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The Medical Exception to Idaho's Abortion Bans as Interpreted by *Adkins v. State of Idaho*

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This document was prepared for informational purposes by the lawyers at the Center for Reproductive Rights, in association with Idaho counsel, who litigated *Adkins v. State of Idaho*. **No information contained in this document constitutes legal advice or creates an attorney-client relationship.** Please contact an attorney if you have questions about how the *Adkins* decision may be interpreted or apply in a particular circumstance. If you are a health-care professional and would like to speak to an attorney about the *Adkins* decision, the Abortion Defense Network, abortiondefensenetwork.org, may be able to help find an attorney for you.

Overview

Since 2022, abortion has been banned in Idaho unless it fits within an exception. Most notably, a medical exception permits abortion when it is "necessary to prevent the death of the pregnant woman."[1] Because the medical exception does not use medical terminology, and because providing a prohibited abortion could have criminal consequences, fear and confusion has pervaded the medical community. This has caused patients to be denied or delayed in receiving abortion care, including when abortion is within the medical standard of care for the patient's condition.

To try to obtain clarity and expand the circumstances in which abortions can be provided in Idaho, a group of plaintiffs sued the State of Idaho in a case called *Adkins v. State of Idaho*. On April 11, 2025, the court issued its opinion and judgment in the case.[2]

The plaintiffs prevailed on their claim for a declaratory judgment construing the scope of the medical exception. The court gave the medical exception a "broad construction,"[3] maximizing the circumstances to which it applies. As discussed below, we believe the court's reading of the exception is so broad that it effectively now permits abortion to protect the patient's health, not just to prevent the patient's death. Indeed, we believe that Idaho's medical exception, as interpreted by the court in *Adkins*, is now the broadest medical exception among all the near-total abortion bans in the United States.

The *Adkins* court also held that physicians have "wide" discretion in determining whether the exception applies. As long as the physician is acting in good faith—that is, the

[1] Idaho Code § 18-622(2)(a).

[2] *Adkins v. State of Idaho*, No. CV01-23-14744, 2025 WL 1148466 (Idaho Dist. Apr. 11, 2025).

[3] Findings of Fact & Conclusions of Law at 30 (¶ 37), *Adkins*, 2025 WL 1148465, at *13 (April 11, 2025).

physician believes in good faith that the patient fits within the exception—the physician's judgment cannot be second-guessed.

Because the State did not appeal the judgment, the court's ruling is now a final judgment that binds the State in future proceedings, including criminal prosecutions. As discussed below, in our view, the declaratory judgment precludes the State from relitigating the matters decided in the *Adkins* court's judgment. Thus, in a future criminal prosecution or other proceeding, the State would be precluded from asserting that the medical exception is narrower than how the *Adkins* court ruled. Additionally, the Idaho Supreme Court has held that county prosecutors are agents of the State of Idaho. They are therefore bound by the judgment against the State. If a prosecutor were to try to prosecute a physician for providing an abortion, the physician could use the declaratory judgment against the State as a strong defense in such a prosecution.

Idaho's Abortion Bans and Exceptions

Idaho has two abortion bans with different medical exceptions: (1) a Total Ban on abortion at all stages of pregnancy and (2) a Six-Week Ban once embryonic cardiac activity is detectable, which is approximately six weeks from the first day of the patient's last menstrual period.

This document focuses primarily on the Total Ban and its medical exception because, to the extent both bans are enforceable, the Total Ban and its medical exception have primacy over the Six-Week Ban and its exception. For completeness, however, the statutory text of both bans' exceptions is set forth below.

A. Total Ban

Idaho's Total Ban permits abortion in the following circumstances:

(1) a "physician determined, in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman,"

(2) so long as the physician "performed or attempted to perform the abortion in the manner that . . . provided the best opportunity for the unborn child to survive, unless . . . termination of the pregnancy in that manner would have posed a greater risk of the death of the pregnant woman."[4]

An abortion is still prohibited, however, if the reason for the physician's determination that an abortion is necessary is that "the physician believes that the woman may or will take action to harm herself."[5]

[4] I.C. § 18-622(2)(a).
[5] *Id.*

The Total Ban explicitly allows (1) "[t]he removal of a dead unborn child," (2) "[t]he removal of an ectopic or molar pregnancy," and (3) "[t]he treatment of a woman who is no longer pregnant."[6]

B. Six-Week Ban

Under Idaho's Six-Week Ban, providing an abortion is not a violation "in the case of a medical emergency."[7] "'Medical emergency' means a condition that, in reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function."[8] The Six-Week Ban says that "[i]n the event both [the Total and Six-Week Bans] are enforceable," the Six-Week Ban is "supersede[d]" by the Total Ban.[9]

The *Adkins* Trial

Before turning to the relief that the *Adkins* court provided, we will briefly describe the plaintiffs' arguments and the medical evidence presented at trial, for context.

The plaintiffs were Dr. Emily Corrigan, Dr. Julie Lyons, the Idaho Academy of Family Physicians, and four patients who were denied abortion care despite receiving devastating diagnoses in their pregnancies. They were represented by the Center for Reproductive Rights, O'Melveny & Myers LLP, and Nevin, Benjamin & McKay LLP.

