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

PAM POE, et al.,

Plaintiffs,

v.

RAÚL LABRADOR, et. al.,

Defendants.

Case No. 1:23-cv-00269-BLW

**STIPULATION RE: BRIEFING
SCHEDULE, SURREPLY, AND
STRIKING OF DECLARATION OF
DR. MALONE**

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WHEREAS, on July 18, 2023, the Parties filed a stipulation for overlength briefs and for an extended briefing schedule in advance of Plaintiffs filing a motion for a preliminary injunction (Dkt. No. 28);

WHEREAS, on July 19, 2023, the Court approved the stipulation and entered an order setting a briefing schedule and allowing for overlength briefs (Dkt. No. 29);

WHEREAS, on July 21, 2023, Plaintiffs filed a motion for a preliminary injunction (Dkt. No. 32) (“Plaintiffs’ Motion”), which was supported by two expert declarations from Dr. Christine Brady (Dkt. No. 32-6) and Dr. Kara Connelly (Dkt. No. 32-7);

WHEREAS, counsel for Defendants Raúl Labrador and Individual Members of the Idaho Code Commission (collectively “State Defendants”) took the deposition of Dr. Connelly on August 28, 2023, and of Dr. Brady on August 31, 2023;

WHEREAS, the State Defendants filed a combined memorandum of law in opposition to Plaintiffs’ Motion and in support of a motion to dismiss on September 5, 2023 (Dkt. No. 56) (“State Defendants’ Opposition”), which was supported by three expert declarations from Dr. Daniel Weiss (Dkt. No. 56-3), Dr. James Cantor (Dkt. No. 56-4), and Dr. William Malone (Dkt. No. 56-5);

WHEREAS, counsel for Plaintiffs took the deposition of Dr. Cantor on September 21, 2023, and of Dr. Weiss on September 22, 2023;

WHEREAS, Plaintiffs noticed the deposition of Dr. Malone pursuant to an agreed-upon deposition date of September 27, 2023;

WHEREAS, due to unforeseen family medical circumstances, Dr. Malone is not available for deposition;

WHEREAS, the State Defendants have agreed to withdraw Dr. Malone's declaration (Dkt. No. 56-5) and revise the citations in the State Defendants' Opposition;

WHEREAS, Plaintiffs intend to submit a rebuttal declaration in support of the reply in support of Plaintiffs' Motion from Dr. Jack Turban, who has not yet submitted a declaration in this matter;

WHEREAS, the Parties agree that the State Defendants may take a deposition of Dr. Turban subsequent to the filing of Plaintiffs' reply brief; and

WHEREAS, the Parties agree that a limited modification of the briefing schedule would be appropriate to permit the Parties time to address these developments in advance of the November 6, 2023 hearing so as not to affect the date of the hearing;

THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the Parties, subject to the approval of the Court, that:

(1) Dr. Malone's Declaration (Dkt. No. 56-5) be withdrawn from the docket and not relied upon in support of the State Defendants' Opposition;

(2) The State Defendants shall be permitted to file a revised version of the State Defendants' Opposition no later than Friday, September 29, 2023, wherein the revisions will be limited to replacing citations to Dr. Malone's declaration with citations to other evidence already in the record as of the date of this Stipulation;

(3) The Plaintiffs' time for filing a reply in support of the Plaintiffs' Motion is extended by three business days to October 10, 2023;

(4) The State Defendants shall be permitted to file a surreply, no longer than five pages in length, by October 26, 2023, which shall be limited in scope to the topics addressed by Dr. Turban in his rebuttal declaration.

Pursuant to Local Civil Rules 6.1 and 7.1, the Parties request that this Court approve this stipulation for modifying the briefing schedule and remove Dr. Malone's declaration from the docket.

DATED: September 27, 2023

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

By: /s/ Li Nowlin-Sohl
LI NOWLIN-SOHL
Counsel for Plaintiffs

DATED: September 27, 2023

STATE OF IDAHO
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DATED: September 27, 2023

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