

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

No. 24-1243

THE SATANIC TEMPLE

Plaintiff-Appellant

v.

RAUL LABRADOR et al

Defendants-Appellees

Appeal from the United States
District Court for Idaho

No. 1:22-cv-00411-DCN

David C. Nye, *Judge*

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THE SATANIC TEMPLE,

Plaintiff,

v.

RAUL LABRADOR, in his capacity as
the Attorney General of Idaho; JAN M.
BENNETTS, in her capacity as Ada
County Prosecutor; and THE STATE OF
IDAHO,

Defendants.

Case No. 1:22-cv-00411-DCN

JUDGMENT

In accordance with the Court's Memorandum Decision and Order entered concurrently herewith,

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of Defendants and this case CLOSED.



DATED: January 31, 2024


David C. Nye
Chief U.S. District Court Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THE SATANIC TEMPLE,

Plaintiff,

v.

RAUL LABRADOR, in his capacity as
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IDAHO,

Defendants.

Case No. 1:22-cv-00411-DCN

**MEMORANDUM DECISION AND
ORDER**

I. INTRODUCTION

Before the Court is Defendants Raul Labrador, Jan Bennetts, and the State of Idaho's Motion to Dismiss. Dkt. 23. The Court held oral argument on December 6, 2023, and took the matter under advisement. Upon review, and for the reasons set forth below, the Court GRANTS the Motion and DISMISSES this case.

II. OVERVIEW and BACKGROUND

In the summer of 2022, the United States Supreme Court overruled its prior holdings in *Roe v. Wade* and *Casey v. Planned Parenthood* that the Constitution guarantees a right to abortion. *Dobbs v. Jackson Women's Health*, 142 S. Ct. 2228, 2243 (2022). Decisions regarding those weighty matters were "return[ed] . . . to the people's elected representatives." *Id.*

Shortly after the *Dobbs* decision, the State of Idaho enacted various statutes outlawing (and criminalizing) abortion. At issue today are Idaho Code § 18-604 et seq. (the “Criminal Abortion Statute”) and the criminal and civil sanctions imposed by Idaho Code § 18-8801 et seq. (the “Fetal Heartbeat Statute”) on abortion providers.

After the enactment of these statutes, The Satanic Temple (“TST”) filed the instant case arguing Defendants actions have: (1) effected a regulatory taking of the economic value of a pregnant woman’s womb in violation of the Fifth Amendment; (2) effectively made pregnant women into slaves in violation of the Thirteenth Amendment; (3) given unconstitutional preferences to rape victims in violation of the Fourteenth Amendment; and (4) violated Idaho’s religious freedom statutes.¹ *See generally* Dkt. 15.

On March 14, 2023, Defendants filed a Motion to Dismiss. Dkt. 23. Therein, they allege: (1) certain Defendants are immune from suit; (2) TST does not have standing; and (3) even if it did have standing, it has not pleaded cognizable legal claims. *Id.* at 10. TST opposed the motion. Dkt. 30.

After briefing on the Motion was complete, TST filed a Motion for Leave to File a Sur-Reply arguing Defendants had raised certain arguments for the first time in their reply brief. Dkt. 36. Defendants did not agree with TST’s characterization of its briefs, but nonetheless, did not oppose the request. Dkt. 38. Accordingly, the Court granted the same

¹ While some of TST’s arguments are interesting and unique in the legal sense—such as whether a woman’s uterus has economic value and deserves compensation—some of its arguments border on the offensive—such as comparing women who are “forced” to carry a child to African American slave women in the antebellum south. Defendants shared similar observations at oral argument much to the dismay of TST. Regardless of any stigma that may be associated with TST itself, its beliefs, or its arguments, the Court evaluates the claims at issue solely on the merits.

and allowed TST an opportunity to file a short sur-reply. Dkt. 40.

On December 4, 2023, Defendants filed a Notice of Supplemental Authority. Dkt. 45. Herein, Defendants brought to the Court's attention a decision from the United States District Court for the Southern District of Indiana, *Satanic Temple, Inc. v. Rokita*, that addressed many of the issues presently before the Court. The cited decision was issued on October 25, 2023. The Court had already located this decision (as it arose after briefing on the current motion but before the hearing), but appreciates Counsel's diligence in bringing it up nonetheless.

Similarly, on December 4, 2023, TST filed a Notice of Supplemental Authority. Dkt. 46. Here, TST directs the Court to various decisions from the *GenBioPro, Inc. v. Sorsaia* case out of the Southern District of West Virginia. 2023 WL 5490179 (S.D.W. Va. Aug. 24, 2023). In particular, it highlights an August 24, 2023, decision from that court dealing with the legal principle of preemption, the FDA's regulatory scheme regarding mifepristone, and whether nurses can prescribe that particular drug via telemedical consultations. *Id.* The Court will address that case in more detail below, but finds it unhelpful to the current posture of this case. Again, however, it appreciates Counsel's diligence in keeping the Court apprised of changes in this ever-changing area of law.

As noted, oral argument was held on December 6, 2023, and the matter is now ripe for review.

III. LEGAL STANDARD

A motion to dismiss based upon a defendant's Eleventh Amendment sovereign immunity may be brought under either Federal Rule of Civil Procedure 12(b)(1) or

12(b)(6). *See Sato v. Orange Cnty. Dep't of Educ.*, 861 F.3d 923, 927 n.2 (9th Cir. 2017). A motion to dismiss based upon a plaintiff's lack of Article III standing is properly brought under Rule 12(b)(1). *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). And a motion to dismiss based on the "absence of sufficient facts alleged under a cognizable legal theory" is properly brought under Rule 12(b)(6). *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1208 (9th Cir. 2019).

A. Rule 12(b)(1)

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) challenges the Court's subject matter jurisdiction. A lack of jurisdiction is presumed unless the party asserting jurisdiction establishes that it exists. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Thus, the plaintiff bears the burden of proof on a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. *Sopcak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995). If the court determines that it does not have subject matter jurisdiction, it must dismiss the claim. Fed. R. Civ. P. 12(h)(3).

B. Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a claim if the plaintiff has "fail[ed] to state a claim upon which relief can be granted." "A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008) (cleaned up). Federal Rule of Civil Procedure 8(a)(2) requires a complaint to contain "a short and plain statement of the claim showing

that the pleader is entitled to relief,” in order to “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007). “This is not an onerous burden.” *Johnson*, 534 F.3d at 1121.

A complaint “does not need detailed factual allegations,” but it must set forth “more than labels and conclusions, and a formulaic recitation of the elements.” *Twombly*, 550 U.S. at 555. The complaint must also contain sufficient factual matter to “state a claim to relief that is plausible on its face.” *Id.* at 570.

In deciding whether to grant a motion to dismiss, the court must accept as true all well-pleaded factual allegations made in the pleading under attack. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). A court is not, however, “required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

In cases decided after *Iqbal* and *Twombly*, the Ninth Circuit has continued to adhere to the rule that dismissal of a complaint without leave to amend is inappropriate unless it is beyond doubt that the complaint could not be saved by an amendment. *See Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009).

IV. ANALYSIS

Defendants assert this case is “about abortion, from start to finish.” Dkt. 23-1, at 24. TST, on the other hand, asserts this case addresses “what rights, if any, [] a woman [has] when her body is conscripted by the state of Idaho *without her consent* to incubate and give birth to a prenatal person.” Dkt. 30, at 8 (emphasis in original). The Court wishes to address

this issue at the outset as the way in which this case is “framed” makes a difference in the outcome.

Throughout its briefing and at oral argument, TST argued Defendants have “eviscerate[d] a woman’s fundamental right to engage in protected sex,” *id.* at 12, and/or otherwise “burden[ed] the exercise of a fundamental right [to engage in protected sex].” *Id.* at 30. But Defendants do no such thing. The statutes at issue do not discuss the right to engage in private sexual activities in any way. The regulations are directed at pregnancy and abortion. Now, it goes without saying that pregnancy—and, therefore, abortion—are not possible without some initial sexual activity,² but the fact remains that Defendants’ actions are not directed at the act of sex or any restrictions thereon. The regulations do not burden that right in any way. TST’s arguments on this wise miss the mark. The challenged regulations here deal with abortion. As already noted, there is no longer a federally recognized constitutional right to abortion. There is no right to abortion in the state of Idaho either. The lack of an option for abortion is what gives rise to TST’s causes of action; not anything having to do with the act of sex.

A deeper review of the facts of this case illustrates why TST’s arguments are misplaced, even by its own admissions.

After the *Dobbs* decision, TST formed an abortion clinic called “Samuel Alito’s Mom’s Satanic Abortion Clinic” (“the Clinic”)³ to combat state laws banning abortion,

² Unless pregnancy was the result of in vitro fertilization. But more on that later.

³ Defendants take issue with the fact that the Clinic is owned and operated by “The Satanic Temple, Inc.” and the Plaintiff in this case is “The Satanic Temple.” Dkt. 23-1, at 17. In response, TST explains that it was incorporated as a Massachusetts religious organization in 2017 using the name “The Satanic Temple,” but changed its name to “The Satanic Temple, Inc.” in 2019. Dkt. 30, at 7n.1. It requests leave to amend its

including those in Idaho. The Clinic supports TST’s effort to create a wider health network: *TST Health*. The Clinic is “located” in New Mexico. It does not appear there are any brick-and-mortar locations for TST Health; rather, the Clinic is a telehealth network of licensed medical professionals who prescribe abortifacient drugs to members of TST who wish to induce abortions at home. The Clinic does not currently prescribe abortifacients to any of TST’s members in Idaho for fear of prosecution but asserts it would like to expand its services into Idaho if it could “lawfully do so.” Dkt. 30, at 18. TST claims it is harmed by Idaho’s law criminalizing abortion.

Members of TST wishing to have an abortion perform the Satanic Abortion Ritual. Dkt. 15-1. This self-described “destruction ritual” mandates, among other things, that the pregnant woman look at her own reflection and recite a personal affirmation as follows: “By my body, my blood; By my will, it is done.” *Id.*, at 2, 4. Members of TST assert Idaho’s new laws prevent them from engaging in this personal abortion ritual by dictating that women cannot legally end a pregnancy if they so desire.

Thus, to reiterate, both the alleged organizational harm the Clinic has suffered, and the alleged individual harm members of TST suffer relate to abortion, not sexual activity. That is the lens through which the Court views the arguments today.

Defendants raise four primary justifications in support of their Motion to Dismiss. The Court will address each in turn.

Amended Complaint to clarify its current and proper name. *Id.* The Court understands Defendants position, but finds such amendment is unnecessary considering its ruling today dismissing the case on other grounds.

A. Sovereign Immunity

As an initial matter, TST has named “the State of Idaho” as a Defendant in this suit. In their opening brief, Defendants argue the State of Idaho cannot be sued in federal court without its consent and affirm the State of Idaho has not waived its sovereign immunity. This is correct. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 72–73 (1996); *Hans v. Louisiana*, 134 U.S. 1, 13 (1890). TST does not rebuff this argument in any way in briefing. At oral argument, when asked, it acquiesced the point. Accordingly, the State of Idaho is dismissed as a Defendant.

B. Standing

Article III standing requires a plaintiff to show: (1) “it has suffered an ‘injury in fact’”—an invasion of a legally protected interest that is (a) “concrete and particularized” and (b) “actual or imminent, not conjectural or hypothetical”; (2) “the injury is fairly traceable to the challenged action of the defendant”; and (3) the injury will “likely” be “redressed by a favorable decision.” *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000); *Lujan* 504 U.S. at 560–61. TST “bears the burden of establishing these requirements at every stage of the litigation.” *Krottner v. Starbucks Corp.*, 628 F.3d 1139, 1141 (9th Cir. 2010).

In this case, TST does not have standing; either as an association on behalf of its members, or on its own behalf.

1. Associational Standing

Associational standing requires that: (1) one or more of an organization’s members would have Article III standing to sue in their own right; (2) the interests at stake are

germane to the organization’s purpose; and (3) neither the claim asserted, nor the relief requested, requires participation by the individual members in the lawsuit. *Laidlaw*, 528 U.S. at 180–81.

TST has not identified any *specific* Plaintiff who has suffered, or will suffer, the harms it alleges Defendants’ actions are causing. Defendants’ first argument is that TST must list someone *by name* so they can ascertain whether that person actually meets the standing requirements. Citing *Summers v. Earth Island Inst.*, Defendants assert TST must “identify” its “members who have suffered the requisite harm.” 555 U.S. 488, 499 (2009). At a minimum, Defendants assert TST could have identified a person anonymously or via pseudonym if it was worried about notoriety or retribution. TST disagrees. Citing *Nat’l Council of LaRaza v. Cegavske*, TST argues that if it is “relatively clear, rather than merely speculative, that one or more members have been or will be adversely affected by a defendant’s action . . . we see no purpose to be served by requiring an organization to identify by name the member or members injured.” 800 F.3d 1032, 1041 (9th Cir. 2015).

The Court need not decide this issue conclusively⁴ because, even under TST’s reading of the “identity” requirement, it loses. It is not relatively clear that *anyone* who is a member of TST—identified or anonymous—has suffered, or will suffer, an injury as a

⁴ Defendants respond further that *LaRaza* is “in tension with *Summers*,” Dkt 35, at 4 (citing *California Rest. Ass’s v. City of Berkeley*, 65 F.4th 1045, 1063 (9th Cir. 2023) (Baker, J., concurring), *amended and superseded on denial of rehearing en banc* by *California Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094, 1115 (9th Cir. 2024)) and that the Court should not give that case any weight. Again, the Court does not need decide this issue because, even under TST’s interpretation, they do not have standing. But for what its worth, the Court subscribes to the idea that individual members must *ordinarily* be named; especially when a party is a relatively large group. See *Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. California Dep’t of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013) (“The requirement of naming the affected members has never been dispensed with in light of statistical probabilities.” (cleaned up)).

result of Defendants' actions. TST has submitted two affidavits in support of its argument that one or more individual members is at risk from Defendant's actions. Both affidavits, however, suffer from defects rendering each unpersuasive.

The first affidavit, from Dr. J.D.⁵ asserts he or she has been "advised" that TST has 1,750 women of child-bearing age in Idaho who are members. Dkt. 32, at 2. Based upon a statistical analysis of those women who are child-bearing age, combined with the fertility rate in Idaho, the abortion rate in Idaho, and various other factors, Dr. J.D. speculates "to a reasonable degree of medical probability" that 115 women who are members of TST in Idaho may become pregnant during the year and many of them are pregnant involuntarily and would like to have an abortion. *Id.*

The second affidavit is from Erin Helian,⁶ who serves as the executive director of TST. She opines that it is "highly likely that one or more of [TST's] members in Idaho would use the unique services of [the Clinic] but for the Idaho abortion bans." Dkt. 31, at 5.

TST argues these affidavits are sufficient to illustrate it has organizational standing to sue on behalf of its members who have suffered, or will suffer, harm.

As one Court who recently weighed similar arguments raised by TST noted: these "calculated allegations do not inspire confidence." *Satanic Temple, Inc. v. Rokita*, 2023 WL 7016211, at *6 (S.D. Ind. Oct. 25, 2023). And as Defendants in this case point out, one

⁵ This Doctor elected to use a pseudonym as part of these proceedings.

⁶ This is an assumed name used by this individual for "fear of violent retribution from domestic terrorists." Dkt. 31, at 1.

must jump through a variety in hoops in the hopes of finding one or more identifiable plaintiffs that have standing. For example, one must assume—based upon a statistical probability—that a member of TST in Idaho got pregnant unintentionally, that she decided to terminate that pregnancy, and that she decided to do so via the Satanic Abortion Ritual (as opposed to some other way or via some other service). Simply put, there is no way to verify any of the data TST puts forth.⁷ Is it *unreasonable* to suggest someone in Idaho meets the criteria? No. But the Court needs more than speculation based upon statistics.⁸

As the Supreme Court has held:

While it is certainly possible—perhaps even likely—that one individual will meet all of these criteria, that speculation does not suffice. Standing, we have said, is not an ingenious academic exercise in the conceivable[,] but requires a factual showing of perceptible harm. In part because of the difficulty of verifying the facts upon which such probabilistic standing depends, the Court has required plaintiffs claiming an organizational standing to identify members who have suffered the requisite harm

Summers, 555 U.S. at 499 (cleaned up). While associational standing is permissible in order to allow “abortion providers to invoke the rights of their actual or potential patients in challenges to abortion-related regulations,” TST has wholly failed to meet its burden in

⁷ In its sur-reply, TST tries to buttress its arguments by affirmatively stating it has 27 members in Idaho who become involuntarily pregnant each year. Dkt. 40, at 2. But again, by its own admission, this number is based upon “fertility and abortion rates maintained by state and federal government agencies applied to the facts” *Id.* It then goes on to say it is “relatively clear, rather than merely speculative that one or more of these [27 women] have been or will be adversely affected by a Defendant’s actions each year.” *Id.* at 2–3. This explanation does not assuage the Court’s concerns. It is still based upon statistics and probabilities *that may or may not be accurate*. TST has not verified *any* of the data in a real-life setting to determine if any actual women fall into any specific category.

⁸ Notably, while Helian states that the Clinic has received “hundreds of inquires . . . about its services,” notably absent is any indication that any of those inquires came from members of TST residing in Idaho. Dkt. 31, at 5. It is also worth mentioning that the Clinic became operational *after* this lawsuit was filed. *Id.* (noting the Clinic began services in February 2023).

showing there are actual or potential Idaho members who are affected by Idaho's regulations. *June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2118 (2020), *abrogated by Dobbs*.

In short, statistical analysis and probabilities will not suffice. TST has not met its burden of establishing it has associational standing to bring these claims on behalf of its members because it cannot illustrate to a "relatively clear" degree that any of its members actually meet the requisite criteria. *Cegavske*, 800 F.3d at 1041.

2. *Own Standing*

In like manner, TST has not established that it has standing as an organization *itself* to bring these claims. TST argues it can sue on its own behalf because it is a prescriber of abortifacients and because it devoted significant funds to the Clinic, and both activities have been curtailed by Idaho's laws. Neither argument is persuasive.

