

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

LOURDES MATSUMOTO,
NORTHWEST ABORTION ACCESS
FUND, and INDIGENOUS IDAHO
ALLIANCE,

Plaintiffs,

v.

RAÚL LABRADOR, in his capacity as
the Attorney General for the State of
Idaho,

Defendant.

Case No. 1:23-cv-00323-DKG

ORDER

Before the Court is a Second Motion to Quash Subpoena filed by Right to Life of Idaho, Inc., an entity not named as a party in this action. (Dkt. 129). The motion is fully briefed. (Dkt. 130-132). The facts and legal arguments are adequately presented in the record. Accordingly, in the interest of avoiding delay, and because the decisional process would not be significantly aided by oral argument, the motion will be decided on the record. For the reasons that follow, the motion will be granted without prejudice.

BACKGROUND

This case challenges the constitutionality of Idaho Code Section 18-623, which “criminalizes ‘abortion trafficking’ defined as ‘[a]n adult who, with the intent to conceal

an abortion from the parents or guardian of a pregnant, unemancipated minor, either procures an abortion,...or obtains an abortion-inducing drug...by recruiting, harboring, or transporting the pregnant minor within' the state of Idaho." *Matsumoto v. Labrador*, 122 F.4th 787, 796 (9th Cir. 2024) (quoting I.C. § 18-623(1)); (Dkt. 1). Plaintiffs are an individual and two advocacy organizations who seek to counsel pregnant minors in Idaho and provide material support to access legal abortion in other states. *Id.* at 795. Defendant is the Idaho Attorney General. Plaintiffs assert claims alleging Idaho Code Section 18-623 is void for vagueness under the Fourteenth Amendment, violates their First Amendment rights, and infringes on their right to interstate travel. (Dkt. 1, 41).

On September 12, 2025, Plaintiffs served a subpoena duces tecum to Right to Life of Idaho, Inc. (RLI), an entity not named as a party in this action, requesting production of five categories of documents and materials. (Dkt. 72-3).¹ RLI objected to the subpoena and Plaintiffs responded with proposed narrowed requests for production. (Dkt. 72-4). On October 23, 2025, RLI filed a motion to quash, which was granted in part and denied in part, with the Court further narrowing the subpoena request. (Dkt. 72, 108). On February 6, 2026, RLI filed the motion presently before the Court seeking to quash the operative subpoena request under Federal Rule of Civil Procedure 45(d)(3).

¹ Plaintiffs issued a similar subpoena to the National Right to Life Committee, Inc. (NRLC), which was the subject of a separate motion to quash before the District Court for the District of Columbia. (Dkt. 72-1 at 4 n.2; Dkt. 87 at 3 n.1). The Court in the District of Columbia granted NRLC's motion to quash. Plaintiffs have appealed that decision to the United States Court of Appeals for the District of Columbia.

STANDARD OF LAW

Under Federal Rule of Civil Procedure 34(c), a nonparty may be compelled to produce documents and tangible things or to permit an inspection pursuant to a subpoena issued as provided in Rule 45. The scope of discovery allowable through a subpoena under Rule 45 is the same as that permitted under Rule 26(b). Fed. R. Civ. P. 45 advisory committee note (1970) (“[T]he scope of discovery through a subpoena is the same as that applicable to Rule 34 and the other discovery rules.”); Fed. R. Civ. P. 34(a) (“A party may serve on any party a request within the scope of Rule 26(b).”).

Upon a timely motion, the Court must quash or modify a subpoena under Rule 45(d) where, as relevant here, the subpoena requires disclosure of privilege or other protected matter, or subjects the recipient to undue burden. Fed. R. Civ. P. 45(d)(3)(A)(iii)-(iv). The burden of persuasion is on the party moving to quash the subpoena. *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal 2005). The party issuing the subpoena must demonstrate the requested discovery is relevant. *Nachison v. American Airlines, Inc.*, 2025 WL 346081, at *2 (N.D. Cal. Jan. 30, 2025).

DISCUSSION

On this motion, RLI seeks to quash the operative subpoena request on the basis of First Amendment privilege, relevancy, overbreadth, and undue burden. (Dkt. 129). Defendant maintains the requested discovery is irrelevant. (Dkt. 131). Plaintiffs oppose the motion, arguing that the requested information is not privileged, is relevant to the right to interstate travel claim, and is not overbroad or unduly burdensome. (Dkt. 130).

