

IDAHOANS UNITED *for*  
Women & Families



NOV 21 '24 PM 1:06  
IDAHO SECRETARY OF STATE

November 20, 2024

To the Honorable Phil McGrane  
Secretary of State  
Idaho Secretary of State's Office  
700 W Jefferson St, Room E205  
Boise, Idaho 83720

Re: Reproductive Freedom and Privacy Act Initiative – Resubmission

Dear Secretary McGrane,

This letter accompanies our resubmission of the enclosed Reproductive Freedom and Privacy Act Initiative, which would establish a right to make private reproductive health care decisions, including abortion up to fetal viability and in medical emergencies.

We are submitting the Initiative with a new petition making slight revisions to the prior version to address typos and clarify key terms, including to further clarify that the Initiative does not create a financial obligation on the state, its agencies, or their programs to pay for, fund, or subsidize the reproductive health care protected by the Initiative. Because of this change accompanied by a new petition, we respectfully ask that your Office request that the official fiscal impact statement for the Initiative from the Division of Financial Management be issued to reflect the enclosed Initiative's further clarified provision. Care has been taken to avoid substantive changes to the operative portions of the Initiative, including those addressed by the issued titles, while enhancing clarity and ensuring the language accurately reflects its purpose and intent.

Very truly yours,

A handwritten signature in cursive script, reading "Melanie Folwell". The signature is written in dark ink and is positioned below the "Very truly yours," text.

Melanie Folwell

Be it enacted by the people of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 8, Title 39, Idaho Code, and to read as follows:

39-801. SHORT TITLE. This act shall be known and may be cited as the “Reproductive Freedom and Privacy Act.”

39-802. STATEMENT OF PURPOSE. The Reproductive Freedom and Privacy Act recognizes that reproductive health care choices—such as the use of contraception, fertility treatments, childbirth care, miscarriage care, the decision to continue one’s own pregnancy, and abortion—are deeply private matters that should be decided by a person in consultation with their health care provider. This statute upholds a person’s rights to make their own decisions based on their own values, health care needs, and circumstances—free from the fear of external pressures or punitive consequences to them or their health care provider. The act supports a person’s right to reproductive freedom and privacy, protects the confidential nature of the patient-provider relationship, and secures a person’s right to make their own health care decisions without government interference.

### 39-803. REPRODUCTIVE FREEDOM AND PRIVACY ACT

1. This act establishes a right to make private reproductive health care decisions, including abortion up to fetal viability and in medical emergencies.
2. Notwithstanding any other provision of law to the contrary:
  - a. Every person has the right to reproductive freedom and privacy, which is the right to make personal decisions about reproductive health care that directly impact the person’s own body, including but not limited to the right to make decisions about:
    - i. Abortion;
    - ii. Childbirth care;
    - iii. Contraception;
    - iv. Fertility treatment;
    - v. Miscarriage care; and
    - vi. Prenatal, pregnancy, and postpartum care.
  - b. The right to reproductive freedom and privacy includes the right of privacy in making personal decisions about reproductive health care in consultation with a health care provider.
  - c. A person’s voluntary exercise of the right to reproductive freedom and privacy shall not be burdened, interfered with, discriminated against, deprived, or prohibited by the state, directly or indirectly, in any manner, unless such state action is narrowly tailored to improve or maintain the health of the person seeking reproductive health care through

the least restrictive means.