Again, TST has not identified any actual women in Idaho who wish to use the Clinic's services to obtain abortifacients and/or utilize its support in performing the Satanic Abortion Ritual. Without such a person, the organization has not actually suffered any concrete injury. And, as outlined above, its speculative position that it is "highly likely" someone in Idaho would use its services but for the current regulations is not sufficient. Dkt. 31, at 5.

Similarly, the fact that TST spent money on the Clinic *in New Mexico* does not prove an actual injury. To be sure, an organization has standing if "it suffered both a diversion of its resources and a frustration of its mission," but it "cannot manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that

otherwise would not affect the organization at all.” *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010) (cleaned up). Here, TST opened its Clinic to do precisely what Idaho law forbids, creating a problem “that otherwise would not affect” Plaintiff at all.⁹ *Id.*; see also *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1175–76 (9th Cir. 2022) (finding no injury where Twitter voluntarily incurred costs to respond to a civil investigative demand). Furthermore, Idaho did not cause the alleged injury and, even if it did, the relief requested will not redress it. Said another way, because TST admits it opened the Clinic to respond to *several* states’ abortion bans, including Idaho’s, whatever happens in Idaho will not make or break the Clinic.

The bottom line is, similar to its problems with associational standing, TST’s chain of causation for its own standing is too attenuated.

No injury will occur to TST unless: (1) TST’s providers become licensed in Idaho—a necessary step that neither TST nor any of its declarants allege is underway or even planned; (2) a TST member in Idaho becomes “involuntarily pregnant” due to failed birth control; (3) that member chooses to abort her child; and (4) that member selects the Clinic to help perform the abortion, rather than some other abortion provider. Dkt. 30, at 10.

⁹ TST pushes back on the idea that it manufactured its own injury, asserting it diverted resources to create the Clinic—resources it could have spent elsewhere—and now it cannot reap the benefits of what it created with those resources. Dkt. 40, at 4. But this simply is not true because regardless of what happens in Idaho, the Clinic will (presumably) remain open and (presumably) provide benefits to TST. TST further asserts it is “irrelevant” whether any of its “member[s] in Idaho will use the services of [the Clinic]” because it is not offering those services to Idaho women out of fear of prosecution. *Id.* But fear of prosecution based upon intentions that may or may not materialize is not enough to establish standing because there is no injury. See *Lujan*, 504 U.S. at 564 (explaining that “some day intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the actual or imminent injury”) (cleaned up).

Because this “causal chain involves numerous third parties whose independent decisions collectively have a significant effect on plaintiffs’ injuries,” it is “too weak to support standing.” *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 867 (9th Cir. 2012) (cleaned up).¹⁰The Court digresses momentarily to highlight an issue in response to the first point above—that TST has not planned to license any of its providers in Idaho. TST avers it has not done so because of the laws currently in place, but that it would be simple to do so; a matter of registering and paying a small fee of \$300. TST goes one step further arguing that it really should do this because Idaho’s laws are pre-empted by federal laws and illegal. Enter the *GenBioPro* case from TST’s supplemental filing.

Because the Court finds the case ultimately unhelpful, it will not delve into the underlying facts and subject matter in detail. TST, however, strongly urged the Court to consider this case and noted that it tried to do the same in other litigation and was denied the opportunity. The Court is not predisposed to address each and every argument raised—even those that are strongly encouraged by counsel—but it feels the need to do so here to explain why the *GenBioPro* case does not support TST’s position.

In *GenBioPro*, the Plaintiff (GenBioPro) sued the state of West Virginia because, like Idaho, it enacted limitations on abortions after *Dobbs*, and those limitations burdened GenBioPro’s ability to prescribe the abortifacient drugs it manufactured. 2023 WL 5490179. One of the primary issues in that case was the interplay between the Food and Drug

¹⁰ Finally, while injunctive relief could potentially redress the purely hypothetical injuries TST claims to have sustained, the Court has already concluded that no such injury actually exists, and even if it did, that the causal link between it and Defendants’ actions is too attenuated to support standing. Thus, TST has a redressability problem as well.

Administration’s Risk Evaluation and Mitigation Strategy (“REMS”) that allowed these drugs to be prescribed, and West Virginia’s statute that did not allow the same. *Id.* Thus, the Court was presented with a question regarding preemption, or the legal doctrine that allows a higher level of government the ability to limit or overrule the power of a lower level of government. TST’s reading of that decision is that the court found preemption applied and the state of West Virginia was *preempted* from enacting statutes that regulated the prescription of abortifacients and the Court should make a similar finding here today. The Court has a few problems with this argument.

First, this specific issue isn’t squarely before the Court today. The parties have not extensively briefed or argued Idaho’s bans on prescribing abortifacients; the arguments here are more about performing abortions in general. To be fair, abortifacients are part and parcel to the process of performing abortions. But the Court’s point is that, to a large degree, the specific regulations surrounding the prescribing of abortifacients in Idaho have not been fleshed out by the parties.

Second, this decision is from a district court in another circuit. At most, it can only have a persuasive impact on this Court, not a precedential impact. Furthermore, the cited decision is currently on appeal. Accordingly, the Court affords the decision only minimal weight.

Third and most importantly, the *GenBioPro* decision isn’t as straightforward as TST posits. Setting aside multiple nuances discussed in that decision, the Court notes some observations. To begin, that court did *not* wholesale conclude that West Virginia’s statutes regarding abortifacient drugs were pre-empted by federal laws or statutes. To the contrary,

it specifically found that “Congress has not expressed an intent to occupy the field of drugs subject to a REMS in a manner which would preempt West Virginia’s abortion restrictions.” 2023 WL 5490179, at *10. What it did determine, however, was that certain REMS that allowed abortifacients to be prescribed over the phone *did* preempt West Virginia’s statues specifically related to “telemedicine.” *Id.* at *10–11. The problem, however, was an injunction regarding those telemedicine REMS was already in place. In *All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, 78 F.4th 210, 223 (5th Cir. 2023), the Fifth Circuit enjoined the FDA’s REMS that allowed the prescription of abortifacients via telemedicine. The Supreme Court recently granted cert on the case. *Danco Lab’s, L.L.C. v. All. Hippocratic Med.*, 2023 WL 8605744, at *1 (U.S. Dec. 13, 2023). Because of the Fifth Circuit stay, the *GenBioPro* court did not conclusively decide the matter since doing so would constitute “an advisory opinion as to the constitutionality of a law not presently operative.” *Id.* at 11. So, somewhat contrary to TST’s argument, that case does not support the notion that Idaho’s laws regarding telemedicine are unconstitutional.

Thus, for the reasons described above, the Court finds the *GenBioPro* case unhelpful to its present analysis. It is from a district court in another circuit and the outcome is speculative at best considering the matter is on appeal. That case, therefore, does not aid TST in its efforts to assert organizational standing on behalf of nurses or doctors who may or may not want to register in Idaho in the hopes of prescribing abortifacients over the phone.

The Court returns to the broader picture and concludes that TST lacks organizational standing because it has failed to show injury in fact, causation, and redressability.

This alone warrants dismissal. The case previously referenced out of Indiana was dismissed entirely on the basis of standing, without leave to amend, and without any commentary as to the merits of the arguments in support of dismissal. *Rokita*, 2023 WL 7016211, at *11 (“Accordingly, the Court **DISMISSES** the First Amended Complaint for lack of jurisdiction without leave to amend.”) (emphasis and bolding in original).

In this case, however, to provide additional support for dismissal, the Court will briefly address the merits of TST’s causes of action and Defendants’ arguments in support of dismissal.

C. Claims for Relief

1. Takings Claim

In its first cause of action, TST alleges Defendants have “conscripted” women’s bodies “without [their] consent” and taken their property—“the use of her uterus—without compensation in violation of the Takings Clause.” Dkt. 30, at 8. It asserts that after the advent of in vitro fertilization and gestational surrogacy as a means of achieving pregnancy, it is clear a woman’s uterus is “property.” *Id.* at 4. It contends this “property” can be disposed of (via hysterectomy) or gifted/sold/leased (via surrogacy). *Id.* This is an interesting argument. But interesting as it may be, it is not legally sound.

The Takings Clause provides that “private property [shall not] be taken for public use, without just compensation.” U.S. Const. amend. V.¹¹ Since the Takings Clause does

¹¹ Neither side addresses the “public use” aspect of a regulatory taking. Even assuming TST’s argument that a uterus was property, preventing abortion is not “taking” for “public use.” The public, in and of itself, has no use for the uterine space. Again, this is where framing is important. The regulations here deal with abortion, not property.

not define “property,” *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 164 (1998), courts “draw[] on existing rules or understandings about property rights” to give content to the Clause. *Tyler v. Hennepin Cnty., Minn.*, 598 U.S. 631,638 (cleaned up). Courts thus look to state law, “traditional property law principles,” historical practice, and Supreme Court precedent. *Id.*; *see also Phillips*, 524 U.S. at 165–68.

None of these helpful guides support the view that a pregnant woman’s “uterus” is property taken by the State unless she is permitted “to reclaim it by abortion” as TST contends. Dkt. 30, at 16. To the contrary, these non-binding sources show that the Anglo-American legal tradition has consistently viewed abortion as a crime—not as a property taking. *See Dobbs*, 142 S. Ct. at 2249.

First, traditional principles. The common law viewed life as “the immediate gift of God, a right inherent in every individual.”¹ Sir William Blackstone, *Commentaries on the Laws of England: The Rights of Persons*, bk. 1, ch. 1, at 125.¹² If the common law recognized any property rights in this area, it was the property rights of the unborn child. A child still in the womb could have a legal guardian and could receive an estate. *See* 1 Blackstone, at 125–26.

Second, applicable state law. Like the broader United States historical tradition, Idaho treats unborn life as worthy of protection and endowed with distinct rights. *See, e.g.*, Idaho Code § 18-8802(1) (outlining that “preborn children have interests in life, health, and well-being . . .”). It has never recognized a property right for a woman to abort a child.

¹² Yale Law School, The Avalon Project, <https://tinyurl.com/k67xs8ju>.

Furthermore, while Idaho does have laws governing such things as human tissues, transplantable organs, blood, and dead bodies, those statutes view those biological materials as unique and specific objects with specific regulations for gifting and/or donating the same. None of the statutes, however, indicate these materials are subject to general laws of personal property as TST advocates. *See, e.g.*, Idaho Code § 39-3412.

Third and finally, nothing in the Supreme Court’s Takings Clause jurisprudence provides support for TST’s view here. *Tyler*, 598 U.S. 631. As *Dobbs* made clear, “[t]he Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision.” 142 S. Ct. at 2242 (emphasis added). There is no right to an abortion under the constitution, let alone a right to do so vis-à-vis the Takings Clause.

TST argues Defendants have “commandeer[ed] the uterus but provide nothing in return—other than jail if the mother tries to reclaim it by abortion.” Dkt. 30, at 22. But Defendants do no such thing. The regulations at issue discuss abortion, not property. And there is no persuasive authority suggesting a woman’s uterus is property subject to the same considerations and economic uses other traditionally-understood property holds. Thus, history, tradition, and precedent require dismissal of TST’s Takings Clause claim.

2. *Involuntary Servitude*

TST’s second cause of action alleges Defendants subject women to “involuntary servitude in violation of the Thirteenth Amendment” when they force them to “remain pregnant and give birth without [] consent.” Dkt. 30, at 8.

The Thirteenth Amendment provides that “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly

convicted, shall exist within the United States, or any place subject to their jurisdiction,” U.S. Const. amend. XIII, § 1 and that “Congress shall have power to enforce this article by appropriate legislation.” *Id.*, § 2. In other words, the Thirteenth Amendment “abolished slavery,” *Civil Rights Cases*, 109 U.S. 3, 20 (1883) and “those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results.” *United States v. Kozminski*, 487 U.S. 931, 942 (1988) (citation omitted).

Fundamentally, the Court struggles with TST’s argument on this front (and implied in other arguments as well). It consistently asserts that involuntarily pregnant women did not “consent” to being pregnant and that they have a “fundamental right to engage in protected sex.” Dkt. 30, at 8, 12. The Court will get to fundamental rights in a moment, but notes here that the notion of becoming pregnant after having sex—even protected sex—is not some far-fetched anomaly. As the whole of humanity understands, pregnancy is a potential, natural, understood, and often expected consequence of having sex.¹³ So to say a woman has not “consented” to getting pregnant after undertaking an act that is fully capable of bringing about that exact result is somewhat disingenuous.¹⁴ Regardless, however, the point is that Defendants do not regulate *getting* pregnant in any way. They do not infringe on a women’s ability to have sex in any way. And becoming pregnant is not a

¹³ TST makes the further outlandish claim that “there is [] a profound Constitutional question of whether a woman who engages in sex without Birth Control thereby consents to the creation of a Prenatal Person in her body.” Dkt. 30, at 13n.5. General laws of science dictate the answer to that question.

¹⁴ The Court is, of course, cognizant of the fact that—as TST repeatedly points out—birth control measures fail, and some pregnancies are unexpected or unplanned. The Court is also not affirmatively saying that “consent to sex is consent to pregnancy.” But it has a hard time with TST’s argument that women who consent to sex, and that act is followed by a natural result, are “forced” into doing something—akin to involuntary servitude or slavery—that was always plausible in the first place.

consequence imposed by Defendants (especially a consequence analogous to slavery); it’s a consequence of science. Defendants are not regulating sex and pregnancy; they are regulating abortion. And they are doing so legally under *Dobbs*.

Women who conceive children through consensual sex do not suffer “the very essence of involuntary servitude outlawed by the Thirteenth Amendment.” Dkt. 30 at 28.¹⁵ TST’s argument here goes too far. Were the Court to take this logic to its end, it could find that any obligations the law imposes on parents for the support and upbringing of a child would constitute involuntary servitude and justify the termination of the child. Such a result is blatantly absurd. TST’s involuntary servitude claim must be dismissed.

3. *Equal Protection*

Third, TST argues that Idaho’s laws have a carve out for victims of rape and that this violates the Equal Protection Clause because it treats rape victims better than involuntarily pregnant women.

Setting aside the very obvious difference between a person who becomes pregnant via rape—a *non-consensual* act—and a person who becomes pregnant by accident—a consensual act, albeit with an unintended result—TST still cannot meet its burden.

The Equal Protection Clause of the Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. It is “essentially a direction that all persons similarly situated

¹⁵ TST avers that it is “particularly egregious” to require women to carry unwanted children to term in the “21st Century” where “women have the technological means at their disposal to safely terminate unwanted pregnancies.” Dkt. 30, at 28. This may be true. But women also have the technological means, medicine, and knowledge necessary to engage in sex that does not result in pregnancy.

should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The state may not discriminate against classes of people in an “arbitrary or irrational” way or with the “bare . . . desire to harm a politically unpopular group.” *Id.* at 446–47. This aspirational promise, however, must coexist with the practical reality that laws often draw lines between groups of people and those lines naturally advantage some groups while disadvantaging others. *Romer v. Evans*, 517 U.S. 620, 631 (1996).

When considering an equal protection claim, the Court must first determine what level of scrutiny applies and then decide whether the policy at issue survives that level of scrutiny.

There are three levels of review: strict scrutiny, intermediate scrutiny, or rational basis review. Laws are subject to strict scrutiny when they discriminate against a suspect class, such as a racial group, *e.g.*, *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003), or when they discriminate based on any classification but impact a fundamental right, such as the right to vote. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 562 (1964). Laws are subject to intermediate scrutiny when they discriminate based on certain other suspect classifications, such as gender. *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 723 (1982). When no suspect class is involved and no fundamental right is burdened, Courts apply a rational basis test to determine the legitimacy of the classifications. *Olagues v. Russoniello*, 770 F.2d 791, 802 (9th Cir. 1985).

In this case, the parties disagree on the level of scrutiny the Court must apply: strict, intermediate, or rational basis. TST alleges Defendants are infringing a fundamental right—the right to have sex—and, therefore, strict scrutiny applies. For their part, Defendants

assert no fundamental right is at issue and no suspect class has been established. The Court agrees with Defendants on both fronts.

First, back to framing the arguments in this case. Regardless of whether consensual sex is a fundamental right, Defendants are not infringing on that right because the regulations at issue do not focus on sex; the regulations focus on abortion. And there is no fundamental right to abortion under the Idaho constitution or the United States Constitution.

Second, “involuntarily pregnant women” or “women who engage in sex just for the pleasure and intimacy it brings” are not a protected class. TST never so alleges. And even if the Court were to find the same, that group is not “similarly situated” to the group (victims of rape) supposedly receiving special treatment.¹⁶ And even if the Court were to find TST’s members comprised a protected class and were similarly situated to victims of rape, Idaho’s regulation is still narrowly tailored¹⁷ to its compelling interests in preventing abortions and protecting victims of criminal conduct. That those two interests overlap (and “leave out” TST members) is not a violation of equal protection, but the reality of living in a pluralistic society. *See Romer*, U.S. at 631.

¹⁶ The Idaho Legislature is well within its power to police the welfare of rape victims after a criminal act and also police the interest of the life of the unborn. These are two distinct areas not tied together as closely as TST postures.

¹⁷ Laws that discriminate against a fundamental right or protected class “are presumed unconstitutional and will survive strict scrutiny only when the government can show the law is narrowly tailored to a compelling governmental interest.” *Latta v. Otter*, 19 F. Supp 3d 1054, 1073 (D. Idaho 2014). Where rational basis review applies, the Court “presumes the law is valid unless the challenger can show the difference in treatment bears no rational relation to a conceivable government interest.” *Id.* Suffice it to say, even under the highest level of scrutiny, TST cannot meet its burden because Idaho’s regulations are narrowly tailored to its interests.

4. *State law Claims*

TST's final cause of action is that Defendants' actions violate the Idaho Exercise of Religious Freedom Act ("IERFA") because they make the exercise of the Satanic Abortion Ritual a crime. Dkt. 15, at 16. This is so because one of TST's seven tenets focuses on the idea that one's own body is inviolable and subject to one's own will alone and the state of Idaho is encroaching upon that belief by dictating that women *cannot* end a pregnancy if they so desire.

In briefing, Defendants asserted this cause of action lacked merit and should be dismissed. TST wholly failed to respond to this assertion. Accordingly, in their reply brief, Defendants asked that the Court dismiss the claim as abandoned. Dkt. 35, at 11. As part of its sur-reply, TST asks the Court to allow it the opportunity to withdraw its IERFA claim and change it to a Free Exercise claim. Dkt. 40, at 8.