The operative subpoena request states as follows:

Communications with Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98, including any attachments, talking points, or materials actually disseminated to Idaho legislators or legislative staff concerning H.B. 242 or H.B. 98.

(Dkt. 108).² The subpoena expressly does “not seek internal deliberations, membership information, strategic planning materials, or communications solely among NRLC, RLI, or their affiliates unrelated to direct legislative engagement.” (Dkt. 72-4).

1. First Amendment Privilege

RLI’s Privilege Log asserts the First Amendment Privilege for each of the items identified. (Dkt. 129-3). “A party who objects to a discovery request as an infringement of the party’s First Amendment rights is in essence asserting a First Amendment *privilege*.” *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2010) (italics in original) (citations omitted). A claim of First Amendment privilege is subject to a two-part analysis. *Id.* First, the party asserting the privilege must make “a ‘prima facie showing of arguable first amendment infringement,’” which requires demonstrating ““that enforcement of the [discovery requests] will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or ‘chilling’ of, the members’ associational rights.”” *Id.* (quoting *Brock v. Local 375, Plumbers Int’l Union of Am.*, 860 F.2d 346, 350 (9th Cir.

² H.B. 98 and H.B. 242 were the pieces of legislation introduced during the 2023 Idaho legislative session that became Idaho’s Abortion Trafficking law, codified as Idaho Code Section 18-623.

1988) (citation omitted brackets in original)). Second, if the party asserting the privilege makes such a showing, the burden shifts to the party seeking discovery to “demonstrate that the information sought through the [discovery] is rationally related to a compelling governmental interest ... [and] the ‘least restrictive means’ of obtaining the desired information.” *Id.* at 1161. The second part of the analysis is meant to determine whether the party seeking the discovery has demonstrated an interest in obtaining the requested disclosures that is sufficient to justify the infringement on the First Amendment right asserted, not necessarily to preclude discovery. *Id.*

A. First Amendment Infringement

RLI bears the initial burden to establish a prima facie case of a First Amendment infringement. *Perry*, 591 F.3d at 1160. To that end, RLI has submitted a Privilege Log and Second Declaration of Emily Naugle in support of this motion. (Dkt. 129).

Having carefully reviewed the submissions, the Court finds that RLI has now satisfied its prima facie burden to show an arguable First Amendment infringement. Namely, that compelled disclosure of the communications, documents, and materials sought here could have a deterrent or chilling impact on RLI’s First Amendment rights. *Perry*, 591 F.3d at 1159. “Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association....” *Id.* (quoting *NAACP v. Alabama*, 357 U.S. 449, 460 (1958)). “The First Amendment protects political association as well as political expression,” *Buckley v. Valeo*, 424 U.S. 1, 15 (1976), and the “freedom to associate with others for the common advancement of

political beliefs and ideas is ... protected by the First and Fourteenth Amendments.’’

Kusper v. Pontikes, 414 U.S. 51, 56–57 (1973).

Here, the Privilege Log identifies various communications between three individuals from RLI, one individual from NRLC, three Idaho legislative staff, and certain members of the Idaho Legislature. (Dkt. 129-3). Nearly all of the communication exchanges are in the form of text messages and emails. A limited number of the privilege log entries are non-text/email messages, e.g., attachments and a paper copy “explainer” of the legislation and responses to frequently asked questions. (Dkt. 129-3). The subject matter of the exchanges in the Privilege Log generally include: arranging meetings and discussions between RLI and legislators regarding the proposed legislation; drafting, amending, and modifying the language of the proposed legislation; and timing, review, feedback, concerns, opposition, presentation of the bills, critiques and responses to the proposed legislation, and modifications/amendments to the legislation. (Dkt. 129-3).

Accompanying the Privilege Log is Naugle’s Second Declaration.