- d. Any person or entity may voluntarily advise, assist, facilitate, inform, refer, or otherwise aid another person exercising the right to reproductive freedom and privacy, and the state shall not burden, interfere with, discriminate against, deprive, or prohibit such acts, directly or indirectly, in any manner, unless such state action is narrowly tailored to improve or maintain the health of the person seeking reproductive health care through the least restrictive means.
  - e. In no case may reproductive health care provided consistent with this act by a health care provider be a basis for professional discipline, civil liability, or criminal liability as to a health care provider solely on the basis that the health care provider knowingly advised, assisted, facilitated, informed, referred, or otherwise aided a person in exercising their right to reproductive freedom and privacy.
3. Provided further that as this act specifically applies to abortion:
- a. After the point of fetal viability, it shall not be a violation of the right to reproductive freedom and privacy for the state to regulate abortion, except in cases of medical emergency.
4. The provisions of this act are to be liberally construed in favor of reproductive freedom and privacy and are intended to control over any other section of Idaho Code, consistent with the following:
- a. Nothing in this act shall be construed to limit any right or access to reproductive health care, including but not limited to abortion, that currently exists or is otherwise provided for or guaranteed by law.
  - b. This act does not create a financial obligation on the state, its agencies, or their programs to pay for, fund, or subsidize the reproductive health care protected by this act.
  - c. Nothing in this act will be deemed to bar or otherwise apply to a claim of medical malpractice against a health care provider for failing to comply with the applicable community standard of health care practice, as set forth in Section 6-1012, Idaho Code.
  - d. Nothing in this act will infringe on the protections and accommodations regarding a health care provider's freedom of conscience, as set forth in Section 18-611, Idaho Code.
  - e. If the application of any provision of this act is declared invalid for any reason including by the application thereof, such invalidity shall not affect the validity of the remaining portions of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

5. Definitions. As used in this act:

- a. "Abortion" means a medical treatment that is intended to terminate a pregnancy.
- b. "Childbirth care" means the medical treatment provided by health care providers in the processes of labor and delivery, including all stages of labor, the act of giving birth, and any medical procedures related to the delivery of a child, whether by vaginal birth or cesarean section.
- c. "Contraception" means any act of preventing pregnancy including the use of any device, drug, procedure, or biological product intended for use in the prevention of pregnancy.
- d. "Fetal viability" means the point in a pregnancy when, on the basis of a physician's good faith medical judgment, based on the facts known at the time, and determined on a case-by-case basis, the fetus has a significant likelihood of sustained survival outside of the uterus without extraordinary medical measures.
- e. "Fertility Treatment" means the treatment of infertility and related conditions, including but not limited to assisted reproductive technology and in vitro fertilization.
- f. "Health care provider" means a licensed person or an entity that provides health care or medical treatment.
- g. "Medical emergency" means a physical medical condition that, on the basis of a physician's good faith medical judgment, based on the facts known at the time, and determined on a case-by-case basis, complicates the physical medical condition of a pregnant patient as to warrant an abortion:
  - i. To protect a pregnant patient's life; or
  - ii. For which a delay may:
    - a. Place the health of a pregnant patient in serious jeopardy;
    - b. Cause serious impairment to a bodily function of a pregnant patient; or
    - c. Cause serious dysfunction of any bodily organ or part of a pregnant patient's body.
- h. "Miscarriage care" means the treatment and management of pregnancy loss.
- i. "Physician" means a person licensed to practice medicine and/or surgery or osteopathic medicine and surgery in this state as provided in Chapter 18, Title 54. A physician is a health care provider as defined in this act.
- j. "Prenatal, pregnancy, and postpartum care" means health care and other medical services provided before, during, and after childbirth, including but not limited to exams, treatments, diagnostic testing, postpartum recovery and support, and any other care necessary for the health of the patient.

- k. “Reproductive health care” means health care and other medical services related to the reproductive processes, functions, and systems. It includes but is not limited to abortion, contraception, childbirth, fertility treatment, miscarriage care, and prenatal, pregnancy, and postpartum care.

SECTION 2. This act shall be in full force and effect on and after January 1, 2027.



JAN 10 '25 4:09:56  
IDAHO SECRETARY OF STATE

**STATE OF IDAHO**  
OFFICE OF THE ATTORNEY GENERAL  
**RAÚL R. LABRADOR**

January 10, 2025

**VIA HAND DELIVERY**

The Honorable Phil McGrane  
Idaho Secretary of State  
Statehouse

RE: Ballot Titles  
Proposed Initiative for Adding a New Section to Title 39, Idaho Code,  
Providing for a Right to Reproductive Freedom and Privacy.

