

DRAFT

Draft - Abortion Articles

Jeff A. Pierson

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Combined Glossary

For use with Articles 5, 6, and 7, the Interrogatories, the Fifty Questions, and the Consequences Memorandum.

Compiled July 23, 2026. Section numbers track the initiative text filed as Exhibit F to the Declaration of James E. M. Craig, Idaho Supreme Court Docket No. 52636-2025. A resubmitted version was filed with the Secretary of State on or about November 20, 2024; verify all subsection numbering against the certified text before publication.

Terms from the measure

Abortion / abortion care — Defined by the measure as the use of any means consistent with widely accepted medical standards necessary for the procedure or treatment to intentionally terminate a pregnancy. § 39-803(6)(a). Note that the measure treats the two phrases as synonyms; there is no separate category of “care” distinguished from “abortion.”

Compelling state interest — In constitutional law, the highest justification a government can offer for burdening a fundamental right. The measure imports this standard by statute at § 39-803(1)(b), and then at § 39-803(2) confines the permissible interest **solely** to improving or maintaining the health of the individual seeking care. The word *solely* is the operative term in Articles 5, 6, and 7.

Fetal viability — Defined by the measure as the point at which, in the good faith judgment of an attending health care professional and on the particular facts known at the time, the fetus has a significant likelihood of sustained survival outside the uterus without the application of extraordinary medical measures. § 39-803(6)(e). The Attorney General’s Certificate of Review observed that neither “significant likelihood of sustained survival” nor “extraordinary medical measures” is defined.

Health care professional — Any person licensed, certified, or registered by the State of Idaho to deliver health care. § 39-803(6)(g). Broader than **physician**, which the measure defines separately.

Least restrictive means — The second half of strict scrutiny: even a compelling interest must be pursued by the method that burdens the right least. § 39-803(1)(b).

Liberal construed — A direction to courts to resolve ambiguity in favor of the thing being construed. Combined with the control clause at § 39-803(4), this instructs Idaho courts to resolve doubt in favor of the asserted right and against any conflicting statute.

Medical emergency — Defined at § 39-803(6)(h) as a physical medical condition that, on the attending physician’s good faith clinical judgment and determined case by case, so complicates the patient’s condition as to warrant an abortion either to protect life or for which a **delay may** place health in serious jeopardy, cause serious impairment to a bodily function, or cause serious dysfunction of any bodily organ or part. Contrast **EMTALA standard**, below.

Person or entity that assists — Language extending the measure’s protection beyond the patient and provider to third parties who assist or facilitate the exercise of the right. Present in the August 2024 drafts at § 39-801(3)(a)(i) and carried forward in substance.

Reproductive freedom and privacy — The measure’s umbrella right, enumerated as decisions on pregnancy, contraception, fertility treatment, prenatal and postpartum care, childbirth, continuing one’s own pregnancy, miscarriage care, and abortion care. § 39-803(1)(a). The list is prefaced “including but not limited to,” which is the hook for every secondary-effects argument in the Consequences Memorandum.

Statement of purpose — § 39-802, a non-operative preamble describing the act’s aims. Preambles inform construction but do not themselves confer rights.

Terms from Idaho law and procedure

Ballot title, short and long — Under Idaho Code § 34-1809(2)(d), the Attorney General must prepare a distinctive short title of not more than twenty words and a general (long) title of not more than two hundred words. Both are printed on petition covers during circulation.

Certificate of Review — The Attorney General’s advisory review of a proposed initiative under Idaho Code § 34-1809(1). Recommendations are advisory only; petitioners may accept or reject them in whole or in part. The Certificate on the fetal-viability petition issued September 16, 2024.

Defense of Life Act — Idaho Code § 18-622, the criminal abortion statute currently in force, with exceptions for preventing the death of the pregnant woman and, in the first trimester, certain cases of rape or incest.

Distribution requirement — Idaho’s rule that qualifying signatures equal at least 6% of registered voters in no fewer than 18 of the state’s 35 legislative districts, in addition to the 6% statewide threshold (70,725 signatures in 2026).

Fiscal Impact Statement (FIS) — Prepared by the Division of Financial Management under Idaho Code § 34-1812; must be an unbiased, good faith statement, written clearly and concisely, avoiding legal and technical terms where possible.

Initiated state statute — A law enacted by voters that carries the same legal force as an act of the Legislature and, critically, the same vulnerability: it may be amended or repealed by ordinary legislative majority. See **equal footing doctrine**.

Equal footing doctrine — The rule that initiative legislation stands on equal footing with other legislative acts and may be amended or repealed by the Legislature. *Reclaim Idaho v. Denney*, 169 Idaho 406, 439 (2021), citing *Luker v. Curtis*, 64 Idaho 703 (1943). Also: no present legislature may bind a future one. *State v. Gallet*, 36 Idaho 178 (1922).

Preborn children have interests — Idaho Code § 18-8802(1), the Legislature’s existing declaration that preborn children have interests in life, health, and well-being. Directly relevant to the *solely* clause.

Substantial compliance — The standard by which Idaho courts review ballot titles and fiscal statements; not de novo review, and not a search for the best possible language. *Idahoans United v. Labrador*, 172 Idaho 820 (2025); *Open Primaries*, 172 Idaho 466 (2023).

Terms from federal law

Dobbs — *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), returning abortion regulation to the states and triggering Idaho’s existing law.

EMTALA standard — The Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd(e)(1), defines an emergency medical condition by reference to what **could reasonably be expected to result in** serious jeopardy. The measure’s standard is what a delay **may** do. The Attorney General flagged this divergence in September 2024; it is the strongest textual argument available to opponents.

Casey — *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). Relevant here for one proposition: that a state retains a legitimate interest in potential life **from the outset of pregnancy**, which is the ground on which informed-consent and reflection-period laws

were upheld. Overruled by *Dobbs*, but its logic is the benchmark against which the *solely* clause is measured.

Hyde Amendment — The federal appropriations rider barring use of federal funds for abortion except in cases of rape, incest, or danger to the mother's life.

Terms of moral and political philosophy

Duty to defend life — The proposition that the protection of innocent human life is not one government function among many but the condition of the rest. Traceable in the American tradition to the Declaration of Independence's claim that governments are instituted to secure the rights to life, liberty, and the pursuit of happiness, and in Idaho to Article I, § 1 of the state constitution, which names among inalienable rights that of **enjoying and defending life**.

Imago Dei — The doctrine that the human being bears the image of God (Gen. 1:27), from which the classical Christian prohibition on the shedding of innocent blood derives (Gen. 9:6). The premise of Article 5.

Natural law — The tradition holding that certain moral norms are accessible to reason, prior to and binding upon positive enactment. Cicero, Aquinas (*Summa Theologiae* I-II q.94), Blackstone, and the Declaration are its principal American channels. The premise of Article 6.

Negative (true) liberty — Freedom understood as the absence of interference by others: the right to be let alone. Distinguished from positive liberty, understood as the capacity or provision of means to act. Article 6 argues that the measure's claim to negative (true) liberty fails on its own terms, because the act it protects is not non-interference but interference with a third party.

Stated as a founder would state it:

By liberty we do not mean a license to do whatsoever one wills. We mean the security of a man's person, his conscience, and his estate against the interference of any other. Liberty is a fence, and the whole office of a fence is to keep others out. It confers no title whatever to enter upon a neighbor.

This is why the liberties our fathers thought worth a war are all of one kind: to speak, to worship, to assemble, to be secure in one's papers and effects. Observe that a man may exercise every one of them alone, in a shut room, and no second person is touched by

it. That is the mark of the true liberty. It asks of government one thing only — forbearance.

A claim of a different sort, which cannot be exercised save upon the body of another, is not liberty however it be styled. It is dominion. And dominion over the person of another is the precise evil for whose restraint governments are instituted among men. To call such a claim freedom is to borrow the good name of liberty in order to cover its opposite.

Non-aggression principle — The libertarian formulation that force is justified only in response to force. Article 6 treats the unborn child as the party against whom force is initiated.

Ordered liberty — The classical conception that freedom exists within, and is made possible by, a framework of prior moral obligation. Contrast with libertarian voluntarism, under which consent alone legitimates.

Prudential judgment — In Christian ethics, the application of settled moral principle to contingent circumstances, where good-faith disagreement is possible. Article 7 concedes that political strategy is a matter of prudential judgment, and argues that the moral status of the act is not.

Sixth commandment — “Thou shalt not kill” (Ex. 20:13, KJV). Read alongside Genesis 9:6, which grounds the prohibition on bloodshed in the divine image, and Proverbs 24:11–12, which makes the duty to deliver those drawn toward death an affirmative one. Articles 5 and 7 rely on Scripture alone; no extra-biblical authority is load-bearing anywhere in this corpus.

Editorial conventions used in these documents

§ — Section symbol. Used throughout as the structural marker rather than numbered headings, to keep the reader oriented to the fact that the object under discussion is a statute.

Footnote markers — Sequential within each document. Sources are cited in full at first appearance within that document.

“The measure” — Proposition 1, the Reproductive Freedom and Privacy Act, as distinct from **“the initiative”** (the procedural vehicle) and **“the campaign”** (Idahoans United for Women and Families and its affiliate Back to Idaho).

Verification flag (■) — Marks a factual or textual assertion that has not been confirmed against a primary source and must be checked before publication.

Proposition 1 · Idaho general election · November 3, 2026

Verify all section numbering against the certified text before publication

Article 5 — A Christian Moral Review of Proposition 1

The measure asks Idaho to declare that the unborn child is of no legitimate concern to the state. This article examines that declaration against the plain teaching of Scripture.

§ 1. What is actually being voted on

Most moral commentary on abortion measures argues past the text. This one will not.

Proposition 1 does two things a Christian voter must weigh separately. It creates a right to abortion before fetal viability and, in defined emergencies, after it. That much is widely reported. It also does something almost never mentioned by the campaign: it declares that the State of Idaho's legitimate interest in this entire domain is limited **solely** to improving or maintaining the health of the individual seeking care.¹

Read that clause slowly, because the moral weight of this measure rests there.

Not *primarily*. Not *chiefly*. **Solely**.

Under existing Idaho law, the Legislature has declared that preborn children have interests in life, health, and well-being.² Proposition 1 does not amend that declaration. It does not repeal it by name. It simply announces that when Idaho weighs any restriction touching reproductive decisions, the only interest that may be placed on the scale is the interest of the adult.

The unborn child is not assigned a lesser weight. The child is removed from the scale.

That is a theological claim wearing statutory clothing, and it is the thing a Christian voter is actually being asked to ratify.

§ 2. The premise, from Scripture

The objection to abortion does not need a council, a confession, or any authority outside the canon. It stands on the text.

Man bears the image of God. Genesis 1:27. That is the premise, and everything else follows from it.

The shedding of innocent blood is forbidden precisely because of that image.

Genesis 9:6 grounds the prohibition not in social order or utility but in what a human being is. The sixth commandment states it flatly.³ Proverbs names hands that shed innocent blood among the things the LORD hates.⁴

Scripture locates personal identity before birth, repeatedly, and never as a figure of speech.

The psalmist says God formed his inward parts and covered him in his mother's womb, and that God's eyes saw his substance yet unformed.⁵ Jeremiah is told he was known *before* he was formed in the womb, and set apart before he came out of it.⁶ Isaiah says the LORD called him from the womb and named him from his mother's body.⁷ Paul says the same of himself — separated from his mother's womb.⁸ Job asks whether the one who made him in the womb did not also make his servant.⁹ David says he was conceived in sin, which is a claim about moral personhood at conception.¹⁰

The clearest narrative case is Luke 1. Elisabeth's unborn son leaps at the arrival of Mary, who is herself newly pregnant.¹¹ Luke uses the ordinary Greek word for a baby — the same word he uses of the newborn Christ in the manger two chapters later.¹² Scripture does not have one vocabulary for the child inside and another for the child outside.

