

No. 23-3787

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

LOURDES MATSUMOTO, et al.

Plaintiffs-Appellees,

v.

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

Defendant-Appellant.

On Appeal from the United States District Court
for the District of Idaho
The Honorable Debora K. Grasham
No. 1:23-cv-00323-DKG

**BRIEF OF AMICI CURIAE ADVOCATES FOR YOUTH,
IF/WHEN/HOW: LAWYERING FOR REPRODUCTIVE JUSTICE, and
NATIONAL NETWORK OF ABORTION FUNDS
IN SUPPORT OF PLAINTIFFS-APPELLEES**

Chelsea Gonzalez
ADVOCATES FOR YOUTH
1325 G Street NW, Suite 980
Washington, DC 20005
Telephone: (202) 419-3420
chelsea@advocatesforyouth.org

Colleen R. Smith
Counsel of Record
STRIS & MAHER LLP
1717 K Street NW Suite 900
Washington, DC 20006
Telephone: (202) 800-5749
csmith@stris.com

*Counsel for Amicus Curiae
Advocates for Youth*

Counsel continued on inside cover

Alanna Peterson
NATIONAL NETWORK OF
ABORTION FUNDS
9450 SW Gemini Drive
Beaverton, OR 97008-7105
Telephone: (253) 470-6143
alanna@abortionfunds.org

Alexander M. Wolf
Drew M. Padley
STEPTOE LLP
717 Texas Avenue, Suite 2800
Houston, Texas 77002
Telephone: 713.221.2300
awolf@steptoe.com
dpadley@steptoe.com

*Counsel for Amicus Curiae National
Network of Abortion Funds*

Jessica S. Goldberg
IF/WHEN/HOW: LAWYERING FOR
REPRODUCTIVE JUSTICE
1714 Franklin Street # 100-393
Oakland, CA 94612-3409
Telephone: (602) 892-0940
jessica.goldberg@ifwhenhow.org

*Counsel for Amicus Curiae
If/When/How: Lawyering for
Reproductive Justice*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4), the undersigned counsel of record states as follows:

As a nonprofit entity organized under §§ 501(c)(3) or 501(c)(6) of the Internal Revenue Code, amicus curiae Advocates for Youth has issued no stock. Consequently, no parent corporation nor any publicly held corporation could or does own 10% or more of its stock.

As a nonprofit entity organized under §§ 501(c)(3) or 501(c)(6) of the Internal Revenue Code, amicus curiae If/When/How: Lawyering for Reproductive Justice has issued no stock. Consequently, no parent corporation nor any publicly held corporation could or does own 10% or more of its stock.

As a nonprofit entity organized under §§ 501(c)(3) or 501(c)(6) of the Internal Revenue Code, amicus curiae National Network of Abortion Funds has issued no stock. Consequently, no parent corporation nor any publicly held corporation could or does own 10% or more of its stock.

Dated: January 24, 2024

Respectfully submitted,

/s/ Colleen R. Smith

Colleen R. Smith
STRIS & MAHER LLP
1717 K Street NW Suite 900
Washington, DC 20006
Telephone: (202) 800-5749
csmith@stris.com

Alanna Peterson
NATIONAL NETWORK OF
ABORTION FUNDS
9450 SW Gemini Drive
Beaverton, OR 97008-7105
Telephone: (253) 470-6143
alanna@abortionfunds.org

Chelsea Gonzalez
ADVOCATES FOR YOUTH
1325 G Street NW, Suite 980
Washington, DC 20005
Telephone: (202) 419-3420
chelsea@advocatesforyouth.org

*Counsel for Amicus Curiae
Advocates for Youth*

Alexander M. Wolf
Drew M. Padley
STEPTOE LLP
717 Texas Avenue, Suite 2800
Houston, Texas 77002
Telephone: 713.221.2300
awolf@steptoe.com
dpadley@steptoe.com

Jessica S. Goldberg
IF/WHEN/HOW: LAWYERING FOR
REPRODUCTIVE JUSTICE
1714 Franklin Street # 100-393
Oakland, CA 94612-3409
Telephone: (602) 892-0940
jessica.goldberg@ifwhenhow.org

*Counsel for Amicus Curiae
If/When/How: Lawyering for
Reproductive Justice*

*Counsel for Amicus Curiae National
Network of Abortion Funds*

TABLE OF CONTENTS

	<u>Page</u>
CORPORATE DISCLOSURE STATEMENT	i
INTEREST OF AMICI CURIAE	1
SOURCE OF AUTHORITY TO FILE	2
FED. R. APP. P. 29(a)(4)(E) STATEMENT.....	3
INTRODUCTION	4
ARGUMENT	5
I. Adolescents everywhere face unique struggles in accessing abortion care. Idaho Code § 18-623 exacerbates those existing barriers.	5
II. Idaho Code § 18-623 threatens the health, safety, and well-being of young people in Idaho.	12
A. Idaho Code § 18-623 harms young pregnant people who may not have traditional parental support systems.	12
B. Idaho Code § 18-623 forces birth and other attendant harms on young people.	16
C. Idaho Code § 18-623 creates fear and distrust between youth and supportive adults, which can lead to further isolation, abortion stigma, and insecurity.....	23
III. Adolescents deserve confidential access to abortion care.....	25
CONCLUSION	29

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Idaho v. United States</i> , __ S.Ct. __, 2024 WL 61828 (U.S. Jan. 5, 2024) (No. 23-726).....	20
<i>Smith v. United States</i> , 568 U.S. 106 (2013).....	24
Statutes and Regulations	
42 U.S.C. § 300 <i>et seq.</i>	26
42 C.F.R. § 59.5(a)(4).....	26
42 C.F.R. §§ 59.10(b)	26
Idaho Code § 18-622.....	8, 19
Idaho Code § 18-623.....	4, 5, 10, 11, 12, 15, 16, 23, 24, 25, 28, 29
Idaho Code § 33-202.....	7
Idaho Code § 39-3801.....	26
Other Authorities	
American Academy of Pediatrics, <i>Policy Statement: The Adolescent’s Right to Confidential Care When Considering Abortion</i> 139 PEDIATRICS 1 (2017)	15, 17, 26, 27, 28, 29
American Academy of Pediatrics, <i>Policy Statement: The Adolescent’s Right to Confidential Care When Considering Abortion</i> , 150 PEDIATRICS 1 (2022)	6, 15, 27
American Academy of Pediatrics, <i>The Importance of Access to Abortion</i> , https://www.aap.org/en/patient-care/adolescent-sexual- health/equitable-access-to-sexual-and-reproductive-health-care- for-all-youth/the-importance-of-access-to-abortion/AAP	26

Adriana Diaz et al., <i>“Hopeless and frustrated”</i> : Idaho’s abortion ban is driving OB/GYNs out of the state, CBS NEWS (Oct. 31, 2023), https://www.cbsnews.com/news/idaho-near-total-abortion-ban-driving-doctors-out-of-the-state/	18
Alanna Vagianos, <i>Idaho Is About To Be The First State To Restrict Interstate Travel For Abortion Post-Roe</i> , HUFFPOST (Mar. 28, 2023), https://www.huffpost.com/entry/idaho-abortion-bill-trafficking-travel_n_641b62c3e4b00c3e6077c80b	29
Alisha Kramer et al., <i>The impact of parental involvement laws on minors seeking abortion services: a systematic review</i> , 1 HEALTH AFFAIRS SCHOLAR, 1 (2023)	17
Amanda E. Bryson et. al., <i>Call to Action: Healthcare Providers Must Speak Up for Adolescent Abortion Access</i> , 70 J. ADOLESCENT HEALTH 189 (2022).....	6
Andrea J. Hoopes, et. al., <i>Elevating the Needs of Minor Adolescents in a Landscape of Reduced Abortion Access in the United States</i> , 71 J. Adolescent Health 530 (2022)	5, 6, 7
Association of American Medical Colleges, <i>2021 State Physician Workforce Data Report</i> , 4, 7 (2022), https://www.aamc.org/data-reports/workforce/report/state-physician-workforce-data-report	19
Audrey Dutton, <i>Idaho Banned Abortion. Then It Turned Down Supports for Pregnancies and Births</i> , PROPUBLICA (Oct. 2, 2023), https://www.propublica.org/article/idaho-banned-abortion-support-pregnancies-families	21, 22
Audrey Dutton, <i>Idaho budget committee votes to cut funding for child care, family supports</i> , IDAHO CAPITAL SUN (Feb. 27, 2023), https://idahocapitalsun.com/2023/02/27/idaho-budget-committee-votes-to-cut-funding-for-child-care-family-supports/	23
Bonnie Scott Jones & Tracy A. Weitz, <i>Legal Barriers to Second-Trimester Abortion Provision and Public Health Consequences</i> , 99 AM. J. PUB. HEALTH 623 (2009)	17