As noted, Defendants did not object to TST's sur-reply. But that does not mean they acquiesced to the filing of a second amended complaint or the inclusion of a new cause of action in this case. And at oral argument, Defendants opined that the best course of action would be to dismiss Claim Four in light of TST's acquiesces and then this case would have finality. Then, if TST so desired, it could file another lawsuit alleging a fresh free exercise claim. The Court agrees this is the best approach. TST has already amended its complaint once in this case. Dkt. 15. If it wants to allege any new claims against these Defendants, it can do so in another lawsuit.¹⁸ But as for the claims *in this lawsuit*, each is dismissed with

¹⁸ The Court expresses no opinion on the viability of any future claims; only that TST's fourth claim in this case does not withstand muster.

prejudice for the reasons outlined above.

V. CONCLUSION

The State of Idaho has sovereign immunity and must be dismissed.

TST does not have associational or organizational standing because it: (1) does not identify with any degree of certainty any women who have, or will, suffer injury at the hands of Defendants, and (2) cannot point to any injury it will suffer itself.

TST's claims do not have merit. Trying to muster a takings claim and an involuntary servitude claim out of the facts of this case leaves much to be desired. And there is no equal protection violation here because a fundamental right is not at issue, and even if it were, the statutes are narrowly tailored to Idaho's compelling interests in protecting unborn life and rape victims. The regulations concern abortion; not consensual sex. Finally, TST is voluntarily dismissing its state law claim.

TST avers this case is straightforward. But it is not. Its arguments, while interesting, are convoluted and do not lead to the desired result. And the fact that it now, belatedly, wants to reframe one of its causes of action illustrates the novelty of its arguments. Because TST has already amended its complaint as a matter of right, the Court will not allow further amendment on any of the current claims as no amendment appears likely to save those specific claims. Claims One through Four are, therefore, dismissed with prejudice.

VI. ORDER

1. Defendants' Motion to Dismiss (Dkt. 23) is GRANTED. Claims One through Four are Dismissed with prejudice and without leave to amend.

2. The Court will enter a separate judgment in accordance with Federal Rule of Civil Procedure 58.



DATED: January 31, 2024

A handwritten signature in dark ink, appearing to read "David C. Nye". The signature is written over a horizontal line.

David C. Nye
Chief U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THE SATANIC TEMPLE,
Plaintiff,

Case No. 1:22-CV-411-DCN

vs.

Boise, Idaho
December 6, 2023
10:03 a.m.

RAUL LABRADOR, in his capacity
as the Attorney General of
Idaho; JAN M. BENNETTS, in her
capacity as Ada County
Prosecutor; and THE STATE OF
IDAHO,

Defendants.

TRANSCRIPT OF MOTION HEARING PROCEEDINGS
BEFORE THE HONORABLE DAVID C. NYE
CHIEF UNITED STATES DISTRICT COURT JUDGE

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I N D E X

MOTIONS

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Defendants' Motion to Dismiss

Mr. Turner

4

Mr. Mac Naughton

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Mr. Turner

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1 (Proceedings commenced at 10:03 a.m., December 6, 2023.)

2 THE COURT: Please be seated.

3 THE COURTROOM DEPUTY: The Court will now hear the
4 motion hearings in Case Number 1:22-CV-411, The Satanic Temple
5 versus Brad Little, et al.

6 Counsel, would you please state your appearance for
7 the record, beginning with the plaintiff.

8 MR. MAC NAUGHTON: James Mac Naughton for the
9 plaintiff.

10 MR. HUDSON: Jeremiah Hudson for plaintiff.

11 MR. TURNER: Josh Turner for the State.

12 MR. CHURCH: And Brian Church for the State as well,
13 Your Honor.

14 THE COURT: Thank you. Good morning, gentlemen.
15 We're here today on a motion to dismiss brought by the
16 defendants in this matter.

17 One thing I wanted to bring up right from the get-go
18 is the idea that the State of Idaho cannot be sued. I didn't
19 see any real response to that from the plaintiff. Are you
20 conceding that the State shouldn't be a party?

21 MR. MAC NAUGHTON: That's correct, Your Honor. The
22 State on the state claim, that's correct.

23 THE COURT: Okay. Just on the state claim.

24 MR. MAC NAUGHTON: Just on the state claim. The
25 State -- the State is being -- is a party in the sense that

1 the individuals who hold the offices, the attorney general is
2 a party for the federal claims.

3 THE COURT: But in your amended complaint, you listed
4 the State itself. That can be dismissed?

5 MR. MAC NAUGHTON: That's correct. That's correct.

6 THE COURT: I think we're all on the same page, then.

7 MR. MAC NAUGHTON: Yes.

8 THE COURT: Thank you. So we'll begin with that.

9 You don't have to argue that. That's out. So I think
10 probably -- and I don't know if you've prepared it this way or
11 not. You do what you want to do. But it seems to me there's
12 got to be some focus at some time on the case out of Indiana.
13 So just putting that out there. You may proceed.

14 MR. TURNER: Good morning, Your Honor. May it please
15 the Court.

16 The Satanic Temple wants to help women
17 ritualistically kill in utero babies in Idaho. Thankfully,
18 Idaho law prevents that. But The Satanic Temple thinks that
19 those legal protections are unconstitutional and asks this
20 Court to enjoin Idaho's Defense of Life and Fetal Heartbeat
21 Acts under bizarre theories that are contrary to fundamental
22 tenets of western jurisprudence.

23 So plaintiff first asks and argues that a so-called
24 involuntary pregnancy subjects a mother to a Fifth Amendment
25 taking and involuntary servitude under the 13th Amendment.

1 Beyond lacking any historical or textural support,
2 both arguments, if accepted by this Court, would mean that
3 motherhood in general violates each amendment and would reduce
4 the mother-child relationship to an at-will association of
5 persons with no duties owed one to the other. That theory is
6 as troubling as it is wrong.

7 Plaintiff next argues that Idaho law violates the
8 14th Amendment's equal protection clause because, as they see
9 it, there's a fundamental right to engage in, quote, protected
10 sex. Even if such a right exists, these Idaho laws do not
11 infringe on that right in any way. As the amended complaint
12 alleges in paragraph 97 -- and I'm quoting -- the
13 involuntarily pregnant women engaged in protected sex.

14 On the merits, this case falls flat, but the Court
15 cannot even reach the merits because The Satanic Temple lacks
16 standing and because there's 11th Amendment immunity as to
17 certain claims as well.

18 So I'll begin with standing and note that the
19 Southern District of Indiana's opinion is an excellent roadmap
20 for this Court to follow. It dealt with all of the same
21 issues that are here. It --

22 THE COURT: I thought you would say it was an
23 excellent one to follow.

24 MR. TURNER: Yeah, and it's because it's a
25 mirror-image complaint. The allegations that The Satanic

1 Temple brings here were brought there. The allegations of
2 harm and injury are the same that are being brought here. The
3 same expert declaration was provided there that's provided
4 here, both of them. Dr. J.D., the expert that was used by The
5 Satanic Temple to establish the statistical likelihood that at
6 least one member in the relevant state -- there in Indiana,
7 here in Idaho -- has suffered an injury, that's all the same.
8 And so I don't intend to rehash the court's analysis; I just
9 commend its analysis to the Court.

10 But I'd like to highlight a few things regarding the
11 two theories of standing here, and those are associational and
12 organizational. And that's because there's no individual
13 plaintiff here. It's The Satanic Temple as an organization
14 attempting to come into court asserting the injuries of its
15 members and the injuries of itself.

16 So under an associational standing theory, Your
17 Honor, they have to demonstrate through clearly alleged facts
18 that at least one member of theirs is injured by Idaho law.
19 And they don't do that, because nowhere in the complaint do
20 they allege that there is a woman who is involuntarily
21 pregnant -- and here's the key -- who intends or wants to seek
22 an abortion that she is not entitled to get under Idaho law.

23 The Court can search the complaint, every paragraph,
24 and it will find no allegation where The Satanic Temple
25 alleges that a specific woman -- and I'm not saying a named or

1 identified woman; I'm just saying a woman who's a member of
2 theirs -- wants an abortion that she cannot have under Idaho
3 law. And that is fatal.

4 The statistical analysis is also unsound under the
5 Supreme Court's case in *Summers*. The -- that analysis, I
6 don't think it takes much to see is rife with speculation.
7 There are layers and layers of speculation built in. It
8 starts with the premise that there are about 3,500 members,
9 total numbers, of The Satanic Temple in Idaho, and generally
10 those members range between the ages of 16 and 40.

11 From that factual premise, which is provided in the
12 declaration of Helian, which is a pseudonym, the -- Dr. J.D.
13 assumes that precisely 1,750 of those 3,500 are female
14 members. How he gets that, I'm not sure. And he assumes that
15 all of the 1,750 female members are between the child-bearing
16 ages of 16 and 40. He also assumes that the annual pregnancy
17 rate demonstrates pregnancy as of the filing of the complaint.

18 And that point's a little nuanced, so let me unpack
19 it. His analysis operates on a number of percentages or rates
20 that ultimately conclude in any given year there are probably
21 about 27 female members who are likely to be pregnant in
22 Idaho. But what's important for this Court's analysis on
23 standing is that there were at least one pregnant member as of
24 the time of filing the complaint. And it is not outside the
25 realm of possibility that in the 11 months that this complaint

1 was not filed, there were 27 women pregnant. And there were
2 none pregnant as of the time of filing this complaint.

3 It's just -- this is the problem of relying on
4 statistical probabilities, is you're not demonstrating a
5 concrete and particularized injury. You are assuming
6 speculatively that there is a likely injury, and that's not
7 enough to invoke this Court's jurisdiction.

8 Another key assumption is that he assumes what is
9 true of the general population is true of Idaho's population
10 of women. And, more problematically, he assumes what is true
11 of the general population is true of female Satanic Temple
12 members in specific. And that assumption, I think, is very
13 unfounded. I would imagine -- and I don't think plaintiffs
14 would fight me too much on this -- that The Satanic Temple
15 members do not reflect the habits and practices of the U.S.
16 population in general on the issue of contraception and
17 motherhood.

18 There just isn't enough alleged in the complaint to
19 demonstrate that a single female member has -- has been
20 injured as of the time of filing this complaint.

21 Now, we also think that *Summers* does require
22 identifying a specific member. Plaintiffs say, We can't do
23 that because they'd be subject to domestic terrorism and
24 threats, so we're not going to identify any member. But
25 Dr. J.D. and the declaration of their executive director had

1 the same fears and proceeded under pseudonyms, and nothing
2 would have prevented The Satanic Temple from doing the same
3 with one of its members.

4 And *Summers* is fairly clear. Well, not fairly; I
5 think it's very clear. It says this requirement of naming the
6 affected members has never been dispensed with in light of
7 statistical probabilities.

8 There is a Ninth Circuit case that plaintiffs rely
9 on, the *La Raza* case, that says where it is relatively clear
10 rather than merely speculative that one or more members will
11 be injured, there's not a need to name a member. We'll take
12 that for what it says and say in response it's not relatively
13 clear here and it is merely speculative that there is an
14 injured member. So I don't think *La Raza* helps.

15 If the Court has no questions on associational
16 standing, I'll --

17 THE COURT: I don't.

18 MR. TURNER: On organizational injury, there are two
19 theories. The first is a diversion of resources injury, and
20 the second is a prescription injury. Both of these injuries
21 flow out of The Satanic Temple's establishment of a clinic
22 that they refer to as The Samuel Alito Mom's Abortion Clinic.
23 I will simply refer to it as The Satanic Temple clinic.

24 That clinic, the main problem with the diversion
25 theory of harm is that the complaint expressly alleges in

1 paragraph 19 that it was established in response to bans on
2 abortion, quote, in Idaho and other states. And so there's a
3 traceability issue here. It was not established in response
4 only to Idaho law, and so the diversion of resources was
5 caused not just by Idaho's laws but, rather, by other states'
6 laws. And this is what the Southern District of Indiana
7 noted. There is a real traceability issue here with the
8 organizational theory of standing.

9 In short, Idaho's laws didn't cause plaintiff's
10 diversion of resources. There's -- in thinking about this
11 last night, I also don't think that this is really a
12 diversion -- a diversionary harm. The clinic was established
13 in response to Idaho's laws. In other words, it's a
14 self-inflicted harm. It's not a type of harm that think of a
15 voter rights organization might suffer when a voter rights --
16 an election law makes it more difficult to register voters and
17 now the organization has to expend additional resources in
18 order to do its same activities and carry out its same
19 mission.

20 Here, The Satanic Temple has undertaken a new mission
21 to create a clinic in response to -- in response to Idaho's
22 laws. And so it is a self-inflicted injury, and I don't think
23 this is really a diversionary theory at all.

24 The prescription theory is simply that The Satanic
25 Temple alleges that they can't prescribe mifepristone in Idaho

1 to its female members because of Idaho's laws. And that's
2 true. They can't. But it's not just because of Idaho's laws.
3 The Comstock Act prevents that. And I know that the plaintiff
4 thinks that the Comstock Act doesn't apply here. The Court
5 doesn't have to get into the weeds on that, but I think the
6 language is unambiguous that it prevents the mailing of any
7 abortifacient. But they don't allege that they have any
8 licensed practitioner that could prescribe mifepristone in
9 Idaho.

10 And if I could get my colleague to come up here and
11 log in to his computer, their own website shows that only
12 women who are physically located in New Mexico are eligible
13 for those services.

14 It's not appearing on my screen.

15 THE COURTROOM DEPUTY: One minute, please.

16 THE COURT: Patti has to work her magic first.

17 THE COURTROOM DEPUTY: You have to have patience.

18 MR. TURNER: So, Your Honor, this is their website,
19 TSThealth.org. And if you'll see in the center of the screen
20 who is eligible, TST's health -- TST health services are
21 available to those who meet the following criteria. And
22 there's two that are particularly relevant here: in New
23 Mexico at the time of the online visit and have a New Mexico
24 mailing address. Right there, that excludes an Idaho
25 resident, involuntarily pregnant woman. So Idaho's laws are

1 not in any way harming the alleged desire of The Satanic
2 Temple in prescribing mifepristone.

3 And if Your Honor wonders whether he can take account
4 of this, I'd say, one, this is a public website. It's their
5 website that you can take judicial notice of. But, two,
6 they've submitted declarations, two, in order to demonstrate
7 standing. And without those declarations, they fall far short
8 of demonstrating standing. But because they have submitted
9 those declarations, this Court is not confined to the
10 pleadings anymore. This is now a factual challenge. Those
11 declarations have made this a factual inquiry on standing.

12 And this website demonstrates that their inability to
13 prescribe mifepristone in Idaho is either self-imposed, it is
14 a result of lacking a practitioner licensed in Idaho, or it is
15 a result of federal law. The Comstock Act and specifically
16 the mifepristone REMS -- and REMS stands for risk evaluation
17 and mitigation strategy -- currently do not allow mifepristone
18 to be prescribed by any provider without an in-person visit.
19 This is the *Alliance for Hippocratic Oath* case out of the
20 Fifth Circuit, which has an injunction covering Idaho that
21 prevents mifepristone from being prescribed without an
22 inpatient visit.

23 So there are numerous reasons why The Satanic Temple
24 is not harmed by Idaho's laws, but there are collateral,
25 outside, legal constraints on their ability to prescribe

1 mifepristone.

2 I'll turn to the merits briefly, and I say "briefly"
3 because the merits are -- I think are simple enough, and
4 they're self-defeating. On the Fifth and 13th Amendment
5 claims, they're just inconsistent with *Dobbs*. If *Dobbs* was
6 right -- and *Dobbs* said the constitution makes no reference to
7 abortion and no such right is implicitly protected by any
8 constitutional provision. If that's true, their claim about
9 the Fifth Amendment and the 13th Amendment creating a right to
10 abortion implicitly through a takings violation or through an
11 involuntary servitude claim cannot be true. Those are
12 inconsistent theories, and this Court is bound by *Dobbs*.

13 It is also troubling in that there's no limiting
14 principle. What's true of a mother-child relationship
15 in utero is true of a mother-child relationship once that
16 child is born. The mother will always be required by law to
17 provide for the shelter and care of her child. In fact, the
18 Supreme Court has called it a high duty of parents, guaranteed
19 and protected by the constitution, to see to the care of their
20 children. And if the Court accepts the plaintiff's theory,
21 then the mother-child relationship outside the womb is subject
22 to the same theory and same claims. That just can't be.

23 Finally, I'll note on the Fifth Amendment takings
24 claim, if there is a property right to your uterus, there is
25 an equal property right to sell your kidneys or other any

1 organ. And of course we know that that is illegal under Idaho
2 law and federal law.

3 On the 13th Amendment claim, I think it's simple
4 enough to say, they say there is a fundamental right to
5 protected sex. These laws don't infringe on that right.
6 These laws don't prohibit a mother or any woman from having
7 protected sex. So I don't -- I don't understand quite the
8 theory of that case, and it seems to me that they've walked
9 away from the discrimination.

10 They assume that this law passes rational basis
11 scrutiny and it can only go forward under a strict scrutiny
12 basis, and so they rely on the fundamental right theory. And
13 there -- there's just no infringement of a fundamental right.
14 The Court doesn't even have to decide whether in fact their
15 definition of a fundamental right of protected sex is a
16 fundamental right.

17 I'd note as a quick aside that it can't be as simple
18 as they say. Yes, the State recognizes that there is a
19 privacy interest in sexual relations, but there are lots of
20 valid legal constraints on sexual relations, such as incest
21 laws, laws regarding minors. Their theory takes no account of
22 those nuances.

23 THE COURT: Let me ask you, you talked about the
24 kidney and using -- selling a kidney. Isn't this more like
25 being a surrogate mother than selling a kidney? I mean, in

1 that sense, she's using her womb to raise somebody else's
2 child, and she can get paid for that.

3 MR. TURNER: She can. And many states, like
4 Nebraska, hold that such surrogacy contracts are unenforceable
5 and invalid.

6 THE COURT: But does Idaho?

7 MR. TURNER: Idaho does not. So there's certainly a
8 contractual -- a -- there's a statutory recognition that those
9 contracts are enforceable, but that's very different than
10 saying there's a Fifth Amendment taking of the uterus if a
11 woman is unable to abort any and every pregnancy that she does
12 not want to carry to term.