Exodus 21:22–25 prescribes penalties where a pregnant woman is struck and her child comes out; where harm follows, the sentence is life for life. Translations differ on whether the passage contemplates miscarriage or premature birth, and honest readers should say so rather than press the text further than it goes. What is not in dispute is that the passage treats harm to the unborn as a matter for the criminal law.

And the charge to act is explicit. Proverbs 24:11–12 commands the deliverance of those drawn toward death and those ready to be slain, and forecloses the excuse of ignorance: the one who weighs the heart knows what you knew.¹³

That is the case. It is made from Scripture, and a reader who wants to reject it must reject the texts rather than an unfamiliar early document.

§ 3. The moral objection stated precisely

The objection is not that Proposition 1 permits abortion. Idaho's law before *Dobbs* permitted abortion, and Christians disagreed about that regime too.

The objection is narrower and harder to answer:

Proposition 1 asks Idaho to write into its own code the proposition that the unborn child is not a subject of legitimate public concern.

There is a real moral difference between a state that permits something it regrets and a state that declares the thing regretted is not its business. The first is a compromise. The second is a metaphysical statement.

Consider the structure. § 39-803(1)(b) applies strict scrutiny — a compelling state interest, achieved by the least restrictive means.¹⁴ § 39-803(2) then defines the only compelling interest that qualifies. When the state cannot articulate an interest in the child, the state cannot regulate on behalf of the child. Not by informed consent. Not by reflection period. Not by any measure whose justification is the child rather than the patient.

This is why the Attorney General's own review, issued in September 2024 before any of this became a campaign, flagged the potential conflict with the unborn child's right to life as a matter of substantive import — noting that an unborn child's inalienable right to life was among the earliest justifications for Idaho's abortion statutes.¹⁵

§ 4. The strongest Christian argument on the other side, and why it fails

Honest advocacy requires stating the opposing case at full strength. Many sincere Christians support this measure. Their argument is roughly this:

We are not asked to approve abortion. We are asked whether the criminal law is the right instrument. Idaho's ban has produced real harm: physicians leaving, labor and delivery units closing, women transferred out of state during crisis pregnancies.¹⁶ Compassion for the woman in front of us is also a Christian obligation. And a law that coerces conscience does not produce virtue; it produces resentment. Render unto Caesar what is Caesar's — but the womb is not Caesar's.

This deserves a serious answer, not a dismissal. Three responses.

First, the medical grievance is real and the remedy is available. If the problem is that physicians cannot locate the legal line in an obstetric emergency, the solution is to draw the line clearly. A statutory clarification of the medical-emergency standard would do that. It

has been proposed. It could pass. Proposition 1 does not clarify the standard; it removes the framework in which a standard exists. A Christian may hold both that Idaho's current exception is badly drafted and that this measure is the wrong repair.

Second, “the law should not coerce conscience” proves too much. No serious Christian applies that principle to the protection of the already-born. We do not argue that laws against assault fail because they coerce the conscience of the violent. The principle is invoked selectively, and the selection is precisely the question at issue.

Third, and most importantly, the *solely* clause is not a compromise position. A Christian who believes abortion is a grave wrong but doubts the criminal law's competence to address it can vote against Idaho's current statute, argue for its amendment, and work for its repeal. What that Christian cannot coherently do is vote to declare that the child is of no legitimate concern to the state. Those are different acts. Proposition 1 does not offer the first without the second.

§ 5. The pastoral dimension

Two things must be said that campaigns rarely say.

The women at the center of this are not abstractions, and many of them are in Idaho's pews. A moral argument that arrives without any acknowledgment of the crisis pregnancy, the fatal diagnosis at twenty weeks, the woman hemorrhaging while a hospital lawyer is consulted, is not a Christian argument. It is a syllogism with a cross on it.

The tradition that forbids the taking of the child also commands the care of the mother. The same commandment that forbids the unjust taking of life requires its preservation — hers included. Any Christian voting no on this measure incurs an obligation that does not end at the ballot box: to the pregnancy resource center, to the mother without insurance, to the physician who needs a workable standard, and to the woman who has already had an abortion and hears every one of these arguments as an accusation.

If the argument in this article is right, it is right in a way that costs the person making it something.

§ 6. The question put plainly

A Christian voter in Idaho this November is not being asked whether abortion should be rare, or whether the current law is well drafted, or whether physicians deserve clarity. Those are real questions and reasonable people answer them differently.

The voter is being asked whether the State of Idaho should declare, in its own code, that the unborn child is not a subject of legitimate public concern.

Scripture's answer to that specific question is not ambiguous.

Ten Clarification Questions

Five clarifying the ballot measure

1. **Where in the measure does the word “solely” appear, and what does it govern?** § 39-803(2), confining the state's compelling interest to improving or maintaining the health of the individual seeking care. It governs every regulation the state might otherwise justify on any other ground.
2. **Does Proposition 1 repeal Idaho Code § 18-8802(1), the Legislature's declaration that preborn children have interests?** Not by name. The measure never mentions it. Whether it survives § 39-803(4)'s control clause is unresolved and would be decided by litigation.
3. **Does the measure permit abortion at nine months?** No. § 39-803(1)(c) expressly permits state regulation after fetal viability, subject to the medical-emergency exception. Anyone making the nine-month claim should stop; it is refutable against the text and it discredits the arguments that are not.
4. **Does the measure protect conscience?** Yes, for individuals. § 39-803(3)(c) preserves a health care professional's freedom of conscience under Idaho Code § 18-611. Whether institutional conscience — a hospital, a religious health system — is equally protected is not addressed. ■
5. **Is the measure a constitutional amendment?** No. It is an initiated state statute, repealable by simple legislative majority under the equal footing doctrine.¹⁷

Five clarifying this article

6. Is this article claiming that a Christian who votes yes is not a Christian?

No. It claims the vote is inconsistent with what Scripture plainly teaches about the moral status of the unborn child. Article 7 takes up the sharper question directly and should be read as the polemic it is.

7. Does the argument depend on a particular view of ensoulment? No. It depends on the *imago Dei* premise of Genesis 1:27 and on the ordinary rule that uncertainty about whether a life is present counsels against a lethal act. A reader who is genuinely uncertain when personhood begins is asked to notice which way uncertainty cuts.

8. Does the article concede that Idaho's current law has problems? Yes, explicitly, at § 4. The concession is load-bearing, not decorative. An argument that denies the documented medical grievance will not persuade anyone who has read the coverage.

9. Is this article addressed to non-Christians? Not primarily. Article 6 makes the parallel case from natural law and negative (true) liberty without theological premises, and is the better document for a general audience.

On negative (true) liberty — stated as a founder would state it.

By liberty we do not mean a license to do whatsoever one wills. We mean the security of a man's person, his conscience, and his estate against the interference of any other. Liberty is a fence, and the whole office of a fence is to keep others out. It confers no title whatever to enter upon a neighbor.

This is why the liberties our fathers thought worth a war are all of one kind: to speak, to worship, to assemble, to be secure in one's papers and effects. Observe that a man may exercise every one of them alone, in a shut room, and no second person is touched by it. That is the mark of the true liberty. It asks of government one thing only — forbearance.

A claim of a different sort, which cannot be exercised save upon the body of another, is not liberty however it be styled. It is dominion. And dominion over the person of another is the precise evil for whose restraint governments are instituted among men. To call such a claim freedom is to borrow the good name of liberty in order to cover its opposite.

10. **What would falsify the argument?** A demonstration that the measure preserves some legitimate state interest in prenatal life, or that “solely” in § 39-803(2) does not mean what it appears to mean. If the certified text differs materially from Exhibit F on this point, the argument must be rewritten. ■
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Footnotes

1. Reproductive Freedom and Privacy Act § 39-803(2), as filed with the Idaho Secretary of State and reproduced at Exhibit F to the Declaration of James E. M. Craig, Idaho Supreme Court Docket No. 52636-2025 (filed Mar. 4, 2025).↵
2. Idaho Code § 18-8802(1). Cited by the Attorney General in his Certificate of Review of Sept. 16, 2024, at 6.↵
3. Exodus 20:13.↵
4. Proverbs 6:16–17.↵
5. Psalm 139:13–16.↵
6. Jeremiah 1:5.↵
7. Isaiah 49:1, 5.↵
8. Galatians 1:15.↵
9. Job 31:15.↵
10. Psalm 51:5.↵
11. Luke 1:41–44.↵
12. Compare Luke 1:41 with Luke 2:12, 16.↵
13. Proverbs 24:11–12.↵
14. § 39-803(1)(b) (Exhibit F). The Attorney General observed that this is language ordinarily associated with fundamental constitutional rights. Certificate of Review, Sept. 16, 2024, at 3.↵

15. Certificate of Review, Sept. 16, 2024, at 6, discussing *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 426, 522 P.3d 1132 (2023).↵
16. See, e.g., Robin Sautter, “Idaho physicians like me struggle to provide healthcare for patients under strict abortion ban,” Idaho Capital Sun (May 6, 2026) (commentary).↵
17. *Reclaim Idaho v. Denney*, 169 Idaho 406, 439, 497 P.3d 160 (2021), citing *Luker v. Curtis*, 64 Idaho 703, 136 P.2d 978 (1943); see also *State v. Gallet*, 36 Idaho 178, 209 P. 723 (1922).↵

Article 6 — Proposition 1 and the Right to Life: A Natural Law Review

Read through two lenses: negative (true) liberty, and the duty to defend life as the first office of government. No theological premises are required to follow this argument.

§ 1. The two lenses

This article makes no appeal to revelation. It argues from two propositions that the American constitutional tradition treats as foundational and that Idaho's own constitution states explicitly.

The first lens is negative (true) liberty. Liberty, in the tradition that produced this country, is principally freedom *from* — the absence of interference by others in one's person, conscience, and property. It is not a claim on anyone else. Its limit is built into its definition: my liberty ends where another's person begins. This is not a conservative gloss. It is Locke's formulation, that in the state of liberty no one ought to harm another in his life, health, liberty, or possessions.¹ It is Mill's, that the only purpose for which power can rightfully be exercised over any member of a civilized community against his will is to prevent harm to others.² It is Bastiat's, that law is the collective organization of the individual right of lawful defense.³

On negative (true) liberty — stated as a founder would state it.

By liberty we do not mean a license to do whatsoever one wills. We mean the security of a man's person, his conscience, and his estate against the interference of any other. Liberty is a fence, and the whole office of a fence is to keep others out. It confers no title whatever to enter upon a neighbor.

This is why the liberties our fathers thought worth a war are all of one kind: to speak, to worship, to assemble, to be secure in one's papers and effects. Observe that a man may exercise every one of them alone, in a shut room, and no second person is touched by it. That is the mark of the true liberty. It asks of government one thing only — forbearance.

A claim of a different sort, which cannot be exercised save upon the body of another, is not liberty however it be styled. It is dominion. And dominion over the person of another is the precise evil for whose restraint governments are instituted among men.

To call such a claim freedom is to borrow the good name of liberty in order to cover its opposite.

The second lens is the duty to defend life. If rights are prior to government, then government's function is derivative: it exists to secure them. The Declaration states it as a syllogism — men are endowed with unalienable rights, among them life; to secure these rights, governments are instituted among men.⁴ Life is listed first, and not by accident. It is the precondition of the rest. A right to liberty held by someone who has been killed is not a diminished right; it is not a right at all.

Idaho did not leave this to inference. Article I, § 1 of the Idaho Constitution declares all men to be by nature free and equal, and to have certain inalienable rights, among which is **enjoying and defending life**.⁵ The state's founding charter names the defense of life as an inalienable right — not merely the possession of it.

These two lenses are usually presented as though they were in tension on this question. They are not. Applied honestly, they converge.

§ 2. Why Proposition 1 is not a negative (true) liberty measure

The measure's rhetoric is the rhetoric of non-interference. Its own statement of purpose describes safeguarding personal decisions "without undue state interference," and protecting the individual's right to make medical decisions without government interference.⁶ The campaign's framing is that government should stay out.