Caitlin Gerdts, <i>Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth after an Unwanted Pregnancy</i> , 26 WOMEN’S HEALTH ISSUES 55 (2016).....	18
Carol Sanger, <i>Decisional Dignity: Teenage Abortion, Bypass Hearings, and the Misuse of Law</i> , 18 COLUM. J. GENDER & L. 409 (2009).....	11
Carolyn Sufrin et al., <i>Abortion Access for Incarcerated People: Incidence of Abortion and Policies at U.S. Prisons and Jails</i> , 138 OBSTETRICS & GYNECOLOGY 330 (2021).....	10
Crystal M. Hayes et al., <i>Reproductive Justice Disrupted: Mass Incarceration as a Driver of Reproductive Oppression</i> , 110 AM. J. PUB. HEALTH S21 (2020).....	10
Cynthia Osborne & Nora Ankrum, “ <i>Mom, I’m Pregnant</i> ”: <i>The Adolescent Pregnancy Reveal</i> , 94 SOC. SERV. REV. 339 (2020).....	6
D. Jeha et. al., <i>A review of the risks and consequences of adolescent pregnancy</i> , 8 J. NEONATAL-PERINATAL MEDICINE 1 (2015).....	20
Daniel Grossman et al., <i>Complications after Second Trimester Surgical and Medical Abortion</i> , 16 REPRODUCTIVE HEALTH MATTERS 173 (2008).....	17
Diana Greene Foster, <i>THE TURNAWAY STUDY</i> (2020).....	6, 7, 21, 22
Emily Bridges, <i>Abortion and Young People in the United States</i> , ADVOCATES FOR YOUTH (2019), https://advocatesforyouth.org/resources/health-information/abortion-and-young-people-in-the-united-states/	6
Grace Keegan et al., <i>Trauma of abortion restrictions and forced pregnancy: urgent implications for acute care surgeons</i> , 8 TRAUMA SURGERY & ACUTE CARE OPEN 1 (2023).....	18, 25
GUTTMACHER INSTITUTE, <i>An Overview of Consent to Reproductive Health Services by Young People</i> (August 30, 2023), https://www.guttmacher.org/state-policy/explore/overview-minors-consent-law	26, 27

GUTTMACHER INSTITUTE, *Medication Abortion* (Oct. 31, 2023),
<https://www.guttmacher.org/state-policy/explore/medication-abortion>7

Hannah Lantos et. al., *State-level Abortion Restrictions will Negatively Impact Teens and Children*, CHILD TRENDS (November 19, 2022), <https://www.childtrends.org/blog/state-level-abortion-restrictions-will-negatively-impact-teens-and-children>.....9

Heidi Moseson et al., *Abortion Attempts without Clinical Supervision among Transgender, Nonbinary and Gender-Expansive People in the United States*, 48 BMJ SEXUAL & REPRODUCTIVE HEALTH e22 (2021).....10

Human Rights Watch & ACLU of Illinois, *The Only People It Really Affects Are the People It Hurts: The Human Rights Consequences of Parental Notice of Abortion in Illinois* at 43 (March 11, 2021), https://www.aclu-il.org/sites/default/files/field_documents/us0321_web.pdf.....16

IDAHO DEPARTMENT OF HEALTH & WELFARE, *Get Healthy Idaho: Overview of Idaho*,
<https://www.gethealthy.dhw.idaho.gov/overview-of-idaho>8

J. Shoshanna Ehrlich, *Grounded in the Reality of Their Lives: Listening to Teens Who Make the Abortion Decision Without Involving Their Parents*, 18 BERKELEY WOMEN’S L.J. 61 (2003)13

James Bopp., Jr. et al., *NRLC Post-Roe Model Abortion Law*, NATIONAL RIGHT TO LIFE COMMITTEE 1 (June 15, 2022),
<https://www.nrlc.org/wp-content/uploads/NRLC-Post-Roe-Model-Abortion-Law-FINAL-1.pdf>.....29

Jamille Fields Allsbrook & Nora Ellman, *A Proactive Abortion Agenda Federal and State Policies To Protect and Expand Access*, CENTER FOR AMERICAN PROGRESS (Mar. 17, 2021),
<https://www.americanprogress.org/article/proactive-abortion-agenda/>7

Jenna Nobles et. al., <i>Menstrual Irregularity as a Biological Limit to Early Pregnancy Awareness</i> , 119 PROCEEDINGS OF THE NAT'L ACAD. OF SCIENCES 1 (2021), https://www.pnas.org/doi/epdf/10.1073/pnas.2113762118	9
Kate Coleman-Minahan et. al., <i>Adolescents Obtaining Abortion Without Parental Consent: Their Reasons and Experiences of Social Support</i> , 52 PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH 15 (2020).....	11, 14, 16, 18, 24
Kate Coleman-Minahan et. al., <i>Young Women's Experience Obtaining Judicial Bypass for Abortion in Texas</i> , 64 J. ADOLESCENT HEALTH 20 (2019).....	15
Kelcie Moseley-Morris, <i>Citing staffing issues and political climate, North Idaho hospital will no longer deliver babies</i> , IDAHO CAPITAL SUN (March 17, 2023), https://idahocapitalsun.com/2023/03/17/citing-staffing-issues-and-political-climate-north-idaho-hospital-will-no-longer-deliver-babies/	19
Kelly Jones, <i>At a Crossroads: The impact of abortion access on future economic outcomes</i> (2021), https://doi.org/10.17606/0Q51-0R11	22
KFF, <i>The Availability and Use of Medication Abortion</i> (Sept. 28, 2023), https://www.kff.org/womens-health-policy/fact-sheet/the-availability-and-use-of-medication-abortion/	17
KFF, <i>Medicaid Postpartum Coverage Extension Tracker</i> (Jan. 17, 2024), https://www.kff.org/medicaid/issue-brief/medicaid-postpartum-coverage-extension-tracker/	22
Lauren J. Ralph et al., <i>Reasons for and Logistical Burdens of Judicial Bypass for Abortion in Illinois</i> , 68 J. ADOLESCENT HEALTH 71 (2020).....	7
Lauren J. Ralph et al., <i>The Role of Parents and Partners in Minors' Decisions to Have an Abortion and Anticipated Coping After Abortion</i> , 54 J. ADOLESCENT HEALTH 428 (2014).....	13, 15, 25
Lauren van Schilfgaarde et al., <i>Tribal Nations and Abortion Access: A Path Forward</i> , 46 HARV. J.L. & GENDER 1 (2023)	9

Laurence Steinberg, <i>Does recent research on adolescent brain development inform the mature minor doctrine?</i> , 38 J. OF MEDICINE & PHILOSOPHY 256 (2013).....	28
Laurence Steinberg et al., <i>Are adolescents less mature than adults?: minors' access to abortion, the juvenile death penalty, and the alleged APA "flip-flop,"</i> 64 AM. PSYCHOLOGIST 583 (2009)	27
Laurie Schwab Zabin et al., <i>To whom do inner-city minors talk about their pregnancies? Adolescents' communication with parents and parent surrogates,</i> 24 FAMILY PLANNING PERSPECTIVES 148 (1992)	24
Laurie Schwab Zabin et al., <i>When Urban Adolescents Choose Abortion: Effects on Education, Psychological Status and Subsequent Pregnancy,</i> 22 FAMILY PLANNING PERSPECTIVES 248 (1989).....	21-22
Linda Bartlett et al., <i>Risk factors for legal induced abortion-related mortality in the United States,</i> 103 OBSTETRICS & GYNECOLOGY 729 (2004).....	17
Liza Fuentes, <i>Policy Analysis: Inequity in US Abortion Rights and Access: The End of Roe is Deepening Existing Divides,</i> GUTTMACHER INSTITUTE (Jan. 2023), https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides	8
Loretta J. Ross & Rickie Solinger, <i>REPRODUCTIVE JUSTICE: AN INTRODUCTION</i> (2017).....	9
Maternal Mortality Review Committee, <i>2021 Maternal Deaths in Idaho A report of findings by the Maternal Mortality Review Committee,</i> IDAHO DEPARTMENT OF HEALTH & WELFARE (June 2023)	21
Patricia Donovan, <i>Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions,</i> 15 FAMILY PLANNING PERSPECTIVES 259 (1983)	16

