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** Pro hac vice applications forthcoming*

**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 CASEY
JOHNSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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**DECLARATION OF CASEY JOHNSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Casey Johnson, hereby declare that:

1. My name is Casey Johnson. 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.

2. As I explain more fully below, the No Public Funds for Abortion Act (“NPFAA”) has chilled my academic speech, forcing me to change my ethics courses to the detriment of my students and to refrain from research and scholarship on the topic of abortion—a subject I have studied, researched, and lectured on for years. The NPFAA thus prohibits me from teaching my ethics courses freely and to the best of my ability, and deprives my students of the opportunity to learn about and engage with important ethical and philosophical topics related to abortion, diminishing the value of their education.

Background

3. I currently serve as an Associate Professor of Philosophy at the University of Idaho.

4. I received Bachelor of Arts degrees in Philosophy and English from Connecticut College in 2007. I received a PhD in Philosophy from the University of Connecticut in 2015.

5. I have eight years of professional experience in higher education. From 2015 to 2017, I was a post-doctoral researcher on the Humility and Conviction in Public Life project at the University of Connecticut. In 2017, I joined the University of Idaho faculty as an Assistant Professor of Philosophy. In March 2023, I received tenure to become an Associate Professor of Philosophy.

6. My coursework and research center on political philosophy and social epistemology. I teach courses on ethics, philosophy, social philosophy, and philosophy through the lens of feminism. In my research, I focus on how social position and social power bear on

traditional questions in the philosophy of language and epistemology. I am particularly interested in epistemic labor, disagreement, and epistemic and communicative justice—in other words, the way that people’s social identities affect what they can do with their knowledge and their words.

7. I have authored several publications, including *Epistemic Care: Vulnerability, Inquiry, and Social Epistemology* (2023); “Teaching to the Test: How Schools Discourage Phronesis,” a book chapter in *Vice Epistemology* (Ian James Kidd, Heather Battaly, & Quassim Cassam eds., 2020); and “Teaching as Epistemic Care,” a book chapter in *Overcoming Epistemic Injustice: Social and Psychological Perspectives* (Benjamin R. Sherman & Stacey Goguen eds., 2019).

8. I have been a member of the American Philosophical Association since 2014.

The NPFAA and My Academic Speech

9. On May 10, 2021, Idaho Governor Brad Little signed the NPFAA into law and the Act went into effect that same day.

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

11. The NPFAA provides that a violation of these provisions by a public employee “shall be considered a misuse of public moneys punishable under section 18-5702,” which authorizes criminal punishments, including fines and terms of imprisonment. *Id.* §§ 18-8709, 18-5702. It further provides that a violation of these provisions will result in termination for cause from public employment and require “restitution of any public moneys misused.” *Id.* § 18-5702(5).

12. I fear that the NPFAA's prohibition on promoting and counseling in favor of abortion applies to the content of some of my courses and publications, as described below, and I am concerned about the possibility of prosecution if I was to continue to teach my courses and pursue research areas of interest as I have in the past. In particular, I believe the NPFAA prohibits me from teaching multiple viewpoints on the issue of abortion, even though it is unethical and improper to teach only a single perspective in the disciplines of ethics and philosophy. I also cannot safely determine what academic speech might be construed as promoting or counseling in favor of abortion because the NPFAA's prohibitions are vague and undefined. For these reasons, I feel I cannot teach abortion-related topics in the same way I did before the NPFAA was enacted. I also am no longer comfortable pursuing scholarship that addresses or implicates abortion. I have therefore changed my courses to the detriment of me and my students, and I have been and will continue to be chilled in my academic speech on important issues in my area of expertise.

13. While the University of Idaho has issued guidance related to the NPFAA since the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the University's response has only solidified my concerns regarding the risk of prosecution for my academic speech. The University has stated that "classroom discussion" about abortion "should be approached carefully," and that "[w]hile academic freedom supports classroom discussions of topics related to abortion," it is also not "a defense to violation of law, and faculty . . . must themselves remain neutral on the topic and cannot conduct or engage in discussions in violation of these prohibitions without risking prosecution." Kim Decl. Ex. 1 at 6.

14. I continue to fear that teaching content related to abortion will expose me to prosecution under the NPFAA. I am worried, for example, that if I assign readings in which authors with differing viewpoints on abortion discuss their perspectives, the abortion-supportive portion

of that assignment could be construed as me promoting or counseling in favor of abortion, subjecting me to risk of prosecution. I similarly fear that by moderating debate in class related to abortion, others will view my moderation as advocating for one viewpoint over another. I am also concerned that providing substantive feedback or suggesting resources for students writing papers or doing presentations on abortion will be misconstrued as favoring one side of the abortion debate over the other. For these reasons, and as described below, I have been chilled in my speech on a topic of critical importance and changed my courses and altered my research pursuits to the detriment of me and my students.