Dear Secretary of State McGrane:

An initiative petition was filed on November 20, 2024, proposing to amend title 39 of the Idaho Code. Pursuant to Idaho Code § 34-1809, this office reviewed the petition and provided advisory comments and a certificate of review. Thereafter, the petitioners re-submitted the proposed initiative on December 27, 2024, requesting the assignment of ballot titles. In accordance with § 34-1809, this office must, within ten (10) working days, provide ballot titles for the measure, one short and one general (long) title. The short title—not exceeding twenty (20) words—shall be a distinctive title by which the measure is commonly referred to or spoken of. The general (long) title—not exceeding two hundred (200) words—shall express the purpose of the measure. The ballot titles should give a true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure. This letter therefore provides both the short and long ballot titles below, in accordance with Idaho Code § 34-1809. Any person dissatisfied with a ballot title provided herein may appeal to the supreme court by petition, praying for a different title and setting forth the reason why the title is insufficient or unfair.

## BALLOT TITLES

### I. Short Ballot Title

Measure establishing a right to abortion up to fetus viability and to make reproductive decisions regarding one's own body.

### II. Long Ballot Title

The measure seeks to change Idaho's laws by introducing a right to reproductive freedom and privacy including a right to abortion up to the point of the fetus's ability to survive outside the womb. After fetal viability, there would be no general right to abortion except in cases of "medical emergency." The "medical emergency" exception would expand Idaho's current life exception and allow abortions when pregnant women face complicating physical conditions that threaten their life or health, "including serious impairment to a bodily function" or "serious dysfunction of any bodily organ or part."

The proposed measure codifies a right to make reproductive decisions, including contraception, fertility treatment, and prenatal and postpartum care. This includes a "right of privacy" in making these decisions. The measure seeks to prevent the state from enforcing certain abortion laws protecting the life of the unborn child. It would also impose a requirement that any restrictions on reproductive decisions, including abortion prior to fetus viability, must be "narrowly tailored to improve or maintain the health of the person seeking reproductive health care." The measure would also prevent the state from penalizing patients, healthcare providers, or anyone who assists in exercising the proposed right.

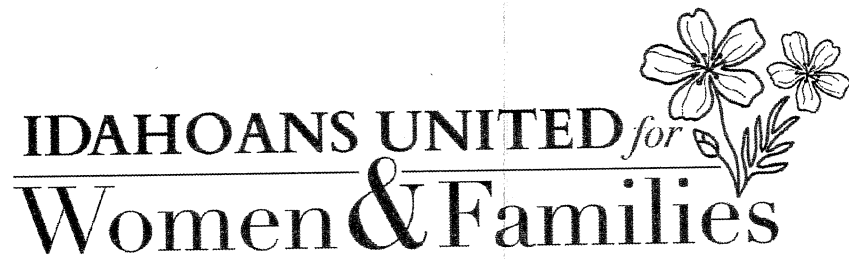
## CERTIFICATION

I HEREBY CERTIFY that the above ballot title provides an impartial statement of purpose for the enclosed measure and satisfies the requirements of Idaho Code § 34-1809.

Sincerely,



RAÚL R. LABRADOR  
Attorney General



## FUNDING SOURCE STATEMENT

No funding source is required for the Reproductive Freedom and Privacy Act as it does not create any new financial obligation on the state. Because no funding source is required, the Act has no impact on income taxes, sales tax, or product taxes.

## Ballot initiative: Reproductive freedom and Privacy Act

100 Word Fiscal Impact

December 17, 2024

The laws affected by the initiative would not impact income, sales, or product taxes. There is no revenue impact to the General Fund found.

The initiative could change state expenditures in minor ways. Costs associated with the Medicaid and prisoner populations may occur; see Idaho Codes [20-237B](#) and [56-255](#) and the [Medicaid](#) references from Health and Welfare.

Passage of this initiative is likely to cost less than \$20,000 per year. The Medicaid budget for providing services was about \$850 million in FY2024. If passed, nominal costs in the context of the affected total budget are insignificant to the state.

