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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO  
SOUTHERN DIVISION**

IDAHO FEDERATION OF TEACHERS et al.,

*Plaintiffs,*

v.

RAÚL LABRADOR, in his official capacity as  
Attorney General of the State of Idaho, et al.,

*Defendants.*

Case No. 1:23-CV-353

**DECLARATION OF MARTIN ORR  
IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

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**DECLARATION OF MARTIN ORR IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Martin Orr, hereby declare that:

1. My name is Martin Orr. I am over the age of 18 years. I have personal knowledge of the following facts and if called to testify could and would competently do so.

**The Idaho Federation of Teachers**

2. I am President of the Idaho Federation of Teachers (“State Federation”), a state affiliate of the American Federation of Teachers. I have held this position since June 2020. I am authorized to provide this declaration on behalf of the State Federation.

3. The American Federation of Teachers (“AFT”) is a national union of professionals founded in 1916 that had more than 1.7 million members as of June 2022. The AFT’s mission is to champion fairness; democracy; economic opportunity; and high-quality public education, healthcare, and public services for our students, their families, and our communities. The AFT is committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

4. The AFT represents higher education faculty, professional staff, and graduate employees, in all sectors of higher education, both public and private. AFT membership includes 300,000 university faculty. The AFT Higher Education division’s mission is “to help our affiliates and their members prosper in the face of political, economic and technological forces challenging the most basic assumptions about the union’s role on campus.” *See* Am. Fed’n of Teachers, About AFT Higher Education, <https://www.aft.org/highered/about-aft-higher-education>.

5. The AFT grants charters to state federations, like the State Federation, that consist of at least three AFT locals and their dues-paying members. *See* Am. Fed’n of Teachers, AFT Constitution art. IV, § 3, <https://www.aft.org/sites/default/files/media/documents/2022/>

aftconstitution2022.pdf. State federations liaise with the AFT on their members' behalf and may send voting delegates to the biennial AFT convention. *Id.* art. VIII, § 1.

6. According to its constitution, the State Federation is a federation of “locals of the American Federation of Teachers in Idaho.” Ex. A art. II, § 3. Its constituent local affiliates—the University of Idaho Faculty Federation, Local 3215; the Boise State University Federation of Teachers, Local 3537; and the Idaho State University Federation of Teachers, Local 2438—represent university faculty and professional staff at the University of Idaho, Boise State University, and Idaho State University. As of June 2023, the State Federation represented approximately 175 dues-paying members of these three locals. State Federation members teach or otherwise work in a wide range of departments at their respective universities, including Modern Languages and Cultures; Theatre and Film; Politics and Philosophy; Political Science; Psychology; Communication Studies; Biology; Culture, Society, and Justice; English; Law; History; Gender Studies; Social Work; Nursing; History; Criminal Justice; and Sociology, among other departments.

7. The State Federation's purpose is “[t]o encourage and protect democratic educative practices so that students can realize their fullest potential physically, mentally, socially, and spiritually” and to “advance[] democratic concepts and practices throughout society.” Ex. A art. II, § 1. In addition, the State Federation seeks “[t]o obtain for both students and teachers all the rights to which they are entitled” and “[t]o raise the standards of the teaching profession and improve instructional opportunities by securing the conditions essential to the best professional service.” *Id.* art. II, §§ 5, 6.

8. To carry out these aims, the State Federation coordinates with its local affiliates on common issues, provides funding for larger-scale initiatives, and facilitates information sharing.

The State Federation also holds regular meetings with local affiliate leadership and participates in meetings of state affiliates across the country.

**The No Public Funds for Abortion Act and State Federation Members’ Academic Speech**

9. On May 10, 2021, Idaho Governor Brad Little signed the No Public Funds for Abortion Act (“NPFAA”) into law and the Act went into effect that same day.

10. Under the NPFAA, “[n]o public funds . . . shall be used in any way to . . . promote abortion [or] counsel in favor of abortion,” and “[n]o person, agency, organization, or any other party that receives [public] funds . . . may use those funds to . . . promote abortion.” Idaho Code § 18-8705(1), (2) (2021).