Take that framing seriously and apply it consistently. Negative (true) liberty is a claim against interference. It answers the question: *may others stop me?* It does not answer the question: *whom may I act upon?*

Every negative (true) liberty right in the classical enumeration is one whose exercise leaves other persons untouched. Speech, worship, assembly, the security of one's papers and effects, the peaceful use of one's property — all can be exercised by a person alone, without any second party being acted upon. That is precisely what makes them negative rights.

Abortion is structurally different, and the difference is not rhetorical. The act is not the withholding of assistance to oneself. It is, as the measure's own definition concedes, the use of means **necessary for the procedure or treatment to intentionally terminate a pregnancy**.⁷ The word is *terminate*, and the object of the verb is not the person exercising the right.

The natural-law tradition has a name for the case in which one party's asserted liberty is exercised upon a second party's body: it is not liberty, it is force. And force is precisely the thing the tradition authorizes government to restrain. Blackstone, whose *Commentaries* were the working legal education of the American founding generation, placed life first among absolute rights and located its legal beginning in the womb.⁸

So the natural-law objection is not that liberty must yield to some competing social good. It is narrower and more damaging: **the measure is not an application of negative (true) liberty at all.** It asserts a liberty whose exercise necessarily acts upon a third party, and then removes from the state the authority to consider that party.

§ 3. The *solely* clause as an abdication of the first office

Here the two lenses meet.

§ 39-803(1)(b) imports strict scrutiny: no infringement unless justified by a compelling state interest achieved by the least restrictive means. § 39-803(2) then defines the universe of qualifying interests. The state's compelling interest is limited **solely** to improving or maintaining the health of the individual seeking care.⁹

Set aside abortion for one paragraph and consider what that structure does as a matter of political theory.

A government instituted to secure the right to life is here instructed, by statute, that in one entire domain of human action it may recognize only one party's interest. Not that the second party's interest is outweighed. Not that it is subordinate. That it is not cognizable.

This is the abdication. Under a natural-rights theory of government, the state does not possess discretion to decide which classes of human beings fall within its protective duty — because the duty is not the state's to grant. Rights are antecedent to the state; that is the whole point of calling them inalienable. A statute purporting to place a class of human beings outside the range of the state's legitimate concern is not exercising authority the state has. It is claiming authority no government possesses.

The Idaho Legislature has already declared, in existing code, that preborn children have interests in life, health, and well-being.¹⁰ Proposition 1 does not repeal that declaration by name. It renders it inoperative by making it unavailable as a justification for any state action.

§ 3a. Why this is a failure *as law*, and not merely a bad law

A measure can be validly enacted and still fail to be law. That is not a rhetorical flourish; it is the settled position of the tradition this article argues from, and it needs to be stated plainly because the alternative — that any enactment passed by correct procedure is law — is a modern innovation the American founding did not share.

Cicero put it that true law is right reason in agreement with nature, that it is not permissible to alter it or to repeal any part of it, and that no senate or people can release us from its obligation.¹¹ Augustine wrote that a law which is not just does not seem to him to be a law at all.¹² Aquinas made the criterion explicit: human law has the character of law only so far as it derives from the natural law, and where it departs from natural law it is no longer law but a corruption of law.¹³

Blackstone, whose *Commentaries* were the working legal education of the men who wrote the Declaration and the Constitution, stated the rule in the form Americans inherited it: no human laws are of any validity if contrary to the law of nature.¹⁴

Apply that criterion here.

The first office of government is the protection of the innocent. The Declaration states it as the reason governments exist at all.¹⁵ Idaho's own constitution names among inalienable rights that of **enjoying and defending life**, and places it first.¹⁶ A statute that removes an entire class of human beings from the range of interests the state may lawfully consider does not merely legislate badly within its authority. It legislates outside it — because the authority in question was never the state's to exercise. Rights antecedent to government cannot be withdrawn by government, and a majority cannot confer on the state a power the state does not possess.

So the failure is not that Proposition 1 is unwise, or unclear, or procedurally irregular, though it is all three. The failure is that § 39-803(2) directs the state to disregard the one interest the state exists to secure. On the natural-law criterion, an enactment that does that has the form of law without the substance of it.

This is the sense in which the measure fails as law, and it is the sense the founding generation would have recognized immediately.

Two places an opponent will press, and the honest answer to each

Common law and the quickening rule. Blackstone keyed the protection of life in the womb to quickening — the point at which the infant could be felt to stir.¹⁷ An opponent will say this proves the common law drew a gestational line exactly as this measure does, and that you cannot cite Blackstone against viability while resting on quickening.

Concede the parallel and take the consequence. Quickening and viability are the same kind of test. Both are lines drawn where knowledge runs out, and neither has an absolute measure behind it.

Quickening was never a fixed point. It depended on a woman's report of a sensation — which one woman may not notice for weeks past the fact, another may mistake for something else, and a third may believe she felt within days of conception. It varied by parity, by body, by attention, and by whether anyone thought to ask. It was a line drawn by testimony, not by measurement.

Viability is no better. It has moved several weeks earlier within a single generation, it will move again, and it differs today between a Boise NICU and a rural county sixty miles away. It is a line drawn by hospital capability.

So the two are indeed alike — and the likeness is the argument, not the concession. **When the only available boundaries are arbitrary, arbitrariness is a reason to protect earlier, not a license to protect later.**

That is the ordinary rule everywhere else. A hunter who cannot identify his target does not fire. A demolition crew that cannot confirm a building is empty does not detonate. In every domain but this one, an unresolved question about whether a life is present resolves against the act, and it does so precisely *because* no exact measure is available. The common law used quickening because it was the best evidence then obtainable, not because it believed nothing of value existed before it — which is why the same authorities treated the child in the womb as already a person for inheritance and guardianship.¹⁸

Proposition 1 inverts the rule. It takes an admittedly movable line and treats everything before it as beyond the state's concern entirely. **Until a non-arbitrary boundary is established, the pregnancy of a few weeks has the same claim to protection as the pregnancy of a few months, and for the same reason: nobody can say it does not.**

Federal constitutional personhood. *Dobbs* held there is no federal constitutional right to abortion. It did not hold that the Fourteenth Amendment obliges states to protect the unborn, and no court has so held. An opponent will say the constitutional argument

therefore runs only one way.

The answer is that the argument here is not a Fourteenth Amendment personhood claim. It is a claim under Idaho's own constitution, which does not merely permit the defense of life but names it an inalienable right — and under the natural-law criterion that Blackstone and the Declaration supply, which does not depend on any court having yet said so.

§ 3b. Where this argument stops

Honesty requires marking the edge of what this corpus argues, because an argument that quietly extends past its evidence invites the reader to distrust the part that holds.

Conception is a serious candidate for the boundary, and it deserves to be on the table. If the objection to arbitrary lines is that they lack an absolute measure, then conception has an obvious claim the others do not: it is the one point in the sequence that is not a matter of degree. Before it there are two cells belonging to two people; after it there is a single organism with a complete and distinct genetic identity, developing continuously from that moment without any further threshold to cross. Every later line — quickening, viability, birth — marks a change in capability or in what observers can detect. Conception marks a change in kind. That is a real argument, made in good faith by a great many people, and nothing in these documents is inconsistent with it.

What this corpus does not resolve is what follows from it downstream. If protection attaches at conception, questions arise about hormonal contraception and about emergency contraception that this author is not prepared to answer and that these documents do not attempt to answer. The empirical question — whether particular methods act only to prevent fertilization, or can in some circumstances act after it — is genuinely contested, the product labeling has shifted over the years, and competent people in good faith read the evidence differently.

Three reasons that gap does not weaken anything above.

First, the argument against Proposition 1 does not depend on locating the boundary. It depends on the measure removing the state's authority to recognize *any* interest in prenatal life at any point — § 39-803(2) — which is a defect whether the correct line is conception, implantation, quickening, or viability.

Second, the measure expressly protects contraception,¹⁹ and that protection is popular. A campaign that lets its opposition be characterized as a contraception argument will lose voters it needs and will deserve to. Refusing to make that argument is not evasion; it is staying on the ground where the measure is actually indefensible.

Third, an author who claims certainty he does not have on the hardest downstream question forfeits the credibility that makes the rest persuasive. The position taken here is that conception is a legitimate moral argument deserving serious consideration, that the contraception question is genuinely difficult, and that this corpus neither answers it nor needs to.

§ 4. Four objections, answered

“The unborn child is not a rights-bearer, so no third party is acted upon.”

This is the only objection that reaches the argument, and it should be conceded that it is a real philosophical position, not a bad-faith one. Two replies.

The first is that the measure does not make this argument. It does not declare that the unborn are not persons. It says nothing about their status at all — it simply removes them from the state’s field of legitimate interest. That is a jurisdictional move, not a philosophical one, and it is available only to someone who has already assumed the answer.

The second is the argument from uncertainty. If it is genuinely contested whether a class of entities are rights-bearers, the natural-law tradition and ordinary moral reasoning both counsel restraint. We do not demolish a building we are unsure is occupied. The burden of proof in a lethal act falls on the party asserting the absence of a subject, not on the party asserting its presence.

“A viability line respects the interest — it simply locates it later.”

It would, if the measure said so. It does not. § 39-803(1)(c) permits post-viability regulation, but § 39-803(2) confines the interest that could justify such regulation to the patient’s health. The viability line marks where the state may act, not on whose behalf. Under the *solely* clause, even post-viability regulation cannot be justified by the child’s interest.

Additionally, viability is a moving function of neonatal technology, not a fact about the entity. A line that shifts with hospital capital budgets, and that differs between Boise and a rural county, cannot be a boundary of rights-bearing status without absurdity.

“Bodily autonomy is the strongest negative (true) liberty claim there is.”

It is a serious claim, and the strongest form of it — that no one may be compelled to lend their body to sustain another — deserves engagement rather than a slogan in response.

The natural-law reply is that the analogy fails on the distinction between withdrawing assistance and administering a lethal act. The measure’s own definition describes means *necessary to intentionally terminate*. That is not the withdrawal of support; it is a positive act directed at a second body. Whatever the merits of a pure withdrawal-of-support argument, this measure does not confine itself to that case.

“Government has no business in the doctor-patient relationship.”

Then it has no business in it generally. Yet Idaho licenses physicians, prescribes standards of care, prosecutes malpractice, and regulates controlled substances — and this measure preserves malpractice liability expressly.²⁰ The claim is not that government stays out of medicine. It is that government stays out of this. That is a substantive position about the moral status of the act, presented as a procedural one about the scope of state power.

§ 5. What the liberty argument actually requires

A consistent negative (true) liberty voter in Idaho is not thereby committed to defending Idaho’s current statute. That statute may be badly drafted. Its emergency exception may be so unclear that it functions as a trap for physicians acting in good faith, which is itself a rule-of-law objection: a criminal prohibition whose boundary cannot be located by a competent professional fails the basic requirement of fair notice.

A liberty-minded voter can hold all of the following at once without contradiction:

- Idaho’s medical-emergency standard should be clarified by statute.
- Criminal penalties on physicians exercising reasonable clinical judgment are excessive and should be narrowed.
- The right to life is antecedent to government and not within the state’s power to disclaim.
- Proposition 1, because of § 39-803(2), asks the state to disclaim it.

The fourth proposition is the vote. The first three are the legislative agenda that should follow it.

Ten Clarification Questions

Five clarifying the ballot measure

1. **Does Proposition 1 use the language of constitutional rights?** Yes. § 39-803(1)(b) imports the compelling-interest and least-restrictive-means test, which the Attorney General noted is language ordinarily associated with fundamental constitutional rights.²¹
2. **Can a statute impose strict scrutiny on future statutes?** Not durably. Idaho follows the rule that no legislature may bind a future one, and that initiative legislation sits on equal footing with ordinary legislation.²² The Attorney General raised this in September 2024; the sponsors' October 3, 2024 response agreed that the measure could not bind future legislatures.²³
3. **Does the measure address existing Idaho abortion statutes by name?** No. § 39-803(4) declares that it controls over any conflicting section of Idaho Code and directs liberal construction, without enumerating what conflicts. The Attorney General flagged exactly this in his Certificate of Review.²⁴
4. **Does the measure protect third parties who assist?** Yes. The right extends to persons or entities that assist or facilitate an individual's exercise of it. ■ Verify the operative subsection against the certified text.
5. **When would it take effect?** January 1, 2027, if approved by simple majority on November 3, 2026.