The plaintiffs sued the State of Idaho, seeking relief in two forms:

1. Plaintiffs sought a **declaratory judgment**, asking the court to declare the rights of physicians to provide care and the rights of patients to receive care under Idaho's abortion bans. This claim essentially asked the court to clarify the medical circumstances in which the exceptions permit physicians to provide abortions.

2. Plaintiffs asked the court to declare the abortion bans **unconstitutional** to the extent that they infringe on patients' rights under the Idaho Constitution to enjoy and defend life, secure safety, and pursue happiness.

At trial, plaintiffs focused on obtaining relief for high-risk pregnancies. Plaintiffs' medical experts discussed three categories of conditions that make a pregnancy high risk:

1. preexisting or underlying medical conditions that are exacerbated by pregnancy or cannot be treated effectively during pregnancy, making it dangerous to continue the pregnancy;

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[6] I.C. § 18-604(1)(b)-(d).
[7] I.C. § 18-8804(1).
[8] I.C. § 18-8801(5); *see also* I.C. § 18-8804(1).
[9] I.C. § 18-8805(4); *see also Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 403, 522 P.3d 1132, 1161 (2023); *Adkins*, Conclusions of Law ¶ 4, 2025 WL 114865 at *6.

2. medical conditions that arise during pregnancy as a complication of the pregnancy, endangering the pregnant patient's life or health; and

3. lethal fetal conditions.

Plaintiffs' medical experts testified about how difficult it is in practice to apply the medical exception to high-risk pregnancies due, at least, to (1) uncertainty about how high the risk of death needs to be or how close to death the patient must be and (2) concerns that the physician's medical judgment will be second-guessed by a prosecutor.

Plaintiffs' medical experts also testified that they are not trained to determine whether a treatment is "necessary" to prevent a patient's death, and that such a determination is extremely difficult to make. Instead, a variety of common medical conditions in pregnancy may seriously compromise a patient's *health*—such as cardiovascular damage, loss of kidney function, or progression of cancer. These health outcomes may shorten the patient's lifespan, even if the patient does not die in the short term.

For example, Dr. Corrigan explained at trial that preeclampsia with severe features poses short-term risks of (among other things) stroke, renal failure, and death. If the patient survives, the patient could still have long-term cardiovascular damage, chronic renal failure that could progress to the need for dialysis or renal transplant, or neurological deficits caused by stroke. Any of these long-term health consequences could lead to the surviving patient's dying sooner than she otherwise would have, even if that earlier death does not occur until many years later.[10]

At the conclusion of trial, plaintiffs argued that the medical exception's use of "death" should include *shortened lifespan* or an earlier death that may not occur until many years in the future. Plaintiffs argued that one way to interpret the medical exception that would "provide us the relief that we're requesting is that it permits an abortion if a pregnant patient has a condition that could lead to a risk of death if left untreated."[11] Plaintiffs pointed to the "testimony that these conditions pose a risk of organ damage and therefore a risk of shortened lifespan, and that provides another way to interpret the exception as we're arguing."[12] Plaintiffs argued that if the court interpreted "necessary to prevent the death" as "necessary to prevent the risk of an earlier death," then that "would encompass all of the conditions" discussed at trial.[13]

Similarly, in their post-trial briefs, plaintiffs argued that "necessary to prevent the death" should be interpreted as "necessary to prevent the risk of an earlier death."[14] Plaintiffs asserted that this interpretation would "encompass[] all of the conditions about which the Physician Plaintiffs asserted uncertainty" over whether the medical exception applies.[15] In support of their interpretation, plaintiffs pointed to the statutory text and to

[10] Trial Tr. 224-25.
[11] *Id.* at 1123-24.
[12] *Id.* at 1125.
[13] *Id.*
[14] Proposed Findings of Fact and Conclusions of Law at 55.
[15] *Id.*

the Idaho Supreme Court's instruction that the phrase "necessary to prevent the death of the pregnant woman" "does not require objective certainty, or a particular level of immediacy, before the abortion can be 'necessary' to save the woman's life."[16]

Declaratory Judgment Construing the Scope of the Medical Exception

On April 11, 2025, the court issued a final judgment in the form of a declaratory judgment. (We discuss the binding effect of declaratory judgments below.)

The judgment issued by the court declared that Idaho's abortion bans permit providing an abortion if:

- in the performing physician's **good faith medical judgment** (based on the facts known to the physician at the time of the abortion),
- the patient—because of an existing medical condition or pregnancy complication that would be alleviated by an abortion—faces a **non-negligible risk of dying sooner** without an abortion (even if her death is neither imminent nor assured),
- so long as
    - (i) the risk of her death doesn't arise from a risk of self-harm, and
    - (ii) the manner of pregnancy termination is the one that, without increasing the risk of her death, best facilitates the unborn child's survival outside the uterus, if feasible.

Each of these elements is explained in further detail in the following sections.