Rachel Cohen, <i>Idaho dissolves maternal mortality review committee, as deaths remain high</i> , BOISE STATE PUBLIC RADIO NEWS (July 7, 2023), https://www.boisestatepublicradio.org/news/2023-07-07/idaho-maternal-mortality-review-committee-dissolve	21
Robert D. Webster et. al., <i>Parental Involvement Laws and Parent-Daughter Communication: Policy without Proof</i> , 82 CONTRACEPTION 310 (2010)	13
Sarah Miller et al., <i>The Economic Consequences of Being Denied an Abortion</i> , NAT'L BUREAU OF ECON. RESEARCH, working paper 26662 (2022), https://www.nber.org/system/files/working_papers/w26662/w26662.pdf	22
Sarah Wood & Aletha Akers, <i>Access to Comprehensive Reproductive Health Care is an Adolescent Health Issue</i> , GUTTMACHER INSTITUTE (Nov. 2022), https://www.guttmacher.org/article/2022/11/access-comprehensive-reproductive-health-care-adolescent-health-issue	8
Saul Hoffman & Rebecca Maynard, <i>Kids Having Kids: Economic Costs and Social Consequences of Teen Pregnancy</i> (2nd ed. 2008)	21
Selena Simmons-Duffin & Shelly Cheng, <i>How many miles do you have to travel to get abortion care? One professor maps it</i> , NPR (June 21, 2023) https://www.npr.org/sections/health-shots/2023/06/21/1183248911/abortion-access-distance-to-care-travel-miles	8
Sheryl Gay Stolberg, <i>As Abortion Laws Drive Obstetricians From Red States, Maternity Care Suffers</i> , NEW YORK TIMES (Sept. 6, 2023), https://www.nytimes.com/2023/09/06/us/politics/abortion-obstetricians-maternity-care.html	19
Stanley K. Henshaw & Kathryn Kost, <i>Parental Involvement in Minors' Abortion Decisions</i> , 24 FAMILY PLANNING PERSPECTIVES 196 (1992)	13, 14, 15, 17, 24
The American College of Obstetricians and Gynecologist, <i>Increasing Access to Abortion</i> , ACOG Committee Opinion No. 815, 136 OBSTETRICS & GYNECOLOGY e107 (2020)	10

United Nations Population Fund, *Adolescent pregnancy* (May 19, 2017) <https://www.unfpa.org/adolescent-pregnancy>.....20

Ushma Upadhyay et al., *Incidence of emergency department visits and complications after abortion*, 125 *OBSTETRICS & GYNECOLOGY* 175 (2015)..... 25-26

World Health Organization, *Adolescent Pregnancy* (15 Sept. 2022), <https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy>20

INTEREST OF AMICI CURIAE

Advocates for Youth (“Advocates”) is a nonprofit organization that helps young people¹ make informed and responsible decisions about their reproductive and sexual health. For more than four decades, Advocates has partnered with youth leaders, adult allies, and youth-serving organizations to advocate for effective adolescent reproductive and sexual health programs and policies. Advocates champions youth rights to bodily autonomy and has worked to afford young people honest, affirming, inclusive sex education; access to confidential universal sexual health services; and the economic, educational, and social power to exercise their bodily autonomy and make informed decisions regarding their health and well-being. Advocates files this brief to help illuminate the facts and to contextualize the critical role of youth access to abortion and youth access to information and resources to obtain abortion care.

If/When/How: Lawyering for Reproductive Justice is a non-profit legal organization that works to transform the law and legal profession in service of reproductive justice. If/When/How provides direct legal services and engages in legal and policy advocacy, as well as public education, to ensure that young people have the legal rights and resources they need to make important decisions about their

¹ Amici refer to people under 18 as “young people” or “adolescents.” Amici use the term “minors” when referring to the legal status of people in that age group.

reproductive wellbeing. Through its national helpline, the organization provides legal information, advice, representation, and lawyer referrals to young people seeking access to abortion care. If/When/How also organizes, trains, and provides legal support to attorneys working with young people across the country.

Amicus the National Network of Abortion Funds (“NNAF”) is a national membership organization for abortion funds in the United States. NNAF has 100 member funds, which together supported over 81,690 people seeking abortions in fiscal year 2022 (the most recent comprehensive data). Abortion funds are community-based organizations that work with people, including young people, to overcome the financial and logistical obstacles that prevent people from getting the abortions they need and want. Abortion funds also play a key role in helping people navigate the increasingly complex and constantly shifting abortion landscape in the United States. NNAF is committed to organizing at the intersections of racial, economic, and reproductive justice to ensure that every person can exercise their right to determine whether, when, and how to create a family.

SOURCE OF AUTHORITY TO FILE

Counsel for Defendant-Appellant did not respond to requests for consent to file this brief. Accordingly, Amici submit this brief along with a motion for leave to file. *See* Fed.R.App.P. 29(a)(2).

FED.R.APP.P. 29(a)(4)(E) STATEMENT

No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than Advocates, If/When/How, NNAF, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief.

INTRODUCTION

Idaho Code § 18-623 violates Plaintiffs' First Amendment rights to speak about abortion, and to associate and to engage in expressive conduct regarding the same. That violation has significant and alarming consequences for the young people of Idaho, who rely on the support and assistance provided by Plaintiffs and other trusted adults to access abortion care. If permitted to go into effect, Idaho Code § 18-623 will exacerbate the already significant barriers to abortion access for adolescents; will threaten the health, safety, and well-being of adolescents; and will deprive adolescents—who are fully capable of making thoughtful, rational, and independent decisions about their own health—of access to confidential care.

Appellant and the Idaho Legislature have been clear that the purpose of § 18-623 is to curtail abortion access in any way they can and to force adolescents to involve a parent in their abortion decision-making. This forced involvement harms young people who do not have access to traditional parental support systems. And in many cases it delays or eliminates access to abortion care altogether, which only increases the health risks for those living in a state where it is already dangerous to be pregnant.

It is near impossible for a young person in Idaho to access abortion care. The state's total abortion ban prohibits abortion in all but a few exceptionally narrow circumstances. Idahoans, especially those living in rural parts of the state, must

travel hundreds of miles and shoulder significant expense—which most adolescents cannot afford on their own—to reach the nearest abortion clinic or emergency room legally able to perform an abortion. By criminalizing the trusted adults around them, Idaho Code § 18-623 cuts off the last bastion of support for many young Idahoans who must make this journey.

Abortion is safe, effective, and a critical component of comprehensive sexual and reproductive healthcare. Young people deserve access to this care on a confidential basis, and, if they choose, with the help of a supportive adult they trust. Accordingly, Amici urge this Court to affirm the district court’s order enjoining the enforcement of Idaho Code § 18-623. Only by enjoining the enforcement of Idaho Code § 18-623 will the young people of Idaho have access to the confidential, supportive care they need.

ARGUMENT

I. Adolescents everywhere face unique struggles in accessing abortion care. Idaho Code § 18-623 exacerbates those existing barriers.

Adolescents face unique and significant barriers to accessing abortion care.²

These barriers harm young people by delaying or obstructing their access to such

² Andrea J. Hoopes, et. al., *Elevating the Needs of Minor Adolescents in a Landscape of Reduced Abortion Access in the United States*, 71 J. ADOLESCENT HEALTH 530, 530 (2022).

care.³ In short, young people lack the knowledge and resources of older populations, have limited access to medication abortion, and are frequently deprived of the confidentiality, that adults expect, by laws forcing parental involvement.⁴ And for those adolescents who already face larger systematic barriers, such as Black, Indigenous, and other youth of color, young people experiencing homelessness, LGBTQ youth, immigrant youth, and young people in the foster care system, these barriers compound, making the likelihood of harm even higher.⁵

First, for a variety of reasons, adolescents are less likely than older populations to detect a pregnancy.⁶ For example, adolescents tend to have less regular periods, which can make it more difficult for them to know they are pregnant early on.⁷ They often lack knowledge of pregnancy symptoms and when or how to test for a pregnancy and are more likely to experience denial of an unwanted pregnancy.⁸

³ See American Academy of Pediatrics, *Policy Statement: The Adolescent's Right to Confidential Care When Considering Abortion*, 150 PEDIATRICS 1, 2 (2022) (“[D]ecades of evidence support that delayed or denied care is harmful to the emotional health of individuals seeking legal abortion therapies.”).