Naugle’s Second Declaration demonstrates that disclosure of the requested information could deter communication, participation, donations, and affiliation in and with RLI such that RLI’s First Amendment speech and association rights and its ability to pursue its stated purpose could be harmed. (Dkt. 129-2 at ¶¶ 3, 6, 13-17). Unlike the prior Declaration (Dkt. 93-1), Naugle’s Second Declaration alleges more specific First Amendment harms that RLI could incur relevant to its ability to advance legislation favorable to its cause; maintain and grow its membership, participants, associations, and

donors; and further its organizational purpose. (Dkt. 129-2). When coupled together, the Court finds that the Privilege Log and Naugle's Second Declaration objectively demonstrate that disclosure of the requested information could have a chilling impact on RLI's First Amendment rights. For these reasons, the Court finds RLI has satisfied its prima facie burden to establish an arguable First Amendment infringement. *Perry*, 591 F.3d at 1160. In so finding, the Court makes no determination as to whether any specific information or materials are in fact privileged or discoverable. Rather, the Court finds only that RLI has met its prima facie burden.

B. Relevance and Need for the Discovery

At the second part of the *Perry* analysis, the burden shifts to the party seeking discovery to demonstrate “an interest in obtaining the disclosures it seeks...which is sufficient to justify the deterrent effect...on the free exercise...of [the] constitutionally protected right of association.” 591 F.3d at 1161 (quoting *NAACP*, 357 U.S. at 463). To make this determination, the Court balances the burdens on RLI against the interests in disclosure, and considers the importance of the litigation, the “centrality of the information sought to the issues in the case,” whether less intrusive means of obtaining information exist, and the “substantiality of the First Amendment interests at stake.” *Id.* The party seeking the discovery must show that the information requested is “highly relevant to the claims or defenses in the litigation – a more demanding standard of relevance than that under Federal Rule of Civil Procedure 26(b)(1),” and the request must “be carefully tailored to avoid unnecessary interference with protected activities, and the

information must be otherwise unavailable.” *Id.*³ In making this determination, the Court is mindful that nonparties subject to Rule 45 subpoena requests are afforded special consideration. *See e.g., Mi Familia Vota*, 343 F.R.D. at 81-82.

As to relevance, the Court finds the information requested is highly relevant to the interstate travel claim. As previously determined, the operative subpoena request has been narrowed to seek communications and materials provided to Idaho legislators or legislative staff concerning H.B. 242 and H.B. 98, which bear directly on the issue of whether the passage of the legislation at issue was motivated or intended to impede interstate travel. (Dkt. 108 at 12-13).

However, as to the need for the discovery, the Court finds, on the current record, that Plaintiffs have not demonstrated that compelled discovery of the requested information is the least restrictive means of obtaining the desired information sufficient to justify infringing on the First Amendment rights asserted. While Plaintiffs’ previously prevailed on this point during the first motion to quash where no arguable First Amendment infringement was shown, the materials submitted by RLI on this second motion to quash now establish an arguable infringement of its First Amendment rights that demands a different outcome. (Dkt. 108). The rights to freedom of speech and

³ Under Rule 26(b)(1), the scope of discovery is any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties’ relative access to the information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs the likely benefit. Fed. R. Civ. P. 26(b)(1). “Information within the scope of discovery need not be admissible in evidence to be discoverable.” *Id.*

association are important core First Amendment interests. *Perry*, 591 F.3d at 1159-1160. Given the significance of the First Amendment rights, the Court finds, on balance, that Plaintiffs' interests in obtaining the information through discovery before pursuing other less intrusive means, such as a public records request, are now outweighed by the First Amendment rights asserted. Plaintiffs' reasons for not first attempting to obtain the information through other less intrusive means – inefficiency, cost, scope, and timing – do not justify infringement on the First Amendment rights asserted at this time. (Dkt. 87, 108, 130). For this reason, the Court will grant the Second Motion to Quash without prejudice. The Court may entertain a motion to compel or other appropriate motion if Plaintiffs are unable to obtain the requested information using other means. Accordingly, the Court will extend the deadline for completion of discovery relevant to this information to June 1, 2026.

ORDER

THEREFORE IT IS HEREBY ORDERED that the Motion to Quash (Dkt. 129) is **GRANTED WITHOUT PREJUDICE**, as stated herein.



DATED: April 7, 2026

A handwritten signature in black ink, appearing to read "Debora K. Grasham".

Honorable Debora K. Grasham
United States Magistrate Judge