A. Good-Faith Medical Judgment

One of the central questions in construing the exception is who decides whether the exception applies: the physician, the Attorney General, a prosecutor, a judge, a jury, the medical board, or someone else? In ruling that the physician's good-faith medical judgment is the correct standard, the court essentially ruled that physicians are entitled to decide whether the exception applies, and their determination cannot be second-guessed, so long as the physician acted in good faith.

There are two potential standards by which the physician's determination that an abortion is within the medical exception could be judged: (1) "good faith medical judgment," which is in the Total Ban's exception, and (2) "reasonable medical judgment," which is in the Six-Week Ban's exception. The "good faith medical judgment" standard is more deferential to the physician's determination than "reasonable medical judgment."

[16] *Planned Parenthood*, 171 Idaho at 445, 522 P.3d at 1203 (emphasis omitted).

"Reasonable medical judgment" is the same standard used in medical malpractice cases. It is an objective standard: if the physician provided an abortion because they believed that the exception applied, the court (or a prosecutor or jury) could later decide that the physician's judgment was unreasonable, and thus the abortion was unlawful.[17]

By contrast, "good faith medical judgment" is a subjective standard that focuses solely on what the physician believed, without considering whether the physician's belief was reasonable. The Idaho Supreme Court has explained that this good-faith standard "is purely subjective and merely requires a good faith judgment call by the physician without needing to be objectively 'correct.'"[18] The court in *Adkins* explained that this standard "'leaves wide room for the physician's good faith medical judgment' rather than imposes a standard of 'objective certainty'—concerning whether an abortion is necessary to prevent a pregnant woman's death."[19]

Because the Total Ban uses "good faith medical judgment" and the Six-Week Ban uses "reasonable medical judgment," one of the issues in *Adkins* was which of these standards would apply. The court resolved this issue by ruling that the Total Ban "has primacy over" the Six-Week Ban because the Six-Week Ban says that if both bans are in effect then the Total Ban supersedes the Six-Week Ban.[20] Thus, in declaring the circumstances in which abortions may be provided, the court adopted solely the "good faith medical judgment" standard.

Some physicians may still be concerned that the "good faith" standard would allow a prosecutor or court to decide that the physician was acting in bad faith. But it should be emphasized that the "good faith" standard is one of the most (if not the most) deferential standards recognized in the law. In a criminal trial, the prosecutor would have to prove beyond a reasonable doubt that the physician was not acting in good faith—an extremely high hurdle for any prosecution.

An example of a physician acting in bad faith would be if the physician intentionally or knowingly misdiagnoses the patient with a pregnancy complication so that the physician can offer the patient an abortion under the medical exception—even though the physician knows that the patient does not in fact have a pregnancy complication. Short of such an intentional misdiagnosis, it is difficult to think of circumstances in which the physician could be found to have acted in bad faith.

Attorneys should consider advising their physician clients to document their good-faith medical judgment by documenting both the patient's diagnosis and a brief contemporaneous explanation of why the physician has determined that the patient's condition permits an abortion under the medical exception as construed by *Adkins*. To be sure, the prosecutor—not the physician—would have the burden of proof beyond a reasonable doubt in a criminal trial, and the physician is not required to document anything to prove that they were acting in good faith. But the physician's documentation

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[17] *See Planned Parenthood*, 522 P.3d at 1207-08.
[18] *Id.* at 1205.
[19] Court's Findings of Fact & Conclusions of Law ¶ 35.
[20] *Id.* ¶ 4.

of their exercise of good faith would further protect the physician by making it even harder for the prosecutor to meet an already extremely demanding burden.

B. Non-Negligible Risk of Dying Sooner

The court largely adopted plaintiffs' argument about the scope of the medical exception: the court interpreted "necessary to prevent the death" as permitting an abortion if the patient "faces a non-negligible risk of dying sooner without an abortion (even if her death is neither imminent nor assured)."[21]

1. "Non-negligible risk" is a low bar

Although a physician will need to determine whether the risk of an earlier death is "non-negligible," this should be seen as a low bar. The court emphasized that it was "construing the exception broadly" to encompass a wide range of medical conditions.[22]

The court explained that a "broad construction is appropriate for three reasons,"[23] each of which supports viewing a "non-negligible risk" as a very low threshold:

1. First, the court explained that the "holdings of the Idaho Supreme Court—that the exception requires neither 'a particular level of immediacy' nor a 'certain percent chance' of the death to be prevented by an abortion—suggest a broad construction [of the exception] rather than a narrow one."[24] Thus, in our view, "non-negligible risk" must be a very low level of risk because otherwise it would violate the Idaho Supreme Court's interpretation of the exceptions in *Planned Parenthood*.