11. A public employee’s violation of § 18-8705 “shall be considered a misuse of public moneys punishable under section 18-5702” and may trigger criminal punishments, including fines and terms of imprisonment. *Id.* §§ 18-8709, 18-5702. Such a violation may also trigger for-cause termination from public employment and require “restitution of any public moneys misused.” *Id.* § 18-5702(5).

12. The law’s ban on promoting and counseling in favor of abortion has instilled confusion and created a profound chilling effect among members of the State Federation, who fear prosecution for their teaching and research related to abortion. Because the NPFAA is unclear, and its ambit undefined, State Federation members have no way of knowing what academic speech Idaho law enforcement might understand as promoting or counseling in favor of abortion. To mitigate the risk of criminal prosecution, faculty have eliminated or plan to eliminate valuable educational materials related to abortion from their syllabi, have avoided or plan to avoid holding classroom debates or discussions in which they could be perceived as offering a pro-abortion viewpoint, have limited or plan to limit student research topics to exclude those related to abortion,

and have changed or plan to change their scholarly agendas to avoid topics that relate to abortion. Consequently, State Federation members have made dramatic changes to their teaching and scholarship, to their disadvantage and the disadvantage of their students.

### **Guidance from the Universities and State Federation Members' Academic Speech**

13. The University of Idaho, Boise State University, and Idaho State University each have issued various forms of guidance related to the NPFSA. None of this guidance has alleviated State Federation members' concerns regarding the risk of prosecution for their academic speech.

14. The NPFSA took effect in May 2021. The U.S. Supreme Court's decision a year later in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), brought new prominence to the statute. On September 23, 2022, the University of Idaho distributed to its employees a memorandum warning that "classroom discussion" about abortion "should be approached carefully." Kim Decl. Ex. 1. Though the memorandum acknowledged that "academic freedom supports classroom discussions of topics related to abortion," it emphasized that academic freedom "is not a defense to violation of law, and faculty or others in charge of classroom topics and discussion must themselves remain neutral on the topic [of abortion] and cannot conduct or engage in discussions in violation of these prohibitions without risking prosecution." Kim Decl. Ex. 1 at 6. Soon after, the University of Idaho published additional statements that underscored the ambiguity as to how the NPFSA applies in the university setting. *See* Kim Decl. Ex. 2; Kim Decl. Ex. 3. The University simultaneously affirmed that professors have academic freedom and emphasized that professors might face potential prosecution. Kim Decl. Ex. 3 at 2. The University also acknowledged that the "language of the law is vague in many respects which creates uncertainty as to the extent of the law." *Id.* Ultimately, the University put the burden of navigating these murky waters on employees. Its bottom-line position was that "the administration wants each

individual employee to know they can choose to assess for themselves what level of risk they are comfortable with when determining what they teach or talk about in performing their job.” *Id.*

15. Boise State University has likewise issued written guidance on the NPF AA. In September 2022, employees received a document entitled “Frequently Asked Questions: No Public Funds for Abortion Act and Idaho Abortion Laws” (“BSU FAQ”). Kim Decl. Ex. 4 at 1. In response to the question, “Can curriculum include information or training regarding abortion . . . ?,” the BSU FAQ states that “[b]ased on the plain language of the NPF AA, curriculum and training could include general information and educational materials that discuss abortion,” but cautions that employees must “not engage in prohibited activity” such as “promot[ing] abortion,” *id.* at 2. The BSU FAQ also warns employees that “[v]iolation of the [Act] could expose a person to criminal liability” and punishment including fines, imprisonment, and termination of employment. *Id.*

16. Idaho State University has not issued any formal, written guidance on the NPF AA. But its Office of General Counsel has responded to faculty members’ requests for guidance and information on an ad hoc basis. In these conversations, the General Counsel has advised faculty members to exercise caution when teaching, speaking, researching, or writing about topics related to abortion and reproductive rights because the NPF AA is untested and such conduct could risk prosecution. *See infra* ¶¶ 39–40.