13 I just would -- I'm very interested to hear my
14 colleague's response to how this doesn't implicate the
15 organ -- the prohibitions on selling organs. The uterus is an
16 organ, just like the kidney, and you can't sell a kidney. And
17 if -- under their theory, it's one of personal autonomy,
18 complete personal autonomy. And a woman has autonomy in her
19 kidneys as much as she does in her uterus. And just because
20 the State has recognized that a contract regarding surrogacy
21 will not be declared unenforceable and will be enforced does
22 not create a U.S. Constitutional right to treat that as
23 property.

24 I'll reserve whatever time I have for rebuttal.

25 THE COURT: Okay. Thank you.

1 Counsel, I recognize the Indiana case is your case.

2 MR. MAC NAUGHTON: It is.

3 THE COURT: There is -- and it's on appeal now;
4 right?

5 MR. MAC NAUGHTON: It is.

6 THE COURT: And there's also that other case you
7 quoted yesterday, the *GenBioPro* case out of West Virginia, I
8 think.

9 MR. MAC NAUGHTON: Yes, sir.

10 THE COURT: Okay. So I assume you're going to talk
11 about that one too.

12 MR. MAC NAUGHTON: I will address all of those.

13 I would like to start off and explain -- not
14 explain -- correct the State in its misconceptions of The
15 Satanic Temple. I sat here and listened to them call the
16 members of the The Satanic Temple baby killers. They said
17 that we are outliers in matters of contraception and
18 motherhood. That this is -- I put this one in quotes -- an
19 attack on motherhood in general. These are offensive, sir,
20 and incorrect.

21 This case is not about abortion. This case is about
22 what right does a woman have who is involuntarily pregnant, if
23 any, what rights. The threshold for motherhood is consent.
24 You don't have to look far to see what kind of damage is done
25 in this world without mothers wanting them to be their

1 children. A woman has a fundamental, constitutional right on
2 whether to decide to beget children. She has a fundamental
3 right to decide "I am going to be pregnant" in the first
4 instance.

5 If she gets pregnant by mistake, because her birth
6 control failed, she has not surrendered that constitutional
7 right, has not surrendered it. And so what are the
8 implications that flow from that? That gets to the merits. I
9 will come back to those.

10 I would like to address, first, standing. To
11 understand the Indiana case --

12 THE COURT: If I could, I just want to make sure I'm
13 tracking with you. I think there's one more phrase to add on
14 to what you just said for your position, and you said this
15 case is not about abortion but about the rights of a woman who
16 is involuntarily pregnant. Could I add to that by means other
17 than rape? Because that's the distinction -- one of the
18 distinctions you're making; right?

19 MR. MAC NAUGHTON: That is -- well, that anticipates
20 the equal protection claim. If she's involuntarily pregnant
21 by rape, she's granted an exemption. If she's involuntarily
22 pregnant because of --

23 THE COURT: Because of a failed condom or whatever.

24 MR. MAC NAUGHTON: Yeah. But both of them are in the
25 same category of mothers. They are mothers against their

1 consent. And they -- and once they become pregnant, in the
2 absence of the State's -- in the absence of the State's
3 restrictions, they have a choice. They can decide whether to
4 be mothers going forward.

5 THE COURT: Okay. I understand.

6 MR. MAC NAUGHTON: And the State strips women who are
7 involuntarily pregnant because of lack of birth control of
8 that opportunity.

9 But to understand the -- excuse me. I need to get
10 some water. To understand the Indiana case, *GenProBio* [sic],
11 and what the TST does as an abortion clinic, you have to
12 understand what it is that they do. Under FDA regulations,
13 the REMS regulations, mifepristone, an abortifacient, can be
14 prescribed by an advanced registered nurse practitioner, an
15 APRN. It doesn't have to be a doctor. And she can prescribe
16 that -- he or she can prescribe it based on a telemedicine
17 consultation.

18 Counsel alluded to a Fifth Circuit decision which is
19 up on appeal. In this circuit, in the Ninth Circuit, there
20 are no bans on the use of mifepristone in telemedicine. I can
21 provide you with the citations to that later.

22 Then to become -- Indiana is a member of an
23 interstate compact in which an APRN who is registered in one
24 state can become registered in another state. So the TST
25 clinic has APRNs who are registered in New Mexico. They can

1 be registered in Idaho simply by filing the appropriate
2 paperwork and paying a \$300 filing fee. And once they have
3 done that, under REMS they can lawfully prescribe mifepristone
4 to Idaho residents using telemedicine.

5 And what *GenProBio* holds is that the REMS process
6 established by the FDA preempts any state regulation that
7 conflicts with the REMS because it is a direct conflict
8 preemption. The APRN cannot comply with both the FDA
9 requirements and the State of Idaho requirements.

10 So in order for TST to expand its business model in
11 Idaho, it's 300 bucks and some paperwork. We don't have to
12 set up a clinic. We don't have to hire doctors. All we have
13 to do is file the paperwork and pay the fee. And lawfully,
14 under federal law, it can provide mifepristone to anybody in
15 the state of Idaho.

16 He's right. If you looked at the site, we wanted --
17 we asked our people who come to New Mexico for mifepristone to
18 have their consultation while they are in New Mexico and to
19 have the mifepristone delivered to a New Mexico address, but
20 they do not have to be New Mexico resident. Anyone from
21 anywhere in the U.S. can come to New Mexico and go through
22 this. And in fact, as the Court I'm sure is aware, there are
23 numerous women in this state who in order to seek an abortion
24 have to leave. This is one place where they can go.

25 But the reason that we do that is so we don't have

1 the State of Idaho coming at us for committing a felony. We
2 want to make sure that we keep our distribution within the
3 confines established by the FDA. The FDA says you've got to
4 be a New Mexico APRN, so it becomes no question we can
5 demonstrate that the APRN is in New Mexico. And now we can
6 document that the person with whom the APRN is prescribing the
7 medication to has had their telemedicine consult in New
8 Mexico, had their drugs delivered in New Mexico.

9 That's not a function of Idaho law. It's just trying
10 to be careful because if we step outside of that footprint,
11 somebody's going to come after the TST as criminals. So we
12 are -- TST is on the threshold, able, willing, and ready to
13 provide its services to Idaho women in Idaho.

14 Now, the problem that I had in Indiana is I presented
15 the *GenPrio* case to the Court, and to my utter astonishment,
16 she struck the pleading. We'd had a cycle of pleadings on
17 U.S. Supreme Court cases on standing, and after that cycle was
18 closed, the *GenPrio* decision came down at the end of August.

19 And I did what any good attorney would do, what the
20 State did in this case. I brought to the Court's attention a
21 recent decision from another federal court, highly relevant
22 and germane to the matter pending before the Court.

23 You know, since *Dobbs*, the whole issue of who can get
24 an abortion, how you get it, it has become a very fast-moving
25 target on a lot of different fronts. And it behooves both

1 counsel and the Court to be as up to date as possible on
2 what's happening elsewhere, which is why you are interested in
3 what's going on in Indiana, because it's relevant to what
4 you're doing. What's going on in West Virginia is relevant to
5 what you're doing, because there are judges across the country
6 who are grappling with these issues.

7 *Dobbs* put the debate back on to us, the people. And
8 because there are so many unanswered questions, we come to
9 you, the courts, and we're trying to pick our way through
10 them. And each one has its own set of intricacies and
11 problems.

12 But the big flaw with what was done in Indiana is
13 that the judge absolutely ignored *GenBoPrio*. And if you read
14 the opinion, it basically said, I don't think you're serious
15 about coming into Indiana because you're not prepared to build
16 a clinic and hire a doctor.

17 And you know what? She's right. We're not prepared
18 to build a clinic or hire a doctor. But that doesn't mean
19 we're not prepared to go into Indiana, and that does not mean
20 that it is a someday kind of proposition. It's today. It's
21 the amount of time it would take to submit the paperwork by
22 FedEx and write a check. If we had to, we could get an APRN
23 registered in Idaho by the end of the year. Not a big deal.

24 So if you overcome those obstacles, we clearly have
25 standing as a prescriber for abortifacients. We're prepared

1 to deliver our services into the state of Idaho legally under
2 federal law. And the only thing that's preventing us from
3 doing it is that the TST people would go to jail for years for
4 violating the law. It's as clear-cut a case of standing as I
5 can imagine.

6 Now, that's just with respect to our organizational
7 standing as a provider of abortifacients. TST's mission, if
8 you will, is the promotion of the Satanic tenets, which are
9 essentially secular humanism, which is that people are able to
10 control their own bodies. And prior to the *Dobbs* decision,
11 women were able to control their own bodies when it came to
12 matters of being pregnant. *Dobbs* changed that.

13 As an extension of that mission, to continue the
14 mission, they took the next step and started offering the
15 medicines and abortifacients to its members. You know what?
16 It's no different than the Catholic church creating Catholic
17 hospitals. It -- it is almost easy to say that separates the
18 medical component from the religious component. But the fact
19 of the matter is that the Catholic church sees the delivery of
20 medical services to the community as part of its mission as a
21 church. Likewise, TST sees the delivery of medical services
22 to its members and others in a manner consistent with its
23 tenets as an extension of its mission.

24 There's something here. What was the point about
25 the -- oh, yes, that somehow the TST clinic is a new

1 undertaking and therefore doesn't qualify under the *Havens*
2 line of cases pertaining to incurring a burden. There's
3 nothing that says -- defines in the *Havens* cases or the other
4 cases that talk about organizations that you have to spend
5 your money in the manner you spent it before. Okay? There
6 are organizations that go out and spend money on registering
7 voters in response to state laws that infringe on their
8 mission. They may not have been in the business of
9 registering voters before, but once the law has changed and
10 they see this is what we have to do to promote our mission,
11 they go out and spend the money and they change it. They move
12 off of advocacy, they move off of education, and they move on
13 to action. And that is what the TST has done.

14 So I'd like to turn to associational standing, where
15 you have to have an identified member who would have standing
16 in her own right.

17 As we stand here in this courthouse today, we know
18 that there are dozens of women within a 10-mile radius of this
19 courthouse who are involuntarily pregnant as I speak. You
20 don't know how many. You don't know their names. But they
21 are there. Why? Because dumb brute biology.

22 And when we talk about statistics, the *Summers*
23 case -- in the *Summers* case, the Sierra Club went and said, We
24 have 700,000 members. And as you know, because we are the
25 Sierra Club, some of them will visit national parks. And it's

1 probable that some of those people visiting national parks
2 will go to those particular sections of the national parks
3 that are affected by the regulations that were at issue in
4 *Summers*.

5 And the Court said, No, it's not good enough. It's
6 probable. It doesn't rise to the level of establishing injury
7 in fact.

8 I've submitted to the Court the affidavit of an
9 expert witness who opines to a reasonable degree of medical
10 certainty that there are 27 members of the TST who are
11 involuntarily pregnant in the state of Idaho over the course
12 of the year.

13 Your Honor, I could get to a jury with that kind of
14 evidence. I could get to the jury, and I could argue that
15 fact to the jury. If the State wants to have its own expert
16 opine something else, then we can have a trial on the question
17 of fact. But I have established under conventional rules of
18 evidence the fact that there are 27 women members of TST who
19 are involuntarily pregnant in the state of Idaho over the
20 course of the year.

21 Now, there are two very -- two peculiarities about
22 pregnancies and standing. The first is that pregnancy only
23 lasts nine months at most. As the Courts have known since the
24 days of *Roe*, women become unpregnant by the time the case is
25 resolved. So the Court said, We're going to have a, you know,

1 repetition, evade, and review kind of standard. We're just
2 going to say at some point in time you have sufficient
3 specificity, a person, that you have standing.

4 Understand that the whole point of standing is to
5 keep the court in the business of interpreting the
6 constitution. It's part and parcel of the case in controversy
7 requirement. Okay? We're not here to ask you for an advisory
8 opinion. We're here to ask you to litigate facts.

9 Now, over that course of the year, I've got -- are
10 those women continuously pregnant? Can I say from start to
11 finish that there's always someone who is pregnant at some
12 point in time during the year? Today -- take today, for
13 example. Maybe none of those 27 women are pregnant. Maybe
14 all of them are. But what about next week? You know, if
15 we -- you have to grant some latitude here given the nature of
16 the injury and the nature of the claim that is being made.

17 I ask the Court to look at our members collectively
18 as a group. And that's exactly what *National Council of*
19 *La Raza* says. You don't have to identify them individually.
20 You just have to make sure that it is relatively clear rather
21 than merely speculative that one or more members have been or
22 will be adversely affected by defendants' actions. We have
23 met that standard.

24 Now, it goes on to say if the defendants could show
25 that there was something that they needed from these

1 individual women to make their case, that might be a different
2 story. But I haven't heard anything along those lines.

3 The other basis for associational standing is
4 stigmatic injury. The Satanic tenets -- members of
5 the Satanic tenets -- adherents of the Satanic tenets are not
6 necessarily Christians. It is not intrinsically or to say
7 overtly or explicitly a Christian theology. But the
8 theology -- and this is critical here, because this is what's
9 going on. There's a theology that the minute a egg is
10 fertilized by a sperm, it becomes a human being. That's what
11 the State wants.

12 In religious terms, that's kind of like saying, We
13 hereby legislate that Jesus Christ rose from the dead. Why
14 not? The State could do that. We would all raise our
15 eyebrows and go, "That's nuts," because that's a religious
16 belief. That's something that people feel in their heart, in
17 their soul.

18 And how do you have the State making that decision
19 for anyone? They do it in the name of protecting the unborn.
20 And kudos. It's a worthy goal. It is a worthy goal to
21 protect the unborn. But it's not only the unborn. It is the
22 unborn and the mother. And what the State has done is
23 created, voila, with a flip of its legislative wrist, a new
24 person. Welcome to America. Welcome to Idaho. You are now a
25 prenatal person. You are protected by the power and majesty

1 of the State of Indiana from having your life terminated.

2 Now let's turn to the woman who's -- who is now
3 carrying that human being. You said it yourself a little
4 earlier, surrogacy. The world has changed. The world has
5 changed certainly since the Fifth Amendment, 14th Amendment,
6 or *Roe*. Women engage in gestational surrogacy. They rent out
7 their uterus to incubate zygotes of other people. It's not
8 like selling a kidney. They're not selling their uterus.
9 Selling kidneys is really not an apt analogy. If we had a
10 situation where technology could allow people to rent out
11 their kidney, it might be a little different.

12 But if you look at the uterus and look at all of the
13 indicia of what constitutes property, it ticks all the boxes.
14 The woman controls it. The woman has the power to exclude.
15 The woman has the power to assign the use to a third party.
16 It ticks all the boxes of property.

17 I'm not asking the State to give up its protection of
18 the unborn. I'm asking the State that if you're going to make
19 a woman who is pregnant against her consent to carry that
20 prenatal person to term, write her a check. Pay for it. Pay
21 for the use of that uterus just as it would be paid for in the
22 open marketplace.

23 Which brings us to the next step. It's a lot of work
24 being a mother. I am blessed in the last few years to become
25 the grandparent of four little girls, and I am constantly

1 amazed at how much work it is to raise kids, to have kids and
2 raise kids. And what the State is asking the involuntarily
3 pregnant woman to do is to provide her work, her services, her
4 labor to bring that person into the world without a penny of
5 compensation.

6 If you want to build superhighways in your state and
7 you want to build universities and you want to grow the state
8 and pursue great dreams, fine. All right? But you got to pay
9 for it. Somebody has to pay for it. And we submit that the
10 constitution protects an involuntarily pregnant woman from
11 being the person who has to pay that bill.

12 There is a method -- I think a couple of smart guys
13 here from the Attorney General's Office, they could come up
14 with some way of accommodating the need to pay women for the
15 use of their bodies that is consistent with the Fifth
16 Amendment. They could come up with some means by which women
17 could be conscripted into the -- I don't know -- motherhood
18 quorum much like men are conscripted into the Army without
19 running afoul of the 13th Amendment. But they haven't done
20 those things. They've just said -- wave the legislative
21 wand -- We hereby say life begins at conception. Human beings
22 begin at conception.

23 THE COURT: I've got you at 25 minutes, so you need
24 to wrap up soon, because I have another hearing at 11:00.

25 MR. MAC NAUGHTON: Fair enough, Your Honor.

1 We talked a little earlier about the equal protection
2 argument. That's -- it's obvious. It's self-evident. The
3 fundamental right that's at issue here is the right to engage
4 in protected sex, unquestionably a fundamental right. And
5 what you -- and what the exemption given for rape victims is
6 that -- or the exemption that's only given for rape victims
7 penalizes women who don't have that exemption for having
8 engaged in protected sex. There are other ways of
9 accomplishing the goal, protecting the victims of rape without
10 infringing the fundamental rights of involuntarily pregnant
11 women.

12 If you have no further questions, I will sit down.

13 THE COURT: I don't. Thank you.

14 MR. TURNER: Just a few brief points in rebuttal,
15 Your Honor.

16 The State would, of course, prefer that the Court
17 reach the merits and dismiss this case with prejudice. But
18 the Court can't get there under Article III standing. There
19 just is not standing.

20 The diversionary harm, Mr. Mac Naughton didn't even
21 attempt to address the traceability issue, that the clinic was
22 established not in response just to Idaho laws but to other
23 states' laws. So if the Court were to provide it with the
24 relief it is seeking and enjoin Idaho law, it would
25 nevertheless establish the clinic in response to those other

1 laws. And that's a fatal defect that Mr. Mac Naughton didn't
2 even address.

3 Regarding the lack of licensure, I think
4 Mr. Mac Naughton is agreeing with me and doubling down on the
5 fact that there is no licensed practitioner employed by the
6 Satanic health clinic that could prescribe mifepristone in
7 Idaho. And that decides the question. Without that in place
8 as of filing, there's no injury; because if the Court were to
9 grant The Satanic Temple the relief it is asking for, it still
10 would not be able to prescribe mifepristone. It would have to
11 pay the \$300 and apply for licensure.