⁴ Hoopes, *supra* note 2, at 2.

⁵ Amanda E. Bryson et. al., *Call to Action: Healthcare Providers Must Speak Up for Adolescent Abortion Access*, 70 J. ADOLESCENT HEALTH 189, 189-90 (2022).

⁶ Diana Greene Foster, *THE TURNAWAY STUDY*, 85-86 (2020).

⁷ *Id.*; Emily Bridges, *Abortion and Young People in the United States*, ADVOCATES FOR YOUTH (2019), <https://advocatesforyouth.org/resources/health-information/abortion-and-young-people-in-the-united-states/>.

⁸ Foster, *supra* note 6, at 86; Cynthia Osborne & Nora Ankrum, “*Mom, I’m Pregnant*”: *The Adolescent Pregnancy Reveal*, 94 SOC. SERV. REV. 339 (2020).

“[M]ost adolescents have [the] developmental capacity to make independent health care decisions,” but “they may have less experience navigating reproductive health care decisions than older individuals;” accordingly, they may uniquely benefit from “tailored education and resources when seeking abortion.”⁹

Second, adolescents face numerous logistical barriers to accessing abortion care, which are often exacerbated by a lack of financial independence.¹⁰ Arranging transportation, missing school,¹¹ work, or family obligations—all while trying to maintain confidentiality—is extremely challenging.¹² Delay in accessing abortion care may mean a more invasive procedure and increased cost.¹³ And as distance

⁹ Hoopes, *supra* note 2, at 530-31.

¹⁰ *Id.*; see also Foster, *supra* note 6, at 86.

¹¹ Indeed, Idaho law compels school attendance for all state residents between the ages of seven and sixteen. Idaho Code § 33-202.

¹² See e.g. Jamille Fields Allsbrook & Nora Ellman, *A Proactive Abortion Agenda Federal and State Policies To Protect and Expand Access*, CENTER FOR AMERICAN PROGRESS (Mar. 17, 2021), <https://www.americanprogress.org/article/proactive-abortion-agenda/> (“Young people are less able to take time off work or school or travel to access an abortion, and they may also have to navigate requirements to disclose to their parent or guardian when they are seeking an abortion.”).

¹³ See Lauren J. Ralph et al., *Reasons for and Logistical Burdens of Judicial Bypass for Abortion in Illinois*, 68 J. ADOLESCENT HEALTH 71, 75 (2020). For example, medication abortion, often a more affordable option, is approved by the federal Food & Drug Administration for use up to 10 weeks gestational age. As of 2020, medication abortion was used in the majority of abortions in the U.S. GUTTMACHER INSTITUTE, *Medication Abortion* (Oct. 31, 2023), <https://www.guttmacher.org/state-policy/explore/medication-abortion>; see also *supra* Part II.B.

traveled for abortion care increases, delay and cost increase.¹⁴ This is of particular concern for young people in Idaho, “one of the most rural states in the nation.”¹⁵ For young people living in rural parts of the state or in poverty, the cost of arranging for and receiving abortion care is often insurmountable.¹⁶

For adolescents from marginalized communities and those with multiple, intersecting identities these barriers are significantly heightened.¹⁷ Adolescents of

¹⁴ See Liza Fuentes, *Policy Analysis: Inequity in US Abortion Rights and Access: The End of Roe is Deepening Existing Divides*, GUTTMACHER INSTITUTE (Jan. 2023), <https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides> (“The cost of finding, arranging and traveling for abortion care has risen substantially, even in communities that already faced tremendous barriers.”).

¹⁵ IDAHO DEPARTMENT OF HEALTH & WELFARE, *Get Healthy Idaho: Overview of Idaho*, <https://www.gethealthy.dhw.idaho.gov/overview-of-idaho> (last visited Jan. 23, 2024). The vast majority of the state—35 of Idaho’s 44 counties—is rural. *Id.* In this rural state, healthcare is already difficult to access. There is a shortage of primary care physicians in 98.7% of the state. *Id.* Now, with abortion banned in Idaho under Idaho Code § 18-622, Idahoans must travel hundreds of miles across states to reach the closest abortion clinic or hospital. Selena Simmons-Duffin & Shelly Cheng, *How many miles do you have to travel to get abortion care? One professor maps it*, NPR (June 21, 2023) <https://www.npr.org/sections/health-shots/2023/06/21/1183248911/abortion-access-distance-to-care-travel-miles>.

¹⁶ Sarah Wood & Aletha Akers, *Access to Comprehensive Reproductive Health Care is an Adolescent Health Issue*, GUTTMACHER INSTITUTE (Nov. 2022), <https://www.guttmacher.org/article/2022/11/access-comprehensive-reproductive-health-care-adolescent-health-issue> (“[I]ndividuals with the least financial means, greatest access barriers, and longer distances to services will face more access challenges or be forced to forgo care.”).

¹⁷ Allsbrook & Ellman, *supra* note 12 (“[P]opulations that have been systemically oppressed are less able to navigate these barriers due to the discrimination and injustices they already face.”).

color, particularly Black and Indigenous youth, seek abortion care in the context of centuries of reproductive oppression and criminalization.¹⁸ In Indigenous communities, the underfunded Indian Health Service (“IHS”), and the federal Hyde Amendment’s prohibition on funding for abortion care through IHS, mean that access to health care—including reproductive health care—remains an ongoing and serious problem.¹⁹ Black and Hispanic adolescents are also more likely to experience stress, racism, pesticide exposure, and chronic health conditions, which are linked to earlier first menstruation and irregular menstrual cycles increasing the difficulty of detecting pregnancy early on.²⁰ Transgender, non-binary, and gender-expansive minors frequently experience discrimination and worsening gender dysphoria when

¹⁸ Loretta J. Ross & Rickie Solinger, *REPRODUCTIVE JUSTICE: AN INTRODUCTION* 9-57 (2017).

¹⁹ Lauren van Schilfgaarde et al., *Tribal Nations and Abortion Access: A Path Forward*, 46 *HARV. J.L. & GENDER* 1, 5, 9, 14-15, 16, 19-20 (2023) (“The majority of funding for health services in Indian country comes from federal dollars. Thus, while the Hyde Amendment was not directed at Tribes, it has an outsized impact on Native people.”)

²⁰Hannah Lantos et. al., *State-level Abortion Restrictions will Negatively Impact Teens and Children*, *CHILD TRENDS* (November 19, 2022), <https://www.childtrends.org/blog/state-level-abortion-restrictions-will-negatively-impact-teens-and-children>; see also Jenna Nobles et. al., *Menstrual Irregularity as a Biological Limit to Early Pregnancy Awareness*, 119 *PROCEEDINGS OF THE NAT’L ACAD. OF SCIENCES* 1 (2021), <https://www.pnas.org/doi/epdf/10.1073/pnas.2113762118>.

seeking pregnancy or abortion care.²¹ Documented and undocumented adolescent immigrants and adolescents with limited English proficiency often have additional difficulty navigating the medical system due to language barriers, lack of experience with healthcare systems, and fear of deportation or criminalization.²² Finally, adolescents who are incarcerated or detained in immigration detention centers—a group disproportionately made up of those who are Black and Latinx—lack access to the necessary reproductive health services to discover a pregnancy, access non-coercive care, and obtain an abortion.²³

Idaho Code § 18-623 exacerbates these existing barriers. By criminalizing the very ways in which adults support young people seeking abortion care, this law robs young people of access to information, financial assistance, and emotional support. By cutting young people off from the trusted adults in their communities and villainizing those adults who support their decision to seek an abortion, Idaho Code

²¹ The American College of Obstetricians and Gynecologist, *Increasing Access to Abortion*, ACOG Committee Opinion No. 815, 136 OBSTETRICS & GYNECOLOGY e107, e112 (2020); see also Heidi Moseson et al., *Abortion Attempts without Clinical Supervision among Transgender, Nonbinary and Gender-Expansive People in the United States*, 48 BMJ SEXUAL & REPRODUCTIVE HEALTH e22, e23, e29 (2021).

²² ACOG, *supra* note 21, at e112.