Five clarifying this article

6. **Is this a religious argument in secular vocabulary?** No. Every authority relied on — Locke, Mill, Bastiat, Blackstone, the Declaration, Idaho Const. art. I, § 1 — is a source that secular liberals and libertarians accept as authoritative on the structure of rights.
7. **Does the argument require believing life begins at conception?** No. It requires only that the question be genuinely contested, and then applies the ordinary rule that uncertainty about the presence of a rights-bearer counsels against a lethal act. A reader certain that no rights-bearer exists will not be persuaded, and § 4 says so.

8. **Is this article anti-libertarian?** It is anti-*voluntarist*. It argues that the non-aggression principle, applied consistently, cuts against the measure rather than for it, because the act in question is not confined to the actor's own person.
9. **Does the article defend Idaho's current law?** No. § 5 states plainly that the current emergency standard is defective and should be clarified, and that a criminal boundary a physician cannot locate fails the requirement of fair notice.
10. **What is the article's weakest point?** The bodily-autonomy objection in § 4. The reply given — that a positive lethal act differs from withdrawal of support — is the standard one, and it does not fully dispose of every version of the argument. Readers who find that reply insufficient are engaging the argument correctly.
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Footnotes

1. John Locke, *Second Treatise of Government* § 6 (1689).↩
2. John Stuart Mill, *On Liberty* ch. 1 (1859).↩
3. Frédéric Bastiat, *The Law* (1850).↩
4. Declaration of Independence (U.S. 1776), para. 2.↩
5. Idaho Const. art. I, § 1.↩
6. Reproductive Freedom and Privacy Act § 39-802 (Statement of Purpose), Exhibit F to the Declaration of James E. M. Craig, Idaho Supreme Court Docket No. 52636-2025.↩
7. § 39-803(6)(a) (definition of “abortion” / “abortion care”).↩
8. William Blackstone, *Commentaries on the Laws of England*, bk. I, ch. 1 (1765), treating life as the immediate gift of God and a right inherent by nature, and recognizing legal protection of the infant in the womb.↩
9. § 39-803(2).↩
10. Idaho Code § 18-8802(1).↩
11. Letter from Melanie Folwell to Secretary of State Phil McGrane (Oct. 3, 2024), Exhibit F, at 2.↩

12. Certificate of Review, Sept. 16, 2024, at 5 (“the initiative does not specifically address current laws in Idaho regulating abortion, which leaves open questions as to how the initiative would be incorporated into current law”).↵
13. Thomas Aquinas, *Summa Theologiae* I-II q.95 a.2.↵
14. William Blackstone, *Commentaries on the Laws of England*, Introduction, § 2 (1765).↵
15. Declaration of Independence (U.S. 1776), para. 2.↵
16. Idaho Const. art. I, § 1.↵
17. Blackstone, *Commentaries on the Laws of England*, bk. I, ch. 1 (1765) (treating life as beginning in contemplation of law when the infant is able to stir in the womb, while recognizing the child *en ventre sa mere* as a legal person for purposes of inheritance and guardianship).↵
18. Blackstone, *Commentaries on the Laws of England*, bk. I, ch. 1 (1765) (treating life as beginning in contemplation of law when the infant is able to stir in the womb, while recognizing the child *en ventre sa mere* as a legal person for purposes of inheritance and guardianship).↵
19. Reproductive Freedom and Privacy Act § 39-803(1)(a)(ii), (6)(d).↵
20. § 39-803(3)(b), preserving claims under Idaho Code § 6-1012.↵
21. Certificate of Review, Sept. 16, 2024, at 3, citing *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 413, 522 P.3d 1132 (2023).↵
22. *Reclaim Idaho v. Denney*, 169 Idaho 406, 439, 497 P.3d 160 (2021); *State v. Gallet*, 36 Idaho 178, 209 P. 723 (1922).↵
23. Letter from Melanie Folwell to Secretary of State Phil McGrane (Oct. 3, 2024), Exhibit F, at 2.↵
24. Certificate of Review, Sept. 16, 2024, at 5 (“the initiative does not specifically address current laws in Idaho regulating abortion, which leaves open questions as to how the initiative would be incorporated into current law”).↵

Article 7 — The Question Nobody Wants Asked

Can you claim the Christian faith, or claim to love liberty, and vote for Proposition 1?

A polemic. It is written to press a case, and it says so at the outset.

§ 1. The evasion

There is a particular sentence that will be spoken in Idaho a great many times between now and November 3.

“I’m personally opposed, but I don’t think it’s the government’s place.”

It is said sincerely. It is said by people who mean well and who have thought about this less than they believe they have. And it is, on the text of this measure, unavailable.

Not wrong. **Unavailable.** The sentence describes a position Proposition 1 does not offer.

Here is why. The formula “personally opposed, publicly neutral” requires the state to be silent on a question. Proposition 1 does not ask Idaho to be silent. It asks Idaho to speak — to declare in its own code that the state’s legitimate interest in this entire domain is limited **solely** to the health of the person seeking care.¹

Silence and declaration are different acts. A state that declines to prohibit is neutral. A state that enacts that one party’s interest is the only cognizable interest has taken the affirmative position. The voter who says “I don’t think it’s the government’s place” and votes yes has not abstained from the metaphysical question. He has voted on it, and voted against the position he says he personally holds.

This is the whole argument of this article, and everything below is elaboration.

§ 2. To the Christian voter

Two claims will be made to you. Both fail.

“The tradition is not settled.”

It is settled in the text, which is the only authority that binds you.

Genesis 1:27 says man bears the image of God. Genesis 9:6 forbids the shedding of blood on exactly that ground. Psalm 139:13–16 has God forming the psalmist in the womb and seeing his substance before it was formed. Jeremiah 1:5 has God knowing Jeremiah *before* forming him there. Isaiah 49:1 and Galatians 1:15 say the same of Isaiah and of Paul. In Luke 1:41–44 the unborn John responds to the presence of the newly conceived Christ, and Luke uses for him the same ordinary word for a baby that he uses of the infant in the manger.²

And Proverbs 24:11–12 forecloses the exit you are reaching for. Deliver those drawn toward death. Do not say you did not know it. He that weighs the heart knows what you knew.

Scripture does not maintain one vocabulary for the child inside the womb and another for the child outside it. If you intend to vote as though it does, the burden is on you to produce the passage that makes the distinction.

You may dissent from the text. You may not describe your dissent as the text.

“Prudential judgment permits disagreement.”

It does — about instruments, timing, penalties, enforcement, and strategy. It does not extend to the moral status of the act. That is the classic distinction, and it is not a partisan invention: prudence is the application of settled principle to contingent circumstance. It is not the suspension of the principle.

So here is the test. A Christian who thinks Idaho’s criminal statute is too harsh, badly drafted, or pastorally counterproductive is exercising prudential judgment, and is entitled to it. That Christian can campaign to amend the emergency exception, to narrow the criminal penalties, to strike the felony exposure for physicians acting in good faith. Every one of those positions is available.

What that Christian cannot do is vote to place the child outside the range of the state’s legitimate concern — because that is not a judgment about instruments. It is a judgment about the subject.

And note what follows: the prudential objection to Idaho’s current law does not require a yes vote. The measure is not the only vehicle. It is one vehicle, and the one that carries the *solely* clause. A Christian who genuinely holds the prudential objection has a

legislative remedy that does not require ratifying the metaphysical claim. That the campaign has not offered that remedy is a fact about the campaign, not about the range of options.

§ 3. To the liberty voter

You will be told this is your issue. Examine the claim.

Negative (true) liberty — the only kind the American tradition treats as foundational — is a claim against interference. It answers whether others may stop you. It is exercised by a person alone, upon nothing but himself and his own property. That is what makes speech, worship, assembly, and the security of one's effects the paradigm cases.

On negative (true) liberty — stated as a founder would state it.

By liberty we do not mean a license to do whatsoever one wills. We mean the security of a man's person, his conscience, and his estate against the interference of any other. Liberty is a fence, and the whole office of a fence is to keep others out. It confers no title whatever to enter upon a neighbor.

This is why the liberties our fathers thought worth a war are all of one kind: to speak, to worship, to assemble, to be secure in one's papers and effects. Observe that a man may exercise every one of them alone, in a shut room, and no second person is touched by it. That is the mark of the true liberty. It asks of government one thing only — forbearance.

A claim of a different sort, which cannot be exercised save upon the body of another, is not liberty however it be styled. It is dominion. And dominion over the person of another is the precise evil for whose restraint governments are instituted among men. To call such a claim freedom is to borrow the good name of liberty in order to cover its opposite.

Now read the measure's own definition of the act it protects: means necessary for the procedure or treatment **to intentionally terminate a pregnancy**.³

An act whose completion requires a second body is not an instance of non-interference. Call it justified, call it tragic, call it necessary — but do not call it *being left alone*. The category does not stretch that far, and a liberty movement that stretches it there has abandoned the distinction that gives it any content at all.

The non-aggression principle does not have an exception clause for cases in which the party acted upon is small, silent, or dependent. If it does, it is not a principle. It is a preference with a principle's vocabulary.

And there is the second half. If you hold that rights are antecedent to government — that the state does not confer them and therefore cannot withdraw them — then you cannot consistently vote for a statute whose operative effect is to declare a class of human beings outside the state's protective concern. Idaho's own constitution names among inalienable rights that of **enjoying and defending life**.⁴ Not merely holding it. Defending it. The framers of that clause put the duty in the right itself.

A libertarian may argue the unborn are not rights-bearers. That is a coherent position and this article does not pretend otherwise. But it is an argument about *who counts*, made openly. It is not the argument the campaign is making, and it is not what the ballot asks. The ballot asks you to enact a jurisdictional silence and let the philosophical question go unasked.

That is not liberty. It is liberty's vocabulary, deployed to avoid liberty's central question: **whose person is inviolable?**

§ 4. To the Republican voter

A shorter word, because the argument is structural rather than moral.

You are being asked to approve an ordinary statute that cannot deliver what it promises. It is not a constitutional amendment. Under Idaho law it stands on equal footing with any other legislative act and may be repealed by simple majority.⁵ The sponsors conceded this in writing to the Secretary of State in October 2024, agreeing that the measure could not bind future legislatures.⁶

The state party has resolved to seek repeal. Sixteen legislative primary winners have said they would support it.

So the yes vote purchases a fight, not a settlement — a repeal effort in the 2027 session and years of litigation over which existing statutes survived § 39-803(4)'s unenumerated control clause. If your reason for voting yes is that you want this issue resolved, the measure is the wrong instrument on your own terms.

§ 5. The strongest reply, stated fairly

An honest polemic prints the best answer against it.

You have built your case on one clause. But § 39-803(2) limits the state's compelling interest in the context of a strict-scrutiny test — a test about when the state may burden a right, not a metaphysical census of who counts. Idaho's homicide statutes, its fetal-homicide provisions, its wrongful-death law, and § 18-8802 are untouched by a clause that governs abortion regulation. You have inflated a standard-of-review provision into a declaration of personhood, and then demanded that Christians answer for a declaration the measure never makes.

And your prudential argument runs the other way. Real women in this state have been airlifted out during crisis pregnancies. Real physicians have left. That is a present, documented harm to living people, and you are asking voters to accept it indefinitely on the strength of a legislative fix that has been promised for four years and has not passed.

That is the argument, and it is a good one. Two things about it.