12 And he says it's just paperwork and it's a
13 perfunctory administrative task, but I don't think that our
14 health department views it that way. They are licensing
15 people who are fit to practice medicine in the state, and that
16 requires some -- some application, sure, but it also requires
17 some showing that you're fit. And they haven't demonstrated
18 that anybody would meet those requirements. They haven't --
19 they haven't demonstrated that there is a nurse practitioner,
20 through clearly alleged facts, that would qualify under
21 Idaho's licensure regulations to practice medicine in Idaho.
22 So that's a big issue.

23 Regarding the *GenBioPro* case, the reason I didn't
24 address it is because it's totally irrelevant. The question
25 of preemption is dicta, and the Court says so itself. It

1 says, I'm not issuing an advisory opinion on preemption. And
2 it was in the motion to dismiss phase. And so if the Court
3 looks at page 25, it'll see very evidently that *GenBioPro* has
4 no bearing on this case.

5 The Court opined on whether preemption would apply if
6 the REMS were in place but noted that the REMS that they would
7 prefer to be in place are not because of the Fifth Circuit
8 injunction.

9 And that brings me to that injunction. The current
10 REMS that govern Idaho and that govern West Virginia and
11 Indiana and all of the states that are not part of that
12 17-state coalition in the *Washington v. FDA* case which
13 Mr. Mac Naughton was referring to in the Ninth Circuit are
14 under the pre-2016 REMS. The pre-2016 REMS require an
15 in-patient visit in order for mifepristone to be prescribed.

16 There are 17 states that are protected by a competing
17 injunction that only applies to those 17 states. And that is
18 on appeal in the Ninth Circuit on a procedural issue. But
19 Idaho's not part of that 17-state coalition and is not under
20 that injunction.

21 The -- what I thought was hinted at in the brief but
22 became abundantly clear from Mr. Mac Naughton's presentation
23 is that they think and conceive of a mother's uterus as purely
24 a property interest that the State can utilize however it
25 wants as long as it pays for it.

1 That's a radical idea, and I don't really think the
2 implications would be palatable to The Satanic Temple. Are
3 they saying that the State could inversely condemn a mother's
4 uterus and compel her to become pregnant and carry a pregnancy
5 to term as long as they pay her? That doesn't -- I don't
6 think that jibes with the tenets of the Satanic Temple.

7 I'll end by saying Mr. Mac Naughton said the
8 threshold for motherhood is consent. That seems to be the
9 premise of his entire argument: The threshold for motherhood
10 is consent. That couldn't be more wrong. That's not true.
11 Idaho law does not impose obligations purely on the basis of a
12 consensual relationship on parents.

13 When a child is born -- Mr. Mac Naughton is right --
14 motherhood does require labor. It does require lots of work.
15 It does require resources. And yet the law recognizes that
16 there's a high duty of participants to care for their
17 children, and they can't abort them purely because they don't
18 want to carry that child to term. Idaho law protects women.
19 The Supreme Court says in *Dobbs* that it's the right of Idaho
20 to do that, and Mr. Mac Naughton did not address in a single
21 word how his theories are consistent with *Dobbs*' limitation.

22 For those reasons, Your Honor, we'd respectfully
23 request that the case be dismissed.

24 THE COURT: Before you sit down, there was one issue
25 raised in the surreply brief that I don't think you've had a

1 chance to respond to, and I don't know what your position is.
2 It has to do with plaintiff's amending their complaint to
3 allege a First Amendment claim.

4 MR. TURNER: Yeah. So the State's position, Your
5 Honor, is that the Court doesn't have that amendment -- that
6 motion to amend in front of it. But the Court should not
7 invite it either. The proper thing here, because of the lack
8 of jurisdiction, is to dismiss without prejudice. That will
9 not prejudice The Satanic Temple's ability to plead that claim
10 in a separate lawsuit if they can -- if they can do so.

11 There's a huge futility issue under the *halal* case
12 and *Smith*. There's no free exercise targeting of religion
13 here. It's a generally applicable law. The abortion
14 regulations in Idaho apply equally to Satanists as they do to
15 Christian as they do to Muslims.

16 So there's a futility issue, and the Court is going
17 to have to get to that futility question if it invites
18 pleading. It doesn't need to do that. It can just dismiss
19 this case without prejudice on standing. If it's going to
20 dismiss the claims with prejudice, then I suppose it would be
21 appropriate -- well, even then it's not been pleaded, and
22 there would be nothing preventing the plaintiff from bringing
23 a fresh lawsuit. And I think that's the appropriate thing to
24 do. They had the opportunity already to amend.

25 The Court would be well within its bounds to dismiss

1 given that they've had the opportunity to amend. That's what
2 the Southern District of Indiana did, and they're not
3 prejudiced because it's going to be without prejudice.

4 THE COURT: Okay. Thank you.

5 Counsel, I do appreciate the arguments that have been
6 made. You've clarified several points raised in the briefs.
7 I do believe the briefs were very helpful. I'll take the
8 matter under advisement, and I will get a decision out as
9 quickly as I can. I appreciate your time here this morning.

10 Court will be in recess.

11 (Proceedings concluded at 10:56 a.m., December 6, 2023.)

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C E R T I F I C A T E

I, ANNE BOWLINE, a Registered Merit Reporter and Certified Realtime Reporter, do hereby certify that I reported by machine shorthand the proceedings contained herein on the aforementioned subject on the date herein set forth, and that the foregoing 34 pages constitute a full, true and correct transcript.

Dated this 6th day of January, 2024.

/s/ Anne Bowline

ANNE BOWLINE
Registered Merit Reporter
Certified Realtime Reporter

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

THE SATANIC TEMPLE

Plaintiff

Index No. 1:22-cv-411

v.

RAUL LABRADOR, in his
capacity as the Attorney General of
Idaho, JAN M. BENNETTS, in
her capacity as Ada County Prosecutor,
and THE STATE OF IDAHO

Defendants

DECLARATION OF ERIN HELIAN

Erin Helian, pursuant to 28 U.S.C. §1746, declares under penalty of perjury the following statements are true and correct:

1. I am an Executive Director of and also a member of Plaintiff The Satanic Temple (“TST”). My areas of responsibility include the creation and operation of the TST Clinic, as described in the First Amendment Complaint (“Complaint”) at ¶¶ 17 to 22. I make this declaration in opposition to the Defendants’ motion to dismiss, ECF No. 23.

2. Erin Helian is an assumed name. I will not disclose my real name due to my fear of violent retribution from domestic terrorists motivated by animosity to proponents of abortion and non-Christian religious beliefs.

3. TST was incorporated as a Massachusetts religious organization in 2017 using the name “The Satanic Temple” and changed its name in 2019 to “The Satanic Temple, Inc.” Attached as Exhibit A is a true copy of the Articles of Incorporation of TST filed with the

Commonwealth of Massachusetts in 2017. Attached as Exhibit B is a true copy of the search results for “The Satanic Temple” at the MA Corporations Search Entity webpage. The Plaintiff in this case is the same entity that incorporated in 2017 and is currently listed as The Satanic Temple, Inc. in the state corporate records of MA and NM.

4. TST venerates, but does not worship, the allegorical Satan described in the epic poem Paradise Lost - the defender of personal sovereignty against the dictates of religious authority.

5. Members in TST adhere to seven tenets (the “TST Tenets”) commonly associated with secular humanism and described in the Complaint at ¶4.

6. TST promotes the TST Tenets with a variety of programs, including, but not limited to, litigating the validity of abortion regulations that infringe on the TST Tenets. TST has financed such litigation in federal courts in Missouri, Texas and the 8th Circuit and in Missouri state court.

7. TST is a voluntary membership organization, closely identified with TST members and subject to their influence. TST maintains a website at <https://thesatanictemple.com>. TST members can and do routinely organize events to promote the TST Tenets, with the support and encouragement of TST. TST members can and do routinely voice their opinions on the formulation and implementation of the TST Tenets and TST responds to those opinions.

8. There is a surprisingly large number of people in the US who profess to be Satanists,¹ including some who actually worship Satan as a deity. TST serves the segment of the Satanist community that regards Satan as the allegorical figure described in Milton's Paradise Lost. Adherence to the TST Tenets is central to their concept of being a Satanist and antithetical to the worship of Satan.

9. TST has at least 3,500 members in Idaho. They are generally between 16 and 40 years old.

10. TST has approximately 1,750 female TST members residing in Idaho.

11. The TST members wish to remain anonymous due to the risk of violent retribution from domestic terrorists motivated by animosity to proponents of abortion and non-Christian religious beliefs.

12. Consistent with TST Tenets III and V, TST members believe the fetal tissue a pregnant woman carries in her uterus – from conception until viability - is part of her body and not imbued with any humanity or existence separate and apart from that of the woman herself.

13. Consistent with the TST Tenets III and V, TST members believe a woman who carries a Prenatal Person (as that term is defined in the Complaint at ¶12) in her uterus without her consent must remove that Prenatal Person from her body provided it can be done without jeopardy to her own health and safety.

14. TST members hold these beliefs without regard to gender or whether they are pregnant.

¹ The dictionary defines a Satanist as “a person who engages in any of a highly diverse group of religious, philosophical, or countercultural practices centered around Satan, either as a deity or a nontheistic symbol of enlightenment, individualism, or ethical egoism.” <https://www.dictionary.com/browse/satanist>, last visited April 21, 2023

15. The concept that a human being comes into existence at conception and must be carried to term by the mother is antithetical to the TST Tenets and deeply offensive to TST members.

16. Pregnant TST members can and do get abortions, where they are legal, to terminate an unwanted pregnancy as an exercise of their religious beliefs pursuant to the Satanic Abortion Ritual, a copy of which is attached as Exhibit A to the Complaint.

17. Pregnant TST members in Idaho could get abortions in the exercise of the Satanic Abortion Ritual prior to August 25, 2022.

18. TST, doing business as TST Health, Inc., has spent over \$100,000 to establish and operate an abortion clinic in New Mexico (the “TST Clinic”).

19. The purpose of the TST Clinic is to:

- A. Promote the Satanic Abortion Ritual;
- B. Prescribe mifeprestone and misoprostol (“Abortifacients”) to pregnant members of TST nationwide using telemedicine (“Medical Abortions”); and
- C. Deliver Abortifacients to TST members nationwide for use in Medical Abortions by mail and other means;
- D. Counsel TST members on the use of Abortifacients in the Satanic Abortion; and
- E. Counsel TST members on the application of the Satanic Abortion Ritual to surgical abortions

20. The TST Clinic was established in response to the bans on abortion in Idaho and other states.

21. The TST Clinic became operational on February 14, 2023. It has received hundreds of inquiries from TST members about its services. It has served dozens of patients in the two months it has been operational and prescribed Abortifacients to numerous women for purposes of engaging in the Satanic Abortion Ritual.

22. Given this enthusiastic reception by TST members, it is highly likely that one or more of TST members in Idaho would use the unique services of the TST Clinic but for the Idaho Abortion Bans.

23. The TST Clinic employs licensed medical professionals who can and do, in their medical judgment, safely prescribe Abortifacients in accordance with FDA regulations to TST members for inducing abortions at home.

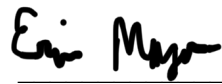
24. Those licensed medical professionals could safely prescribe Abortifacients in accordance with FDA regulations to TST members in Idaho for inducing abortions at home. The cost to become registered in the State of Idaho to make such prescriptions is about \$300.

25. The TST Clinic would provide Medical Abortions to TST members in Idaho, provided it could do so lawfully.

26. The TST Clinic does not prescribe Abortifacients to TST members in Idaho due to the threat of criminal prosecution and jeopardy to the professional licenses of its staff for violating the Idaho Abortion Bans (as defined in the Complaint at ¶24).

27. The creation of the TST Clinic has resulted in a diversion of TST resources from other programs and the corresponding reduction of TST's ability to promote the TST Tenets by other means.

April 26, 2023



Erin Helian

EXHIBIT A



The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee: \$35.00

Secretary of the Commonwealth, Corporations Division
One Ashburton Place, 17th floor
Boston, MA 02108-1512
Telephone: (617) 727-9640

Articles of Organization

(General Laws, Chapter 180)

Identification Number: 001299281

ARTICLE I

The exact name of the corporation is:

THE SATANIC TEMPLE

ARTICLE II

The purpose of the corporation is to engage in the following business activities:

THIS CORPORATION IS ORGANIZED AS A TAX-EXEMPT ORGANIZATION EXCLUSIVELY FOR ONE OR MORE OF THE PURPOSES SPECIFIED UNDER SECTION 501(C) OF THE INTERNAL REVENUE CODE. SPECIFICALLY, THE CORPORATION IS ORGANIZED AS A CHURCH OR RELIGIOUS INSTITUTION AS DESCRIBED UNDER 501(C)(3). THE PURPOSE OF THE CORPORATION IS TO ENGAGE IN THE FOLLOWING ACTIVITIES: A) THE PROMOTION OF THE BELIEFS, IDEALS, AND TENETS OF THE RELIGION. B) MUTUAL SUPPORT AND ASSISTANCE OF THE RELIGION'S MEMBERS. C) HOLDING RELIGIOUS EVENTS AND CEREMONIES. D) INTERACTION WITH THE COMMUNITIES WITHIN WHICH THE CHURCH HAS A PRESENCE. E) TO ENGAGE IN SUCH OTHER ACTIVITIES CONSISTENT WITH THE OPERATION OF A NON-PROFIT CHURCH AS DESCRIBED BY SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OR CORRESPONDING SECTION OF ANY FUTURE FEDERAL TAX CODE.

ARTICLE III

A corporation may have one or more classes of members. If it does, the designation of such classes, the manner of election or appointments, the duration of membership and the qualifications and rights, including voting rights, of the members of each class, may be set forth in the by-laws of the corporation or may be set forth below:

AS STATED IN THE BYLAWS OF THE CORPORATION

ARTICLE IV

Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or members, or of any class of members, are as follows:

(If there are no provisions state "NONE")

UPON DISSOLUTION OF THIS CORPORATION, ITS ASSETS REMAINING AFTER PAYMENT OR PROVISION FOR PAYMENT, OF ALL DEBTS AND LIABILITIES OF THIS CORPORATION, SHALL BE DISTRIBUTED FOR ONE OR MORE EXEMPT PURPOSES WITHIN THE MEANING OF SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OR SHALL BE DISTRIBUTED TO THE FEDERAL GOVERNMENT, OR TO A STATE OR LOCAL GOVERNMENT, FOR A PUBLIC PURPOSE. NO

SUBSTANTIAL PART OF THE ACTIVITIES OF THIS CORPORATION SHALL BE THE CARRYING ON OF PROPAGANDA, OR OTHERWISE ATTEMPTING TO INFLUENCE LEGISLATION (EXCEPT AS OTHERWISE PROVIDED BY SECTION 501 (H) OF THE INTERNAL REVENUE CODE) AND THIS CORPORATION SHALL NOT PARTICIPATE IN, OR INTERVENE IN (INCLUDING THE PUBLISHING OR DISTRIBUTION OF STATEMENTS), ANY POLITICAL CAMPAIGN ON BEHALF OF, OR IN OPPOSITION TO ANY CANDIDATE FOR PUBLIC OFFICE. NOTWITHSTANDING ANY OTHER PROVISIONS OF THESE BYLAWS, THIS CORPORATION SHALL NOT CARRY ON ANY ACTIVITIES NOT PERMITTED TO BE CARRIED ON (A) BY A CORPORATION EXEMPT FROM FEDERAL INCOME TAX UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OR (B) BY A CORPORATION, CONTRIBUTIONS TO WHICH ARE DEDUCTIBLE UNDER SECTION 170(C)(2) OF THE INTERNAL REVENUE CODE. NO PART OF THE NET EARNINGS OF THIS CORPORATION SHALL INURE TO THE BENEFIT OF, OR BE DISTRIBUTABLE TO, ITS MEMBERS, DIRECTORS, OFFICERS, OR OTHER PRIVATE

Notes: The preceding four (4) articles are considered to be permanent and may only be changed by filing appropriate Articles of Amendment.

ARTICLE V

The by-laws of the corporation have been duly adopted and the initial directors, president, treasurer and clerk or other presiding, financial or recording officers, whose names are set out on the following page, have been duly elected.

ARTICLE VI

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a *later* effective date is desired, specify such date which shall not be more than *thirty days* after the date of filing.

ARTICLE VII

The information contained in Article VII is not a permanent part of the Articles of Organization.

a. The street address (post office boxes are not acceptable) of the principal office of the corporation in Massachusetts is:

No. and Street: 64 BRIDGE STREET
 City or Town: SALEM State: MA Zip: 01970 Country: USA

b. The name, residential street address and post office address of each director and officer of the corporation is as follows:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code	Expiration of Term
PRESIDENT	DOUGLAS MISICKO	519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA 519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA	12/31/2019
TREASURER	DOUGLAS MISICKO	519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA 519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA	12/31/2019
CLERK	DOUGLAS MISICKO	519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA 519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA	12/31/2019
DIRECTOR	DOUGLAS MISICKO	519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA 519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA	12/31/2019 ER-73

c. The fiscal year (i.e., tax year) of the business entity shall end on the last day of the month of:
December

d. The name and business address of the resident agent, if any, of the business entity is:

Name: DOUGLAS MISICKO
No. and Street: 519 SOMERVILLE AVENUE
#288
City or Town: SOMERILLE State: MA Zip: 02143 Country: USA

I/We, the below signed incorporator(s), do hereby certify under the pains and penalties of perjury that I/we have not been convicted of any crimes relating to alcohol or gaming within the past ten years. I/We do hereby further certify that to the best of my/our knowledge the above-named officers have not been similarly convicted. If so convicted, explain:

IN WITNESS WHEREOF AND UNDER THE PAINS AND PENALTIES OF PERJURY, I/we, whose signature(s) appear below as incorporator(s) and whose name(s) and business or residential address (es) beneath each signature do hereby associate with the intention of forming this business entity under the provisions of General Law, Chapter 180 and do hereby sign these Articles of Organization as incorporator(s) this 14 Day of November, 2017. (If an existing corporation is acting as incorporator, type in the exact name of the business entity, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said business entity and the title he/she holds or other authority by which such action is taken.)

