

Idaho Educators File Lawsuit Challenging State Law Censoring Professors' Speech on Abortion

The law violates educators' First Amendment right to academic speech by criminalizing teaching and scholarship on pro-abortion viewpoints at Idaho's public universities.

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BOISE, Idaho – Six Idaho professors and two teachers' unions filed a lawsuit today in the U.S. District Court for the District of Idaho challenging the state's No Public Funds for Abortion Act (NPFSA), a law that makes it a crime to use public funds to promote or counsel in favor of abortion. This law censors teaching, discussion, and scholarship about abortion at Idaho's public universities, effectively stripping professors of their First Amendment right to academic speech. The plaintiffs are represented by the American Civil Liberties Union, the American Civil Liberties Union of Idaho, Professor Seth Kreimer, and the law firm Strindberg Scholnick Birch Hallam Harstad Thorne.

The lawsuit argues that the NPFSA violates the First Amendment rights of professors across Idaho's public universities by broadly and prospectively criminalizing all academic speech that might express a viewpoint favorable to abortion. It also argues that the law is unconstitutionally vague, forcing individuals to guess at what speech it prohibits, in violation of the 14th Amendment's Due Process Clause. In particular, the law does not define the terms "promote" or "counsel in favor of." Indeed, Idaho's public universities are uncertain about where the NPFSA draws the line between criminal and permissible speech. As one university wrote to its staff, the NPFSA is "vague in many respects which creates uncertainty as to the extent of the law."

"The NPFSA represents an unprecedented and dangerous attack on speech about abortion, part of the unrelenting assault on reproductive health care in the wake of the overturning of *Roe*. Our clients have been forced to censor their teaching and scholarship about abortion or risk imprisonment, loss of livelihood, and financial ruin," said **Scarlet Kim, senior staff attorney with the ACLU Speech, Privacy, and Technology Project**. "This impossible choice is both outrageous and unconstitutional, and runs fundamentally counter to the Supreme Court's declaration over 50 years ago that imposing 'any straight jacket upon the intellectual leaders in our colleges' would 'imperil' the very 'future of our nation.'"

The NPFSA is one of the latest actions in Idaho to limit reproductive health care and abortion — and information about essential care — in the wake of *Dobbs v. Jackson Women's Health Organization*, which overturned *Roe v. Wade*. The *Dobbs* ruling allowed Idaho's ban on abortion to go into effect, prohibiting virtually all abortion care. Since then,

the Idaho attorney general has issued a legal opinion [claiming](#) that health care providers cannot refer patients out of state for abortion care under Idaho's ban — a threat recently [blocked](#) by a federal court for violating the free speech rights of physicians to make appropriate medical referrals.

“It's vital for Idaho's public universities to have autonomy in fostering vibrant debate on their campuses, free from government interference,” said **Leo Morales, executive director of the ACLU of Idaho**. “However, Idaho's abortion censorship law directly undermines that autonomy, attempting to restrict educators' free speech and stoke fear of retaliation for such speech in our state. This unconstitutional interference with the First Amendment must be challenged, and rejected, to protect the fundamental rights of educators and students across Gem State university campuses.”

The professors and teachers' unions are asking the court to declare the law unconstitutional under the First and 14th Amendments and are urging the court to issue a preliminary injunction that would immediately bar enforcement of the act and allow students and educators to have full and open discussions around abortion and reproductive rights in the classroom.

“For university employees and students the NPFAA is a minefield. It creates a set of poorly-defined concepts and perspectives that must be avoided if we are to protect ourselves from draconian penalties,” said **Martin Orr, president of the Idaho Federation of Teachers**. “This makes reasoned discussion impossible. How can we teach about U.S. society without addressing abortion — one of the defining cultural and political issues of the day? Our educators and students deserve better.”

The ACLU has advocated against similar attempts across the country to stifle speech and infringe on the free speech rights of people related to abortion in the aftermath of the *Dobbs* decision. These include politicians' efforts to require internet providers to block websites that provide information on abortion and to censor physicians from advising their patients on where to obtain abortion legally. The NPFAA is an integral part of this censorship wave; indeed, it has already resulted in one Idaho public university [pulling art about reproductive health care](#) from a planned exhibit. Last week, the ACLU and ACLU of Alabama filed a lawsuit to prevent the Alabama attorney general and district attorneys throughout the state from prosecuting health care providers who give medical advice and support to Alabamians seeking to access legal out-of-state abortion care after the attorney general [threatened](#) to bring felony charges against health care providers who provide such assistance.

The complaint is available online [here](#) and the brief is available online [here](#).

This statement is available online [here](#).

About the ACLU: For more than 100 years, the American Civil Liberties Union (ACLU) has worked in courts, legislatures, and communities to protect the constitutional rights of all people. With a nationwide network of offices and millions of members and supporters, the ACLU takes on the toughest civil liberties fights in pursuit of liberty and justice for all.

About the ACLU of Idaho: The ACLU of Idaho is a non-partisan, non-profit organization dedicated to the preservation and enhancement of civil liberties and civil rights. The ACLU of Idaho strives to advance civil liberties and civil rights through activities that include litigation, education and lobbying.