²³ *Id.* at e111-12; see also generally Crystal M. Hayes et al., *Reproductive Justice Disrupted: Mass Incarceration as a Driver of Reproductive Oppression*, 110 AM. J. PUB. HEALTH S21 (2020); Carolyn Sufrin et al., *Abortion Access for Incarcerated People: Incidence of Abortion and Policies at U.S. Prisons and Jails*, 138 OBSTETRICS & GYNECOLOGY 330 (2021).

§ 18-623 forces young people to navigate these barriers to abortion access in isolation, further delaying and obstructing their access to care.²⁴

Additionally, Idaho Code § 18-623 perpetuates and worsens the effects of abortion stigma.²⁵ “Although abortion is common, safe and effective, choosing and obtaining an abortion is a stressful life event for some women because of barriers to access and stigma. A lack of social support is associated with less decisional certainty, and anticipated or experienced negative emotions.”²⁶ Idaho Code § 18-623 perpetuates this stigma by seeking to punish those who support and assist young people accessing abortion care.²⁷ It worsens the effects of abortion stigma by exacerbating social isolation, severely limiting the network of support available to young people.²⁸ Thus, Idaho Code § 18-623 indisputably heightens the harm

²⁴ See Kate Coleman-Minahan, et. al., *Adolescents Obtaining Abortion Without Parental Consent: Their Reasons and Experiences of Social Support*, 52 PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH 15, 18 (2020); see also *infra* Part II.C.

²⁵ *Id.* at 16.

²⁶ *Id.*

²⁷ Cf. Carol Sanger, *Decisional Dignity: Teenage Abortion, Bypass Hearings, and the Misuse of Law*, 18 COLUM. J. GENDER & L. 409, 419, 444-46, 471-72 (2009) (arguing that judicial bypass hearings, a court process through which minors may access abortion care without mandated parental involvement, serves not as a safeguard but as a punishment and to “prevent abortion”).

²⁸ Coleman-Minahan, *Adolescents Obtaining Abortion*, *supra* note 24, at 16.

disproportionately experienced by adolescents who already struggle with a myriad of logistical and financial barriers limiting their access to abortion care.

II. Idaho Code § 18-623 threatens the health, safety, and well-being of young people in Idaho.

By criminalizing the non-parent supportive adults in young people's lives, Idaho Code § 18-623 in effect forces young people in Idaho to either involve a parent in their decision to have an abortion or forgo a desired abortion altogether. This forced parental involvement (A) harms young pregnant people who do not have traditional parental support systems; (B) delays access to abortion care or forces birth on young people, which comes with significant physical and mental health risks and social and economic consequences, especially in Idaho; and (C) harms relationships between youth and the trusted adults around them, which can further isolate young people when they need help the most.

A. Idaho Code § 18-623 harms young pregnant people who may not have traditional parental support systems.

Idaho Code § 18-623 does not enhance protections for young people, and instead harms them by forcing them to involve a parent they otherwise would not or lose access to abortion care altogether. Studies overwhelmingly show that most pregnant young people already involve a parent in their abortion decision-making,

without a state mandate that they do so.²⁹ Notably, younger adolescents and those reporting a close relationship with their parents before pregnancy are significantly more likely to involve a parent in abortion decision-making.³⁰

Adolescents are most likely to disclose their pregnancy to a parent if their family has a history of warmth, closeness, and emotional support.³¹ However, inevitably there are young people who cannot involve a parent, because their parent will refuse consent, or because they do not have access to a parent to ask for consent.³² This latter point was underscored by H.K. Gray, who testified before Congress about her experience with forced parental consent requirements in Texas: “[M]y father is homeless and my mother was incarcerated. They weren’t in a

²⁹ See e.g. Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors’ Abortion Decisions*, 24 FAMILY PLANNING PERSPECTIVES 196, 200 (1992); Robert D. Webster et. al., *Parental Involvement Laws and Parent-Daughter Communication: Policy without Proof*, 82 CONTRACEPTION 310 (2010); Lauren J. Ralph et al., *The Role of Parents and Partners in Minors’ Decisions to Have an Abortion and Anticipated Coping After Abortion*, 54 J. ADOLESCENT HEALTH 428, 428-29 (2014).

³⁰ Henshaw & Kost, *supra* note 29, at 200; see also Ralph, *The Role of Parents*, *supra* note 29, at 429.

³¹ Lee Hasselbacher et al. *Factors Influencing Parental Involvement Among Minors Seeking An Abortion: A Qualitative Study*, 104 AM. J. PUB. HEALTH 2207, 2208 (2014).

³² *Id.* at 2209; see also J. Shoshanna Ehrlich, *Grounded in the Reality of Their Lives: Listening to Teens Who Make the Abortion Decision Without Involving Their Parents*, 18 BERKELEY WOMEN’S L.J. 61, 142 (2003).

situation to support me legally, financially, or emotionally.”³³ Young people may feel too much shame and stigma about abortion to discuss it with a parent.³⁴ They may anticipate their parent will disapprove or refuse to consent based on strict religious beliefs, cultural differences, or other reasons.³⁵ They may fear violence, abandonment, or the prospect of being forced to continue an unwanted pregnancy.³⁶ They may also wish to protect a vulnerable parent from stress and disappointment, believe that disclosing their intended abortion would damage their relationship with their parent, or fear that the disclosure could escalate conflict or coercion in their relationship.³⁷

Young people who choose not to involve a parent do so for reasons rooted in their own safety and well-being, to protect themselves from judgment and physical harm, to safeguard their relationship with a parent, and to protect their family from

³³ *Threats to Reproductive Rights in America Before the Subcomm. on the Const., C.R., and C.L. of the H. Comm. on the Judiciary*, 106th Cong. 14 (June 4, 2019) (statement of H.K. Gray, Activist, Youth Testify).

³⁴ Coleman-Minahan, *Adolescents Obtaining Abortion*, *supra* note 24.

³⁵ *Id.*; Hasselbacher, *supra* note 31, at 2209.

³⁶ Coleman-Minahan, *Adolescents Obtaining Abortion*, *supra* note 24; Hasselbacher, *supra* note 31, at 2209.

³⁷ Henshaw & Kost, *supra* note 29, at 213. Indeed, one-third of minors who do not inform their parents have already experienced family violence and fear it will recur. *Id.*

the stress of their pregnancy and abortion decision.³⁸ Research demonstrates that young people are good predictors of the outcomes of involving a parent in their abortion decision-making.³⁹ The research also shows that “mandating parental involvement does not promote positive family communication,” but instead can “create[] an unsafe family atmosphere for some adolescents.”⁴⁰

Idaho Code § 18-623 ignores the research and disregards the recommendations of adolescent healthcare professionals.⁴¹ Not accounting for complex family dynamics and incorrectly assuming that all young people can safely involve a supportive parent in their abortion decision-making, this law fails to account for the reality of young people’s lives—which is that forcing parental

³⁸ Kate Coleman-Minahan et. al., *Young Women’s Experience Obtaining Judicial Bypass for Abortion in Texas*, 64 J. ADOLESCENT HEALTH 20, 21-22 (2019) (citing adverse childhood experiences, fears of damaging a relationship with a parent, fear of violence, fear of judgment and shame, and fear of being forced to continue with pregnancy as reasons for not involving a parent).

³⁹ Henshaw & Kost, *supra* note 29, at 207; *see also* Ralph, *The Role of Parents*, *supra* note 29 at 431-32 (anticipating poorer coping for minors who involve an unsupportive mother compared to those who do not tell their mother or told a supportive mother).

⁴⁰ AAP, *Adolescent’s Right to Confidential Care* (2022), *supra* note 3, at 2. Mandating parental involvement also does not prevent “regret” or increase the minor’s level of satisfaction with the decision. Rather, minors are the most content with their decision whether to receive an abortion or not when that decision was their own. American Academy of Pediatrics, *Policy Statement: The Adolescent’s Right to Confidential Care When Considering Abortion* 139 Pediatrics 1, 6 (2017).

⁴¹ *See, e.g.*, AAP, *Adolescent’s Right to Confidential Care* (2022), *supra* note 3, at 5.

involvement in an adolescent's abortion decision may be punitive, coercive, or abusive.⁴² Idaho Code § 18-623 thus threatens the well-being of those adolescents seeking abortion care who, for whatever reason, cannot or choose not to involve a parent.