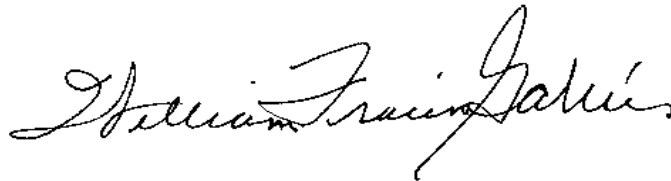
DOUGLAS MISICKO 519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are

deemed to have been filed with me on:

November 14, 2017 10:04 PM

A handwritten signature in black ink, reading "William Francis Galvin". The signature is written in a cursive style with a large, prominent initial "W".

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

EXHIBIT B

Secretary of the Commonwealth of Massachusetts

William Francis Galvin

Business Entity Summary

ID Number: 001299281

[Request certificate](#)

[New search](#)

Summary for: THE SATANIC TEMPLE, INC.

The exact name of the Religious (Chapter 180): THE SATANIC TEMPLE, INC.

The name was changed from: THE SATANIC TEMPLE **on** 05-24-2019

Entity type: Religious (Chapter 180)

Identification Number: 001299281

Date of Organization in Massachusetts:
11-14-2017

Last date certain:

Current Fiscal Month/Day: 12/31

The location of the Principal Office in Massachusetts:

Address: 64 BRIDGE STREET
City or town, State, Zip code, SALEM, MA 01970 USA
Country:

The name and address of the Resident Agent:

Name: DOUGLAS MISICKO
Address: 64 BRIDGE STREET
City or town, State, Zip code, SALEM, MA 01970 USA
Country:

The Officers and Directors of the Corporation:

Title	Individual Name	Address	Term expires
PRESIDENT	DOUGLAS MISICKO	519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA	12-31-2019
TREASURER	DOUGLAS MISICKO	519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA	12-31-2019
CLERK	DOUGLAS MISICKO	519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA	12-31-2019
DIRECTOR	DOUGLAS MISICKO	519 SOMERVILLE AVENUE #288 SOMERVILLE, MA 02143 USA	12-31-2019

Consent Confidential Data Merger Allowed Manufacturing

View filings for this business entity:

- ALL FILINGS
- Annual Report
- Application For Revival
- Articles of Amendment
- Articles of Consolidation - Foreign and Domestic

[View filings](#)

Comments or notes associated with this business entity:

[New search](#)

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

THE SATANIC TEMPLE

Plaintiff

Index No. 1:22-cv-411

v.

RAUL LABRADOR, in his
capacity as the Attorney General of
Idaho, JAN M. BENNETTS, in
her capacity as Ada County Prosecutor,
and THE STATE OF IDAHO

Defendants

DECLARATION OF DR. J.D.¹

Dr. J.D., pursuant to 28 U.S.C. §1746, declares under penalty of perjury the following statements are true and correct:

1. I hold a Doctorate in Osteopathy and am a Fellow in The American Congress of Obstetricians and Gynecologists. I am licensed to practice medicine in four states. I have engaged in the practice of medicine as an obstetrics and gynecological specialist for over fifteen (15) years.

2. I make this declaration in opposition to the Defendants' motion to dismiss, ECF No. 23.

3. I have reviewed the First Amended Complaint (the "Complaint") in this action. The allegations made in the Complaint at ¶¶37 to 40, 44, 46, 48, 51, 52, 55 to 58, 61 to 65 and 67 to 70 are true.

¹ Original filed under seal.

4. Virtually all scientific knowledge regarding the matters described in the preceding paragraph has been developed in the 20th and 21st Centuries. The scientific details for creating a human zygote and its progression and development to birth as a human being capable of self-sustaining life were unknown in the 18th and 19th Centuries.

5. The fertility rate is a commonly used metric in obstetrics and expressed as the number of live births per 1,000 women of child-bearing age. The fertility rate in Idaho in 2021 (the last year for which statistics are available) was 60.7 per 1,000 women.²

6. The induced abortion rate is a commonly used metric in obstetrics and expressed as the number of induced abortions per 1,000 women of child-bearing age. The induced abortion rate in Idaho in 2021 (the last year for which statistics are available) was 5.4 induced abortions per 1000 women.³

7. I am advised there are 1,750 women of child-bearing age in Idaho who are members of The Satanic Temple (“TST”). It is my opinion, to a reasonable degree of medical probability based on the fertility and abortions rates for Idaho, that one hundred fifteen (115) TST members in Idaho are pregnant during the course of a year.⁴ Many of them are Involuntarily Pregnant Women, as that term is defined in the Complaint at ¶8.

8. Contraception is routinely used by sexually active women to prevent becoming pregnant. There are many different forms of contraception, each with its own unique characteristics and risks for failure. With the exception of sterilization by hysterectomy, no

² https://www.cdc.gov/nchs/pressroom/sosmap/fertility_rate/fertility_rates.htm last visited April 21, 2023

³

<https://publicdocuments.dhw.idaho.gov/WebLink/DocView.aspx?id=23524&dbid=0&repo=PUBLIC-DOCUMENTS&cr=1> at p.5. Last visited April 21, 2023.

⁴ $1,750 \text{ women} \times (60.7 \text{ fertility rate} + 5.2 \text{ abortion rate}) = 115.3$

method of contraception is fool proof. Women using contraception are always at risk for getting pregnant, typically (though not always) due to a failure to correctly use their chosen method of contraception.

9. The National Institute of Health reports that 88.2% of all women ages 15 to 44 years used at least one form of contraception during their lifetime. Among women who could become pregnant but did not wish to do so, 90% use some form of contraception.⁵

10. The Centers for Disease Control and Prevention report that one-half of all pregnancies in the U.S. are unintended.⁶

11. The National Institute of Health reports that 48% of unintended pregnancies are due to a failure in the use of birth control.⁷

12. Applying these statistics, it is my opinion, to a reasonable degree of medical probability, that twenty-seven (27) TST members in Idaho are Involuntarily Pregnant Women during the course of a year.⁸

April 24, 2023

_____/s/_____
Dr. J.D.

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7533104/> last visited April 21, 2023

⁶ <https://www.cdc.gov/reproductivehealth/contraception/unintendedpregnancy/index.htm> , last visited April 21, 2023

⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2386600/> , last visited April 21, 2023.

⁸ $115 \times .5 \times .48 = 27.6$

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208-345-7000

W. James Mac Naughton, Esq.
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NJSB No. 000701985
7 Fredon Marksboro Road
Newton, NJ 07860
732-213-8180
Pro Hac Vice

Attorneys for Plaintiff The Satanic Temple

UNITED STATE DISTRICT COURT

DISTRICT OF IDAHO

THE SATANIC TEMPLE,

Plaintiff,

v.

RAÚL LABRADOR, in his capacity as the
Attorney General of Idaho, JAN M.
BENNETTS, in her capacity as Ada County
Prosecutor, and THE STATE OF IDAHO,

Defendants.

Case No. 1:22-cv-411-DCN

**STIPULATION TO REDACT AND
KEEP CONFIDENTIAL THE
NAME OF PLAINTIFF'S EXPERT
MEDICAL WITNESS FROM
PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO
DISMISS (DKT. 23)**

Plaintiff The Satanic Temple, by and through its attorneys of record, Jeremiah M. Hudson, of Fisher Hudson Shallat, and W. James Mac Naughton, Esq., and Defendants Raúl Labrador, Jan Bennetts, and the State of Idaho, by and through their attorneys of record, Lincoln Davis Wilson and Brian Church of the Office of the Attorney General of Idaho, hereby agree and stipulate to

request that the Court allow Plaintiff to redact and keep confidential the name and identifying information of Plaintiff's expert witness from a Declaration submitted by Plaintiff's expert witness and from Plaintiff's Response to Defendants' Motion to Dismiss ("Plaintiff's Expert Witness Declaration").¹ Plaintiff will file a copy of Plaintiff's Expert Witness Declaration with the witness' name and identifying information redacted. The parties agree to refer to Plaintiff's Expert Witness Declaration in papers filed with the Court by the witness' initials. Plaintiff will provide Defendants with an unredacted version of Plaintiff's Expert Witness Declaration, which Defendants will keep confidential. Plaintiff will file an unredacted version of Plaintiff's Expert Witness Declaration with the Court under seal.

Redaction of the name and identifying information of Plaintiff's expert witness is proper because Plaintiff's counsel has a good faith reason to believe that Plaintiff's expert witness, her family, and/or her place of employment might be subjected to threats of violence or targeted harassment due to the disclosure of her identity. Plaintiff's counsel does not believe that the public interest in disclosing the identity of Plaintiff's expert witness at this initial stage of litigation outweighs the safety interest of Plaintiff's expert witness. Plaintiff's counsel believes that additional time to adequately prepare Plaintiff's expert witness, her family, and her place of employment for any potential threats and harassment would be beneficial in the event that the Plaintiff's expert testimony be needed in subsequent phases of the above-entitled case.

This stipulation is not intended to extend beyond the pleadings related to Defendant's Motion to Dismiss. This stipulation is without prejudice to Defendants' right to petition the Court

¹ By entering this agreement, Defendants do not waive any defense or objection to Plaintiff's expert witness or Plaintiff's Expert Witness Declaration.

to lift the seal on the Expert Witness Declaration and be relieved of its confidentiality obligations herein.

DATED: May 2, 2023.

FISHER HUDSON SHALLAT

By: /s/ Jeremiah M. Hudson
Jeremiah M. Hudson
Counsel for Plaintiff

DATED: May 2, 2023.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Brian V. Church
Brian V. Church
Deputy Attorney General
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Lincoln Davis Wilson
Chief of Civil Litigation and Constitutional Defense
lincoln.wilson@ag.idaho.gov

Brian V. Church
Deputy Attorney General
brian.church@ag.idaho.gov

/s/ Jeremiah Hudson

Jeremiah Hudson

Jeremiah M. Hudson
Fisher Hudson Shallat
jeremiah@fisherhudson.com
ISB No. 8364
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208-345-7000

W. James Mac Naughton, Esq.
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Newton, NJ 07860
732-213-8180
Attorneys for Plaintiff The Satanic Temple

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

THE SATANIC TEMPLE

Plaintiff

Case No. 1:22-cv-411

v.

RAUL LABRADOR, in his
capacity as the Attorney General of
Idaho, JAN M. BENNETTS, in
her capacity as Ada County Prosecutor,
and THE STATE OF IDAHO

Defendants

FIRST AMENDED COMPLAINT

Plaintiff The Satanic Temple (“TST”) alleges as follows:

Parties

1. TST is a religious association with its principal place of business in Salem, Massachusetts.
2. TST has over 1.5 million members worldwide, including over 3,500 members in

Idaho.

3. TST venerates, but does not worship, the allegorical Satan described in the epic poem *Paradise Lost* - the defender of personal sovereignty against the dictates of religious authority.

4. Members in TST adhere to seven tenets (the “TST Tenets”) commonly associated with secular humanism:

A. Tenet I -One should strive to act with compassion and empathy toward all creatures in accordance with reason.

B. Tenet II - The struggle for justice is an ongoing and necessary pursuit that should prevail over laws and institutions.

C. Tenet III - One’s body is inviolable, subject to one’s own will alone.

D. Tenet IV - The freedoms of others should be respected, including the freedom to offend. To encroach upon the freedoms of another willfully and unjustly is to forgo one’s own.

E. Tenet V - Beliefs should conform to one’s best scientific understanding of the world. One should take care never to distort scientific facts to fit one’s beliefs.

F. Tenet VI - People are fallible. If one makes a mistake, one should do one’s best to rectify it and resolve any harm that might have been caused.

G. Tenet VII - Every tenet is a guiding principle designed to inspire nobility in action and thought. The spirit of compassion, wisdom, and justice should always prevail over the written or spoken word.

5. TST promotes the TST Tenets with a variety of programs, including, but not limited to, litigating the validity of abortion regulations that infringe on the TST Tenets.

6. TST has female TST members residing in Idaho who are or will become involuntarily pregnant (“Involuntarily Pregnant Women”).

7. The TST members wish to remain anonymous due to the risk of violent retribution from domestic terrorists motivated by animosity to proponents of abortion and non-Christian religious beliefs.

8. An Involuntarily Pregnant Woman is a woman who:

- A. Is “pregnant,” as that term is defined in Idaho Code § 18-604(11) with an “unborn child” as that term is used in Idaho Code § 18-604(5); and
- B. The “unborn child” is not “viable” as that term is used Idaho Code § 18-604(15); and
- C. Became pregnant without her consent due to the failure of her Birth Control, as hereinafter defined; and
- D. Is a member of TST.

9. Idaho Code § 18-604(5) defines an unborn child to be “an individual organism of the species Homo sapiens from fertilization until live birth.”

10. Idaho Code § 18-8802(1) states the legislative finding that “[t]he life of each human being begins at fertilization, and preborn children have interests in life, health, and well-being that should be protected.”

11. Idaho Code § 18-8802(8) states the legislative finding that “the state of Idaho has a compelling interest in protecting the life of a preborn child at all stages of its development, including after the preborn child has a detectable heartbeat, which signals rhythmically and without pause the presence of a precious and unique life, one that is independent and distinct from the mother's and one that is also worthy of our utmost protection.”

12. The “unborn child” defined in Idaho Code § 18-604(5) and “preborn child” defined in Idaho Code § 18-8802 are referred to herein as a Prenatal Person.

13. Consistent with TST Tenets III and V, TST members believe the fetal tissue a pregnant woman carries in her uterus – from conception until viability - is part of her body and not imbued with any humanity or existence separate and apart from that of the woman herself.

14. Consistent with the TST Tenets III and V, TST members believe a woman who carries a Prenatal Person in her uterus without her consent must remove that Prenatal Person from her body provided it can be done without jeopardy to her own health and safety.

15. Pregnant TST members can and do get abortions, where they are legal, to terminate an unwanted pregnancy as an exercise of their religious beliefs pursuant to the Satanic Abortion Ritual, a copy of which is attached as Exhibit A.

16. Pregnant TST members in Idaho could and did get abortions in the exercise of the Satanic Abortion Ritual prior to August 25, 2022.

17. TST, doing business as TST Health, has spent a substantial amount of money to establish an abortion clinic (the “TST Clinic”).

18. The purpose of the TST Clinic is to:

- A. Promote the Satanic Abortion Ritual;
- B. Prescribe mifeprestone and misoprostol (“Abortifacients”) to pregnant members of TST nationwide using telemedicine (“Medical Abortions”); and
- C. Deliver Abortifacients to TST members nationwide for use in Medical Abortions; and
- D. Counsel TST members on the use of Abortifacients in the Satanic Abortion Ritual; and

E. Counsel TSTS members on the application of the Satanic Abortion Ritual to surgical abortions.¹

19. The TST Clinic was established in response to the bans on abortion in Idaho and other states.

20. The TST Clinic will become operational on or about February 1, 2023, in New Mexico.

21. The TST Clinic will provide Medical Abortions to TST members in Idaho, provided it can do so lawfully.

22. The creation of the TST Clinic has resulted in a diversion of TST resources from other programs and the corresponding reduction of TST's ability to promote the TST Tenets by other means.

23. Involuntarily Pregnant Women are unable to get an abortion and engage in the Satanic Abortion Ritual in Idaho due to the criminalization of abortions in Idaho pursuant to Idaho Code § 18-604 et seq. (the "Criminal Abortion Statute") and the criminal and civil sanctions imposed by Idaho Code § 18-8801 et seq. (the "Fetal Heartbeat Statute") on abortion providers.

24. The Criminal Abortion Statute and Fetal Heartbeat Statute are referred to herein jointly and severally as the Idaho Abortion Bans.

25. The TST Clinic is unable to provide Medical Abortions to TST members in Idaho due to the criminal and civil sanctions imposed by the Idaho Abortion Bans on anyone who provides or aids on the performance of an abortion in Idaho.

26. Defendant Raul Labrador is the Attorney General of Idaho with responsibility for

¹ TST Clinic does not currently intend to provide surgical abortions, e.g., dilation and curettage.

enforcing the Idaho Abortion Bans. Attorney General Labrador is sued in his official capacity as Attorney General.

27. Defendant Jan M. Bennetts is the prosecutor for Ada County, Idaho with responsibility for enforcing the Idaho Abortion Bans in Ada County. Prosecutor Bennetts is sued in her official capacity as the Prosecutor for Ada County.

28. Most of the abortions provided in Idaho in the last two years were done in Ada County.

29. Defendant State of Idaho is a “government” for purposes of Idaho Code § 73-402(4) and a party defendant solely for purposes of Count Four.

30. Defendants, other than the State of Idaho, act under color of state law in violation of 42 U.S.C. § 1983 when they enforce the Idaho Abortion Bans against TST and its members in deprivation of their rights under the U.S. Constitution.

Jurisdiction and Venue

31. Count One seeks injunctive relief pursuant to 42 U.S.C. § 1983 for violations of the takings clause of the Fifth Amendment as applied to Idaho pursuant to the Fourteenth Amendment.

32. Count Two seeks injunctive relief pursuant to the Thirteenth Amendment prohibition of involuntary servitude, which is self-executing on the states.

33. Count Three seeks injunctive relief pursuant to 42 U.S.C. § 1983 for violations of the equal protection clause of the Fourteenth Amendment.

34. The Court has jurisdiction to decide Counts One, Two and Three pursuant to 28 USC § 1331 because the resolution of Plaintiff’s claims presents questions of federal law.

35. Count Four seeks injunctive relief pursuant to the Free Exercise of Religion

Protection Act (“FERPA”), Idaho Code § 73-401 et seq., for violation of the right of TST members to partake in the Satanic Abortion Ritual in Idaho and the right of TST to promote and enable the Satanic Abortion Ritual in Idaho.

36. The Court has jurisdiction to decide Count Four pursuant to 28 U.S.C. § 1367 because the claims made in Count Four are so related to claims made in Counts One, Two and Three that they form part of the same case or controversy under Article III of the U.S. Constitution.

Zygotes and Blastocysts

37. The most common method for creating a Prenatal Person starts with the deposit of a man’s sperm inside a woman’s vagina during the course of sex.

38. Once the man’s sperm is deposited in the woman’s vagina, it travels through her uterus and into her fallopian tubes where it may encounter an egg produced by her ovaries.

39. When a single sperm fuses with or fertilizes the woman’s egg, the resulting cell is known as a zygote. The fertilization process takes about 24 hours and typically occurs about two (2) weeks after the first day of the woman’s last menstrual cycle. The first day of the last menstrual cycle prior to fertilization is the starting point for measuring the course of a pregnancy commonly known as the estimated gestational age (“EGA”).