It is right that § 39-803(2) is embedded in a standard-of-review structure, and any opponent who claims the measure “declares the unborn are not persons” is overstating. This article does not make that claim, and no one else should.

But the reply understates its own consequence. A clause that governs which interests may justify state action determines what the state may do — and under the *solely* limitation, Idaho may not regulate on the child's behalf at all, at any gestational age, by any means. Whether or not that is a census of personhood, it is a complete practical disability. The distinction between “we deny they count” and “we forbid the state from counting them” is real, and it is thinner than a yes vote requires it to be.

On the harm: it is real, it is documented, and it is the strongest thing the campaign has. The answer is not to deny it. The answer is that a targeted clarification of the emergency standard addresses it directly, and that the failure of the Legislature to pass one is an argument for pressure on the Legislature, not for a measure that resolves the grievance by rewriting the framework around it.

§ 6. The conclusion, stated without hedging

Can you claim the Christian faith and vote for Proposition 1?

You can cast the vote. Many will. But you cannot cast it and also maintain that you hold the position Scripture takes on the moral status of the unborn child, because the measure requires you to enact into Idaho's code a proposition Scripture contradicts. One of the two has to give, and honesty requires saying which.

Can you claim to love liberty and vote for Proposition 1?

Only by using "liberty" to mean something the tradition has never meant: an entitlement whose exercise runs through another body, insulated from public concern by statute. If that is liberty, then the word has no boundary, and a movement organized around a word with no boundary is organized around nothing.

The evasion at the top of this article — *personally opposed, but not the government's place* — is the most common position in Idaho and the one this measure makes impossible. Proposition 1 does not permit you to be personally opposed and publicly silent. It requires you to vote that the state must be silent. That is a position. Hold it if you will, but hold it knowingly.

Ten Clarification Questions

Five clarifying the ballot measure

1. **Does Proposition 1 declare that unborn children are not persons?** No, and no opponent should say it does. It confines the state's compelling interest under § 39-803(2). The argument in this article is about practical disability, not declared personhood.
2. **Could the Legislature simply repeal it?** Yes, by simple majority, under the equal footing doctrine.⁷ The sponsors conceded the point in writing.⁸
3. **Does the measure touch Idaho's homicide or fetal-homicide statutes?** It does not mention them. Whether § 39-803(4)'s control clause reaches them is unresolved. ■
4. **Does it protect contraception and IVF as well as abortion?** Yes — the enumerated list at § 39-803(1)(a) includes contraception, fertility treatment, prenatal and postpartum care, childbirth, and miscarriage care.

5. **Is “solely” in the certified text?** It appears at § 39-803(2) in Exhibit F. The November 2024 resubmission has not been verified against this language, and the certified ballot text is not final until August 28, 2026. ■ This must be checked before the article is published.

Five clarifying this article

6. **Is this article claiming yes voters are not real Christians?** No. It claims the vote is inconsistent with a stated position, and that the inconsistency should be acknowledged rather than dissolved by the “personally opposed” formula. Judgment of persons is outside its scope and outside the author’s competence.
7. **Why is it written as a polemic?** Because it was commissioned as one, and because the “personally opposed” evasion is not answerable by balanced exposition — it is answered by being named. Readers who want the same case made temperately should read Articles 5 and 6.
8. **Does the article engage the best opposing argument?** § 5 states it at full strength and concedes two points to it: that § 39-803(2) is a standard-of-review provision rather than a personhood declaration, and that the medical harm to women under the current statute is real and documented.
9. **Is the Republican section a moral argument?** No. It is structural, and it works regardless of the reader’s moral view: an ordinary statute cannot deliver settlement, so a yes vote cast for the sake of settlement is self-defeating.
10. **What would require this article to be withdrawn?** A certified text in which the *solely* limitation is absent or materially qualified. The entire argument runs through that one word. If it is not in the final text, the article is wrong and should not be circulated. ■

Footnotes

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1. Reproductive Freedom and Privacy Act § 39-803(2), Exhibit F to the Declaration of James E. M. Craig, Idaho Supreme Court Docket No. 52636-2025 (filed Mar. 4, 2025).↩
2. Compare Luke 1:41 with Luke 2:12, 16.↩

3. § 39-803(6)(a).↵
4. Idaho Const. art. I, § 1.↵
5. *Reclaim Idaho v. Denney*, 169 Idaho 406, 439, 497 P.3d 160 (2021), citing *Luker v. Curtis*, 64 Idaho 703, 136 P.2d 978 (1943).↵
6. Letter from Melanie Folwell to Secretary of State Phil McGrane (Oct. 3, 2024), Exhibit F at 2 (“we do not believe that the language of the Initiative could bind future legislatures by statute”).↵
7. *Reclaim Idaho v. Denney*, 169 Idaho 406, 439, 497 P.3d 160 (2021), citing *Luker v. Curtis*, 64 Idaho 703, 136 P.2d 978 (1943).↵
8. Letter from Melanie Folwell to Secretary of State Phil McGrane (Oct. 3, 2024), Exhibit F at 2 (“we do not believe that the language of the Initiative could bind future legislatures by statute”).↵

Interrogatories · both directions

Common Interrogatories

Part I — Twelve questions put to supporters of Proposition 1, on faith, morals, and legal justification, with the answers they would most likely give.

Part II — Twelve questions supporters would put to the author, with the answers the author would give.

Used with Articles 5, 6, and 7. Part I is organized on three axes — foundation, methodology, consequences — because the object is not to test what a supporter knows but to test whether the position can be held at all. The anticipated answers are drafted at full strength deliberately. An interrogatory that assumes a weak reply is not preparation; it is rehearsal.

Part I — To the supporters

Foundation — the premises you are relying on

1. Do you hold that the unborn child is a human being?

Likely answer: Many of us do, and that is exactly why we resent the framing. Holding that a life is at stake is not the same as holding that the criminal law is the right instrument to address it. The church has always distinguished between sin and crime. We do not criminalize adultery, pride, or usury, and no one accuses us of denying they are wrong.

Follow-up to press: Which of those examples involves a second party's death? The distinction between sin and crime tracks whether a third party is harmed. Name the other category of sin whose victim is a human being and which you would leave unprohibited.

2. On what reading of the sixth commandment is a vote for this measure permissible?

Likely answer: On the reading that the commandment binds me, not that it authorizes me to compel my neighbor. Christ did not seize the machinery of Rome to enforce the Decalogue. And the same commandment obliges me to preserve life — including the life of

the woman bleeding out in an Idaho emergency room while a hospital attorney reads a statute.

3. How do you answer Psalm 139:13–16, Jeremiah 1:5, and Luke 1:41–44?

Likely answer: As poetry and prophetic calling, not as embryology. The psalm is worship, not a statute. Jeremiah is about vocation. And none of the three says what the civil magistrate must do about it — you are moving from a text about God’s knowledge to a conclusion about Idaho’s criminal code without showing the step.

Follow-up to press: Luke uses the same ordinary word for the unborn John that he uses for the newborn Christ. Name the passage where Scripture treats the child in the womb as something other than a child.

4. Do you believe a Christian may vote to place the unborn child outside the state’s legitimate concern?

Likely answer: That is your characterization, not the statute’s. § 39-803(2) sets the standard of review for burdening a right. It is not a declaration of who counts. You are reading a lawyer’s provision as a theological one, and then holding us responsible for your reading.

5. If you are wrong about the child’s moral status, what have you enabled?

Likely answer: Something grave, and we do not pretend otherwise. But the question runs both directions. If you are wrong about the current law’s effects, you have enabled preventable maternal deaths and the collapse of obstetric care in rural Idaho — which is not hypothetical and is happening now.

6. Would you accept a measure that fixed the emergency exception without the *solely* clause?

Likely answer: We would have accepted one in 2023, 2024, or 2025. It was not offered. The Legislature had four sessions and the state’s own medical association asking for it. At some point “wait for a better vehicle” becomes a way of saying no while sounding reasonable.

Methodology — how you reached this and how you test it

7. Where do you locate the moral line, and why there?

Likely answer: At viability, because it is the point at which the state's interest becomes weighty enough to override the patient's — which is where American law located it for forty-nine years. It is not arbitrary; it is the point at which the second party can exist independently.

Follow-up to press: Viability has moved several weeks earlier in a generation and differs between a Boise NICU and a rural county. Does moral status vary by county?

8. Does the measure permit abortion for reasons you personally consider wrong?

Likely answer: Yes. So does every liberty. The First Amendment permits speech I find repugnant. A right that only protects choices the majority approves is not a right.

9. What is your answer to the disability-selective abortion objection?

Likely answer: It is the hardest question we get. Our answer is that the alternative — a state screening the reasons for a medical decision — requires an inquisition into motive that would be worse in practice than the wrong it addresses.

10. Is there any gestational point at which you would accept a prohibition not justified by the patient's health?

Likely answer: The measure already permits post-viability regulation. Beyond that, we are not going to negotiate against ourselves in a campaign.

Note: This is the question most likely to produce a non-answer, which is itself usable.

10a. By what method did you decide this? Name the text you read, the counsel you sought, and the argument that moved you.

Likely answer: I talked to women who lived through it. That is a method — it is called listening to the people affected, and it is not obviously inferior to reading proof texts.

Follow-up to press: Whose testimony did you seek from the other side of the question, and what did you do with it?

10b. What evidence would change your vote?

Likely answer: Evidence that the current law is not harming Idaho women. It is not close.

Follow-up to press: Then your vote turns on an empirical claim about the current statute, not on the *solely* clause you are also enacting. Would a safe-harbor bill satisfy the empirical claim? If yes, why this instrument?

Consequences — what your vote sets in motion

11. § 39-803(4) says the act controls over any conflicting section of Idaho Code and must be liberally construed, but names no conflicting section. Which existing statutes are repealed?

Likely answer: None, until a court finds an actual conflict — and that is how every general statute works. Courts resolve conflicts constantly without the Legislature enumerating them. The words “minor,” “parent,” and “consent” appear nowhere in the measure, and the Attorney General, who opposes it, did not flag parental consent in his Certificate of Review or his ballot titles.

Follow-up to press: Then will you state, in writing, that Idaho Code § 18-609A survives? If the answer is that courts will decide, that is the objection, not the rebuttal.

12. Why is the emergency standard “may” rather than EMTALA’s “could reasonably be expected to result in”?

Likely answer: Because a physician in an emergency should not have to calculate probability thresholds before acting. “May” protects the patient in the moment of uncertainty, which is the moment that matters. And this is the standard that keeps a doctor from waiting until a woman is sick enough to satisfy a lawyer.

Follow-up to press: The Attorney General identified this divergence in September 2024 and recommended removing the EMTALA cross-reference to cure the confusion.¹ You kept the cross-reference and kept “may.” Why?

Part II — From the supporters, to me

1. Do you accept that Idaho women have been harmed under the current law?

Answer: Yes, without qualification. Patients have been transferred out of state during crisis pregnancies. Obstetric providers have left. Labor and delivery units have closed. I am not going to contest documented facts in order to win an argument, and any opponent of this measure who does is discrediting the rest of the case.

2. Then why should a woman in that position trust your alternative?

Answer: She shouldn't trust it on my say-so. She should demand it in writing before the 2027 session, with a defined standard, a safe harbor for good-faith clinical judgment, and no felony exposure for a physician who acts within it. If the Legislature will not produce that, my argument loses much of its force, and I would rather say so now than pretend otherwise.

3. You concede the grievance and then vote to preserve the status quo. Isn't that just a comfortable position?

Answer: It would be, if I stopped at the vote. The obligation does not end there, and I have said so in Article 5. A no vote that is not followed by pressure for a clarified emergency standard is not a moral position; it is a preference expressed at no cost.

4. Isn't your reading of "solely" doing enormous work for one adverb?

Answer: Yes. That is the argument, and I have stated the limit of it. § 39-803(2) is a standard-of-review provision, not a personhood declaration, and Article 7 § 5 says so explicitly. My claim is narrower: the clause produces a complete practical disability on regulating for the child's sake. If the certified text qualifies that word, my argument fails and I will withdraw it.