B. Idaho Code § 18-623 forces birth and other attendant harms on young people.

If allowed to go into effect, Idaho Code § 18-623 will delay minors' access to abortion care or eliminate it altogether by eliminating networks of supportive adults and seeking to force parental involvement in their abortion-decisions. Delayed or denied access to abortion care can have numerous harmful physical, psychological and social impacts.

1. Adolescents are already more likely to receive a later abortion due to challenges in detecting a pregnancy in the first place. *See supra* Part II.A. Forced parental involvement has been shown to delay abortion care even longer for

⁴² Patricia Donovan, *Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions*, 15 FAMILY PLANNING PERSPECTIVES 259 (1983); *see also* Human Rights Watch & ACLU of Illinois, *The Only People It Really Affects Are the People It Hurts: The Human Rights Consequences of Parental Notice of Abortion in Illinois* at 43 (March 11, 2021), https://www.aclu-il.org/sites/default/files/field_documents/us0321_web.pdf (“Providers saw parents belittle, humiliate, or punish their patients while they received abortion care, even if the parents did not ultimately interfere with the young person’s abortion decision.”); Coleman-Minahan, *Adolescents Obtaining Abortion*, *supra* note 24, at 20 (“[W]e hypothesize that abortion stigma and rejection by loved ones may be more profoundly damaging to adolescents than adults because of the former group’s reliance on family as their main source of social support.”).

adolescents and in some instances, to push the abortion into the second trimester.⁴³ The medical risks of first-trimester abortions are exceedingly low. Most can be completed using medication, a method that is 99.6% effective and carries a risk of major complications of just 0.4%.⁴⁴ Later-trimester (after 14 weeks gestation), which may require a surgical procedure or labor induction, as opposed to a medical abortion, increase the medical risks (and the financial costs) to the patient.⁴⁵ Indeed, the health risks associated with abortion increase significantly, by as much as 38%, each week an abortion is delayed.⁴⁶

Forcing a young person to involve a parent can also eliminate their ability to receive abortion care altogether. For example, the parent may refuse consent and

⁴³ Alisha Kramer et al., *The impact of parental involvement laws on minors seeking abortion services: a systematic review*, 1 HEALTH AFFAIRS SCHOLAR, 1, 10, 11 (2023); see also Henshaw & Kost, *supra* note 29, at 204. Studies in several states have shown that second trimester abortions amongst adolescents increased by approximate 20% after forced parental involvement laws were enacted. See AAP, *Adolescent's Right to Confidential Care* (2017), *supra* note 40, at 5 (collecting studies).

⁴⁴ KFF, *The Availability and Use of Medication Abortion* (Sept. 28, 2023), <https://www.kff.org/womens-health-policy/fact-sheet/the-availability-and-use-of-medication-abortion/>.

⁴⁵ Linda Bartlett et al., *Risk factors for legal induced abortion-related mortality in the United States*, 103 OBSTETRICS & GYNECOLOGY 729 (2004); Bonnie Scott Jones & Tracy A. Weitz, *Legal Barriers to Second-Trimester Abortion Provision and Public Health Consequences*, 99 AM. J. PUB. HEALTH 623, 623-24 (2009); Daniel Grossman et al., *Complications after Second Trimester Surgical and Medical Abortion*, 16 REPRODUCTIVE HEALTH MATTERS 173, 173-74 (2008).

⁴⁶ Bartlett, *supra* note 45.

take action to delay or obstruct their access to care for too long.⁴⁷ Pregnancy carries serious risks that should not be overlooked. Indeed, it is far more dangerous for a person to be forced to carry a pregnancy to term than to receive an abortion. The risk of death from childbirth in the United States is “*14 times higher* than the risk from induced abortion.”⁴⁸ The risks of other medical complications and morbidities is similarly significantly higher for childbirth than for abortion.⁴⁹

These risks are heightened in Idaho. Right now, it is dangerous to be pregnant in the state. Idaho already had the fewest active physicians per capita of any state in the country⁵⁰ and that number is quickly dwindling due to Idaho’s total abortion ban. Faced with the prospect of two to five years in prison for providing standard abortion care under Idaho’s total abortion ban, OBGYNs are leaving Idaho in droves.⁵¹

⁴⁷ Coleman-Minahan, *Adolescents Obtaining Abortion*, *supra* note 24, at 20.

⁴⁸ Caitlin Gerdt, *Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth after an Unwanted Pregnancy*, 26 WOMEN’S HEALTH ISSUES 55, 55 (2016) (emphasis added).

⁴⁹ *Id.*; see also Grace Keegan et al., *Trauma of abortion restrictions and forced pregnancy: urgent implications for acute care surgeons*, 8 TRAUMA SURGERY & ACUTE CARE OPEN 1, 3 (2023) (“[P]regnancy itself carries far greater health risks than legal abortions[.]”).

⁵⁰ Association of American Medical Colleges, *2021 State Physician Workforce Data Report*, 4, 7 (2022), <https://www.aamc.org/data-reports/workforce/report/state-physician-workforce-data-report>.

⁵¹ Adriana Diaz et al., “*Hopeless and frustrated*”: *Idaho’s abortion ban is driving OB/GYNs out of the state*, CBS NEWS (Oct. 31, 2023), <https://www.cbsnews.com/news/idaho-near-total-abortion-ban-driving-doctors-out-of-the-state/>.

Because of the severity of the ban, at least one Idaho maternity ward has closed and five of Idaho’s nine maternal-fetal experts—more than 50%—have either left the state or retired.⁵²

In addition, in Idaho a pregnant person cannot obtain an abortion in an emergency until they are on the brink of death. For certain medical emergencies experienced by pregnant people, abortion care is the necessary stabilizing treatment. But under the total ban, pregnant people can only get an abortion in a few exceptionally narrow circumstances: to save the life—but not the health—of the pregnant person, Idaho Code § 18-622(2)(a)(i); to terminate “an ectopic or molar pregnancy,” *id.* § 18-604(1)(c); or to terminate certain pregnancies resulting from rape or incest, *id.* § 18-622(2)(b). Thus, even in a medical emergency that threatens the pregnant person’s organs, bodily functions, or future fertility, a physician cannot perform an abortion—the necessary, standard care under these circumstances—in Idaho.⁵³

⁵² Kelcie Moseley-Morris, *Citing staffing issues and political climate, North Idaho hospital will no longer deliver babies*, IDAHO CAPITAL SUN (March 17, 2023), <https://idahocapitalsun.com/2023/03/17/citing-staffing-issues-and-political-climate-north-idaho-hospital-will-no-longer-deliver-babies/>; Sheryl Gay Stolberg, *As Abortion Laws Drive Obstetricians From Red States, Maternity Care Suffers*, NEW YORK TIMES (Sept. 6, 2023), <https://www.nytimes.com/2023/09/06/us/politics/abortion-obstetricians-maternity-care.html>.

⁵³ This spring the Supreme Court will consider the Federal Government’s challenge to Idaho’s abortion law asserting that the provision that criminalizes providing

The unavailability of this care is especially concerning for young people forced to carry an unwanted pregnancy. Adolescents experience serious pregnancy-related complications at higher rates than adults, including eclampsia, preeclampsia, and infections.⁵⁴ In fact, complications from pregnancy and childbirth are the leading cause of death among adolescent girls.⁵⁵

While erecting near insurmountable barriers to abortion care, Idaho has turned a blind eye to the fatal consequences of its laws. Last year, Idaho legislators disbanded the state’s Maternal Mortality Review Committee—a committee whose purpose was to investigate the root causes of maternal deaths in the state, making Idaho the only state in the nation without such mortality review.⁵⁶ While still in

stabilizing emergency care to a pregnant person whose life is not in danger conflicts with the Emergency Medical Treatment and Labor Act (“EMTALA”). *See Idaho v. United States*, __ S.Ct. __, 2024 WL 61828 (U.S. Jan. 5, 2024) (No. 23-726). On January 5, 2024, the Supreme Court lifted a stay that lower courts put in place that had prevented Idaho from enforcing the law in a way that conflicts with EMTALA. *Id.*

⁵⁴ See World Health Organization, *Adolescent Pregnancy* (15 Sept. 2022), <https://www.who.int/news-room/fact-sheets/detail/adolescent-pregnancy>; D. Jeha et. al., *A review of the risks and consequences of adolescent pregnancy*, 8 J. NEONATAL-PERINATAL MEDICINE 1, 3 (2015).