40. The zygote contains all of the genetic information (DNA) needed to become an adult human being. Half of the genetic information comes from the woman’s egg and half from the man’s sperm.

41. A zygote is a Prenatal Person pursuant to the Idaho Abortion Bans.

42. None of the Involuntarily Pregnant Women was aware of or consented to the creation of a zygote in her fallopian tubes at the time of fertilization.

43. The Idaho Abortion Bans do not apply to the destruction of a zygote by “the use of an intrauterine device or birth control pill to inhibit or prevent . . . the implantation of a fertilized ovum within the uterus.” Idaho Code §§ 18-604(1) and 18-8801(1).

44. After its creation, a zygote travels down the fallopian tube and divides to form a ball of cells known as a blastocyst.

45. A blastocyst is a Prenatal Person pursuant to the Idaho Abortion Bans.

46. The blastocyst reaches the uterus around five days after fertilization or three (3) weeks EGA. During this period, the blastocyst occupies empty space inside the fallopian tube or uterus.

47. The Idaho Abortion Bans do not apply to the destruction of a blastocyst while it occupies empty space in the fallopian tube or uterus.

48. Between six (6) and eleven (11) days after fertilization or three (3) to four (4) weeks EGA, the blastocyst implants into and occupies a layer of tissue in the uterus commonly known as the endometrium.

49. Upon implantation of the blastocyst into the uterus, the removal of the implanted blastocyst from the uterus is defined as an abortion in the Idaho Abortion Bans.

50. None of the Involuntarily Pregnant Women were aware of or consented to the implantation of a blastocyst into her uterus at the time it occurred.

51. Prior to implantation in the endometrium, the zygote and blastocyst derive nutrients from the mother’s egg.

52. Once a blastocyst is implanted into and occupies the endometrium, it forms the cells necessary for a placenta and the development of bodily organs, e.g., heart, lungs, brain, etc. This

stage is known as the embryo.²

53. An embryo is a Prenatal Person for purposes of the Idaho Abortion Bans.

54. The removal of an embryo from the uterus is defined as an abortion in the Idaho Abortion Bans.

55. An embryo is entirely dependent on the woman whose uterus it occupies for all of its oxygen and other nutrients, as well as physical protection until it becomes a viable fetus.

56. A pregnant woman's body produces the hormone progesterone, which is necessary for the endometrium to retain and nurture an embryo. If there is insufficient progesterone, the uterus will eject the embryo, i.e., miscarry, causing the death of the embryo.

57. During the first ten (10) weeks EGA, progesterone is produced by the Corpus Luteum, a cyst on the woman's ovaries. The embryo's placenta thereafter produces progesterone.

58. By the completion of ten (10) weeks EGA, the embryo has developed to the point of becoming a fetus and remains attached to the endometrium.

59. A fetus is a Prenatal Person pursuant to the Idaho Abortion Bans.

60. The removal of a fetus from the uterus is defined as an abortion in the Idaho Abortion Bans.

61. A fetus is entirely dependent on the woman whose uterus it occupies for all of its oxygen and other nutrients, as well as physical protection.

62. A fetus is dependent on the woman whose uterus it occupies for her labor, including but not limited to uterine contractions, to be delivered outside her body at birth.

² The word "embryo" is also commonly used to describe both the zygote and blastocyst. For purposes of this action, Plaintiff refers to an "embryo" as the fetal development stage between blastocyst and fetus.

Gestational Surrogacy

63. Since the mid-1980's, zygotes, blastocysts, and embryos have also been created outside a woman's body using in vitro fertilization ("IVF"). The father provides the sperm in a laboratory setting and the mother provides the egg in a laboratory setting. The sperm fertilizes the egg in a laboratory setting creating a zygote. The zygote develops into a blastocyst or embryo outside a woman's body in a laboratory setting.

64. The blastocyst or embryo created outside the woman's body using IVF is then surgically inserted into the empty space in a woman's uterus with the expectation it will implant in her endometrium.

65. Gestational surrogacy occurs when one woman provides the egg for fertilization by IVF, and another woman provides the use of her uterus for the incubation of the blastocyst or embryo into a viable child ("Gestational Surrogacy").

66. Gestational Surrogacy is legal in Idaho and routinely accomplished using a contract binding on the participants. The woman who provides the use of her uterus for the incubation of the blastocyst or embryo created in a laboratory into a viable fetus is commonly known as a gestational carrier.

67. Gestational carriers in Idaho are routinely paid significant sums of money for providing the use of their uterus to incubate a blastocyst or embryo created by IVF into a viable fetus.

68. Payments to gestational carriers also include compensation for the labor and other work provided by the gestational carrier to deliver a viable fetus at birth.

69. The only economic use for a uterus is being a gestational carrier.

70. An Involuntarily Pregnant Woman cannot be a gestational carrier because her uterus

is already in use.

Birth Control

71. The Involuntarily Pregnant Women used a variety of methods of contraception to avoid pregnancy (“Birth Control”).

72. Each of the Involuntarily Pregnant Women reasonably believed the Birth Control she used would be effective.

73. The Birth Control used by Involuntarily Pregnant Women failed and they became pregnant by accident and without their consent.

Count One:

The Idaho Abortion Bans Unconstitutionally Take the Property of Involuntarily Pregnant Women Without Just Compensation.

74. Plaintiff repeats and realleges ¶¶ 1 to 73.

75. The United States Supreme Court states that the term “property,” as used in the Fifth Amendment of the United States Constitution, “denote(s) the group of rights inhering in the citizen's relation to the physical thing, as the right to possess, use and dispose of it.” *U.S. v. General Motors Corporation*, 65 S.Ct. 357, 359, 323 U.S. 373, 378 (U.S. 1945); *See also Newman v. Sathyavaglswaran*, 287 F.3d 786, 798 (9th Cir. 2002).

76. The uterus of an Involuntarily Pregnant Woman is a physical thing in which she has property rights, including without limitation, the property right to:

- A. Have her uterus removed for any purpose, including without limitation, changing her sex; or
- B. Rent it out to a third party as a gestational carrier; or
- C. Retain any blastocyst, embryo, or nonviable fetus in her uterus; or
- D. Exclude any blastocyst, embryo, or nonviable fetus from her uterus;

E. Remove any blastocyst, embryo, or nonviable fetus from her uterus.

77. The property right of an Involuntarily Pregnant Woman to exclude or remove a Prenatal Person from her uterus cannot be taken by the State of Idaho without just compensation pursuant to the Takings Clause of the Fifth Amendment to the U.S. Constitution.

78. The property right to exclude or remove a Prenatal Person from a woman's uterus has substantial commercial value as established by over twenty-five years of experience with gestational surrogacy in Idaho.

79. The Idaho Abortion Bans make the exclusion or removal of a Prenatal Person from the uterus of an Involuntarily Pregnant Woman a crime.

80. The Idaho Abortion Bans impose substantial civil liabilities on anyone who provides an abortion or otherwise assists in the removal of a Prenatal Person from the uterus of an Involuntarily Pregnant Woman.

81. The Idaho Abortion Bans cause a taking of the property rights of an Involuntarily Pregnant Woman by preventing her from exercising her property rights to exclude or remove a Prenatal Person from her uterus.

82. The Idaho Abortion Bans fail to provide just compensation to an Involuntarily Pregnant Woman for the taking of her property rights on or before the occupancy of her uterus by a Prenatal Person.

83. The Idaho Abortion Bans are unconstitutional as applied to Involuntarily Pregnant Women under the takings clause of the Fifth Amendment and the Fourteenth Amendment.

84. Any post-taking just compensation awarded by an Idaho state court to an Involuntarily Pregnant Woman is inadequate because the occupancy of her uterus by a Prenatal Person also subjects her to involuntary servitude in violation of the Thirteenth Amendment.

Count Two:

The Idaho Abortion Bans Subject Involuntarily Pregnant Women to Involuntary Servitude in Violation of the Thirteenth Amendment.

85. Plaintiff repeats and realleges ¶¶ 1 to 84.

86. The term “involuntary servitude” means “the control of the labor and services of one [person] for the benefit of another, and the absence of a legal right to the disposal of his [or her] own person, property, and services.” *Clyatt v. U.S.*, 25 S.Ct. 429, 431, 197 U.S. 207, 218 (U.S. 1905).

87. Under the Idaho Abortion Bans, the State of Idaho requires each Involuntarily Pregnant Woman to provide a Prenatal Person with the following labor and services, among others:

- A. Hormones, including but not limited to progesterone.
- B. Oxygen.
- C. Nutrients.
- D. Antibodies.
- E. Body heat.
- F. Protection from external shocks and intrusions.
- G. Uterine contractions and other labor during the course of delivery.

88. The Idaho Abortion Bans cause each Involuntarily Pregnant Woman to provide the services necessary to sustain the life of a Prenatal Person that occupies and uses her uterus.

89. The Idaho Abortion Bans cause each Involuntarily Pregnant Woman to provide the labor necessary to deliver a Prenatal Person during birth.

90. The Idaho Abortion Bans provide no compensation or consideration to an Involuntarily Pregnant Woman for providing the services necessary to sustain the life of a

Prenatal Person that occupies and uses her uterus.

91. The Idaho Abortion Bans provide no compensation or consideration to an Involuntarily Pregnant Woman for providing the labor and other work necessary to birth a Prenatal Person.

92. Those services and labor have a substantial commercial value in Idaho as established by over twenty-five years of experience with gestational surrogacy.

93. The Idaho Abortion Bans are enforced by the use or threatened use of legal coercion including but not limited to:

- A. Conviction and incarceration of an Involuntarily Pregnant Woman for getting or soliciting an abortion pursuant to Idaho Code § 18-606(2); and
- B. Conviction and incarceration and the imposition of civil penalties and sanctions on any person who provides, assists, or enables an Involuntarily Pregnant Woman to get an abortion.

94. The Idaho Abortion Bans are unconstitutional as applied to the Involuntarily Pregnant Women because they are put into a condition of involuntary servitude in violation of the Thirteenth Amendment.

Count Three:

**The Idaho Abortion Bans Unconstitutionally Discriminate Between
Women Who Are Pregnant by Accident and
Women Who Are Pregnant by Rape or Incest**

95. Plaintiff repeats and realleges ¶¶ 1 to 94.

96. All women have the fundamental right to use contraception and engage in sex just for the pleasure and intimacy it brings and without any purpose or intent to become pregnant (“Protected Sex”).

97. The Involuntarily Pregnant Women engaged in Protected Sex but became pregnant by accident and without their consent due to the failure of their Birth Control.

98. The Idaho Abortion Bans impose criminal penalties on Involuntarily Pregnant Women who get an abortion, notwithstanding their lack of consent to becoming pregnant. Idaho Code § 18-606(2).

99. The Idaho Abortion Bans impose criminal penalties and civil sanctions on TST if it provides Medical Abortions to Involuntarily Pregnant Women in Idaho or otherwise knowingly aids them in getting an abortion.

100. The Idaho Abortion Bans do not apply to a pregnant woman who reports an act of rape or incest to a law enforcement agency. Idaho Code §§ 18-622(3)(b)(ii) and 18-8804(1)(a).

101. The Idaho Abortion Bans discriminate between similarly situated women who are pregnant without their consent - women who are pregnant by accident and women who report they are pregnant by rape.

102. This discrimination infringes upon the fundamental right of Involuntarily Pregnant Women to engage in Protected Sex because they are forced to pay the physical, emotional, and financial costs of being pregnant without their consent while women who report they are impregnated by rape are not.

103. There is no compelling state interest served by this discrimination.

104. Whatever government interest this discrimination purports to serve can be accomplished by means less intrusive on the fundamental right of Involuntarily Pregnant Women to engage in Protected Sex.

105. The Idaho Abortion Bans violate the equal protection clause of the Fourteenth Amendment.

Count Four:

**The Idaho Abortion Bans Violate the Idaho Exercise of Religious Freedom Act
Because They Make the Exercise of the Satanic Abortion Ritual a Crime.**

106. Plaintiff repeats and realleges ¶¶ 1 to 105.

107. When a member of TST has an unwanted pregnancy, she exercises her religious beliefs as expressions of Tenets III and V by engaging in the Satanic Abortion Ritual.

108. The Idaho Abortion Bans make the exercise of the Satanic Abortion Ritual in Idaho a crime and effectively prohibits it.

109. The Idaho Abortion Bans makes it a crime for TST to enable TST members in Idaho to partake in the Satanic Abortion Ritual.

110. There is no compelling state interest served by making the exercise of the Satanic Abortion Ritual in Idaho a crime.

111. There are less restrictive means of furthering the state's asserted interests served by the Idaho Abortion Bans than by making the exercise of the Satanic Abortion Ritual in Idaho a crime.

112. The Idaho Abortion Bans violates the Idaho Exercise of Religious Freedom Act, Idaho Code § 73-401 et seq.

COSTS AND ATTORNEY FEES

Plaintiff's claims in Counts One, Two and Three arise from violations of 42 U.S.C. § 1983. As an action to enforce this provision and vindicate a violation of civil rights, Plaintiff is entitled to an award of reasonable costs of suit and attorney fees in an amount deemed reasonable by this Court pursuant to 42 U.S.C. § 1988 in the event it is the prevailing party.

Plaintiff's claims in Count Four arise from violations of Idaho Code § 73-401 et seq. Plaintiff is entitled to the award of attorney fees pursuant to Idaho Code § 73-402(4) in the event it is the prevailing party.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. Entry of an order permanently enjoining Defendants from enforcing the Idaho Abortion Bans against Involuntarily Pregnant Women or anyone who provides an Involuntarily Pregnant Woman with an abortion.
- B. Entry of an order permanently enjoining Defendants from enforcing the Idaho Abortion Bans against TST for the provision of Medical Abortions in Idaho.
- C. For costs of suit, including reasonable attorneys' fees.
- D. For such other and further relief as this Court deems just and equitable.

DATED: December 13, 2022

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date of this pleading, I electronically filed it with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

BRIAN V. CHURCH
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DAYTON P. REED
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/s/ W. James Mac Naughton

EXHIBIT A

SATANIC ABORTION RITUAL

The Satanic Abortion Ritual is a destruction ritual that serves as a protective rite. Its purpose is to cast off notions of guilt, shame, and mental discomfort that a patient may be experiencing due to choosing to have a medically safe and legal abortion.

Even the most confident and unapologetic individual can experience uncomfortable feelings and anxiety for choosing to terminate their pregnancy. Laws in many states that impose waiting periods and state-mandated counseling can exacerbate these feelings, as can social condemnation and outright harassment by those who oppose abortion.

Misinformation about abortion and guilt for pursuing that option can be a lot to handle. It can be exhausting and frustrating to try to shrug off and dismiss internal and external pressures, especially those driven by religious convictions that disregard the beliefs and freedoms of others. Even when one recognizes that these criticisms are invalid, they can make an already troubling time even harder.

This ritual is intended to alleviate some of these stressors and empower the patient to be guided by the Third and Fifth Tenets when pursuing their decision.

The purpose of the ritual is not to persuade someone to have an abortion if they are undecided. Instead, the ritual serves to assist in confirming their decision and to ward off the effects of unjust persecution, which can cause one to stray from the paths of scientific reasoning and free will that TST members strive to embody.



ABOUT THE RITUAL PREPARATIONS

TST's abortion ritual can be performed to address definable concerns or to overcome unproductive feelings.

The ritual, which includes the abortion itself, spans the entirety of the pregnancy termination procedure. There are steps to be performed before, during, and after the medical or surgical abortion.

Because rituals are deeply personal to those enacting them, there are variations in how it may be performed. The ritual can be personalized based on personal preferences and availability of materials. There is no need to purchase anything special or to adhere to every word. What is essential is the spirit and general intent.

One can also perform their favorite destruction ritual to target any of the unwanted feelings incited by adversity faced as a consequence of choosing to have an abortion. Feel free to take or leave whatever you wish from this one to build your own.

Before performing the ritual, you may choose to review the science about the safety and reality of abortion and the debunked claims from those who oppose abortion. You may also choose to read stories or listen to podcasts about people who made great sacrifices in the struggle to establish the reproductive rights we have today. These stories can be inspirational and may subdue stigmas you might feel from those who oppose abortion.

Your ability to choose to terminate a pregnancy is consistent with the ideals of liberty and freedom. Be proud of pursuing what you want for your life despite opposition.

IMPLEMENTS

- A quiet space where you feel comfortable
- Something that allows you to see your reflection
- A copy of The Satanic Temple's third and fifth tenets and personal affirmation

TENETS AND AFFIRMATIONS

Tenet III

One's body is inviolable, subject to one's own will alone.

Tenet V

Beliefs should conform to one's best scientific understanding of the world. One should take care never to distort scientific facts to fit one's beliefs.

Personal Affirmation

*By my body, my blood
By my will, it is done.*



PROCEDURES

For medical abortions:

Immediately before taking the medication(s) to terminate your pregnancy, look at your reflection to be reminded of your personhood and responsibility to yourself. Focus on your intent, take deep breaths, and make yourself comfortable. When ready, read the Third Tenet aloud to begin the ritual. After swallowing the medication(s), take another deep breath and recite the Fifth Tenet. After you have passed the embryo, return to your reflection, and recite the personal affirmation. Feel the doubts dissipating and your confidence growing as you have just undertaken a decision that affirms your autonomy and free will. The religious abortion ritual is now complete.

For surgical abortions:

Immediately before receiving any anesthetic or sedation, look at your reflection to be reminded of your personhood and responsibility to yourself. Focus on your intent, take deep breaths, and make yourself comfortable. When you are ready, say the Third Tenet aloud. The surgery can now begin. During the operation, take another deep breath and recite the Fifth Tenet. Immediately after the surgery, return to your reflection and recite the personal affirmation. Feel the doubts dissipating and your confidence growing as you have just undertaken a decision that affirms your autonomy and free will. The religious abortion ritual is now complete.



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Attorneys for Plaintiff The Satanic Temple

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

THE SATANIC TEMPLE

Plaintiff

Index No. 1:22-cv-411

v.