17. None of this guidance has alleviated State Federation members’ fear of prosecution under the NPF AA or provided any clarity on the law’s applicability to professors and their classrooms. In fact, the universities’ responses to the NPF AA only affirmed members’ belief that their academic speech falls within the purview of the statute and that they are prohibited from freely discussing abortion-related issues and materials in their classes and scholarship.

### **The NPFAA’s Impact on the Academic Speech of Individual State Federation Members**

18. As President of the State Federation, I have spoken to many members about their fear of prosecution under the NPFAA. These members have described the statute’s substantial chill on their academic speech. Members have removed abortion-related course materials, and even full modules, from their courses to avoid violating the NPFAA. They have also avoided classroom discussion about abortion or curtailed such discussion. Some have also changed their approaches to publicizing research and scholarship on topics related to or implicating abortion because of their fear of prosecution and uncertainty about the scope of the law.

#### ***Boise State University Professor of Social Work Heather Witt***

19. Boise State University (“BSU”) Professor Heather Witt explains in her concurrently filed declaration that she has been chilled in her teaching and publicization of her scholarship related to abortion because of her fear of prosecution under the NPFAA. Witt Decl. ¶¶ 12, 22–24, 26–31.

#### ***Boise State University Gender Studies Professor***

20. A BSU Professor teaching in the Gender Studies Program has removed course content and curtailed classroom teaching and discussion in one of their courses, and also plans to change their approach to class discussion in another course.

21. This Professor’s “Introduction to Gender Studies” course, which they have taught for over two decades, includes a unit on reproductive rights. In relation to that unit, this Professor previously assigned materials highlighting different perspectives on abortion and reproductive rights more generally, which were then discussed in class. This Professor fears that the materials they assign could be perceived as presenting viewpoints favorable to abortion, such as Becky



Statzel's "Genocide, Liberation, Self-Determination and the Politics of Abortion"<sup>1</sup> and Connie S. Chan's "Reproductive Issues Are Essential Survival Issues for the Asian-American Communities."<sup>2</sup> In the Spring 2023 semester, the Professor elected not to assign these or other readings specific to abortion out of fear of violating the NPFAA, which had the effect of also limiting class discussion about abortion. Further, class discussions in this unit have traditionally included multiple viewpoints on abortion, including those favorable to abortion, and this Professor is fearful of responding to student comments on abortion under the NPFAA. This Professor believes that removing abortion-related materials from the syllabus has eliminated valuable content related to the academic exploration of reproductive rights and deprived students of the opportunity to engage with diverse viewpoints on abortion in the classroom setting, a subject of great importance in the field of gender studies.

22. In response to the NPFAA, this Professor also issued disclaimers about the limits imposed by the NPFAA each day the class was scheduled to address reproductive rights-related topics. They displayed a PowerPoint slide with the text of the law and explained to the students that the law sets boundaries on class content and discussion. The Professor made clear to students that they could not cross these lines and asked for the students' cooperation in ensuring that the class did not do so. In addition, the Professor arranged for recordings of each class touching on reproductive rights to create a record of exactly what the Professor and students said. In more than twenty years of teaching "Introduction to Gender Studies," this Professor has rarely, if ever, recorded their class outside the context of the COVID-19 pandemic, but decided to take this step

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<sup>1</sup> Becky Statzel, *Genocide, Liberation, Self-Determination and the Politics of Abortion*, in *Voices of a New Generation: A Feminist Anthology* 21 (Sara Weir & Constance Faulkner eds., 2004).

<sup>2</sup> Connie S. Chan, *Reproductive Issues Are Essential Survival Issues for the Asian-American Communities*, in *Reconstructing Gender: A Multicultural Anthology* 569 (Estelle Disch ed., 2003).

in the Spring 2023 semester because of their fear of prosecution under the NPFSA. Without the law, the Professor would not have felt these class recordings were necessary.