2. Second, the court explained that Idaho's abortion laws are "rooted in respect for human life," and a broad construction of the exception "would better promote the statutory policy of respect for human life."[25] A narrow construction, by contrast, "would risk the extant, fully formed human lives of pregnant women." The court emphasized that it was *not* requiring "even a *modest* likelihood that a pregnant woman will die without abortion care" because to impose such a requirement would be "a huge risk to take with her life, which the legislature surely didn't intend to deem less worthy of protection than the fetal life growing in her uterus."[26]

3. Third, the court explained that the "rule of lenity"—a foundational principle well recognized in criminal law—requires that an ambiguous criminal statute be interpreted in a way "that favors the accused rather than the

[21] *Id.* ¶ 42.
[22] *Id.* ¶ 37.
[23] *Id.*
[24] *Id.* ¶ 38.
[25] *Id.* ¶ 39.
[26] *Id.* ¶ 39 (emphasis added).

government."[27] Thus, in our view, any doubt about whether a risk is non-negligible should be resolved in favor of the physician's good-faith judgment.

Ultimately, the physician will need to determine whether the risk of dying sooner is non-negligible, using the physician's good-faith medical judgment. In our view, the risk of earlier death is not negligible if a physician would find it appropriate to disclose the risk of an earlier death when counseling the patient about whether to terminate the pregnancy. Similarly, if a hospital would find it appropriate to disclose a risk of death or a risk of an earlier death on a consent form that a patient must sign before a medical procedure, then we believe that such risk of death is not negligible.

We also believe it would be helpful for hospitals, physician groups, or medical organizations to create written guidance about medical conditions in pregnancy that create a non-negligible risk of dying sooner, including an explanation of why such risk exists. If physicians are following guidance created by the medical community, that would strongly show that they are acting in good faith and would protect against any attempted criminal prosecution.

2. "Non-negligible risk of dying sooner" covers most or all high-risk pregnancies

In our view, and as we explained to the court, the court's capacious reading of the medical exception is broad enough to encompass most or all of the conditions that make a pregnancy high risk.

a. Preexisting or underlying conditions

The court made explicit findings that preexisting health conditions can lead to a patient's earlier death. The court stated:

> Preexisting health conditions that can worsen during pregnancy and pose significant health risks to pregnant women include hypertension, cardiac disease, renal insufficiency, diabetes, autoimmune diseases, vascular problems, coagulation disorders, sickle-cell disease, cancer, or susceptibility to stroke. Denying or delaying abortion care in these instances not only imperils the patient's health *but also can shorten her lifespan*.[28]

In making these findings, the court cited the testimony of two of plaintiffs' medical experts, Drs. Wenstrom and Corrigan.

- Dr. Wenstrom, a maternal-fetal medicine (MFM) specialist, testified that if an underlying condition compromises the patient's major organs, such organ damage could lead to an earlier death. For example, both diabetes

[27] Court's Findings of Fact & Conclusions of Law ¶ 40.
[28] *Id.* ¶ 8 (emphasis added) (citations omitted).

and pregnancy put stress on the kidneys; thus, if a diabetic patient continues a pregnancy, she risks losing kidney function, which could lead to a need for dialysis or transplant at some point in the future, and an earlier death. This would be true for other major organ damage as well.[29]

- Dr. Corrigan gave the example of a patient with cancer. She testified that if abortion is delayed, the cancer can progress during the delay, and the patient's options for treatment can become more limited. This increases the risk that the patient's lifespan will be shortened, even if the patient does not die in the short term.[30]

Additionally, plaintiffs' mental-health expert, Dr. Jennifer Payne, testified that untreated psychiatric illness can shorten the patient's lifespan. For example, Dr. Payne testified that "[t]he literature clearly shows that" "patients with depression, particularly with recurrent bouts, have a shortened lifespan."[31] She explained that "[d]epression is an inflammatory response in the body, and it definitely increases the risk of death."[32] "[I]f patients have cancer and depression, their risk of dying from that cancer is twice the rate of patients with the exact same cancer in the same stage who don't have depression."[33] As discussed below, a patient's depression diagnosis does *not* permit an abortion if the reason the patient may die sooner is because of the patient's potential self-harm; but if the physician determines in their good-faith medical judgment that there is a non-negligible risk that depression may cause an earlier death through some other mechanism, then abortion is permitted under the *Adkins* court's interpretation.

In sum, we read the *Adkins* decision as permitting an abortion if a pregnant patient has any of these preexisting/underlying medical conditions, and there is no need to wait for the patient's health to deteriorate. If the physician believes the standard of care for a patient with an underlying health condition is to offer the patient termination, we believe the *Adkins* decision permits such care.

b. Pregnancy complications

The court also addressed pregnancy complications, explicitly citing testimony from plaintiffs' medical experts. The court stated:

> Some pregnancy-related conditions imperil a pregnant woman's health without necessarily posing an imminent risk of her death, including PPROM (preterm premature rupture of membranes), advanced cervical dilation or cervical incompetence, placental abruption, preeclampsia, HELLP (hemolysis, elevated liver enzymes, and low platelets)

[29] Trial Tr. 499-500.
[30] *Id.* at 235.
[31] *Id.* at 1058.
[32] *Id.*
[33] *Id.*

> syndrome, and hyperemesis gravidarum (characterized by severe nausea and vomiting).[34]