RAUL LABRADOR, in his
capacity as the Attorney General of
Idaho, JAN M. BENNETTS, in
her capacity as Ada County Prosecutor,
and THE STATE OF IDAHO

Defendants

NOTICE OF APPEAL

Plaintiff The Satanic Temple hereby appeals to the United States Court of Appeals for the Ninth Circuit the order and judgment dismissing the complaint of the United States District Court for the District of Idaho entered on January 31, 2024, ECF Nos. 49 and 50.

February 29, 2024

W. James Mac Naughton

W. James Mac Naughton, Esq.
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Attorney for Plaintiff The Satanic Temple

CERTIFICATE OF SERVICE

W. James Mac Naughton certifies that on the date set forth above, I caused a true and correct copy of this pleading to be served via the Court's ECF system and email on:

BRIAN V. CHURCH
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DAYTON P. REED
Deputy Attorney General
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February 29, 2024

W. James Mac Naughton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date of this pleading, I electronically filed it with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

BRIAN V. CHURCH
Deputy Attorney General
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/s/ W. James Mac Naughton

APPEAL,LC19,TERMED

U.S. District Court
District of Idaho (LIVE) NextGen 1.7 (Boise - Southern)
CIVIL DOCKET FOR CASE #: 1:22-cv-00411-DCN

The Satanic Temple v. Little et al
Assigned to: Judge David C. Nye
Case in other court: United States Court of Appeals,
24-01243
Cause: 42:1983 Civil Rights Act

Date Filed: 09/30/2022
Date Terminated: 01/31/2024
Jury Demand: None
Nature of Suit: 440 Civil Rights:
Other
Jurisdiction: Federal Question

Plaintiff

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V.

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Defendant

The State of Idahorepresented by **Brian V Church**

(See above for address)

LEAD ATTORNEY**ATTORNEY TO BE NOTICED****Lincoln Davis Wilson**

(See above for address)

TERMINATED: 10/06/2023**LEAD ATTORNEY**

Date Filed	#	Docket Text
09/30/2022	1	COMPLAINT against All Defendants (Filing fee \$ 402 receipt number AIDDC-2458376.), filed by The Satanic Temple. (Attachments: # 1 Summons Brad Little, # 2 Summons Lawrence Wasden, # 3 Cover Sheet)(Hudson, Jeremiah)
09/30/2022	2	MOTION FOR PRO HAC VICE APPEARANCE by W. James Mac Naughton. (Filing fee \$ 250 receipt number AIDDC-2458403.)Jeremiah Matthew Hudson appearing for Plaintiff The Satanic Temple. Responses due by 10/21/2022 (Hudson, Jeremiah)
10/03/2022	3	DOCKET ENTRY ORDER APPROVING (DKT. 2) Motion for Pro Hac Vice Appearance of attorney W. James Mac Naughton for The Satanic Temple Per Local Rule 83.4(e), out-of-state counsel shall immediately register for ECF. (Notice sent to CM/ECF Registration Clerk) (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (lm)
10/03/2022	4	Summons Issued as to All Defendants. (Print attached Summons for service.) (Attachments: # 1 Summons)(lm)
10/11/2022	5	SUMMONS Returned Executed by The Satanic Temple. Brad Little served on 10/7/2022, answer due 10/28/2022. (Hudson, Jeremiah)
10/11/2022	6	SUMMONS Returned Executed by The Satanic Temple. Lawrence Wasden served on 10/7/2022, answer due 10/28/2022. (Hudson, Jeremiah)
10/27/2022	7	STIPULATION re 1 Complaint <i>Extension of Time to File Defendants' Responsive Pleading</i> by Brad Little, Lawrence Wasden. (Church, Brian)
10/27/2022	8	DOCKET ENTRY ORDER ADOPTING 7 Stipulation. Defendants shall file their responsive pleading to the Complaint on or before November 15, 2022. Signed by Judge Raymond E. Patricco, Jr. (dg)

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10/28/2022	9	NOTICE of Assignment to Magistrate Judge and Requirement for Consent sent to counsel for Brad Little, The Satanic Temple, Lawrence Wasden re 7 Stipulation, 1 Complaint Consent/Objection to Magistrate due by 12/27/2022. (lm)
11/14/2022	10	STIPULATION (<i>Second</i>) <i>Re Extension of Time to File Defendants' Responsive Pleading</i> by Brad Little, Lawrence Wasden. (Church, Brian)
11/16/2022	11	DOCKET ENTRY ORDER ADOPTING 10 Stipulation. Defendants shall respond to Plaintiff's Complaint on or before November 22, 2022. Signed by Judge Raymond E. Patricco, Jr. (dg)
11/22/2022	12	MOTION to Dismiss Brian V Church appearing for Defendants Brad Little, Lawrence Wasden. Responses due by 12/13/2022 (Attachments: # 1 Memorandum in Support of Motion to Dismiss) (Church, Brian)
12/02/2022	13	STIPULATION <i>Extension of Time to File Plaintiffs Response to Defendants Motion to Dismiss</i> by The Satanic Temple. (Hudson, Jeremiah)
12/02/2022	14	DOCKET ENTRY ORDER ADOPTING 13 Stipulation. Plaintiff shall respond to 12 Defendants' Motion to Dismiss on or before January 3, 2023. Signed by Judge Raymond E. Patricco, Jr. (dg)
12/13/2022	15	AMENDED COMPLAINT against RAUL LABRADOR, Jan M. Bennetts, filed by The Satanic Temple. (Attachments: # 1 Exhibit A-The Satanic Abortion Ritual)(Mac Naughton, William)
12/21/2022	16	NOTICE by Brad Little, Lawrence Wasden <i>of withdrawal of counsel</i> (Reed, Dayton)
12/28/2022	17	The 60 day deadline has expired. Case has been reassigned to a District Judge. No more notice of availability or assignment will be sent out. Consent deadline(s) termed. (lm)
12/28/2022		DOCKET ENTRY NOTICE of Case Number Change, Case reassigned to Judge David C. Nye for all further proceedings. Judge Raymond Edward Patricco, Jr no longer assigned to case. Please use this case number on all future pleadings, 1:22-cv-00411-DCN (lm)
01/03/2023	18	ORDER - Defendants Brad Little and Lawrence Wasdens Motion to Dismiss (Dkt. 12) is DISMISSED as MOOT. Defendants Brad Little and Lawrence Wasden are DISMISSED as Defendants. Once the new Defendants are served, and appear (via motion or appearance), the case will continue forward. Signed by Judge David C. Nye. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (lm)

01/23/2023	19	WAIVER OF SERVICE Returned Executed by The Satanic Temple. The State of Idaho waiver sent on 1/13/2023, answer due 3/14/2023. (Hudson, Jeremiah)
01/23/2023	20	WAIVER OF SERVICE Returned Executed by The Satanic Temple. Jan M. Bennetts waiver sent on 1/13/2023, answer due 3/14/2023. (Hudson, Jeremiah)
01/23/2023	21	WAIVER OF SERVICE Returned Executed by The Satanic Temple. RAUL LABRADOR waiver sent on 1/13/2023, answer due 3/14/2023. (Hudson, Jeremiah)
02/17/2023	22	NOTICE of Appearance by Lincoln Davis Wilson on behalf of Jan M. Bennetts, RAUL LABRADOR, The State of Idaho (Wilson, Lincoln)
03/14/2023	23	Motion to Dismiss for Failure to State a Claim <i>and subject matter jurisdiction</i> Lincoln Davis Wilson appearing for Defendants Jan M. Bennetts, RAUL LABRADOR, The State of Idaho. Responses due by 4/4/2023 (Attachments: # 1 Memorandum in Support, # 2 Exhibit A) (Wilson, Lincoln) Modified on 5/4/2023 to make motion pending (lm).
03/28/2023	24	STIPULATION <i>to Extend Time to File Plaintiff's Response to Defendants' Motion to Dismiss</i> by The Satanic Temple. (Hudson, Jeremiah)
03/29/2023	25	ORDER RE: STIPULATED EXTENSION OF TIME TO FILE PLAINTIFFS RESPONSE TO DEFENDANTS MOTION TO DISMISS - The parties Stipulated Extension of Time to File Plaintiffs Response to Defendants Motion to Dismiss (Dkt. 24) is GRANTED, and the time for Plaintiff to file Plaintiffs Response to Defendants Motion to Dismiss in this matter is extended to May 4, 2023. Signed by Judge David C. Nye. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (lm)
03/29/2023		Set/Reset Deadlines as to 23 Motion to Dismiss for Failure to State a Claim <i>and subject matter jurisdiction</i> . Plaintiff's Response to Defendants Motion to Dismiss is due by 5/4/2023 (lm)
04/21/2023	26	STIPULATION <i>to Exceed Page Limits and Extend Time</i> by The Satanic Temple. (Hudson, Jeremiah)
05/01/2023	27	DOCKET ENTRY ORDER. Pending before the Court is the parties' stipulation (Dkt. 26). Good cause appearing, the same is APPROVED. Both parties may have five (5) additional pages for the remaining briefs on the present Motion to Dismiss. Additionally, Defendants' reply is extended and due on or before June 1, 2023. Signed by Judge David C. Nye. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (bb)

05/02/2023		Plaintiff's Reply to Defendants Motion to Dismiss is due by 6/1/2023. (Im)
05/02/2023	28	STIPULATION <i>re Limited Confidentiality of Expert Witness</i> by The Satanic Temple. (Hudson, Jeremiah)
05/03/2023	29	ORDER RE: STIPULATION TO REDACT AND KEEP CONFIDENTIAL THE NAME OF PLAINTIFFS EXPERT MEDICAL WITNESS FROM PLAINTIFFS RESPONSE TO DEFENDANTS MOTION TO DISMISS - The parties Stipulation is GRANTED, and the name and identifying information pertaining to Plaintiffs expert witness shall be redacted from filings associated with Defendants Motion to Dismiss (Dkt. 23). Signed by Judge David C. Nye. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (Im)
05/04/2023	30	MEMORANDUM in Opposition re 23 Motion to Dismiss for Failure to State a Claim <i>and subject matter jurisdiction</i> filed by The Satanic Temple. Replies due by 5/18/2023.(Mac Naughton, William)
05/04/2023	31	AFFIDAVIT in Opposition re 23 Motion to Dismiss for Failure to State a Claim <i>and subject matter jurisdiction</i> By <i>Erin Helian</i> filed by The Satanic Temple. Replies due by 5/18/2023.(Mac Naughton, William)
05/04/2023	32	AFFIDAVIT in Opposition by Dr. J.D. re 23 Motion to Dismiss for Failure to State a Claim <i>and subject matter jurisdiction</i> filed by The Satanic Temple. Replies due by 5/18/2023.(Mac Naughton, William)
05/04/2023	33	SEALED RESPONSE to Motion re 23 Motion to Dismiss for Failure to State a Claim <i>and subject matter jurisdiction</i> By <i>Dr. J.D.</i> filed by The Satanic Temple. Replies due by 5/18/2023.(Mac Naughton, William)
05/04/2023	34	NOTICE of Appearance by Timothy Longfield on behalf of Jan M. Bennetts, RAUL LABRADOR, The State of Idaho (Longfield, Timothy)
06/01/2023	35	REPLY to Response to Motion re 23 Motion to Dismiss for Failure to State a Claim <i>and subject matter jurisdiction</i> filed by Jan M. Bennetts, RAUL LABRADOR, The State of Idaho.Motion Ripe Deadline set for 6/2/2023.(Wilson, Lincoln)
06/16/2023	36	MOTION for Leave to File <i>Sur Reply</i> William James Mac Naughton appearing for Plaintiff The Satanic Temple. Responses due by 7/7/2023 (Attachments: # 1 Exhibit A-Proposed Sur Reply)(Mac Naughton, William)
06/20/2023	37	DOCKET ENTRY ORDER. Pending before the Court is Plaintiff's Motion for Leave to File <i>Sur Reply</i> . Dkt. 36 . In order to ensure the "just, speedy, and inexpensive determination" of this proceeding (See Fed. R. Civ. P. 1), the Court orders as follows: Defendants' response,

		if any, to the motion shall be due on or before June 26, 2023. Plaintiff's reply will be due on or before June 30, 2023. Defendants response (and Plaintiff's reply) need only address the motion for leave to file itself, not the underlying substance. In other words, the parties should address the justification (or lack thereof) of further briefing, not the substantive arguments within the briefing. If the Court's grants the Motion to file sur reply, Defendants may ask for a sur-sur-reply. That said, the Court plans to hold oral argument on the Motion to Dismiss; thus, any and all argument can be made at the time of the hearing (if not addressed now in briefing). Signed by Judge David C. Nye. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (bb)
06/20/2023		Set/Reset Deadlines as to 36 MOTION for Leave to File <i>Sur Reply</i> . Defendants' Response is due by 6/26/2023 Plaintiff's Reply is due by 6/30/2023. Per DEO at dkt 37(lm) (Entered: 06/21/2023)
06/26/2023	38	RESPONSE to Motion re 36 MOTION for Leave to File <i>Sur Reply</i> filed by Jan M. Bennetts, RAUL LABRADOR, The State of Idaho. Replies due by 7/10/2023.(Wilson, Lincoln)
06/27/2023	39	DOCKET ENTRY ORDER. Pending before the Court is Plaintiff's Motion for Leave to File Sur Reply. Dkt. 36 . Pursuant to Court order (see Dkt. 37) the Government has stated its non-opposition to the request (Dkt. 38). Accordingly, Plaintiff's Motion is GRANTED. Plaintiff shall file its sur reply (Dkt. [36-1]) officially on the docket as soon as reasonably possible. Signed by Judge David C. Nye. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (bb)
06/27/2023	40	RESPONSE to Motion re 23 Motion to Dismiss for Failure to State a Claim <i>and subject matter jurisdiction Sur Reply</i> filed by The Satanic Temple. Replies due by 7/11/2023.(Mac Naughton, William)
09/05/2023	41	NOTICE by Jan M. Bennetts, RAUL LABRADOR, The State of Idaho <i>of Withdrawal of Counsel</i> (Longfield, Timothy)
09/26/2023	42	DOCKET ENTRY NOTICE of Hearing on Motion 23 Motion to Dismiss for Failure to State a Claim <i>and subject matter jurisdiction</i> : Motion Hearing set for 12/6/2023 at 10:00 AM in Boise - Courtroom 1 before Judge David C. Nye. (pr)
09/26/2023	43	NOTICE of Appearance by Joshua N. Turner on behalf of Jan M. Bennetts, RAUL LABRADOR (Turner, Joshua)
10/06/2023	44	NOTICE by Jan M. Bennetts, RAUL LABRADOR, The State of Idaho <i>of Withdrawal of Counsel</i> (Wilson, Lincoln)

12/04/2023	45	NOTICE by Jan M. Bennetts, RAUL LABRADOR, The State of Idaho <i>Notice of Supplemental Authority</i> (Attachments: # 1 Exhibit A Supplemental Authority)(Turner, Joshua)
12/04/2023	46	NOTICE by The Satanic Temple re 45 Notice (Other), 23 Motion to Dismiss for Failure to State a Claim <i>and subject matter jurisdiction</i> , 31 Affidavit in Opposition to Motion, 30 Memorandum in Opposition to Motion (Attachments: # 1 Exhibit A-GenBioPro, Inc. v. Sorsaia, Civil Action 3:23-0058 (S.D.W.Va. Aug. 24, 2023), # 2 Exhibit B - GenBioPro, Inc. v. Sorsaia, Civil Action 3:23-0058 (S.D.W.Va. May 2, 2023))(Mac Naughton, William)
12/06/2023	47	<i>Minute Entry for proceedings held before Judge David C. Nye: Motion Hearing held on 12/6/2023 re 23 Motion to Dismiss for Failure to State a Claim and subject matter jurisdiction filed by Jan M. Bennetts, The State of Idaho, RAUL LABRADOR: Court heard oral argument, matter taken under advisement with a written decision to be forthcoming. (Court Reporter/Anne Bowline.) (pr)</i>
01/08/2024	48	Notice of Filing of Official Transcript of Motion Hearing Proceedings held on 12/6/2023 before Judge David C. Nye. Court Reporter Anne Bowline, Email Anne_Bowline@id.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. This transcript is not available to the general public and as such is sealed until release of transcript restriction. Redaction Request due 1/29/2024. Redacted Transcript Deadline set for 2/8/2024. Release of Transcript Restriction set for 4/8/2024. (amb)
01/31/2024	49	MEMORANDUM DECISION AND ORDER - Defendants Motion to Dismiss (Dkt. 23) is GRANTED. Claims One through Four are Dismissed with prejudice and without leave to amend. The Court will enter a separate judgment in accordance with Federal Rule of Civil Procedure 58. Signed by Judge David C. Nye. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (lm)
01/31/2024	50	JUDGMENT - NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of Defendants and this case CLOSED. Signed by Judge David C. Nye. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (lm)
02/29/2024	51	NOTICE OF APPEAL as to 49 Memorandum Decision,, Order, 50 Judgment, by The Satanic Temple. Filing Fee Due. \$ 605, receipt number AIDDC-2713849. (Notice sent to Court Reporter & 9th Cir)

		(Mac Naughton, William)
02/29/2024	52	APPEAL DOCKETING STATEMENT re 51 Notice of Appeal : by Plaintiff The Satanic Temple (Notice sent to 9th Cir) (Mac Naughton, William)
03/01/2024	53	AMENDED NOTICE OF APPEAL 24-1243 as to 49 Memorandum Decision,, Order, 50 Judgment, by The Satanic Temple. (Notice sent to Court Reporter & 9th Cir) (Mac Naughton, William) Modified on 3/4/2024 to add in the USCA case number (lm).
03/01/2024	54	APPEAL DOCKETING STATEMENT re 53 Notice of Appeal, 51 Notice of Appeal : by Plaintiff The Satanic Temple (<i>AMENDED</i>) (Notice sent to 9th Cir) (Mac Naughton, William)
03/01/2024	55	USCA Case Number 24-1243 for 53 Notice of Appeal filed by The Satanic Temple. (lm) (Entered: 03/04/2024)
03/01/2024	56	USCA Scheduling Order 24-1243 as to (Dkt. 53) Notice of Appeal filed by The Satanic Temple. (Notice sent by e-mail to Court Reporter) (lm) (Entered: 03/04/2024)