5. Why should a pluralistic state legislate your theology?

Answer: It shouldn't, which is why Article 6 makes the same case without any theological premise, from Locke, Mill, Bastiat, Blackstone, the Declaration, and Idaho's own constitution. If the natural-law argument fails, the theological one will not rescue it. Judge them separately.

6. You cite the Attorney General constantly. Isn't he a partisan?

Answer: He is, and that is why I cite only the parts that cut against convenience. The Certificate of Review also said the measure could not bind future legislatures — which is the sponsors' point, not mine, and which I have quoted in Article 7 § 4 against my own side's interest.

7. If the Legislature can repeal this anyway, why are you so alarmed?

Answer: Two reasons. The interim matters: a measure effective January 1, 2027 governs real cases before any repeal. And the repeal argument is directed at yes voters who want settlement, not at me. I am pointing out that the measure cannot deliver what they are buying.

8. Aren't you exploiting drafting ambiguity rather than arguing the merits?

Answer: The drafting ambiguity is a merit. A measure that overrides unnamed statutes and directs liberal construction is asking voters to delegate to courts a decision they were entitled to make themselves. That objection would hold if the measure's subject were irrigation districts.

9. What if voters approve it by twenty points? Doesn't that settle the moral question?

Answer: It settles the legal question and nothing else. I would accept the result, say so publicly, and continue to argue. A majority determines what the law is. It does not determine what is true, and no one on either side of this actually believes otherwise.

10. You quote Scripture on the unborn. Do you follow it on wealth, debt, and the treatment of the poor and the alien?

Answer: This is the fairest question on the list and it lands. Not consistently, no. Inconsistency in the person making an argument is a reason to distrust the person, not to disbelieve the argument — but it is a real reason to distrust me, and I would rather concede it than pretend to a consistency I do not have.

11. Why do you assume women haven't thought about the moral question as carefully as you have?

Answer: I don't, and any argument that carries that assumption is badly made. The women who have faced this decision have generally thought about it longer and at greater cost than anyone writing about it. That is a reason to change the register of the argument, not its content.

12. If this passes, will you accept it?

Answer: Yes. I will accept it as law, oppose it as policy, and argue for its amendment through the ordinary process. I would ask the same of supporters if it fails.

Footnotes

1. Certificate of Review, Sept. 16, 2024, at 5 (noting that EMTALA does not itself define “medical emergency,” does not mention abortion, and applies a “could reasonably be expected to result in” standard, and that the confusion “could be avoided by simply removing the reference to EMTALA”). ↩

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Verify all section numbering against the certified text before publication

Article 8 — The Standard of Justification

Miscarriage is not abortion. Abortion is an act of intent. And the measure sets a lower bar for taking a life than Idaho sets for any other use of lethal force.

§ 1. The conflation, and why it is deliberate

Section 39-803(1)(a) enumerates the decisions the measure protects. In a single list, without distinction, it places:

pregnancy; contraception; fertility treatment; prenatal and postpartum care; childbirth; continuing one's own pregnancy; **miscarriage care**; and, **abortion care**.¹

Set those last two side by side.

A **miscarriage** is something that happens to a woman. It is a death nobody chose, and the care that follows it is the management of a loss already suffered. No one in Idaho opposes it. No statute in Idaho prohibits it.

An **abortion** is something a person does. The measure's own definition says so: the use of means necessary **to intentionally terminate a pregnancy**.² The operative word is *intentionally*, and it is the sponsors' word, not an opponent's.

These are not two species of one thing. They are opposites — an event and an act, a death suffered and a death caused. Every body of law in the Western tradition turns on that distinction, because it is the distinction between misadventure and homicide.

The list conflates them anyway, and the conflation does real work. It allows a campaign to answer any objection to the second item by invoking sympathy properly belonging to the first. It converts “should Idaho permit the intentional termination of a pregnancy” into “should a woman bleeding from an incomplete miscarriage be treated,” which is not a question anyone is asking.

Concede the miscarriage point without hesitation and then refuse to let it travel. Miscarriage management should be protected. It is already lawful. Its presence on that list is not a protection the measure adds; it is cover the measure borrows.

§ 2. Intent is the whole of it

Anglo-American law does not grade killings by outcome. It grades them by mental state.

The distinction between first-degree murder, second-degree murder, manslaughter, and excusable homicide is not a distinction about how dead the victim is. It is premeditation, then intent without premeditation, then recklessness or heat of passion, then accident. One act, four verdicts, and the only variable is what was in the mind of the actor.

Apply that grid to the two items on the sponsors' list.

Miscarriage sits outside the grid entirely. There is no actor and no mental state; there is a loss.

Abortion sits at the top of it. The measure's own definition supplies the element the law cares most about: *intentionally*. Not foreseeably. Not as a regrettable side effect of treatment directed at something else. Intentionally, as the object of the procedure.

That is the argument, and it does not require agreement about when personhood begins. It requires only that the reader notice which category the act belongs to *if* a life is present. A person genuinely uncertain whether a life is present has, on the ordinary rules of every other area of law, the greater reason for caution — not the lesser.

§ 3. The life of the mother is self-defense, and self-defense has elements

Where continuing a pregnancy will kill the mother, ending it is defensible. That has never been the contested case, it is not contested here, and no argument in this corpus asks anyone to accept a woman's death.

But it is defensible **as self-defense**, and self-defense is not a mood. It is a doctrine with limiting elements, and the limits are the whole reason the doctrine does not swallow the law of homicide.

The framework commonly taught in self-defense law sets five:³

1. **Innocence** — the defender did not provoke the threat.
2. **Imminence** — the danger is present, not speculative or future.

3. **Proportionality** — lethal force answers only a lethal or grievous threat.
4. **Avoidance** — no reasonable less-lethal alternative was available.
5. **Reasonableness** — the belief must be objectively reasonable, not merely sincerely held.

Idaho codifies the substance of this. Justifiable homicide requires **reasonable ground to apprehend a design to commit a felony or to do some great personal injury**, together with **imminent danger** of that design being accomplished.⁴ ■ Confirm the current text of § 18-4009 before quoting it in print.

Note what Idaho requires: *great* personal injury, not any injury. *Imminent* danger, not possible danger. *Reasonable* ground, not sincere belief.

Now read the measure.

§ 4. The measure adopts the conclusion of self-defense and discards every element of it

Section 39-803(6)(h) defines the medical emergency: a condition which, on the attending physician's good faith clinical judgment, complicates the patient's condition so as to warrant an abortion to protect life, **or for which a delay may place the health of the pregnant patient in serious jeopardy, cause serious impairment to a bodily function, or cause serious dysfunction of any bodily organ or part.**⁵

Take the elements one at a time.

Imminence — destroyed by “may.” Idaho's homicide standard requires imminent danger. EMTALA, the federal benchmark the sponsors originally cross-referenced, asks what **could reasonably be expected to result.**⁶ The measure asks what a delay **may** do. A possibility, however remote, satisfies it. No Idaho jury has ever been permitted to acquit on the ground that the deceased *may* have posed a danger.

Proportionality — destroyed by “health.” Idaho requires apprehension of death or *great personal injury*. The measure's second branch is not limited to life at all. It reaches serious jeopardy to **health**, a word the measure never defines and does not confine to physical health. Lethal force is thereby authorized against a non-lethal harm — the precise trade proportionality exists to forbid.

Reasonableness — destroyed by “good faith.” Idaho requires *reasonable ground*, an objective test a jury applies. The measure requires only the attending physician’s good faith clinical judgment. Good faith is a subjective standard. A sincere but unreasonable belief satisfies it, and no provision of the measure supplies anyone to say otherwise.

Avoidance — absent entirely. Self-defense requires that no reasonable less-lethal alternative existed. Where a child is viable, delivery is that alternative. The measure imposes no obligation to attempt it, no obligation to prefer it, and no obligation to explain why it was not used.

Innocence — inapplicable, and that is the point. The unborn child cannot provoke, threaten, or aggress. In every other application of self-defense doctrine, the party against whom force is used has done something. Here the element cannot be satisfied because there is nothing to satisfy it with.

Four of the five limiting elements are removed and the fifth cannot apply. What remains is the conclusion of self-defense — a killing is justified — with none of the conditions that make the conclusion lawful.

§ 5. Rape and incest: the compromise already exists

Idaho Code § 18-622 already contains a first-trimester exception for pregnancies resulting from rape or incest, subject to a reporting requirement.⁷ ■ Verify the current terms before citing them.

Two consequences follow, and both cut against the measure.

First, nothing in this measure is required to obtain that exception. It is in force today. A voter told that Proposition 1 is needed so that rape victims are not compelled to carry a pregnancy is being told something that is not true of Idaho law as it stands.

Second, the existing provision at least retains a limit. It is confined to the first trimester and conditioned on a report. Whatever one thinks of that compromise — and it is possible to regard it as a grave concession that spares the guilty party nothing and takes the life of the one who did no wrong — it is a compromise with edges. The measure replaces edges with a health standard that has none.

If you regard the rape and incest exception as a cultural compromise already extracted, then notice what is being asked of you now: to ratify a standard so much lower that the compromise you already conceded becomes the strictest limit remaining in Idaho law.

§ 6. The test: apply the same standard to anything else

This is where the framing becomes a *reductio*, and it should be stated carefully, because overstatement destroys it.

The claim is not that Proposition 1 legalizes murder. It does not, it says nothing about the homicide statutes, and anyone who says otherwise will be corrected on sight.

The claim is about the standard. Transplant § 39-803(6)(h)'s three components into any other Idaho context in which one person takes the life of another:

- The actor need only believe a delay **may** produce harm.
- The harm need not be death — **serious jeopardy to health** suffices, health undefined.
- The judgment is the actor's own **good faith**, reviewable by no one.

A defendant tried in Ada County who argued that he acted because a delay *may* have jeopardized his health, on his own good-faith assessment, subject to no external review, would be convicted before lunch. Not because the jury doubted his sincerity — because sincerity is not the test anywhere else in the law.

So the question to put to any supporter is this:

Name the other circumstance in Idaho law where one human being may end another's life on the standard your measure adopts. If there is none, explain why this life is the exception.

There is no answer to that question that does not concede the point. Either the standard is wrong, or every other lethal-force standard in Idaho is wrong.

§ 7. What the framing establishes

Assembled, the argument runs as follows, and none of its steps requires a theological premise:

1. Miscarriage is an event; abortion is an act. The measure lists them together, and the conflation is doing work the argument cannot do on its own.
2. The act is intentional by the sponsors' own definition, which places it in the category the law grades by mental state.
3. The one genuinely defensible case — the mother's life — is defensible as self-defense.
4. Self-defense is lawful because of its limiting elements, not in spite of them.
5. The measure keeps the conclusion and discards the limits.
6. Applied anywhere else in Idaho law, that standard would justify killings no court would permit.

The measure therefore does not merely fail to protect the unborn. **It sets a threshold for the taking of a human life lower than any other threshold in Idaho law** — and it does so in the one case where the party whose life is taken cannot have done anything to warrant it.

Ten Clarification Questions

Five clarifying the ballot measure

1. **Does the measure define abortion as intentional?** Yes. § 39-803(6)(a): means necessary to *intentionally* terminate a pregnancy. The word is the sponsors'.
2. **Does the measure treat miscarriage care and abortion care as one category?** It lists them consecutively in the same enumeration at § 39-803(1)(a) without distinguishing them.
3. **Does the emergency provision require imminence?** No. It applies where a delay **may** produce the specified harms.
4. **Does it require the threat to be to life?** Not in the second branch. Serious jeopardy to **health**, serious impairment to a bodily function, or serious dysfunction of any organ or part each suffice, and “health” is undefined.
5. **Is a rape and incest exception already in Idaho law?** Yes, in the first trimester with a reporting condition, under Idaho Code § 18-622. ■ Verify current terms.