23. This Professor has also modified their approach to how guest speakers and external viewpoints are presented to the class. For example, this Professor invited a policy analyst from the California Health and Human Services Agency to join the class by Zoom. The Professor and the analyst co-facilitated a discussion comparing and contrasting various states' policies and priorities regarding abortion access. The goal of this exercise was to expose students to multiple perspectives on abortion and related issues reflected in different states' policies. The Professor cautioned the speaker beforehand against taking a position in favor of abortion during their presentation because of the NPFSA. Even with these limits, however, the Professor was concerned that the presentation could subject them to prosecution.

24. For this course, students also hold PBS-style roundtables in the classroom, in which they assume the roles of various stakeholders and debate current topics related to gender and sexuality. Student groups choose their own topics, with approval from the Professor. They go through a weeks-long process of identifying stakeholders and researching the stakeholders' perspectives to role play them with as much authenticity as possible. To ensure balanced dialogue from multiple viewpoints, students inform the Professor of the stances group members will take and the material on which those stances are based in advance.

25. During the Spring 2023 semester, one group of students presented a roundtable on abortion rights and access, with different students playing the roles of pro-life and pro-choice advocates, a representative of healthcare providers, and a neutral roundtable facilitator. The students also created a PowerPoint slide deck to accompany their presentation. The group's last slide, captioned "Next Steps," was supposed to identify next steps in the dialogue among

stakeholders, to encourage compromise and consensus. Instead, the group's last slides contained information on abortion resources. In response, and because of the NPFAA, this Professor reacted by interrupting the students' presentation, taking down the slide, and explaining that the NPFAA prevented them from allowing the students to display this information in the classroom. This incident upset the students, who felt their speech was censored and their education impacted by not having free and open discussion of topics directly related to the course in a university classroom, and the Professor, who found themselves in the uncomfortable position of curtailing academic dialogue. In the next class, the Professor took an anonymous online poll to gauge students' opinion about this event. The poll suggested that approximately 80 percent of students were angry and frustrated that the Professor ended their classmates' presentation and believed that the NPFAA's requirement that the Professor do so amounted to censorship.

26. This Professor is scheduled to teach a course examining the roles of women in faith communities in the Fall 2023 semester. This course, which the Professor has taught for over twenty years, includes discussion of reproductive rights and, in particular, how women of different faiths engage in the abortion rights movement as both pro-life and pro-choice activists. For example, the Professor provides a chart listing Christian and Jewish organizations that identify as pro-life or pro-choice to illustrate to students that neither of these faith traditions has a monolithic "religious" position on abortion. In the past, the Professor has discussed Catholics for Choice, a nonprofit organization that self-identifies as Catholic and dissents from the Catholic Church's teachings on abortion and reproductive healthcare, and used this example to examine the history of Church teaching on abortion. Because of the NPFAA, they plan to issue disclaimers similar to those issued in the "Introduction to Gender Studies" course each day the class is set to discuss abortion and are fearful that leading classroom discussion on the topic may expose them to risk of prosecution.

Despite their fear of prosecution, this Professor intends to hold discussion on these issues because they believe that such discussion is critical to students' scholarly understanding of women's roles in faith communities from a gender studies perspective.

27. This Professor believes the materials related to abortion and reproductive rights they have assigned for their courses and attendant classroom discussions and student presentations have significant value that is closely related to their teaching objectives. Gender studies necessarily entails evaluation of how women's reproductive capabilities and options impact their expression of, and others' reactions to, their gender and sexuality, and reproductive healthcare and abortion are key components of women's lived experiences. This Professor therefore believes it is critical to explore these topics. By excising material and changing their approach to classroom teaching and discussion on abortion and reproductive rights, this Professor believes students now engage in less vigorous and nuanced discussion of these topics, depriving students of meaningful academic debate and reducing the value of their educational experience. Nonetheless, this Professor does not feel that they can allow unfettered inquiry into and discussion on the topic of abortion as they did in the past without exposing themselves to prosecution under the NPFSA.