The NPFAA's Impact on My "Honors Ethics" and "Introduction to Ethics" Courses

15. Since 2018, I have taught "Honors Ethics," in which my students and I examine traditional ethical theories and then apply them to contemporary moral issues. I have taught this course seven times at the University of Idaho between Fall 2018 and Spring 2023. Since 2020, I have also taught "Introduction to Ethics," which covers similar content as "Honors Ethics" but is geared to a different group of students. I have taught this course five times at the University of Idaho between Spring 2020 and Fall 2022, both in person and online. I will teach "Honors Ethics" and "Introduction to Ethics" in person in Fall 2023.

16. Through these courses, I educate students on traditional ethical theories, and we focus on applying those theories to contemporary moral issues. Students analyze different forms of argument, and assess their validity and strength. The courses use assigned readings and class discussion to examine several different ethical theories, including "relativism," a theory that knowledge, truth, and morality cannot be measured objectively, but only in relation to culture and society. We also discuss "care ethics," an ethical approach emphasizing the importance of interpersonal relationships and care; "virtue ethics," in which character is central to morality;

“deontology,” also known as Kantian ethics, in which rationality determines ethical and moral goodness; and “utilitarianism,” the view that a good act is the option that maximizes the pleasure-to-pain ratio.

17. In both “Honors Ethics” and the in-person version of “Introduction to Ethics,” the students get to choose which topics we cover during the last few weeks of class. In past years, reproductive rights was always a topic option, and students often selected it. Since I started teaching these courses my students have chosen reproductive rights as a module approximately 60–65% of the time. The module would cover basic facts about abortion, the legal landscape of abortion in the United States and Idaho, and different perspectives on reproductive healthcare and abortion rights. In both courses, when students have chosen this module, I have historically assigned two articles on abortion: one in support of abortion, titled “A Defense of Abortion” by Judith Jarvis Thomson, Ex. B; and one against abortion, titled “Why Abortion is Immoral” by Don Marquis, Ex. C. *See, e.g.*, Ex. A. The Thomson article is particularly important to this module in both courses, because, separate from its viewpoint, it is considered one of the most significant applied ethics articles ever published. *See* Ex. B.

18. My “Honors Ethics” and “Introduction to Ethics” courses are discussion-based, and students engage with the assigned materials and chosen topics by sharing their views, their reactions, and their analysis of the materials. As a professor, I largely remain neutral in the classroom. I have always taught the topic of abortion apolitically, never representing my personal views on abortion in the course. But when students present weak arguments against or in favor of abortion, I will assist them and present arguments on behalf of a position to ensure a diversity of viewpoints are represented. This means that I could, if discussion calls for it, argue against the

provision of abortion, or argue in favor of abortion access, which could be seen as promoting abortion or counseling in favor of abortion.

19. I feel that I can no longer safely offer students the option to choose reproductive rights as a module for either course because I fear that the assigned materials and class discussion may violate the NPFAA. I removed the module as an option before the Fall 2022 semester began, and I do not feel comfortable adding it back as an option while the NPFAA remains in effect.

20. This decision is detrimental to me and to my students. It deprives me of the opportunity to teach about a subject I have researched and lectured on for years, and it deprives my students of the opportunity to learn about an important philosophical topic. My students no longer have the chance to hear their classmates' viewpoints, to understand the sheer breadth of possible arguments in favor of and against abortion, and to learn how to respectfully debate this subject with their peers. Additionally, as noted above, this censorship on the topic of abortion has prevented me from utilizing Judith Jarvis Thomson's "A Defense of Abortion," *see* Ex. B, which is widely regarded as a seminal work of applied ethics, irrespective of its topic. I am deeply disappointed that I have had to change my courses, but I feel these changes were necessary to protect myself in light of the NPFAA.

