UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF IDAHO, Defendant.	Case No. 1:22-cv-329 **REPLY DECLARATION OF DR. EMILY CORRIGAN**

REPLY DECLARATION OF DR. EMILY CORRIGAN IN SUPPORT OF THE UNITED STATES' MOTION FOR A PRELIMINARY INJUNCTION

I, Emily Corrigan, being first duly sworn under oath, state and depose upon personal knowledge as follows:

1. I am a board-certified Obstetrician-Gynecologist ("Ob-Gyn") physician at Saint Alphonsus Regional Medical Center in Boise, Idaho and I previously submitted a declaration in this case. I have now reviewed declarations prepared by Kraig White, M.D., Tammy Reynolds, M.D., Richard Scott French, M.D., and Prosecuting Attorney Grant Loebs, which I understand were submitted by Idaho in this case. I submit this declaration in response. As with my first declaration, unless otherwise stated, the facts set forth herein are true of my own personal knowledge, and if called as a witness to testify in this matter, I could and would testify competently thereto.

The State's Physician Declarations Do Not Reflect Relevant Personal Experience or Risk.

2. To begin, my overall reaction having reviewed the declarations of Drs. White, Reynolds and French is that none of them face the same risk of criminal prosecution for violating

Idaho Code § 18-622 as myself, Dr. Seyb, Dr. Cooper, and most other Idaho physicians and nurses who must comply with EMTALA while treating critically-ill pregnant patients.

3. Although Dr. Reynolds says she was raised in Idaho, after she completed her residency in Nevada she chose to continue practicing medicine there where I understand abortion to be legal. *See* Dr. Reynolds Decl. ¶ 2. She does not indicate in her declaration any intention to return to Idaho to help either patients in Idaho or her physician colleagues deal with these new laws, which have no effect on her living and practicing in Nevada. If anything, her declaration is evidence of Idaho's dire OB/GYN shortage as compared to more urban areas like Las Vegas where she trained, has practiced ever since, and is part of a very large group of physicians. The OB/GYN residency program in Nevada will continue to produce six new OB/GYN physicians per year to supply their workforce. Idaho hospitals will have to convince OB/GYN physicians from out of state to move here and practice under the stressful circumstances created by Idaho Code § 18-622 and our already understaffed OB/GYN Departments.

4. Dr. French does not state in his declaration where he currently is practicing medicine but he speaks of his time in Idaho in the past tense only. *See* Dr. French Decl. ¶¶ 5, 6. His online Doximity profile indicates that he is currently practicing in Hawaii. Abortion healthcare is not currently under legal threat in Hawaii.

5. Dr. White says that he is practicing in Moscow, Idaho, a town that is only 8 miles from Pullman, Washington. Pullman Regional Hospital features a level IV trauma center, so any high-risk patient that Dr. White encounters could quickly and easily be transferred to a hospital in a state where abortion is legal.

6. Additionally, Dr. White says that he is working as a Family Medicine Physician in the Emergency Department at a small hospital. In my experience, if a pregnant patient is having

a significant complication, the Emergency Department provider requests a consultation from an OB/GYN who then assumes management of the patient.[1] Reading his declaration, I noted that while Dr. White says that in the last 6 years he has treated "life-threatening situations that have included obstetrical emergencies," he does not say whether he has ever personally made the decision to terminate a patient's pregnancy to stabilize her condition. Also, complex obstetric patients are usually transferred from a critical access hospital to a tertiary care center before a decision is made regarding an emergency abortion. As such, there is nothing in his declaration to suggest that Dr. White has ever faced the situations that Drs. Seyb, Cooper, and I have faced many times in our careers, that we described in our declarations, and that is at the crux of the conflict between federal and state law if Idaho Code § 18-622.

<u>The State's Physician Declarations Are Wrong About "Necessary to Prevent Death"</u>

7. Each of the State's physician declarations suggests that termination of the pregnancy was necessary to save the pregnant patient's life in each of the cases I discussed. Having not treated those patients or studied their files, those physicians do not speak from experience and are simply wrong. There are several reasons why.

8. First, it is medically impossible to say that death was the guaranteed outcome for Jane Doe 1, 2, and 3 if we had not terminated their pregnancies when we did. None of their conditions *necessarily* would have ended in death. Jane Doe 1 could have developed severe sepsis potentially resulting in catastrophic injuries such as septic emboli necessitating limb amputations or uncontrollable uterine hemorrhage ultimately requiring hysterectomy but could still be alive. Jane Doe 2 possibly would have developed kidney failure requiring lifelong dialysis or hypoxic

[1] Patients with emergency pregnancy-related conditions are frequently triaged and treated in a hospital's labor & delivery department, which is considered part of the "emergency department" for purposes of EMTALA.

brain injury but escaped death. Jane Doe 3 was at risk for stroke and severe lung injury but may have survived her illness. Each of these women potentially would have had to live the remainder of their lives with significant disabilities and chronic medical conditions as a result of their pregnancy complication. If I was asked if the abortion was necessary to prevent the death of the patient in each of those cases, I could not necessarily say yes with absolute certainty. I do not believe that any physician could. That said, in each case, abortion was necessary to stabilize the patient's health.