⁵⁵ United Nations Population Fund, *Adolescent pregnancy* (May 19, 2017) <https://www.unfpa.org/adolescent-pregnancy>

⁵⁶ Audrey Dutton, *Idaho Banned Abortion. Then It Turned Down Supports for Pregnancies and Births*, PROPUBLICA (Oct. 2, 2023), <https://www.propublica.org/article/idaho-banned-abortion-support-pregnancies-families>.

operation, the MMRC determined that maternal deaths in Idaho had increased more than 50 percent from 2019 to 2021, and nearly all of the deaths were preventable.⁵⁷ With increasing deaths and without any oversight, it is indisputable that the health risks of being pregnant in Idaho are very real.

2. Being forced to carry an unwanted pregnancy to term has other negative effects, beyond the physical risks. In the short term, people denied abortions experience elevated levels of anxiety, stress, and lower self-esteem.⁵⁸ In the longer term, an unintended birth has the potential to derail an adolescent's educational plans and career, and that economic impact can last for years. Compared with peers who have abortions, adolescents who bear children are at significantly higher risk of educational deficits and economic disadvantage.⁵⁹ Evidence suggests that access to confidential abortion care from age 15 to 23 increases the probability of individuals completing college by 72%, especially for Black women whose chances of

⁵⁷ Maternal Mortality Review Committee, *2021 Maternal Deaths in Idaho A report of findings by the Maternal Mortality Review Committee*, IDAHO DEPARTMENT OF HEALTH & WELFARE (June 2023); Rachel Cohen, *Idaho dissolves maternal mortality review committee, as deaths remain high*, BOISE STATE PUBLIC RADIO NEWS (July 7, 2023), <https://www.boisestatepublicradio.org/news/2023-07-07/idaho-maternal-mortality-review-committee-dissolve>.

⁵⁸ Foster, *supra* note 6, 22, 39.

⁵⁹ See generally Saul Hoffman & Rebecca Maynard, *Kids Having Kids: Economic Costs and Social Consequences of Teen Pregnancy* (2nd ed. 2008); Laurie Schwab Zabin et al., *When Urban Adolescents Choose Abortion: Effects on Education, Psychological Status and Subsequent Pregnancy*, 22 FAMILY PLANNING PERSPECTIVES 248 (1989).

completing college increased 2- to 3-fold.⁶⁰ Access to abortion care also increases rates of workforce participation, professional occupational attainment, and future employment earnings, while decreasing the chance that an individual will live in poverty, file for bankruptcy, be evicted from their home, or have a debt-related court order entered against them.⁶¹

Significantly, Idaho has declined to provide any additional support for individuals and families now forced to carry a pregnancy to term in Idaho. For example, last year the Idaho Legislature refused to expand postpartum Medicaid coverage to 12 months, making it just one of a handful of states that chose not to do so.⁶² It also declined to accept tens of millions of dollars in federal grants that would have supported childcare providers, provided childcare subsidies for low-income families, and helped efforts to prevent child abuse and neglect.⁶³ In short, Idaho's

⁶⁰ Kelly Jones, *At a Crossroads: The impact of abortion access on future economic outcomes*, 14-15 (2021), <https://doi.org/10.17606/0Q51-0R11>.

⁶¹ *Id.*, Foster, *supra* note 6, 163-86; Sarah Miller et al., *The Economic Consequences of Being Denied an Abortion*, NAT'L BUREAU OF ECON. RESEARCH, working paper 26662, at 35-38 (2022), https://www.nber.org/system/files/working_papers/w26662/w26662.pdf.

⁶² Dutton, *Idaho Banned Abortion*, *supra* note 56; KFF, *Medicaid Postpartum Coverage Extension Tracker* (Jan. 17, 2024), <https://www.kff.org/medicaid/issue-brief/medicaid-postpartum-coverage-extension-tracker/>.

⁶³ Audrey Dutton, *Idaho budget committee votes to cut funding for child care, family supports*, IDAHO CAPITAL SUN (Feb. 27, 2023), <https://idahocapitalsun.com/2023/02/27/idaho-budget-committee-votes-to-cut-funding-for-child-care-family-supports/>.

laws force minors to continue unwanted pregnancies despite the health and social implications and then provides no support during pregnancy or after birth.

C. Idaho Code § 18-623 creates fear and distrust between youth and supportive adults, which can lead to further isolation, abortion stigma, and insecurity.

Idaho Code § 18-623 is a vague and confusing law, *see* Resp. Br. of Appellees, Dkt. 20.1, at 5-7, 48-54, that has a chilling effect on the support provided by trusted adults in a young person’s life by threatening criminal liability.⁶⁴ In addition, the lack of clarity with regard to what behavior or speech the law actually applies to, sows confusion amongst young people and those who wish to support them. *Id.* Despite this confusion, what is clear is that Idaho’s lawmakers intend to force some level of parental involvement in young people’s abortion decision-making. But notably parental consent serves only as an affirmative defense and not an exception to the law. *See* Idaho Code § 18-623(2) (“It shall be an affirmative defense to a prosecution under subsection (1) of this section that a parent or guardian of the pregnant minor consented to trafficking of the minor.”). Because of this confusing and deceptive

⁶⁴ In addition to being vague and confusing, Idaho Code § 18-623 mischaracterizes the trafficking of minors. Minors who seek out assistance from trusted adults to receive necessary healthcare are not being forced to act or coerced against their will, like the victims of sex trafficking or human trafficking. *See* Resp. Br. of Appellees, Dkt. 20.1 at 52-53. Rather, the Idaho Legislature has co-opted anti-trafficking rhetoric to further restrict abortion access. But by doing so the Idaho Legislature belittles the experiences of youth trafficking survivors and diverts attention, resources, and support away from real trafficking victims.

legal framing, an adult who assists a minor—even with the consent of their parent—in obtaining an abortion, can still be arrested, charged, and forced to endure the costs and emotional toll of a jury trial, at which they will carry the burden of proving that the minor’s parent consented to the assistance. *See Smith v. United States*, 568 U.S. 106, 112 (2013) (the burden of proving an affirmative defense is on the criminal defendant). Such a prospect almost certainly lessens or eliminates even an exceptionally supportive adult’s ability and willingness to assist a minor.

The research shows that adolescents who do not engage their parents in their decision to have an abortion typically involve another trusted adult such as an older relative, counselor, or teacher.⁶⁵ Social support is a key component in young people’s access to abortion care.⁶⁶ Forcing young people to involve unsupportive parents while simultaneously isolating them from the supportive adults in their lives will likely cause significant harm.⁶⁷ Minors who feel they cannot tell their parents and who cannot get support from another trusted adult because of Idaho Code § 18-623

⁶⁵ Laurie Schwab Zabin et al., *To whom do inner-city minors talk about their pregnancies? Adolescents’ communication with parents and parent surrogates*, 24 FAMILY PLANNING PERSPECTIVES 148 (1992); Henshaw & Kost, *supra* note 29, at 205.

⁶⁶ Coleman-Minahan, *Adolescents Obtaining Abortion*, *supra* note 24, at 20.

⁶⁷ *Id.* at 18.

are at a high risk of becoming isolated from those around them.⁶⁸ Isolating young people from their support networks creates a culture of distrust, deters them from seeking needed services, and endangers adolescent victims of abuse.⁶⁹ It also jeopardizes the health of minors who feel they have no other choice but to terminate their unwanted pregnancy outside of a clinical setting.⁷⁰ Idaho Code § 18-623 forces these minors, who already have limited resources and knowledge, to face the decision of if and how to obtain an abortion alone.

III. Adolescents deserve confidential access to abortion care.

Abortion is an essential component of comprehensive sexual and reproductive healthcare. It is safe and effective for adolescents.⁷¹ Yet Idaho law assumes

⁶⁸ *Id.*; see also Ralph, *The Role of Parents*, *supra* note 29, at 429 (“[P]erceived lack of support can influence young women’s feelings of self-efficacy to cope with the decision.”).

⁶⁹ See American Academy of Pediatrics, *The Importance of Access to Abortion* (last visited Jan. 20, 2024), <https://www.aap.org/en/patient-care/adolescent-sexual-health/equitable-access-to-sexual-and-reproductive-health-care-for-all-youth/the-importance-of-access-to-abortion/> (parental involvement laws do not “improv[e] family communication or relationships,” “[p]uts youth at risk of punishment, coercion, or abuse,” and “[d]eters adolescents from seeking health services”).

⁷⁰ See Keegan, *supra* note 49, at 2-3.