21. The NPFAA has also changed the way I teach modules that are not directly related to reproductive rights. Part of what makes philosophy so intriguing and enriching is the interconnectivity of different subjects and debates, and part of my role as a professor is to assist students in drawing such connections. For example, I teach a module on euthanasia in my "Introduction to Ethics" course, and as part of that module, we discuss the bodily autonomy aspect of the euthanasia debate. Normally, students and I are able to talk about how principles of bodily autonomy as they relate to euthanasia are also primary concerns in the abortion debate. I no longer

feel comfortable making these connections for my students, where I would be drawing attention to the topic of abortion and arguably “promoting” or “counseling in favor of” it by exploring the values of bodily autonomy. More broadly, the NPFAA has silenced classroom discussion related to abortion, and that silence is driven not just by my own fear of prosecution, but also by the concerns of students, who have told me they are worried about bringing up abortion in class because they do not want to get me or any of their professors in trouble. It is disheartening to know that both professors and students are silencing their own voices in order to comply with this law. The NPFAA is depriving, and will continue to deprive, my students of the opportunity to think critically and expansively about philosophical debates as they apply to abortion and other related topics.

22. Additionally, in “Honors Ethics,” students are responsible for picking an applied ethics topic to either present or write about. In past years, in almost every semester that I taught this course, at least one student has picked abortion as a presentation or paper topic. Following the NPFAA’s enactment, I still allow students to pick this topic, but my teaching, guidance, assistance, and feedback to any students who choose to do so is drastically different than it was before the NPFAA was enacted. Previously, when students chose to present or write about abortion, I would recommend external resources such as books, websites, and media to guide their research. When grading their papers, I would leave detailed notes and comments on my students’ work and provide them with in-person feedback. Now, I no longer feel I can do either of these things for presentations or papers on abortion. I am worried that my recommendation of certain external resources to students qualifies as promoting or counseling in favor of abortion under the NPFAA. I am also worried that leaving any substantive feedback on students’ papers and presentations may appear as though I am favoring one side of the abortion debate over another.

23. These changes are unfair to my students, as I continue to recommend external resources and to provide detailed, substantive feedback to students researching any other topic. I have to make distinctions between students who choose to write about an abortion-related topic and students who choose to write about any other topic; the students who choose to write about abortion are not able to experience my full and undivided engagement because I'm worried about how such engagement would be perceived under the NPFAA.

24. These changes are also detrimental to my students, because providing detailed, substantive feedback is one of the main ways I connect with them. Omitting such feedback is also pedagogically unsound, because it deprives my students of critical opportunities to learn and improve through concrete research and feedback. As long as the law remains in effect, my students will be negatively impacted by the limits on my teaching and advising.

The NPFAA's Impact on My Other Academic Activities

25. The NPFAA has impacted me outside of the classroom as well. Prior to the law's enactment, I began working on a chapter in my book, *Epistemic Care: Vulnerability, Inquiry, and Social Epistemology*, *supra* ¶ 7, about epistemic obligations, or the obligations we have as knowers. I specifically analyze an argument from Dr. Lani Watson that individuals have rights to know some things and, alongside these positive rights to acquire knowledge, individuals have partner rights to give knowledge up—*i.e.*, to *not* know. In the book, I argue that we have moral obligations to other knowledge-seekers that require us to be attentive to their needs.

26. Dr. Watson ultimately argues that if we as humans have a right to know information about our own bodies and medical care, then we have partner rights to give up those rights. And if we're subject to "Right to Know" abortion laws in which providers are required to inform abortion seekers of certain information (*e.g.*, the anatomical features of a fetus at the time an abortion is to

be performed, the availability of resources to assist a pregnant person who continues their pregnancy), then we have a corollary right to decline to know that information.

27. This topic interests me greatly and I would like to research it further, but because of the NPFAA, I am not comfortable continuing to pursue scholarship on abortion. I feel nervous using any University of Idaho property, materials, or funding to pursue this scholarship.

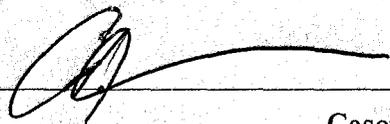
Conclusion

28. As a philosopher, I often teach about controversial topics, including euthanasia, war, and performance-enhancing drugs. These topics provide valuable fodder for intellectual debate and help students understand complicated philosophical theories and questions. They are integral to the study of philosophy. Abortion similarly provides an excellent topic for discussion and an opportunity for my students to use the tools they've learned in my class to engage in healthy and nuanced debate, and to critically analyze their own viewpoints and those of their peers. But the NPFAA prevents me and my students from engaging with this important topic, even as we may continue to discuss other controversial topics.

29. The NPFAA should not be permitted to stifle my academic speech on philosophical issues related to abortion or to deprive my students of the opportunity to learn from discussion and debate on the topic of abortion. As long as the NPFAA remains on the books, I will not be able to fully perform my role as an educator and speak freely on this important topic.

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

Executed on July 31, 2023 in Moscow, Idaho.



Casey Johnson