right to abortion by analogy to a "broader right to autonomy." 597 U.S. at 256–57, 295.

The district court's analogies also fail. Idaho isn't forcing mothers to provide kidneys to their children. *Contra* ER-72. The essential support that a mother provides her child in the womb—who couldn't otherwise survive—is not analogous to compulsory surgery. Idaho's laws prohibit the intentional killing of innocent life, not the omission of some abstract duty.

Neither does self-defense provide even some support for a "therapeutic" abortion. The district court didn't cite any historical evidence connecting self-defense to abortion. Self-defense at common law required an attacker's unlawful force. ER-101 (discussing Blackstone). Of course, a baby doesn't use any unlawful force. The district court's expansively defined rights also do not require that the danger be "imminent" or that the force be "*necessary* to avert the danger," as required at common law. ER-101. Rather, "therapeutic" abortions are those that address a "non-negligible risk of" harm—even though the district court recognized alternative treatments are available. ER-14, 80.

f. "Therapeutic intent" did not allow for abortions.

The district court's discussion of early English common law has little relevance to the Fourteenth Amendment analysis and doesn't support its holding anyway. *See Dobbs*, 597 U.S. at 272. None of the great common law authorities, like Bracton, Hale, Coke, and Blackstone, granted immunity from criminal liability to a medical practitioner for an abortion "with therapeutic intent." ER-266–67; *Dobbs*, 597 U.S. at 242–45. Plaintiff's expert, whom the district court relied on, admittedly drew this conclusion based on "inference," comparing separate discussions about regulation of medical practice with prohibitions on abortion. ER-252–53, 268. Multiple sources during this time emphasized that physicians must take care to avoid *any* possibility of abortion, including by using emmenagogues. ER-263, 265–66.

3. History doesn't show a right to abortion from threats of self-harm.

The district court assumed that statutes allowing for life-preserving abortions automatically included abortions for mental-health reasons. *See* ER-50 n.17. Medical evidence and history show the opposite.

Abortion doesn't treat mental health problems. In fact, suicide risk decreases during pregnancy. ER-240–41, 283. And an abortion and childbirth equally transition a woman to a higher-risk state postpartum. ER-284–85. Mental health issues during pregnancy always have effective alternative treatment options that protect the unborn child. They include

medication (which can be altered as needed), therapy, counseling, and, if necessary, in-patient hospitalization. ER-243–45, 256–62, 285–88.

State statutes allowing for life-preserving abortions were not understood as allowing abortions because a woman might commit suicide. *See* ER-270. That makes sense because "for over 700 years, the Anglo–American common-law tradition has punished or otherwise disapproved of … suicide." *Glucksberg*, 521 U.S. at 711. The Fourteenth Amendment could not have elevated a patient's threat to commit an act broadly viewed as "a grave public wrong" to a justification for a physician to perform a procedure that was also broadly viewed as wrongful. *Id.* at 714. Naturally, Plaintiff's expert was unaware of *any* abortions to prevent suicide occurring before 1900. ER-249–50.

The Wisconsin Supreme Court recognized as "very manifest" that statutes' exceptions for life-preserving abortions applied to death "from natural causes"—not threats of "suicide." *Hatchard v. State*, 48 N.W. 380, 382 (Wis. 1891); *see Austin v. State*, 194 S.W. 383, 383 (Tenn. 1917) (implying that life-preserving exception did not extend to threats of suicide). Even with more permissive abortion laws, courts continued to reject reading mental health exceptions into statutes. In *People v. Wellman*, the appellate court approvingly quoted the trial judge's ruling that suicide threats do not "justify any type of abortion." 149 N.W.2d 908, 912 (Mich. Ct. App. 1967). Similarly, the Illinois Supreme Court held that the state's statutory life-of-the-mother exception applied only to the

"preservation of a woman's life due to physical dangers." *People ex rel. Hanrahan v. White*, 285 N.E.2d 129, 130 (Ill. 1972).

