

Erika Birch (ISB No. 7831)
Strindberg Scholnick Birch
Hallam Harstad Thorne
American Civil Liberties Union of
Idaho Foundation Cooperating Attorney
1516 W. Hays Street
Boise, Idaho 83702
Tel: (208) 336-1788
erika@idahojobjustice.com

Danielle Conley*
Margaret A. Upshaw*
Cherish A. Drain*
Latham & Watkins LLP
555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel: (202) 637-2200
Fax: (202) 637-2201
danielle.conley@lw.com
maggie.upshaw@lw.com
cherish.drain@lw.com

Scarlet Kim*
Andrew Beck*
Elizabeth Gyori*
American Civil Liberties
Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2633
Fax: (212) 549-2649
scarletk@aclu.org
abeck@aclu.org
egyori@aclu.org

Samir Deger-Sen*
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Tel: (212) 906-1200
Fax: (212) 751-4864
samir.deger-sen@lw.com

Attorneys for Plaintiffs

Additional attorneys listed on next page

** 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 KATHRYN
BLEVINS IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Peter Trombly*[†]
Margaret Babad*
Emily True*
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Tel: (212) 906-1200
Fax: (212) 751-4864
peter.trombly@lw.com
molly.babad@lw.com
emily.true@lw.com

Marissa Marandola*
Latham & Watkins LLP
200 Clarendon Street
Boston, MA 02116
Tel: (617) 948-6000
Fax: (617) 948-6001
marissa.marandola@lw.com

Dina Flores-Brewer (ISB No. 6141)
American Civil Liberties Union of
Idaho Foundation
P.O. Box 1897
Boise, ID 83701
Tel: (208) 344-9750
dfloresbrewer@acluidaho.org

Amanda Barnett*
Latham & Watkins LLP
355 S. Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Tel: (213) 485-1234
Fax: (213) 891-8763
amanda.barnett@lw.com

Seth Kreimer*
3501 Sansom St.
Philadelphia, PA
skreimer@law.upenn.edu

* *Pro hac vice applications forthcoming*

[†] *Admitted to practice in Virginia only*

Attorneys for Plaintiffs

**DECLARATION OF KATHRYN BLEVINS IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Kathryn Blevins, hereby declare that:

1. My name is Kathryn (“Katie”) Blevins. 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 related to my journalism and mass media courses and interfered with my teaching of media coverage of abortion and related topics. Because of the NPFAA’s restrictions on my speech, I cannot freely teach my classes in the manner I find most effective, and I am limited in my ability to help my students understand how the media portrays abortion and feminism, two critical social issues that are often the subject of public debate. The NPFAA’s censorship thus diminishes my role as an educator and deprives my students of opportunities to learn core concepts relevant to their courses. Further, in my role as the co-director of an academic program within my university, I have heard from numerous faculty about and witnessed how the NPFAA has stifled faculty teaching and scholarship related to abortion and created uncertainty about faculty research funding, promotions, and tenure.

Background

3. I currently serve as an Associate Professor of Journalism and Mass Media, as well as Co-Director of the Women’s, Gender, and Sexuality Studies Program, at the University of Idaho.

4. I received a Bachelor of Arts degree in English and Communication with a minor in Marketing from Trinity University in 2006. I received a Master’s degree in Mass

Communications from the University of Florida in 2008 and a PhD in Mass Communications from Pennsylvania State University (“Penn State”) in 2014.

5. I have over fifteen years of professional experience in higher education. While I was completing my PhD at Penn State, I also began teaching in 2012 as a Visiting Assistant Professor at Trinity University in the Department of Communication. In 2016, I joined the University of Idaho as an Assistant Professor in the School of Journalism and Mass Media. In August 2022, I received tenure to become an Associate Professor of Journalism and Mass Media.

6. I have also served as Co-Director of the Women’s, Gender, and Sexuality Studies Program at the University of Idaho since August 2021. In this role, I organize faculty meetings once a semester, provide guidance to affiliated faculty, advise students and professors, and coordinate staffing and outreach.

7. I teach courses on law and the media, gender and representation in the media, global media, and new technology.

8. My research focuses on two main areas. The first is access to information in the legal context, including government transparency, privacy, and the First Amendment right to know and receive information. The second is representation in the media, including scholarship on fourth-wave feminism, social media, and activism.

9. I have authored several publications, including: “#TakeaKnee and the Intersection of Toxic Masculinity & Race” in *Misogyny & Media in the Age of Trump*, 267 (Maria Marron ed., 2020); “bell hooks and Consciousness-Raising: Argument for a Fourth Wave of Feminism,” in *Mediating Misogyny: Technology, Gender, & Harassment*, 267 (Maria Marron ed., 2020); and “Access to Government Officials in the Age of Social Media,” an article I co-authored with Kearston Wesner in *The Journal of Civic Information*, 1 J. Civic. Info., no. 1, 2019, at 32.