***Boise State University Sociology Professor Desiree Brunette***

28. Desiree Brunette, a Lecturer of Sociology at BSU, fears prosecution under the NPFSA because she assigns materials, lectures, and moderates classroom discussion on abortion and reproductive healthcare in four of her courses. Professor Brunette teaches a course on the "Sociology of Sex and Sexuality," in which she uses the textbook *Sociology of Sexualities*.<sup>3</sup> This course features a unit on abortion and reproductive rights, in which she assigns a chapter of the textbook called "Sexuality and Reproduction," which discusses abortion and reproductive

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<sup>3</sup> Kathleen J. Fitzgerald & Kandice L. Grossman, *Sociology of Sexualities* 240 (2017).

healthcare. Professor Brunette also assigns a collection of laws related to abortion and reproductive rights for the unit. Professor Brunette believes that these materials and her accompanying classroom lectures and discussions could be construed as promoting or counseling in favor of abortion and thus could expose her to prosecution under the NPFAA. This fear causes Professor Brunette anxiety. She nonetheless has chosen to continue to assign these materials and lecture and facilitate classroom discussion about them, because she believes this content is critical to students' understanding of how gender and sexuality manifest in society, a key theme of sociology.

29. Professor Brunette also teaches three other courses in which she discusses and facilitates class discussion on abortion and reproductive rights: "How Society Really Works: An Introduction to Sociology"; "Sociology of the Family"; and "Sociology of Religion." Gender roles, reproduction, and abortion have long been considered fundamental topics in considering the sociology of society, the family, and religion. Accordingly, in these courses, Professor Brunette asks students to consider abortion and reproductive rights through the lens of gender dynamics in society, the family, and religious traditions, respectively. These conversations take a global perspective on approaches to abortion and reproductive rights as outgrowths of other sociological phenomena. Professor Brunette believes that these discussions could be construed as favoring or promoting abortion and therefore expose her to prosecution under the NPFAA. Despite her fear of potential prosecution, Professor Brunette continues to invite classroom discussion on abortion and reproductive rights in these courses because she believes these topics are key to understanding critical themes and ideas in the courses, and that she cannot appropriately teach her courses without addressing these topics. She finds these discussions to be anxiety-inducing and emotionally draining because she believes she must monitor every word she says to mitigate her risk under the NPFAA.

30. Professor Brunette believes discussion about abortion and reproductive rights is critical to effectively teaching her courses. In her view, these topics capture a critical component of the human experience that is influenced by and in turn influences various aspects of society, including family structure and religion, and thus should be understood by students of sociology. Professor Brunette feels that she would be depriving her students of a valuable educational experience if she were to remove the abortion and reproductive rights unit from her “Sociology of Sex and Sexuality” syllabus or refrain from facilitating discussion about abortion and reproductive rights in her other courses. Nevertheless, she fears that she is at risk of prosecution under the NPFSA because she continues to teach this content.

***Idaho State University Professor***

31. A Professor at Idaho State University (“ISU”) has changed their approach to teaching and discussion in their “Human Sexuality” course. This asynchronous, online course typically includes a unit on pregnancy, which includes materials on abortion. After the U.S. Supreme Court issued its decision in *Dobbs*, 142 S. Ct. 2228, this Professor collected materials about abortion-related healthcare resources and organizations that they planned to add to the course in Fall 2022, as part of the pregnancy unit. But over the course of the summer, they began to question whether the NPFSA prohibited them from assigning these materials because the materials could be characterized as promoting or counseling in favor of abortion under the statute.

32. This concern and similar concerns shared by ISU faculty, staff, and graduate students led this Professor and others in their department to seek advice from the University’s Office of the General Counsel. At a departmental faculty meeting, the General Counsel explained that the University encouraged faculty to exercise their academic freedom and to carry out their teaching and research responsibilities to the best of their ability. The General Counsel nevertheless

warned University employees to be cautious when teaching, researching, providing clinical services, or writing in areas within the NPFAA's ambit. The General Counsel also encouraged faculty to limit class discussion about abortion to factual information, without touching on policy debates or opinions that could be construed as promoting or counseling in favor of abortion, and to refrain from assigning any materials that could be viewed similarly. The General Counsel expressed that because the NPFAA is an untested law, the risk of criminal liability for faculty is high.