Additionally, the court noted that, "[a]ccording to *both sides'* experts, if left untreated, previable PPROM can cause a pregnant woman to suffer infection, sepsis, hemorrhage, infertility, and, ultimately, *death*."[35]

The court heard specific testimony about how pregnancy complications all carry a risk of a shortened lifespan:

- Conditions associated with infection:
  - These include previable PPROM (preterm, prelabor rupture of membranes), advanced cervical dilation, chorioamnionitis, and placental abruption.[36]
  - These conditions all pose a risk of sepsis if an abortion is delayed or denied. Sepsis can lead to other organ systems failing or suffering damage, such as the lungs, kidneys, heart, and/or brain. Sepsis/infection can also lead to stroke, disseminated intravascular coagulation (DIC), heart failure, cardiovascular issues such as valvular insufficiency or cardiomyopathy, chronic renal failure requiring dialysis or transplant, and death.
  - When death does not occur in the near term, sepsis/infection can lead to long-term health complications with one or more organ systems and a shortened lifespan.[37]

- Hypertensive disorders:
  - Preeclampsia with severe features and HELLP syndrome
  - Immediate risks include pulmonary edema, myocardial infarction, stroke, acute respiratory distress syndrome, seizure, profound anemia, DIC, acute renal failure potentially requiring dialysis, placental abruption leading to hemorrhage, and potentially death.[38]
  - If the patient survives, the long-term consequences may include cardiovascular damage such as cardiomyopathy, chronic renal failure that could potentially progress to dialysis or renal transplant, neurological deficits if there was a stroke, and a shortened lifespan.[39]

- Hyperemesis gravidarum
  - This condition involves profound nausea and vomiting, and requirements for diagnosis include significant weight loss and

[34] Court's Findings of Fact & Conclusions of Law ¶ 9.
[35] *Id.* ¶ 11 (emphasis added).
[36] Trial Tr. 198-222.
[37] *Id.* at 199-201.
[38] *Id.* at 223, 226.
[39] *Id.* at 223, 225.

electrolyte abnormalities. By the time it is diagnosed, there is evidence of malnutrition.[40]

- Hyperemesis gravidarum can shorten the patient's lifespan. Although most patients respond to various medical treatments, some cases may require central line placement and total parenteral nutrition, which carry a risk of infection, sepsis, death, and shortened lifespan. Short of that, the patient could have long-term digestive issues and, if there is profound hypovolemia, the patient could develop chronic renal insufficiency. [41]

We read *Adkins* as permitting abortion if a pregnant patient has any of these pregnancy complications, and there is no need to wait for the patient's health to deteriorate. If the physician believes the standard of care for a pregnancy complication is to offer the patient termination, we believe the *Adkins* decision permits such care.

c. Lethal fetal diagnoses

Finally, the court addressed lethal fetal diagnoses, which are conditions "known to have 'no significant chance of sustained life after delivery' and a 'very high risk of fetal demise in-uter[o] or during birth.'" [42] Based on the court's discussion of lethal fetal diagnoses, physicians may determine in their good-faith medical judgment that a patient with such a diagnosis fits within the medical exception.

There could be at least three reasons for such a determination:

1. In *Adkins*, the court found that a "lethal fetal diagnosis means . . . that the pregnancy isn't viable."[43] In *Planned Parenthood*, the Idaho Supreme Court held that Idaho's abortion bans do not prohibit the termination of non-viable pregnancies because "non-viable pregnancies do not fall within [the] definition" of "pregnancy," which requires that there be a "'developing fetus.'"[44] Thus, if the physician determines that the fetus isn't developing, then terminating the pregnancy is not an abortion under Idaho law.

2. If a patient's lethal fetal diagnosis is causing health issues in the pregnant patient, the physician may determine that those secondary health issues create a non-negligible risk that the patient may die sooner.

3. Even before health issues manifest in the pregnant patient, a physician may determine that the lethal fetal diagnosis itself creates a non-negligible risk that the patient could die sooner.

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[40] *Id.* at 228, 230.
[41] *Id.* at 228-230.
[42] Findings of Fact ¶ 16 (quoting Trial Tr. 280).
[43] *Id.* ¶ 18.
[44] *Planned Parenthood*, 522 P.3d at 1202-3 (quoting Idaho Code § 18-604(11)).

a. Relying on Dr. Wenstrom's testimony, the court found: "A lethal fetal diagnosis means not only that the pregnancy isn't viable but also that the pregnant woman's health is imperiled by continuing it. The longer women with certain lethal fetus diagnoses are pregnant, 'the higher likelihood they [have] of developing further pregnancy complications, which can lead to things like future infertility and damage of other parts of their body.'"[45]

b. As Dr. Wenstrom testified, certain lethal fetal conditions can complicate the labor and delivery process. For example, if a patient carries a fetus with anencephaly to term, it is difficult to have a vaginal delivery, and a cesarean section is likely.[46] Similarly, relying on Dr. Duncan Harmon's testimony, the court recognized that body stalk anomaly may require a cesarean section.[47] Physicians know that cesarean section increases the risk of death, as well as the risk of infection and other complications that could lead to an earlier death; indeed, these risks are disclosed in consent forms.