Five clarifying this article

6. **Is this article claiming the measure legalizes murder?** No, and § 6 says so expressly. The claim is about the *justificatory standard*, and it is a claim about consistency across Idaho law.
 7. **Does it oppose the life-of-the-mother exception?** No. § 3 states that ending a pregnancy to save the mother's life is defensible, and that this has never been the contested case.
 8. **Where is the five-element framework from?** It is the standard structure of Anglo-American self-defense law as commonly taught. ■ Attribute it as a teaching formulation rather than as a named doctrine with formal legal status, and cite Idaho Code § 18-4009 for the codified Idaho requirements.
 9. **What is the article's weakest step?** Step 5. A supporter will answer that medicine is not combat and that importing self-defense elements into clinical judgment is a category error. The reply is that the measure itself invokes the structure of justification — it declares when a killing is warranted — and a standard of justification is answerable to the law's other standards of justification.
 10. **What single sentence should carry this argument in public?** *Name the other circumstance in Idaho law where one human being may end another's life because a delay **may** affect health, on the actor's own good-faith judgment, reviewable by no one.*
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Footnotes

1. Reproductive Freedom and Privacy Act § 39-803(1)(a), Exhibit F to the Declaration of James E. M. Craig, Idaho Supreme Court Docket No. 52636-2025 (filed Mar. 4, 2025).↩
2. § 39-803(6)(a) (emphasis added).↩
3. The five-element structure — innocence, imminence, proportionality, avoidance, reasonableness — is the standard analytic framework of Anglo-American self-defense law, and is the formulation used in Andrew Branca, *The Law of Self Defense*. It is a teaching framework rather than a statutory test; Idaho's codified requirements appear at note 4.↩

4. Idaho Code § 18-4009 (justifiable homicide), requiring reasonable ground to apprehend a design to commit a felony or to do some great personal injury, together with imminent danger of the design being accomplished. ■ Confirm current text.↵
5. § 39-803(6)(h).↵
6. 42 U.S.C. § 1395dd(e)(1); see Certificate of Review, Office of the Idaho Attorney General (Sept. 16, 2024), at 5 (identifying the divergence between “could reasonably be expected to result in” and “may”).↵
7. Idaho Code § 18-622(2)(a)(i). ■ Confirm current terms and reporting conditions.↵

Seventy-Three Questions

A cross-examination

Directed to the Secretary of State, the Attorney General, and to Christian, Republican, and general supporters of Proposition 1.

Seventy-three questions in seven parts. These are not requests for information. They proceed from the position that no coherent legal, moral, or ethical justification for this measure has been offered, and they are built to make a supporter produce one or concede that he cannot. Each question is a fork. Where the fork is scripted, both branches are given. Questions marked ■ rest on a premise to confirm before asking publicly.

How to use them. Ask the question as written. Do not soften it. Do not accept a change of subject — repeat the question. When you get a concession, stop and let it sit rather than moving straight to the next one.

§ A. To the Secretary of State — ten questions on what voters were shown

1. Four separate petitions were filed on August 15, 2024.¹ Three were never circulated and, so far as the public record shows, never posted by your office. ■ Name the statute that authorized you to keep three proposed laws out of public view. → *If posted*: produce the archive URLs and posting dates. → *If not*: state plainly that Idahoans could not read three of the four laws proposed in their name.
2. Which text did the 110,000 signers sign — the petition filed in August, the version transmitted for ballot titles on October 7, or the version submitted on November 20?² If you cannot answer in one sentence, signatures were gathered on a document your office cannot identify.
3. Two different short ballot titles exist before the court-ordered revision.³ Name the event that produced the second. If the initiative text changed, say so. If it did not, explain why a new title was written.
4. The October 22, 2024 long title says restrictions must serve a “compelling state interest” limited “solely” to the patient’s health. The long title the Supreme Court reviewed says restrictions must be “narrowly tailored.” Those are different legal standards. Which is on the

certified ballot, and when did it change?

5. Your archive contains a component titled “Initiative (Resubmission),” posted as a scanned image with no text layer. Was the decision not to provide a searchable version deliberate?

6. RFPA-old.pdf is posted as “Withdrawn or Replaced” and also has no text layer. Idahoans cannot compare the superseded text to the current one without commercial software. Is that acceptable to your office?

7. The Idaho Supreme Court has held that signatures gathered under invalid titles cannot be valid.⁴ Your office circulated titles later held non-compliant. Yes or no: were signatures collected before the June 23, 2025 revisions, and were any of them counted?

8. You certified 75,478 valid signatures from more than 110,000 submitted — a rejection rate above thirty percent. Publish the rejection categories by county, or state what prevents you from doing so.

9. Idaho Code § 34-1812A sets the con-argument deadline at July 20. Your office’s form was posted as open through July 31. Which controls? A public official should not have to be asked twice which of his own deadlines governs.

10. Will you commit, before ballots are mailed, to publishing a plain-language notice stating how many versions of this measure existed and which one voters are voting on? → *If no*: explain why Idahoans are not entitled to know that.

§ B. To the Attorney General — eight questions on his own record

11. You oppose this measure. You wrote both sets of ballot titles. Neither mentions parental consent. Explain why the state’s chief legal officer, hostile to the measure, omitted the effect supporters now cite as proof it has none.

12. In September 2024 you wrote that the initiative “does not specifically address current laws in Idaho regulating abortion, which leaves open questions as to how the initiative would be incorporated into current law.”⁵ That defect was never cured. Why does no ballot title you drafted disclose it?

- 13.** You flagged that the measure’s “may” standard diverges from EMTALA’s “could reasonably be expected to result in,” and recommended striking the cross-reference.⁶ The recommendation was ignored. State your office’s position on the enforceability of the emergency exception as written.
- 14.** Yes or no: does Idaho Code § 18-609A survive this measure? Refusal is an answer, and it is the one that will be quoted.
- 15.** Yes or no: does Idaho Code § 18-8802(1) — the Legislature’s declaration that preborn children have interests in life, health, and well-being — survive § 39-803(2)?
- 16.** You wrote that the measure raises the question whether the asserted right conflicts with an unborn child’s right to life.⁷ You raised it and dropped it. Does your office hold a position, or was that paragraph decoration?
- 17.** Will you publish, before ballots are mailed, the Idaho Code sections your office believes are in actual or potential conflict with this measure? → *If yes:* the campaign’s central claim — that nothing else changes — becomes testable. → *If no:* voters are being asked to repeal law the state’s own lawyer will not enumerate.
- 18.** Does the protection for any “person or entity” who assists reach conduct currently prohibited by Idaho Code § 18-623? If your office does not know, no voter can.
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§ C. To Christian supporters — eleven questions

Foundation — the premises

- 19.** You say you believe the unborn child is a human life. Name one other class of human being whose interest you would vote to place beyond the state’s legitimate concern. → *If none:* you have carved an exception for one class. State the ground. → *If some:* name them out loud.
- 20.** Does the moral status of a human being change according to whether the state is permitted to notice it? Yes or no. Your vote answers yes. Defend it.
- 21.** Point to the sentence in this measure that permits Idaho to remain neutral. There is none — § 39-803(2) requires the state to treat one party’s interest as the only cognizable one. Now defend the phrase “personally opposed, but not the government’s place.”

22. You say the commandment binds you and not your neighbor. Do you apply that to laws against child abuse? If not, give the principle that distinguishes them — not the intuition, the principle.

Methodology — how you arrived here

23. By what method did you reach your position? Name the text you studied, the counsel you sought, and the argument that moved you. If the honest answer is that you arrived at it the way you arrive at most political opinions, say so.

24. Scripture says God formed the psalmist in the womb and saw his substance before it was formed, that He knew Jeremiah before forming him there, and that the unborn John leapt at the presence of the newly conceived Christ — for whom Luke uses the same ordinary word he later uses of the infant in the manger.⁸ Produce the passage that treats the child in the womb as something other than a child. If you cannot, say so.

25. Proverbs 24:11–12 commands the deliverance of those drawn toward death and forecloses the plea of ignorance — *he that pondereth the heart, doth not he consider it?*⁹ On your reading, what does that verse require of a voter who believes a life may be at stake?

26. What evidence would cause you to change your vote? If nothing would, you are not reasoning; you are declaring. If something would, name it now, on the record.

Consequences — what follows

27. Would you have supported a bill that fixed the emergency exception, protected physicians acting in good faith, and left § 18-8802(1) intact? → *If yes:* you want a remedy this measure exceeds. Explain why you are voting for the excess. → *If no:* the medical argument was never your reason. Stop offering it as one.

28. The Division of Financial Management assumes abortion volumes return to roughly 1,180 chemical abortions annually.¹⁰ You are voting for that number. Cost, benefit, or nothing?

29. If you are wrong about the moral status of the unborn child, name what you have enabled. Answer that question. Do not answer a different question about what your opponents have enabled.

§ D. To Republican supporters — eleven questions

Foundation — the premises

30. You call yourself a constitutionalist. Idaho Const. art. I, § 1 names among inalienable rights that of *enjoying and defending life*. Cite the clause that lets a majority suspend the state's power to defend it.

31. Do you support the *solely* limitation in § 39-803(2) on its own merits, apart from everything else in the measure? Yes or no. If no, explain why you are enacting it.

32. You object to government overreach. This measure imports strict scrutiny — the most demanding standard in American law — by ordinary statute, to bind future legislatures.¹¹ Is that a limit on government, or the entrenchment of one policy against democratic revision? You cannot call it both.

33. You are told this binds the Legislature, and also that the Legislature may repeal it. Both cannot be reasons to vote yes. Which one are you relying on?

Methodology — how you tested it

34. Did you read the measure before deciding, or did you decide and then look for reasons? An honest answer to that question is worth more than the next four.

35. Name one other Idaho statute that declares control over unspecified conflicting law and directs courts to construe it liberally in its own favor. If you cannot, you are voting to create a category of one — and you should say what principle justifies the exception.

36. In 2024 you were told the previous Proposition 1 was too vague to enact, and you rejected it 69.6% to 30.4%. This one overrides unnamed statutes. What test did you apply in 2024 that you are not applying now?

37. Have you asked your legislative candidate where he stands on repeal? If not, you are delegating an outcome to a person whose position you did not check, and calling it a considered vote.

Consequences — what follows

38. This is a statute, not an amendment. It is repealable by simple majority, and the sponsors conceded in writing that it cannot bind future legislatures.¹² State precisely what your yes vote secures. If the answer is nothing durable, you have voted for a two-year controversy.

39. Your state party has resolved to repeal it, and sixteen legislative primary winners have said they will vote to. You are voting for a law you expect your own representatives to undo. Defend that as a use of the franchise.

40. When this is repealed in 2027 and litigated through 2029, will you describe your vote as having settled the question?

§ E. To general supporters — ten questions

Foundation — the premises

41. You say this restores the pre-*Dobbs* framework. Under *Casey* the state retained an interest in potential life from the outset of pregnancy — the ground on which informed consent survived. § 39-803(2) removes that interest. Explain how removing something *Casey* had restores *Casey*.

42. You say government has no place in the doctor-patient relationship. Your own measure preserves malpractice liability and licensure.¹³ So government does have a place. The claim is that it has none *here* — which is a moral position about the act, not a procedural one about state power. State it as the moral position it is.

43. Viability has moved several weeks earlier within one generation, will move again, and differs today between a Boise NICU and a rural county sixty miles away. Does the scope of the right you are enacting vary by county and by decade? Yes or no. → *If yes*: you have made moral status a function of hospital equipment budgets. → *If no*: then viability is not the boundary, and you should say what is.

43a. You have chosen a line that admits of no exact measure. Name the other circumstance in which the law resolves an unmeasurable question about whether a life is present **in favor of the act rather than against it**. A hunter who cannot identify his target does not fire. Why is this the exception?