33. This Professor ultimately chose not to assign the materials about abortion-related resources and organizations they had collected in the wake of *Dobbs*. Although they understood the materials to focus on healthcare and factual information about a prominent issue in the field of human sexuality, they were concerned that the materials would be considered to promote or counsel in favor of abortion in violation of the NPFAA.

34. The NPFAA also impacted this Professor's approach to discussion in the course. Because the course is offered as an asynchronous, online class, discussion takes place through a Web-based forum. The Professor posts topical prompts throughout the semester, and students are expected to post responses. The Professor did not include a prompt on abortion the last time they taught the course for fear that they would not be able to adequately facilitate discussion and immediately remove posts that could be interpreted as reflecting a viewpoint favorable to abortion, as the online discussion forums were available to students at all times and the Professor could not constantly monitor students' posts.

35. This Professor believes the materials related to abortion and reproductive rights that they wished to assign would have been valuable to their students' educational experience and the topics and objectives of the course. Serious consideration of human sexuality necessarily entails

discussion of how people’s reproductive capabilities and options impact their expression of, and relationship with, their sexuality. In addition, reproductive healthcare, pregnancy, and abortion are key components of people’s lived experiences. This Professor therefore believes it is critical to explore these topics. By declining to teach materials or facilitate discussion related to abortion, this Professor has been unable to teach on an important topic in their area of expertise. The Professor believes they have eliminated a meaningful opportunity for students to learn about and consider different viewpoints on these topics and have reduced the value of students’ educational experiences. Even so, this Professor does not feel that they can assign materials or facilitate discussion on the topic of abortion without exposing themselves to the risk of prosecution under the NPFAA. Accordingly, so long as the NPFAA applies to their academic speech, this Professor will continue to retain these changes to their course in the coming academic year.

***Idaho State University English Professor Amanda Zink***

36. Amanda Zink, an Associate Professor of English at ISU, has changed how she presents materials in class and facilitates classroom discussion related to reproductive rights and abortion because of the NPFAA. Professor Zink teaches a course on “Literary Criticism and Theory,” which includes units on feminism and gender and queer studies, as well as a course on “Gender and Literature.” In both courses, she assigns materials on the development of feminist thought through various “waves,” a metaphor distinguishing different eras of feminism. Feminist thought has long engaged with the topics of abortion and reproductive rights, and abortion access is viewed favorably by many feminist thinkers. Professor Zink therefore assigns materials that describe how various waves of feminist theory understand women’s access to abortion and reproductive freedom as fundamental to women’s equality. Despite the importance of these topics to the subjects she teaches, Professor Zink fears that she might be violating the NPFAA because



the reading materials or her statements in these courses could be interpreted as reflecting a viewpoint favorable to abortion.

37. To mitigate the risk of prosecution under the NPFAA, Professor Zink has changed how she presents these materials in class and facilitates related classroom discussion. During class discussions, Professor Zink monitors every word she speaks to avoid any suggestion that she is engaging in speech favorable to abortion. As a result, she has censored herself from making statements she would have made in the past. Professor Zink finds this self-censorship exhausting and anxiety-inducing. Stifling her speech in this manner has had a detrimental effect on the educational content of the course and deprived her students of instruction and insight she otherwise would have shared.

38. For example, during the Fall 2022 semester, the local newspaper covered Idaho public universities' responses to the NPFAA while Professor Zink was teaching the feminism unit of her "Literary Criticism and Theory" course. Professor Zink believed the news was directly relevant to the course, but because of the NPFAA, she felt she could not directly lecture on or facilitate discussion on how the NPFAA fits into the broader context of history, law, and feminism. Instead, she brought copies of the news coverage to class to share with her students. She asked the students to draw comparisons between the newspaper's account of the NPFAA's impact and the materials she had assigned in the unit. But she did not share her own perspectives as they relate to the course topics and themes as she would have done before the NPFAA took effect.