C. Risk of Death Doesn't Arise from Risk of Self-Harm

There are two important limitations on the application of the medical exception, as interpreted by the *Adkins* court.

1. Medical Condition or Pregnancy Complication Required

First, some may wonder whether the court's broad interpretation of the medical exception would essentially allow abortion in all circumstances—including for pregnancies that are not high risk—because pregnancy itself creates a risk of earlier death than being not pregnant. We believe the answer is no. The court ruled that the risk of an earlier death must be "because of an existing medical condition or pregnancy complication that would be alleviated by an abortion."[48] So it is not enough that pregnancy itself, without more, carries a risk of earlier death.

2. No Abortion Where Risk of Death Arises from Risk of Self-Harm

Second, the exception does not apply if the risk of an earlier death "arise[s] from a risk of self-harm."[49] This limitation exists because of the statutory text of the medical exception, which states that an abortion is not permitted if the reason that the abortion is "necessary to prevent the death of the pregnant woman" is because "the physician believes that the woman may or will take action to harm herself."[50]

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[45] Findings of Fact ¶ 18 (quoting Trial Tr. 841–42).
[46] Trial Tr. at 511.
[47] Findings of Fact ¶ 19.
[48] *Id.* ¶ 41.
[49] *Id.* ¶ 42.
[50] *Id.* ¶ 53.

It is important, however, to note that this self-harm limitation does not exclude providing an abortion for all mental-health conditions. A mental-health condition may present a risk of an earlier death for reasons other than a risk of suicide or self-harm.

For example, the plaintiffs' mental-health expert, Dr. Payne, testified that conditions such as schizophrenia and catatonia (among others) can risk an earlier death, and in some cases such a risk can be alleviated by an abortion.[51] As discussed above, Dr. Payne also testified that depression (whether preexisting or caused by pregnancy) can create a risk of an earlier death in ways other than through self-harm: depression causes a physical inflammatory response, which increases the risk of death.[52]

D. Manner of Termination

Finally, the court ruled that if an abortion is provided under the medical exception, the method of termination must be "the one that, without increasing the risk of [the pregnant patient's] death, best facilitates the unborn child's survival outside the uterus, if feasible." [53] This method-of-termination provision mirrors the statutory text of the medical exception.

This limitation reflects a preference in the statute for induction abortions (i.e., labor and delivery) over D&E (dilation and evacuation) abortions. But this limitation is *not* a ban on D&E abortions. A D&E abortion can still be provided if the physician determines that an induction abortion would increase the risk of the patient's death or if it would not be feasible. We believe that this permits D&E abortions in essentially all applications of the medical exception because D&E abortions are safer for the pregnant patient than undergoing labor and delivery or a cesarean section.

Binding Effect of Final Declaratory Judgment Against the State of Idaho

We believe that the declaratory judgment entered by the *Adkins* court against the State of Idaho would be binding in any future criminal prosecution brought against a physician or other health-care provider for allegedly violating Idaho's abortion bans. This means that the State of Idaho and prosecutors would be precluded from enforcing Idaho's bans in a way that is inconsistent with the declaratory judgment.

A. The Declaratory Judgment Binds the State of Idaho, Which Is the Party that Would Bring any State Prosecution

The declaratory judgment in *Adkins* binds the parties to the case, which includes the defendant, the State of Idaho. A declaratory judgment is a remedy created by the Idaho Declaratory Judgments Act, which gives courts the "power to declare rights, status, and other legal relations."[54] The purpose of a declaratory judgment is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal

[51] Trial Tr. 1037-40.
[52] *Id.* at 1058.
[53] Findings of Fact ¶ 42.
[54] I.C. § 10-1201.

relations," and it therefore "is to be liberally construed and administered."[55] A declaratory judgment has "the force and effect of a final judgment or decree."[56]

A "declaratory judgment action triggers issue preclusive . . . effect."[57] This means that a declaratory judgment bars the parties from relitigating any issue that was decided in the declaratory judgment.[58] "If a declaratory judgment is valid and final, it is conclusive, with respect to the matters declared, as to all persons who are bound by the judgment."[59]

Under these principles, the final, unappealed *Adkins* declaratory judgment is conclusive as to the State with respect to the matters declared by the court—i.e., the circumstances in which abortions may be provided under the medical exception. The State of Idaho is barred from relitigating these issues in future litigation.

It is therefore significant that the State of Idaho itself—not a county prosecutor—brings a criminal prosecution for a violation of state law. The county prosecutor's role is to represent the State in the criminal proceeding, but the prosecuting party is the State itself. This is explicit in the Idaho statutes: "A criminal action is prosecuted in the name of the State of Idaho, as a party, against the person charged with the offense."[60] The Idaho Supreme Court has explained that in a criminal prosecution, neither the county nor the county prosecutor is "a party to the charges against" the defendant; instead, it is "the State of Idaho that [is] the party, with the prosecutors acting as the agents of the State of Idaho."[61] That is why criminal cases are styled "State of Idaho v. Defendant," not "County v. Defendant" or "Prosecutor v. Defendant."