9. While the State's physician declarations speak in terms of absolutes, medicine does not work that way in most cases. Death may be a possible or even probable outcome, but different outcomes may also be possible or probable. This is why doctors frequently refuse to answer the question, "What are my chances?" I frequently tell my patients that I do not possess a "crystal ball" that informs me of exactly what the future holds for them, I can only make an educated guess based on my training and experience. We can provide empirical data on how many patients survived a particular condition, if that data was collected and verified (usually through peer review). But we can only rarely predict with certainty a particular outcome. This is why we follow the standard of care—something that *is* knowable and is consistent with our obligations under EMTALA. And this is also why the Idaho law will have a chilling effect on physicians in treating pregnant patients facing health emergencies.

10. Second, the State's physician declarations simply assume that their interpretation of the Idaho law is the correct one, ignoring that the law does not define when a procedure would be deemed "necessary to prevent the death of the pregnant woman." For those of us faced with the obligation to comply with that law and left only with an affirmative defense, we must ask: Is any risk of death sufficient? Must the risk be greater than 50%? 75%? Or must the physician

wait until the patient's heart has stopped beating to provide the termination and begin resuscitative efforts? Idaho Code § 18-622 does not say. What we can say is that a physician's good-faith belief that it was necessary is *not* enough, as it appears the law does not have any sort of good-faith exception. Just because one physician says he or she believes termination is "necessary" to prevent the pregnant patient's death does not mean all physicians would agree, and certainly does not guarantee all prosecutors, judges, and jurors untrained in medicine would agree. Instead, a physician must rely on hope that a judge or jury would interpret what is "necessary" in the same way as the physician.

11. Third, even if death is eventually the necessary outcome absent termination of a pregnancy, the Idaho law tells physicians to wait until death is near-certain and in the meantime the patient will experience pain and complications that may have lifelong disabling consequences. Even if a patient is ultimately provided the medically necessary care, Idaho Code § 18-622 will delay that care until a debate determines whether it is truly "necessary to prevent the death of the pregnant woman." In my view, the State's physician declarations unrealistically downplay the reason physicians will wait until they are sure an abortion is necessary to prevent death. A physician administering an emergency abortion in Idaho would be risking their professional license, livelihood, personal security, and freedom. Our malpractice insurance may not cover us for performing an act that some may view as a crime. Of course, we may hesitate to provide the same care after the Idaho law is effective—the law is designed for that very purpose.

12. Fourth, the State's physician declarations ignore that it is not only physicians who perform abortions who may be exposed to serious risk. Idaho law also exposes nurses and others who assist doctors to criminal and license-suspension risk. As a result, there will be some cases where even if a physician may be comfortable proceeding, she may have no nurse or other staff to

assist because of the fear that this law has instilled in healthcare workers in Idaho. That too will undermine patient care, causing harm to patients and increasing the risk associated with the abortion being performed.

13. Just because out-of-state doctors do not fear prosecution under Idaho Code § 18-622 does not mean that those of us who actually do practice in Idaho feel the same way. I have said to the administration at my hospital that the OB/GYN Physicians in Idaho are "bracing for the impact" of this law, as if it is a large meteor headed towards Idaho. The OB/GYN and Maternal Fetal Medicine physicians who work at tertiary care hospitals in Boise feel this trepidation most acutely because we receive the most complex cases from other hospitals in the state that have fewer resources. Dr. Cooper, Dr. Seyb, and I are all part of this group of physicians that is most at risk from the implications of this law. There are no declarations submitted in support of this law from any physician with this level of current and intimate knowledge of the risks and challenges we are facing. If this law goes into effect, there will be serious negative consequences for patients and healthcare workers alike. While the pregnant people of Idaho will likely suffer serious physical and emotional trauma or even death as a result of this law, the OB/GYN physicians who practice here will face the untenable situation of making decisions for the care of critically ill patients while facing an impossible choice between complying with either state or federal law but not both.

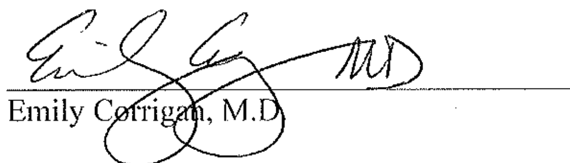
The Prosecutor's Declaration Provides Little to No Comfort.

14. I reviewed the declaration from Prosecuting Attorney Grant Loebs. A declaration from one prosecutor in Twin Falls County does not provide me with any comfort that I would not be criminally prosecuting for terminating a patient's pregnancy where required by EMTALA but not 100% necessary to prevent imminent death to the patient. Idaho has lots of prosecutors. They may have different views of how to exercise their discretion. Some may even think that they have

an obligation to enforce the law in Idaho and may disagree that it was passed only to send a message. And other prosecutors who haven't even been elected yet may have still other views of the law. The consequences of a criminal prosecution are so serious, even if I could present a defense, that Idaho Code § 18-622 is necessarily going to change how emergency medical care is administered in Idaho, even if one prosecutor promises he doesn't plan to enforce it.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is to the best of my knowledge true and correct. Executed this 8th day of August 2022, in Boise, Idaho.

8/18/22
Date


Emily Corrigan, M.D