39. Professor Zink also teaches a course titled "Ethnicity in Literature: Asian American Literature in the American West," in which she assigns a selection of short stories from *Arranged Marriage* by Chitra Banerjee Divakaruni, a collection that chronicles the experiences of Indian-

born women and girls after immigrating to the United States.<sup>4</sup> One of the short stories Professor Zink assigns is “The Ultrasound,” in which a husband pressures his wife to abort her pregnancy upon learning the child is female. The last time she taught the course, upon realizing—after assigning the reading—that the story would likely lead to in-class discussion about abortion, Professor Zink experienced significant fear that she might be violating the NPFSA because the class discussion could involve conversation about abortion-supportive viewpoints. As a result, she closely monitored her speech in class and refrained from making statements she might have made in the past to avoid the risk of prosecution under the NPFSA.

40. Professor Zink believes discussion about abortion and reproductive rights is educationally valuable to her courses. She believes these topics capture an important component of the human experience that is reflected in literature and literary criticism and that students of English should be able to engage with pieces that discuss abortion and reproductive rights. Professor Zink feels that she is depriving her students of a comprehensive educational experience by holding back her own speech on abortion and reproductive rights during classroom discussion, but she fears that speaking freely and openly would expose her to the risk of prosecution under the NPFSA.

***Idaho State University Political Science Professor Edward Kammerer***

41. Edward Kammerer, an Assistant Professor in the Political Science Department at ISU, fears prosecution under the NPFSA because he teaches and discusses abortion law and policy in one of his courses. Professor Kammerer teaches the course “Law and Society,” which includes a four-class unit on law and reproductive rights. The unit includes readings and discussion on the legal history of abortion in the United States, from the state of the law before *Roe v. Wade*, 410

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<sup>4</sup> Chitra Banerjee Divakaruni, *Arranged Marriage* (1995).

U.S. 113 (1973), through the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* in 2022. While much of the assigned reading consists of case law and sources discussing it—for example, Oyez’s *Body Politic* series chronicling major Supreme Court decisions on abortion<sup>5</sup>—Professor Kammerer believes that some materials could be construed as promoting or counseling in favor of abortion, such as Stephen Gilles’ article on “*Dobbs, Obergefell, and the ‘Critical Moral Question Posed by Abortion’*”;<sup>6</sup> Reverend Dr. Cari Jackson’s piece for SCOTUSblog on “*The Dangers of Judicial Cherry-Picking*”;<sup>7</sup> and an episode of the podcast series *Science Vs.* titled “*The Abortion Underground*,”<sup>8</sup> which describes a woman who learned to perform underground abortions when confronted with a lack of access and taught others throughout the country how to do the same. Despite his concern that assigning and teaching these materials could subject him to the risk of prosecution, Professor Kammerer chose to continue to do so in his Spring 2023 course because he believes the materials are critical to students’ understanding of how the Constitution and the federal courts have shaped and responded to social currents in the area of reproductive rights.

42. Professor Kammerer was also involved in planning a Political Science Department event in Fall 2022 on the future of reproductive rights, at which a panel of faculty members, including Professor Kammerer, would describe the state of the law surrounding abortion broadly

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<sup>5</sup> *Body Politic: The Supreme Court and Abortion Law*, Oyez, <https://projects.oyez.org/body-politic/>.

<sup>6</sup> Stephen Gilles, *Dobbs, Obergefell, and “The Critical Moral Question Posed by Abortion,”* SCOTUSblog (July 6, 2022), <https://www.scotusblog.com/2022/07/dobbs-obergefell-and-the-critical-moral-question-posed-by-abortion/>.

<sup>7</sup> Rev. Dr. Cari Jackson, *The Dangers of Judicial Cherry-Picking*, SCOTUSblog (July 1, 2022), <https://www.scotusblog.com/2022/07/the-dangers-of-judicial-cherry-picking/>.