10. During my career, I have earned several awards and honors. For example, at two Association for Education in Journalism and Mass Communication conferences in 2018, my paper titled “The Women’s Convention: Reclaiming a Movement” was awarded the top-ranked and second-top-ranked faculty paper in the Norman, Oklahoma regional division and the national division for the Commission on the Status of Women, respectively.

11. I have received grants for my research and teaching, including the Think Open Fellowship from the University of Idaho Library and a Seed Grant from the University of Idaho Office of Research and Economic Development.

The NPFAA and My Academic Speech

12. The NPFAA went into effect on May 10, 2021.

13. 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).

14. 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).

15. I am concerned that the NPFAA’s prohibition on promoting and counseling in favor of abortion applies to the content of my “Women in the Media” and “Law of Mass Media” courses, and I fear that I could be subject to prosecution for teaching the abortion-related materials that I use in my courses and facilitating classroom discussions on abortion and reproductive rights.

Additionally, since I find the scope of the NPFAA vague and unclear, I am forced to guess what academic speech might be construed as promoting or counseling in favor of abortion, with criminal penalties on the line. For these reasons, and as described below, I have changed the way I teach my courses to the detriment of my teaching and my students' learning.

16. At the same time, despite my fear of prosecution under the NPFAA, I have chosen to continue assigning certain materials on abortion and reproductive rights and permitting some class discussion on these topics because I believe they are a critical part of my curriculum. I feel strongly that removing all of these materials and prohibiting all attendant class discussion would mean I have failed in my duty to educate students broadly about gender, sexuality, and the law, as those topics relate to issues in journalism and the media. While my ability to fully teach and educate my students on gender, sexuality, and legal issues has been curtailed by the NPFAA, I have made a calculated decision to allow some assignments and discussions relating to abortion and reproductive rights in my courses so that I can continue teaching these topics, albeit in a limited way.

17. The guidance issued by the University of Idaho on how to comply with the NPFAA after the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), has not assuaged my concerns regarding the risk of prosecution or how the NPFAA applies to me and my classroom. The first memorandum issued by the University advises that "[a]cademic 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 and cannot conduct or engage in discussions in violation of these prohibitions without risking prosecution." Kim Decl. Ex. 1 at 6. Additional guidance from the General Counsel's Office explains that even though faculty have academic freedom, "the [NPFAA] applies criminal penalties to individuals" and the

“language of the law is vague in many respects which creates uncertainty as to the extent of the law.” Kim Decl. Ex. 3 at 2. The guidance cautions that “[c]onsequently, 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.*

18. The university response affirmed my belief that my academic speech falls under the purview of the NPFAA, and that I am prohibited from speaking in a manner that could be construed as expressing a positive view of abortion in my teaching, advising, or scholarship.

The NPFAA’s Impact on My “Women in the Media” Course

19. Since Fall 2018, I have generally taught “Women in the Media” once per academic year. I most recently taught it in Fall 2022, and I expect to teach it again in Fall 2024. In the course, I teach students about the role of women in the media, both in terms of women who work in the media and the representation of women in various mediums, such as advertising, news, and film. The course helps the School of Journalism and Mass Media at the University of Idaho satisfy a national accreditation requirement for diversity, and can help students meet their diversity requirements for the Journalism and Mass Media program.

20. In the beginning of the course, to build a foundation from which students can analyze and critique the various roles and representations of women in the media, I teach the history of feminist theory—a topic that directly implicates the issue of abortion. I assign the *Vox* article, “The Waves of Feminism, and Why People Keep Fighting Over Them, Explained” by Constance Grady,¹ and an academic essay entitled, “Feminist Thought in Transition: Never a Dull

¹ Constance Grady, *The Waves of Feminism, and Why People Keep Fighting Over Them, Explained*, *Vox* (July 20, 2018), <https://www.vox.com/2018/3/20/16955588/feminism-waves-explained-first-second-third-fourth>.

Moment” by Rosemarie Tong.² These articles discuss the development of feminist thought through various “waves,” a metaphor distinguishing different eras of feminism. Since feminist thought has long grappled with abortion and reproductive rights, abortion is discussed in both of these readings. Abortion access is viewed favorably by many feminist thinkers, and these two readings describe and summarize how various waves of feminist theory believe that women’s access to abortion and right to control their own reproductive powers is fundamental to women’s equality and liberation.