### Assumptions

Changes in costs associated with the ballot initiative could impact state funding expenditures for Corrections and Medicaid budgets. The amount of those costs would be dependent on the frequency of need for reproductive services within the agencies. The manner of the budget impacts would be different for Corrections due to the health care provisions used by the agency; there is no expected changes to the Corrections health care budget. Billing history prior to the [Dobbs](#) decision suggests that \$20,000 per year is a conservative over-estimate of the costs. Neither of these agencies reverted funding when the Dobbs decision was made in 2022 (and already established legislation in Idaho code took effect). It is assumed that any additional costs due to the passage of this ballot initiative could be absorbed in the Corrections and Health and Welfare budgets should the ballot initiative pass.



**PHIL McGRANE**  
IDAHO SECRETARY OF STATE

## **Change to Short Ballot Title and Fiscal Impact Statement**

The short ballot title and fiscal impact statement were both updated as a result of the Idaho Supreme Court case *Idahoans United for Women and Families v. Labrador*.

The revised short ballot title is:

Measure creating right to abortion before fetus viability, and post-viability to protect health; right to privacy; healthcare provider liability protections.

The revised fiscal impact statement is:

### **Summary of Fiscal Impact Statement**

The State estimates the initiative would increase state expenditures between \$3,100 and \$7,800 annually, less than 0.001% of the state share of Idaho's Medicaid budget. This impact is derived from the costs of treating chemical abortion complications for women enrolled in Idaho's Medicaid program. Medicaid covers medically necessary services to treat complications from all abortions. It is anticipated that as legal abortions increase, the complications will also increase. This will likely result in an increase in Medicaid covered services and expenditures to treat complications from chemical abortions, which the State has reliable and readily available data to support.

### **Detailed Statement of Fiscal Impact Including Assumptions**

Based on the amount of reliable data gathered by the Division [sic] Financial Management (DFM) and the outcome of the initiative (if passed), DFM limited its assumptions about any increase in costs to the state to those costs arising from the treatment of Medicaid recipients for chemical abortion complications. DFM does not have reliable and readily accessible data to reasonably calculate the fiscal impact attributable to the complications for surgical abortions.

Based on data provided by Department of Health and Welfare (DHW), DFM considered the number of childbearing women on Medicaid in 2021 which was 97,055. This represents about 25% of the total Idaho population for women in this same age group. DFM assumed that, as a result of this initiative, the number of



## PHIL McGRANE

IDAHO SECRETARY OF STATE

chemical abortions conducted annually would increase to the levels prior to 2022, the year of the U.S. Supreme Court's decision returning the regulation of abortion to the States. Based on the number of chemical abortions performed in Idaho using the 2021 data from the vital records report (approximately 1,180), DFM assumed 25% (approximately 300) of those individuals were Medicaid recipients.

Taking the number of Medicaid recipients who would receive a chemical abortion, DFM assumed that 2% - 5% of those chemical abortions would result in complications. DFM assumed this based on information provided in (1) the United State's [sic] Food and Drug Administration's warning label for the Mifeprex and (2) studies related to abortion complications that were published on the National Library of Medicine website, which DHW provided to DFM.

Based on the claims for complications from chemical abortions provided by DHW for 2019 and 2022 claims data, DFM applied an average per person claim cost and added a 4% medical inflation year over year to account for current medical costs in FY2026. Based on that calculation, DFM assumes that about 300 individuals on Medicaid in Idaho could receive a chemical abortion and of those, 6 to 15 individuals could have complications from that chemical abortion with an average claim cost of about \$531 (state portion of the cost). Based on the process utilized, evidence readily available and gathered, and assumptions used to create the fiscal impact statement, total expenditures for the state would range from \$3,100 to \$7,800 per year.

While the specific fiscal impact to the state's expenditures is difficult to quantify, DFM cannot in good faith conclude that the proposed initiative will have no fiscal impact on state expenditures.

*Citation: Idahoans United for Women and Families v. Labrador, 172 Idaho 820, 563 P.3d 523 (2025)*