<sup>8</sup> *Science Vs., The Abortion Underground*, Gimlet (May 23, 2019), <https://gimletmedia.com/shows/science-vs/xjhxl/the-abortion-underground>.

and the political trends emerging in response to *Dobbs*. To assuage worries that the event might violate the NPFAA, Professor Kammerer reached out to ISU's General Counsel for advice. The General Counsel responded that, in their view, neither the NPFAA nor any other law would prohibit open discussion on this topic, but that the NPFAA did prohibit public employees from using public funds to promote or counsel in favor of abortion. After discussion, the other faculty panelists decided to cancel the event rather than risk prosecution under the NPFAA, given the uncertainties surrounding the law.

43. Professor Kammerer believes discussion about abortion and reproductive rights, both in his classroom and in the university environment more broadly, has substantial educational value that is closely related to his teaching objectives. He believes that the legal status of abortion and reproductive rights is a major, ongoing debate in law and politics and that students of political science must be able to openly explore these topics to understand the current political climate. Professor Kammerer feels that he would be depriving his students of a valuable educational opportunity and betraying his own pedagogical standards if he were to remove the law and reproductive rights unit and related readings from his syllabus, but fears that he is at risk of prosecution under the NPFAA because he continues to teach this content.

**The NPFAA Has Caused the State Federation to Divert Its Resources and Has Impaired Its Mission**

44. In addition to its impact on individual members of the State Federation, the NPFAA has harmed and continues to harm the State Federation as an organization. To address members' fears of prosecution under the NPFAA, the State Federation has been forced to divert resources that otherwise would have been devoted to key aspects of its mission, such as member recruitment, improving instructional opportunities and teaching at the university level, and fighting to improve working conditions for our members.

45. Following the passage of the NPFAA and the university guidance interpreting the statute, many members sought counsel from their local AFT affiliates to understand the contours of what they could and could not teach and say in their classrooms. In my role as State Federation President, I, in turn, consulted extensively with the leaders of local affiliates about how best to advise members about their risks under the NPFAA. I also facilitated information-sharing across the affiliates about the approaches, interpretations, and concerns they saw at their respective institutions. To steer these conversations and collaborations, I undertook research about the scope of the law and its implications for academic freedom and communicated with statewide membership regarding resources and updates. Since the NPFAA was passed, I have spent at least eighty hours, and continue to spend about three hours every week, engaged in activities related to the law. This time could have been spent addressing other critical union-related matters.

46. In my role as State Federation President, I also used union resources—for example, our member directory—to disseminate communications and information about the NPFAA to our statewide membership. For example, I used the State Federation platform to promote a “Know Your Rights” webinar co-hosted by the State Federation, the Boise State University Faculty Senate, and the American Civil Liberties Union of Idaho, about the NPFAA and academic freedom at Idaho’s public universities. I have also relied on these resources to gain information about the NPFAA’s impact on our members.

47. The NPFAA has also impaired the State Federation in its mission of “encourag[ing] and protect[ing] democratic educative practices” and “advanc[ing] democratic concepts and practices throughout society” because it requires State Federation members to suppress discussion on abortion and reproductive rights, issues of great public concern, in their classrooms. By

censoring this academic speech, the NPFAA undermines democratic education and pedagogy and prevents the State Federation from promoting the values of debate and civil disagreement.

### **Conclusion**

48. AFT's mission at the national level is to champion high-quality public education, and to help its members prosper. Within Idaho, the State Federation seeks to ensure that Idaho's public universities engage "democratic educative practices" so that their students "can realize their fullest potential physically, mentally, socially, and spiritually," and to advance the professional interests of its faculty members. By placing State Federation members at risk of criminal prosecution, the NPFAA impedes the State Federation and its members in their efforts to promote high-quality public higher education and advance academic freedom. The NPFAA has significantly injured State Federation members by compelling them to change their course content, restrict their classroom discussions, and avoid publicizing scholarship on abortion.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 3, 2023 in GRESHAM, OREGON.

  
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Martin Orr