⁷¹ AAP, *The Importance of Access to Abortion*, *supra* note 69; Ushma Upadhyay et al., *Incidence of emergency department visits and complications after abortion*, 125 OBSTETRICS & GYNECOLOGY 175 (2015). This United States-based retrospective cohort study captured all complications within six weeks of 54,911 surgical and medical abortions. Adolescents experienced the lowest rate of abortion-related complications—1.5%—of any age group. *Id.*

adolescents are incapable of deciding, without a parent, whether to seek abortion care. This assumption is misguided.

The legal presumption that adolescents are incapable of making personal healthcare decisions seems only to apply in cases involving the decision to have an abortion. In contrast, nearly every state, and the federal government, considers minors capable enough to consent to contraceptive, prenatal, and sexually transmitted infection (“STI”) services without parental involvement, including, to some extent, Idaho.⁷² Many states also permit all or some minors to make decisions regarding the health and welfare of their children, or to place their children for adoption, without their own parents’ knowledge or consent.⁷³ And no state requires a “minor’s parent to consent to the minor’s decision to continue [a] pregnancy when the parent believes that terminating the pregnancy is in the minor’s best interest.”⁷⁴

⁷² See, e.g., Idaho Code § 39-3801(providing that minors over 14 may consent to care for “any infectious, contagious, or communicable disease,” which includes STIs); see also 42 U.S.C. § 300 *et seq.* (providing for federal grants for family planning under Title X); 42 C.F.R §§ 59.5(a)(4), 59.10(b) (“Title X projects may not require consent of parents or guardians[.]”); GUTTMACHER INSTITUTE, *An Overview of Consent to Reproductive Health Services by Young People* (August 30, 2023), <https://www.guttmacher.org/state-policy/explore/overview-minors-consent-law>.

⁷³ AAP, *Adolescent’s Right to Confidential Care* (2017), *supra* note 40, at 3; GUTTMACHER INSTITUTE, *An Overview of Consent to Reproductive Health Services by Young People*, *supra* note 72.

⁷⁴ AAP, *Adolescent’s Right to Confidential Care* (2017), *supra* note 40, at 3; GUTTMACHER INSTITUTE, *An Overview of Consent to Reproductive Health Services by Young People*, *supra* note 72.

This contradiction—that a minor is deemed capable of making all other healthcare-related and family planning decisions *except* for whether to have an abortion—solely serves adult interests at the expense of the health, safety, and well-being of adolescents.

There is no evidence to suggest that a person suddenly becomes a competent decision-maker at the age of 18.⁷⁵ Indeed, “[r]esearch demonstrates that most adolescents are capable of medical decision-making by age 14, are as competent as adults to provide consent to abortion, and are able to make voluntary, rational, independent decisions.”⁷⁶ In addition, research shows that contrary to volatile, heat-of-the-moment situations that elicit impulsivity and make it harder for adolescents to resist peer pressure, the decision to have an abortion is one that adolescents typically make after due consideration and consultation with an adult.⁷⁷ The evidence shows adolescents can understand the risks and benefits of receiving

⁷⁵ AAP, *Adolescent’s Right to Confidential Care* (2022), *supra* note 3, at 3 (“The age of 18 years is a convenient legal dividing line, but does not accurately identify when an individual develops decision-making capacity.”).

⁷⁶ *Id.*

⁷⁷ Laurence Steinberg et al., *Are adolescents less mature than adults?: minors’ access to abortion, the juvenile death penalty, and the alleged APA “flip-flop,”* 64 AM. PSYCHOLOGIST 583, 586 (2009).

abortion care and can make voluntary, rational, and independent decisions about whether to obtain such care.⁷⁸

Because adolescents can decide whether to obtain an abortion on their own, they should also be able to make such decisions confidentially. Young people are less likely to seek reproductive and sexual healthcare if they fear their privacy will be violated. Even a perceived lack of confidentiality in healthcare regarding sexual issues can deter adolescents from seeking services.⁷⁹ Idaho Code § 18-623 in effect robs young people of the ability to make such decisions confidentially or with the assistance of only those whom they choose to involve.

Appellant insists that the purpose of Idaho Code § 18-623 is to protect parental rights, improve family communication and relationships, or protect the physical or emotional health of pregnant adolescents. *See* Def's Opp. to Pls' Mot. Temp. Restraining Order or, in the Alternative, Preliminary Injunction, 3-ER-262-63, 266, 270. But there is no supporting evidence that these goals are achieved by preventing non-parent supportive adults from helping an adolescent to receive an abortion in a state with fewer restrictions than Idaho. Moreover, the authors of the model code on which Idaho Code § 18-623 is based have made clear that they wrote the model

⁷⁸ Laurence Steinberg, *Does recent research on adolescent brain development inform the mature minor doctrine?*, 38 J. OF MEDICINE & PHILOSOPHY 256 (2013).

⁷⁹ AAP, *Adolescent's Right to Confidential Care* (2017), *supra* note 40, at 5.

legislation to further curtail abortion access and ensure “an effective enforcement regime,” not because of an interest in “parental rights.”⁸⁰ The Idaho legislators sponsoring Idaho Code § 18-623 have focused on “parental rights”⁸¹ to obfuscate the law’s origins and goals.

Young people are experts on their own lives. They can make decisions about their own healthcare. When they want to consult a parent about a healthcare decision, they can, but they should not be forced to do so. They deserve the ability to make confidential abortion care decisions with or without the support of a trusted adult of their own choosing. Idaho Code § 18-623 is a direct barrier to these freedoms and should not be permitted to go into effect.

CONCLUSION

For the foregoing reasons, Amici respectfully requests that this Court affirm the decision below.

⁸⁰ James Bopp, Jr. et al., *NRLC Post-Roe Model Abortion Law*, NATIONAL RIGHT TO LIFE COMMITTEE 1 (June 15, 2022), <https://www.nrlc.org/wp-content/uploads/NRLC-Post-Roe-Model-Abortion-Law-FINAL-1.pdf> (“There are two major parts to legislation to protect unborn life. First is the substantive part: which abortions will be prohibited by the law and which abortions will be allowed and under what conditions. . . . The second part is an effective enforcement regime.”); *see id.* at 5, 7, 14 (explaining and proposing model legislation prohibiting the “Illegal Abortion Trafficking of Minor”).

⁸¹ Alanna Vagianos, *Idaho Is About To Be The First State To Restrict Interstate Travel For Abortion Post-Roe*, HUFFPOST (Mar. 28, 2023), https://www.huffpost.com/entry/idaho-abortion-bill-trafficking-travel_n_641b62c3e4b00c3e6077c80b.

Dated: January 24, 2024

Respectfully submitted,

/s/ Colleen R. Smith

Colleen R. Smith
STRIS & MAHER LLP
1717 K Street NW Suite 900
Washington, DC 20006
Telephone: (202) 800-5749
csmith@stris.com

Alanna Peterson
NATIONAL NETWORK OF
ABORTION FUNDS
9450 SW Gemini Drive
Beaverton, OR 97008-7105
Telephone: (253) 470-6143
alanna@abortionfunds.org

Chelsea Gonzalez
ADVOCATES FOR YOUTH
1325 G Street NW, Suite 980
Washington, DC 20005
Telephone: (202) 419-3420
chelsea@advocatesforyouth.org

*Counsel for Amicus Curiae Advocates
for Youth*

Alexander M. Wolf
Drew M. Padley
STEPTOE LLP
717 Texas Avenue, Suite 2800
Houston, Texas 77002
Telephone: 713.221.2300
awolf@steptoe.com
dpadley@steptoe.com

Jessica S. Goldberg
IF/WHEN/HOW: LAWYERING FOR
REPRODUCTIVE JUSTICE
1714 Franklin Street # 100-393
Oakland, CA 94612-3409
Telephone: (602) 892-0940
jessica.goldberg@ifwhenhow.org

*Counsel for Amicus Curiae National
Network of Abortion Funds*

*Counsel for Amicus Curiae
If/When/How: Lawyering for
Reproductive Justice*

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 6999 words, excluding the parts of the brief exempted by the Federal Rule of Appellate Procedure (32)(f).

Undersigned counsel certifies that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionately spaced 14-point Times New Roman typeface using Microsoft Word 2019.

Dated: January 24, 2024

Respectfully submitted,

STRIS & MAHER LLP

/s/ Colleen R. Smith

Colleen R. Smith

Counsel for Amici Curiae