Bills to allow abortion to protect a mother's mental health were proposed and failed in 24 states between 1967 and 1972. ER-109. These "repeated attempts to have the legislature engraft the concept of mental or psychiatric grounds for a legal therapeutic abortion" show that the existing statutes were "not intended to" and did "not encompass" mental health-related abortions. *Hanrahan*, 285 N.E.2d at 131. "Otherwise, such revisions or amendments would have been unnecessary." *Id.*

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

With no fundamental right at stake, Idaho will likely win on Plaintiff's equal-protection challenge. 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 Idaho'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. Idaho's law rationally serves all those ends by banning the intentional taking of unborn life except when necessary to save a mother's life. Every abortion creates maternal health risks, including infection, bleeding, damage to the surrounding organs, injury to the uterus, injury to the cervix, and death. ER-105. Idaho rationally excluded threats of self-harm from reasons for abortion because abortion doesn't treat mental health problems, many other effective treatment options exist, and it can be difficult to verify legitimate threats of self-harm. ER-111–12.

Idaho's law also passes strict scrutiny. The district court devalued Idaho's interest in protecting unborn life and maternal health. Ignoring that abortion *always* kills the unborn child and the evidence that abortion poses a greater risk to a mother's health than childbirth, the court still assumed that abortion was "far safer." ER-73. *Contra* ER-105, 278. And Idaho's legislature can appropriately rely on credible studies showing the harms of abortion. *Gonzales v. Carhart*, 550 U.S. 124, 163–64 (2007). The district court told Idaho it had less restrictive alternatives, but the court didn't identify any. ER-73–74. The only way to protect prenatal life is to stop the intentional taking of it.

Idaho also doesn't have any less restrictive means to regulate mental-health abortions. *Contra* ER-75–76. As discussed above, abortion doesn't treat mental health problems and effective alternative treatments always exist. All that the district court's cited evidence shows

is that *some* treatments may be contraindicated "in *some* circumstances." ER-20 (emphasis added). But nothing proves that counseling or in-patient treatment are ever contraindicated. Even Plaintiff's "reproductive psychiatrist," who has treated hundreds of patients in over two decades of practice, has only discussed abortion as a purported treatment with four of them. ER-246–47.

Idaho's law is also narrowly tailored to address the difficulties in assessing mental-health reasons for an abortion. Neither doctors nor state officials can accurately assess threats of self-harm. ER-279–83. Data from the UK shows that when the law allows for mental-health abortions, the exception swallows the rule. *Supra* Section I.C.1. Nothing in the district court's injunction requires abortionists to use "objectively verifiable information," reject "self-reporting" alone, evaluate alternative treatments that do not involve an abortion, or require a mental health diagnosis before performing an abortion. *Contra* ER-76. Instead, the injunction licenses individual abortionists based only on their subjective judgment to provide mental-health abortions. Idaho's law is narrowly tailored to prevent that harm.

II. Idaho satisfies the other stay factors.

The district court's injunctions broadside Idaho's sovereign 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). That's doubly true in this case because the injunctions prevent the people of Idaho from protecting unborn life—especially given Plaintiff's intention to expand his abortion practice. ER-33–34. The Supreme Court returned "to the people and their elected representatives" the power to "regulat[e] or prohibit[ ] abortion." *Dobbs*, 597 U.S. at 237, 292. Regulating abortion "is primarily the duty and responsibility of the State," so "[f]ederal-court review … represents a serious intrusion on the most vital of local functions." *See Abbott v. Perez*, 585 U.S. 579, 603 (2018) (citation modified).

Plaintiff will suffer no injury from the stay. He has no constitutional right to perform "therapeutic" abortions. He can continue to practice medicine as he's done since *Dobbs*. He had no need to airlift his patient with signs of a deadly infection to Utah. ER-32; ER-84 (district court recognizing that Plaintiff has no need "to airlift patients to Utah"). Regulating the medical profession lies well within Idaho's sovereign police powers. *Lambert v. Yellowley*, 272 U.S. 581, 596 (1926).

The balance of equities and public interest also tip heavily in Idaho's favor. Every day, the district court's injunctions impair Idaho's sovereignty and protection of innocent human life. The public interest favors enforcing Idaho's 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 Idaho's sovereign 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").

CONCLUSION

The Court should grant a stay.

Dated: August 26, 2026

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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 5,592 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 26, 2026

s/Mathew W. Hoffmann
Mathew W. Hoffmann

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 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
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