21. Further, some feminist theorists, namely radical feminists of the second-wave tradition, have argued that women’s inequality is directly tied to patriarchal systems that oppress women based on their biological differences from men. Two schools of thought within radical feminism—radical-libertarian feminism and radical-cultural feminism—emerged in the 1960s and have debated the ethics of women carrying a pregnancy to term. Radical-libertarian feminists have argued for women’s natural reproduction to be replaced by technology so that women can be freed from maternal obligations. Radical-cultural feminists have argued that abortion is necessary for women to have agency and choice in heterosexual relationships defined by male domination. As part of my teaching on the history of feminism, I cover these viewpoints and debates in feminist theory through reading material, class lectures, and discussion. In class discussions on these topics, students are sometimes interested in discussing the legal status of abortion in the United States and moral and ethical arguments about abortion.

22. Because of the NPFSA, I fear that I would be at risk of prosecution if my teaching of the history of feminist thought—and in particular, the theory that abortion is integral to women’s liberation—were misconstrued as an endorsement of abortion. As a result, I have de-emphasized

² Rosemarie Tong, *Feminist Thought in Transition: Never a Dull Moment*, 44 Soc. Sci. J., no. 1, 2007, at 23.

abortion as an aspect of radical feminism in my teaching of these topics, and I have tried to avoid using the term “abortion,” instead choosing to refer to “reproductive health” more broadly. Also, during class discussions on the history of feminist thought, including on the Grady and Tong articles, I give verbal disclaimers, telling students that I am prohibited from giving my opinion or viewpoint on abortion. I have altered my speech in class and given these disclaimers in an effort to prevent students from misinterpreting my teaching of the history of feminist thought as an endorsement of abortion. In response to my disclaimers, some of my students have responded in anger and have expressed that they feel as if they are being denied an opportunity to learn from me.

23. As part of the class’s foundational portion, I also teach bell hooks’s argument that feminism should be depersonalized so that it is not a category of identity attached only to women because of their gender, but rather a political movement in which anyone can participate by engaging in activism. Prior to the passage of the NPFSA, I used to tell students how I support hooks’s argument and provided my activism outside my job as a real-world example to help illustrate this academic theory in practice. One example of activism that I would share is my engagement in pro-choice advocacy. Due to the NPFSA, I believe that I can no longer share with students how I engage in pro-choice activism as a way to participate in feminism as a political movement. I fear that if I do share my personal activism on abortion, even as a way of illustrating a pedagogical point, I will be vulnerable to criminal prosecution under the NPFSA.

24. I run my “Women in the Media” course according to established feminist principles, meaning that I acknowledge my own biases, share personal views when asked, and tell students that we are not removed bystanders when studying course materials. The goal of such an approach—as is well-established in academic literature on feminist pedagogy—is to remove

myself as an authority figure and to give students the space to explore their own political views and, if they so choose, their own path to feminism. But the NFPAA's censorship of academic speech has disrupted this approach and the classroom dynamics that are central to the course. I am no longer able to give my viewpoint, opinions, and examples of activism to model one way of engaging with feminism, especially as I no longer believe I can speak openly with my students about my views and activism on abortion.

The NFPAA's Impact on My "Law of Mass Media" Course

25. Since Fall 2016, I have generally taught "Law of Mass Media" every semester. I most recently taught it in Fall 2022, and I expect to teach the course again in Fall 2024. In the course, I teach students about the legal framework governing the gathering, preparation, and distribution of information; advertising; and entertainment in the United States and abroad. We explore various legal topics, such as the First Amendment, defamation, and copyright. The course is a required Senior Experience class for most majors in the Journalism and Mass Media program.

26. In a section of the course covering the separation of powers, I summarize the Supreme Court's decision in *Dobbs* and assign as reading the *Slate* article, "How the Supreme Court Has Denigrated Its Own Legitimacy" by Dahlia Lithwick,³ which discusses the role of the Supreme Court in our legal structure, the Court's lack of coherence in its treatment of *Roe v. Wade*, 410 U.S. 113 (1973), and other precedential abortion cases, and the role the Court plays in classifying various rights, including reproductive and privacy rights.

27. Pedagogically, I use the *Dobbs* decision and *Slate* article together to discuss the judiciary and the idea that the Supreme Court issues binding precedent. I also use this assignment

³ Dahlia Lithwick, *How the Supreme Court Has Denigrated Its Own Legitimacy*, *Slate* (July 12, 2022), <https://slate.com/news-and-politics/2022/07/supreme-court-dobbs-end-of-term-bruen-guns-abortion-prayer-tiered-rights.html>.

to help students understand the impact of Supreme Court decisions and offer students the opportunity to think critically about the role of the Supreme Court in American democracy. However, due to the NPFAA, I fear that my assignment of these readings may be construed as promoting or counseling in favor of abortion, especially because Lithwick's article criticizes *Dobbs* and can be viewed as supportive of abortion.

