



**Kim Stanger**

Partner  
208.383.3913  
Boise  
kcstanger@hollandhart.com

## Referrals for Out-of-State Abortions: New Idaho Decision

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The federal District Court of Idaho has issued a ruling that will help protect physicians and other healthcare providers who refer patients outside of Idaho for an abortion.

As we have previously discussed (see <https://www.hollandhart.com/idahos-amended-abortion-laws-summary-and-updated-faqs>), Idaho's criminal abortion ban prohibits "assist[ing] in performing or attempting to perform an abortion." (I.C. 18-622(2)). On March 27, 2023, Idaho Attorney General Labrador issued a letter (the "Crane Letter") to a legislator in which he opined:

The plain meaning of assist is to give support or aid. An Idaho health care professional who refers a woman across state lines to an abortion provider or who prescribes abortion pills for the woman across state lines has given support or aid to the woman in performing or attempting to perform an abortion and has thus violated the statute.

(<https://www.courthousenews.com/wp-content/uploads/2023/04/labrador-idaho-opinion-letter.pdf>). Planned Parenthood and potentially affected doctors sued, arguing that enforcement of the statute in this manner would violate their constitutional right of free speech. Although Attorney General Labrador withdrew the letter shortly after the lawsuit was filed, he never disavowed the letter or the analysis contained in the letter.

On July 31, 2023, Judge Winmill sided with the plaintiffs. Significantly, Judge Winmill noted:

[I]t would not have been particularly difficult for the State to definitively establish that no case or controversy exists. That is, all it would have taken is for Attorney General Labrador to denounce the Crane Letter's interpretation or make an

affirmative statement that he, or his office, will not enforce Idaho's criminal abortion statute in such a manner. Instead, the Attorney General has strained at every juncture possible to distance himself from his previous statement without committing to a new interpretation or providing any assurances to this Court or the Medical Providers. Attorney General Labrador's targeted silence is deafening.

(*Planned Parenthood v. Labrador*, Case No. 1:23-cv-00142(BLW), Memorandum Decision at p.55, [available here](#)). Judge Winmill concluded that interpreting or enforcing the statute in a manner that would prohibit healthcare providers from referring patients for out-of-state abortions would likely violate healthcare providers' constitutional right of free speech. Accordingly, Judge Winmill issued a preliminary injunction enjoining Attorney General Labrador “from enforcing Idaho's criminal abortion statute as interpreted in the Crane Letter.” (*Id.* at p.58-59).

During the proceedings, a group of Idaho prosecuting attorneys filed a motion to dismiss the plaintiffs' complaint. Judge Winmill concluded that the prosecutors' arguments had not been fully vetted and, accordingly, he declined to rule on that motion until after the record had been more fully developed. (*Id.* at p.17).

Although the case is still pending and the injunction is preliminary, Judge Winmill's decision should provide comfort to Idaho providers who have struggled with advising women who may be seeking abortions or for whom abortion is a potentially appropriate course of treatment due to the mother's or fetus's health or otherwise.

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