This is significant because the State of Idaho is the same party (1) that would prosecute alleged violations of the abortion ban and (2) that is conclusively bound by the *Adkins* judgment declaring when abortions can be provided under the medical exception. Because the declaratory judgment has preclusive effect on the State of Idaho, the State is barred from relitigating the scope of the medical exception in its future criminal prosecutions, no matter which county prosecutor represents the State in the prosecution.

It may seem unusual for a statutory interpretation by one trial court to have preclusive effect in future criminal prosecutions statewide—without the Idaho Supreme

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[55] Findings of Fact par. 27 (quoting I.C. § 10-1212)

[56] I.C. § 10-1201.

[57] *Stilwyn, Inc. v. Rokan Corp.*, 158 Idaho 833, 843, 353 P.3d 1067, 1077 (2015).

[58] *See Berkshire Invs., LLC v. Taylor*, 153 Idaho 73, 81, 278 P.3d 943, 951 (2012) ("Collateral estoppel bars relitigation of an issue previously determined . . . .").

[59] Restatement (Second) of Judgments § 33, comment b (1982).

[60] I.C. § 19-104.

[61] *State v. Baker*, 156 Idaho 209, 212-13, 322 P.3d 291, 294-95 (2014) (bold added); *see also State v. Gibson*, 164 Idaho 420, 425, 431 P.3d 255, 260 (2018) ("when prosecuting crime, a county prosecutor is representing the State"); *Hooper v. State*, 150 Idaho 497, 500, 248 P.3d 748, 751 (2011) ("County prosecutors represent the sovereign when bringing a criminal proceeding, not any individual state agency or political subdivision.").

Court itself weighing in on the interpretation. But that is the effect of the Attorney General's decision not to appeal the declaratory judgment, for at least two reasons.

First, one agent of the State of Idaho can bind the State as a whole—including by precluding future criminal prosecutions in other parts of the State. The Idaho Supreme Court has held that when one county prosecutor enters into a plea agreement promising that the State will not pursue certain charges, the agreement binds the State as a whole and precludes prosecutions by prosecutors in other counties, even if those other prosecutors did not agree to the plea deal.[62] That is because it is "the State of Idaho that [is] the party" to the prosecution, and the prosecutor who signs the plea agreement is "acting as the agent[] of the State of Idaho," "[e]xercising authority granted by state statute," and thus "acting on behalf of the State."[63] Entering into the plea agreement on behalf of the State thus "binds other prosecutors who could also act on behalf of the state on the same charges."[64]

Similarly, here, the Attorney General had the authority to bind the State by declining to appeal the declaratory judgment. The Attorney General's role in the *Adkins* case was solely as the representative of the State of Idaho,[65] fulfilling his statutory duty to represent the State in civil litigation.[66] There is no question that the Attorney General, as the agent and representative of the State, had the authority to either appeal or not appeal the *Adkins* judgment on behalf of the State. For the reasons discussed, the Attorney General's decision not to appeal on the State's behalf means that the declaratory judgment now binds the State in all future litigation, precluding the State from relitigating the issues declared by the *Adkins* court, including in criminal prosecutions.

Second, the fact that the declaration of rights under the medical exception was issued by a trial court, not the Idaho Supreme Court, does not prevent the declaratory judgment from having statewide binding effect. In fact, in some ways, an unappealed declaratory judgment is *more* protective and binding than a precedential opinion from the Idaho Supreme Court interpreting the exception. An opinion from the Idaho Supreme Court would bind lower courts, but the Idaho Supreme Court could change its interpretation in a future opinion, subject only to the principle of *stare decisis*. By contrast, the declaratory judgment entered by the *Adkins* court has "the force and effect of a final judgment,"[67] and an unappealed final judgment can rarely be set aside. Indeed, the *Adkins* court recognized that a declaratory judgment has a stronger effect than an opinion from the Idaho Supreme Court. It explained that although *Planned Parenthood* had interpreted the medical exception, that decision was a "precedential opinion"; "[i]t isn't,

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[62] *Baker*, 156 Idaho at 212-13, 322 P.3d at 294-95.

[63] *Id.* (bold added).

[64] *Id.*

[65] The Attorney General was originally named as a defendant in the case, but the court dismissed him from the case.

[66] *See* I.C. § 67-1401(1) ("[I]t is the duty of the attorney general . . . [t]o perform all legal services for the state and to represent the state and all departments, agencies, offices, officers, boards, commissions, institutions and other state entities in all courts and before all administrative tribunals or bodies of any nature.").

[67] I.C. § 10-1201.

however, equivalent to a declaratory judgment—particularly not one that further clarifies the exception at the margins."[68]

B. The State of Idaho Is Also Bound under Ordinary Issue Preclusion

Even setting aside the conclusive nature of a declaratory judgment, the State of Idaho would be bound by the *Adkins* court's decision under the ordinary doctrine of issue preclusion (or collateral estoppel). Issue preclusion "bars relitigation of an issue previously determined when: '(1) the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be precluded was actually decided in the prior litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation.'"[69]

All of these requirements for issue preclusion are met here.