28. As a result, I have structured my course differently than I would prefer in order to minimize my risk of prosecution under the NPFAA. Specifically, I have limited classroom discussion of *Dobbs* and the *Slate* article to conversations about binding precedent and the powers of the Supreme Court generally. And I shy away from in-class discussions on tiers of rights in Supreme Court jurisprudence, public opinion on the Court's jurisprudence on abortion, and how the incongruence between favorable public opinion on abortion and the Court's decision in *Dobbs* may undermine the Court's legitimacy as an institution. Rather, I have relegated any discussion on these topics to a written homework assignment. I believe that discussing these topics in class would be more engaging for the students and expose them to a wider array of perspectives, but I am uncomfortable doing so for fear that students may construe my classroom speech or reactions to student speech as promoting or counseling in favor of abortion in violation of the NPFAA. Specifically, I worry that any classroom discussion on whether *Dobbs* has undermined the Court's legitimacy may be viewed as violating the NPFAA.

29. Like in my "Women in the Media" course, I also give verbal disclaimers before class discussions on *Dobbs* and the *Slate* article to make clear that I cannot provide my opinion or views on abortion. I use these disclaimers to try to prevent students from construing my comments as reflecting any particular stance on abortion. Further, I begin class discussion of *Dobbs* by saying that the discussion should focus on the role of the Supreme Court and how the law works in the

United States, not on advocating for or discussing opinions about abortion. Some students have asked for my opinion on the decision in *Dobbs*, its impact on precedent, and the legitimacy of the Supreme Court after its various opinions on abortion. However, due to the passage of the NPFAA, I have responded by informing them that I am not legally allowed to provide my view on abortion.

The NPFAA's Impact on My Role as Co-Director of the Women's, Gender, and Sexuality Studies Program

30. In my role as Co-Director of the Women's, Gender, and Sexuality Studies Program ("WGSS"), I often provide advice to affiliated faculty about their teaching, curriculum, grading, and mentorship of students. Since the passage of the NPFAA, I have had many discussions with the approximately fifteen-to-twenty faculty affiliated with the program about the law and its impacts on their curriculum choices and grading. About half of these conversations have happened one-on-one, while the other half have occurred in a group setting.

31. After the Supreme Court's decision in *Dobbs* and the University of Idaho guidance interpreting the NPFAA brought heightened attention to the risk of prosecution under the NPFAA, many WGSS faculty expressed to me in meetings that they fear criminal prosecution if their speech in classes or grading are construed as promoting or counseling in favor of abortion. Many faculty also fear criminal liability under the NPFAA if a student chooses to disclose their own abortion in an advising meeting or in a course assignment. I witnessed many faculty members become visibly upset about the NPFAA and its potential implications for their careers and their families.

32. In addition to concerns about courses and grading, many WGSS faculty, including myself, have concerns about how the NPFAA will affect university decisions about tenure and promotions. For example, it is unclear if faculty can continue to conduct research related to abortion or reproductive health, and if they can, whether that research and its outputs can be used to support an application for tenure or for a promotion. It is also unclear if faculty can use

university- or state-issued grants to fund research on abortion or reproductive health generally. Despite my asking the university for clarification on this issue in November 2022, it has not provided an answer to these questions. *See* Ex. A.

33. Whether abortion- or reproductive health–related scholarship can be used to support an application for tenure or for a promotion is very important for faculty. There is a general expectation that tenure-track faculty should produce at least one research article per year. If faculty have spent time, energy, and resources on scholarship related to abortion or reproductive health, whether that scholarship can count for tenure or a promotion can be the crucial difference between receiving tenure or a promotion, or being fired. The stakes are particularly high for tenure-track faculty because they are required to apply for tenure within a certain timeline set by the university, and they will be fired if they do not receive tenure after applying for it. Similarly, if a faculty member is marked as unsatisfactory in their research for two years in a row, they can be fired before they even apply for tenure. These dire consequences have caused tremendous anxiety among faculty that continue to this day.

34. The uncertainty on how the NPFSA impacts faculty research touching on abortion and reproductive health has had a chilling effect on faculty scholarship. Both WGSS and non-WGSS faculty have expressed to me that they now feel that it is simply not worth it to pursue such research.

Conclusion

35. I feel that I have an obligation and duty to my students to present complete and nuanced views on abortion so that they can learn and understand the full range of issues in gender, sexuality, and the media. But due to the NPFSA, I have been forced to limit my teaching and


discussion of these topics, which I believe undermines my pedagogical objectives and the educational experience of my students.

36. Further, as the co-director of an academic program at the University of Idaho, I have seen first-hand how the NPFAA has chilled the teaching and scholarship of my colleagues, who are terrified of facing criminal prosecution under the law.

37. The Idaho government should not be allowed to infringe on my and my colleagues' academic freedom by restricting our ability to teach a particular viewpoint on a topic as important as abortion.

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

Executed on August 4, 2023 in Vancouver, Washington.

A handwritten signature in black ink, appearing to read 'Katie Blevins', is written over a horizontal line.

Katie Blevins