1. The State had a full and fair opportunity to litigate which circumstances permit abortion under the medical exception. The State fully participated in the trial, put on witnesses and cross-examined plaintiffs' witnesses, and submitted post-trial briefing that addressed the issue. The State also had the opportunity to appeal the judgment, but it chose not to.
2. The same issue decided in the *Adkins* case would also be at issue in a future criminal prosecution: whether the medical exception allows a physician to provide an abortion when, in the physician's good-faith medical judgment, the physician determines that the patient has a condition that creates a non-negligible risk of an earlier death.
3. That issue was actually decided in *Adkins*. It is explicitly part of the *Adkins* judgment.
4. There was a final judgment on the merits in *Adkins*. The *Adkins* declaratory judgment has "the force and effect of a final judgment."[70]
5. The State, which would be the party against whom the issue is asserted in a criminal prosecution (i.e., the party that the criminal defendant would seek to bind to the earlier decision) was a party in the *Adkins* litigation.

The doctrine of issue preclusion thus provides further assurance that the *Adkins* decision would be binding in future criminal prosecutions.

C. The Declaratory Judgment Also Binds County Prosecutors

Finally, a judgment against the State of Idaho binds all state officials and anyone exercising state power, including county prosecutors.

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[68] Findings of Fact ¶ 34.

[69] *Berkshire Invs., LLC,* 278 P.3d at 951 (quoting *Stoddard v. Hagadone Corp.*, 147 Idaho 186, 191, 207 P.3d 162, 167 (2009)).

[70] I.C. § 10-1201.

In the *Planned Parenthood* case challenging Idaho's abortion bans in their entirety, one of the issues was whether the State of Idaho was properly named as a defendant or whether only individual state officials could be named as defendants. The Idaho Supreme Court ruled that the State was a proper defendant and treated relief against the State and against the officials as effectively interchangeable. The Court explained: "It is neither procedurally improper nor unusual to name the State of Idaho as a party in a case seeking declaratory relief when a constitutional violation is alleged."[71] Significantly, when the State is a defendant and the court issues equitable relief (i.e., a declaratory judgment or injunction), such "relief may issue *against those persons the State is comprised of* (i.e., all its officers, employees, and agents)."[72]

As discussed above, the Idaho Supreme Court has held that when a county prosecutor is prosecuting someone for violation of a state law, the county prosecutors are "members of the prosecutorial branch of the State of Idaho and are **agents of the State of Idaho**."[73] Even though county prosecutors are elected county-wide, not statewide, when they engaged in prosecution, county prosecutors are not agents of the county but agents of the State. In prosecutions for state offenses, it is "the State of Idaho that [is] the party, with the prosecutors acting as the agents of the State of Idaho."[74] "Exercising authority granted by state statute, the [local prosecutor is] acting on behalf of the State."[75]

It is a well-recognized principle in the law that declaratory and injunctive relief against an entity binds that entity's agents and employees. Indeed, the procedural rule governing injunctions explicitly states that an injunction binds not only the parties to the case but also "the parties' officers, agents, servants, employees, and attorneys."[76] Were that not the rule, it would lead to absurd results: a plaintiff suing a corporation for declaratory or injunctive relief would need to sue not only the corporation itself but each of the corporation's officers and employees because otherwise the corporation could evade the injunction by saying that the injunction does not bind the employees.

The fact that relief against the State of Idaho binds all officers and agents of the State played a central role in how the court structured our case. The plaintiffs originally sued not only the State of Idaho but also Governor Little and Attorney General Labrador in their official capacities, as well as the Board of Medicine. The court dismissed Governor Little, Attorney General Labrador, and the Board of Medicine—reasoning that, "[h]aving been sued along with the State, under whose umbrella their roles exist, Governor Little, Attorney General Labrador, and the Board of Medicine are redundant defendants."[77]

It therefore makes no difference that county prosecutors were not explicitly named as defendants in the *Adkins* case. Had they been named, they, too, would have been redundant defendants. As the court explained, a "redundant defendant's inclusion in the

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[71] *Planned Parenthood*, 522 P.3d at 1158.
[72] *Id.* (emphasis added).
[73] *Baker*, 322 P.3d at 295 (bold added).
[74] *Id.* (bold added).
[75] *Id.*
[76] Idaho R. Civ. P. 65(d)(2)(B).
[77] Decision and Order on Motion to Dismiss at 12.

litigation doesn't broaden the relief available to the plaintiff."[78] The court explicitly ruled that if plaintiffs succeed in their claim for declaratory relief (which they ultimately did), "the resulting declaratory . . . relief against the State would . . . bind Governor Little, Attorney General Labrador, the Board of Medicine, and all other state officers or agencies."[79] Significantly, if the State disagreed with this ruling about the binding nature of declaratory relief against the State, then the State could have appealed this ruling at the end of the case, but it did not.

[78] *Id.*
[79] *Id.* at 14.