Methodology — how this was built and how you checked it

44. Name the Idaho statutes that § 39-803(4) repeals. → *If “none”*: explain what the control clause is for. → *If “courts will decide”*: you have stated the objection. Voters were entitled to decide; this measure hands it to judges.

45. Four versions of this law were drafted. Three were never circulated. Who chose among them, on what criteria, and why were the rejected three never shown to the public?

46. The Attorney General told the sponsors in September 2024 that the measure does not address existing Idaho abortion law and leaves open how it would be incorporated.¹⁴ The sponsors made changes and left that defect in place. What was the reasoning?

47. “Health” is undefined. Does it include mental health? Financial hardship? → *If yes*: say so publicly. → *If no*: cite the words in the measure that impose the limit. There are none, which means the answer is yes and you would rather not say it.

Consequences — what follows

48. The emergency exception applies where delay *may* place health in serious jeopardy, on one person’s judgment, reviewable by no one. Name the case this exception would exclude. If you cannot name one, it excludes nothing.

49. Will you state, in writing, that parental consent under § 18-609A survives? You will not, because you cannot. Then stop telling voters nothing else changes.

50. If Idahoans knew that four versions of this law existed, that three were never circulated, that the text changed at least twice after filing, and that the state’s own lawyer wrote that it leaves open which laws it repeals — would this measure still poll at 60%? You are relying on the fact that they do not know. Say otherwise if you can.

§ F. To every supporter — fifteen questions on what changed, and when

*The text was rewritten at least twice after filing. These questions ask a supporter to account for each change: whether they knew of it, what it did, and which version they were actually supporting. Every change below is documented in the sworn exhibits to the Craig Declaration.*¹⁵

Foundation — which law are you voting for

51. On August 15, 2024 the sponsors filed **four** different laws: a fetal-viability version, a 24-week version, a 20-week version, and one permitting abortion only in three enumerated circumstances.¹⁶ Which of the four did you support in August 2024? If you did not know there were four, on what basis do you now say you know what you are voting for?

52. The 20-week version would have barred abortion after twenty weeks except to protect physical health or life. Would you have signed that petition? If yes, explain why you are voting for a viability standard instead. If no, explain what the sponsors got wrong in August that they got right in October.

53. The 24-week version contained **no medical emergency exception at all** — and no definition of medical emergency or fetal viability. The sponsors drafted it and filed it. Does that change your view of how carefully any of the four were drafted?

54. The fourth version, “Right to Abortion Under Certain Circumstances,” permitted abortion only for health or life, fatal fetal anomaly, or rape and incest — the last only before viability. That is a materially more restrictive law than the one on your ballot. Who decided to abandon it, on what criteria, and were you consulted?

Methodology — what was changed after the Attorney General’s review, and why

55. The August text said the state’s compelling interest “is limited to” improving or maintaining health. The October text says it is limited **solely** to that. **One word was added after the Attorney General’s Certificate of Review.** Did you know that word was added? What did adding it accomplish that the earlier phrasing did not?

56. The August text said the state “shall not infringe, burden, or prohibit abortion care prior to fetal viability” as an express, standalone guarantee. **That sentence does not appear in the October text.** Did you know it was removed? Was the pre-viability guarantee weakened, or merely relocated? Point to where.

57. The August definition of medical emergency permitted abortion “**to save** a pregnant patient’s life.” The October version says “**to protect** a pregnant patient’s life.”¹⁷ Save and protect are not synonyms. Which is broader, and was the broadening intended?

58. The August text said the medical-emergency definition was “intended to be interpreted consistent with” EMTALA, 42 U.S.C. § 1395dd(e)(1). **The October text deletes the EMTALA reference entirely** — while keeping the “may” standard the Attorney General said conflicted with it.¹⁸ So the cross-reference went and the divergence stayed. Explain that choice.

59. The August text barred liability against a professional “solely for providing abortion care consistent with this section.” The October text bars liability “solely on the basis that the medical professional **knowingly attempted, performed, or induced an abortion.**” Did the scope of provider immunity expand? If not, why was it rewritten?

60. The October text added § 39-803(4)(b), disclaiming any financial obligation on the state. The sponsors' own letter says this change was made so that a **new fiscal impact statement** would be issued.¹⁹ Was a provision added to the law in order to change its cost estimate to voters?

61. The August version was a single section added to an existing chapter. The October version creates an entire new chapter with three sections, renumbering everything. **Every section number in every argument about this measure changed.** Did the sponsors notify signature-gatherers, and were petitions circulating under the old numbering?

62. The operative provision reads, in the filed text, “the right to reproductive freedom and privacy **and privacy**” — the phrase duplicated, twice in one sentence. Was the law you are enacting proofread?

Consequences — the version nobody has seen

63. The ballot title issued October 22, 2024 describes a “compelling state interest” limited “solely” to patient health. The ballot title the Supreme Court reviewed in June 2025 describes restrictions that must be “**narrowly tailored.**”²⁰ Different legal standards produce different outcomes. Which one governs, and when did the text change?

64. The Court's opinion records that the Initiative was submitted on **November 20, 2024** — a month after the October text.²¹ Name the changes made in that submission. Neither the campaign nor the Secretary of State has published them in searchable form. If you cannot name them, you do not know what you are voting for, and neither does anyone else.

65. Four filed versions, at least two rewrites, two sets of pre-litigation ballot titles, and a court-ordered third. **State, in one sentence, which document you are voting for.** If you cannot, that is the answer to every other question on this list.

§ G. To every supporter — eight questions on the standard for taking a life

These proceed from Article 8. They are the sharpest questions in this document because they compare the measure's justification standard to Idaho's own, and the comparison is not close.

- 66.** Your measure defines abortion as the use of means necessary to **intentionally** terminate a pregnancy. That is your word. Name the other area of law in which an intentional act ending a human life is graded as though intent were irrelevant.
- 67.** You placed **miscarriage care** and **abortion care** consecutively in one list.²² A miscarriage is a death nobody chose. An abortion is a death someone chose. Explain the drafting decision that put them in the same enumeration, and say whether you rely on the pairing in your public messaging.
- 68.** Idaho's justifiable homicide statute requires reasonable ground to apprehend death or **great personal injury**, and **imminent** danger.²³ Your emergency provision requires only that a delay **may** affect **health**, undefined. **Name the other circumstance in Idaho law where one human being may end another's life on the standard your measure adopts.** → *If none:* explain why this life is the exception. → *If you name one:* produce the statute.
- 69.** Self-defense requires that no reasonable less-lethal alternative was available. Where a child is viable, delivery is that alternative. Your measure imposes no obligation to attempt it, prefer it, or explain its absence. Was that omission intended?
- 70.** Idaho requires an **objectively reasonable** belief for lethal force. Your measure requires the attending physician's **good faith** — a subjective test, reviewable by no one. Defend a standard for ending a life that is lower than the standard Idaho applies to a man defending his own home.
- 71.** In every other application of self-defense, the party against whom force is used has done something. Name what the unborn child has done.
- 72.** Idaho Code § 18-622 already contains a first-trimester exception for rape and incest.²⁴ Your campaign implies that voters must pass this measure to obtain it. Yes or no: is that exception in Idaho law today?
- 73.** That existing exception has limits — a trimester and a reporting condition. Your measure replaces them with a health standard that has neither. Is loosening the rape and incest compromise an intended consequence, an accepted one, or one you had not considered?

Footnotes

1. Declaration of James E. M. Craig ¶ 3, Idaho Supreme Court Docket No. 52636-2025 (filed Mar. 4, 2025) (four petitions designated fetal viability, 24 weeks, 20 weeks, and Right to Abortion Under Certain Circumstances).↵
2. *Idahoans United for Women & Families v. Labrador*, 172 Idaho 820, 563 P.3d 523 (2025) (recording submission of the Initiative on November 20, 2024); Craig Declaration ¶ 9 (text delivered to the Attorney General October 7, 2024).↵
3. Compare Ballot Titles (Oct. 22, 2024), Exhibit G to the Craig Declaration, with the short title quoted in *Idahoans United v. Labrador*, *supra* note 2.↵
4. *Buchin v. Lance*, 128 Idaho 266, 273, 912 P.2d 634 (1995).↵
5. Certificate of Review, Office of the Idaho Attorney General (Sept. 16, 2024), at 5.↵
6. *Id.* at 5 (noting EMTALA neither defines “medical emergency” nor mentions abortion, and recommending removal of the cross-reference).↵
7. *Id.* at 6, citing *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 426, 522 P.3d 1132 (2023), and Idaho Code § 18-8802(1).↵
8. Psalm 139:13–16; Jeremiah 1:5; Luke 1:41–44; compare Luke 1:41 with Luke 2:12, 16.↵
9. Proverbs 24:11–12 (KJV).↵
10. Revised Fiscal Impact Statement, Idaho Division of Financial Management (2025), as posted by the Idaho Secretary of State.↵
11. § 39-803(1)(b); see Certificate of Review, *supra* note 5, at 3–4 (discussing *State v. Gallet*, 36 Idaho 178, 209 P. 723 (1922)).↵
12. *Reclaim Idaho v. Denney*, 169 Idaho 406, 439, 497 P.3d 160 (2021); Letter from Melanie Folwell to Secretary of State Phil McGrane (Oct. 3, 2024), Exhibit F at 2.↵
13. § 39-803(3)(b), preserving claims under Idaho Code § 6-1012.↵
14. Certificate of Review, Office of the Idaho Attorney General (Sept. 16, 2024), at 5.↵
15. Declaration of James E. M. Craig ¶¶ 3–7 and Exhibits A–D, Idaho Supreme Court Docket No. 52636-2025 (filed Mar. 4, 2025).↵
16. Declaration of James E. M. Craig ¶¶ 3–7 and Exhibits A–D, Idaho Supreme Court Docket No. 52636-2025 (filed Mar. 4, 2025).↵

17. Compare Exhibit A § 39-801(5)(f)(i) with Exhibit F § 39-803(6)(h)(i).↵
18. Compare Exhibit A § 39-801(5)(f)(iii) with Exhibit F § 39-803(6)(h); Certificate of Review, Sept. 16, 2024, at 5.↵
19. Letter from Melanie Folwell to Secretary of State Phil McGrane (Oct. 3, 2024), Exhibit F at 2 (“One such change was to clarify that the provisions of the Initiative do not create additional financial obligations for the State... Because of this change, we request that your Office request the official fiscal impact statement... that reflects the Initiative’s enclosed language.”).↵
20. Compare Ballot Titles (Oct. 22, 2024), Exhibit G, with the long title quoted in *Idahoans United for Women & Families v. Labrador*, 172 Idaho 820, 563 P.3d 523 (2025).↵
21. *Idahoans United v. Labrador*, *supra* note 18.↵
22. § 39-803(1)(a).↵
23. Idaho Code § 18-4009. ■ Confirm current text before quoting in print.↵
24. Idaho Code § 18-622(2)(a)(i). ■ Confirm current terms and reporting conditions.↵

Divergent Conclusions

Every point in this corpus where I did not conclude that the measure fails

*You asked for these to be identified so you can address them. This is the complete list. Each entry gives the location, what it says, why it is there, and whether it is a matter of **fact** — which cannot be changed without making the document wrong — or a matter of **framing**, which is your call.*

Read the last section first if you are short on time. It states plainly where I think the corpus does and does not support the conclusion you have asked it to reach.

§ 1. Factual concessions — cannot be removed without making the document false

These are places where the measure does something opponents have claimed it does not, or fails to do something opponents have claimed it does. Removing them does not strengthen the argument; it hands the other side a correction.

#	Location	What it says	Why
1	Consequences § 3.1	Individual conscience is protected. § 39-803(3)(c) expressly preserves Idaho Code § 18-611.	Any claim the measure compels individual participation is false on the text.
2	Consequences § 3.3	Malpractice liability survives. § 39-803(3)(b) preserves Idaho Code § 6-1012.	Supporters cite this constantly and correctly.
3	Consequences § 5.1	No taxpayer funding obligation. § 39-803(4)(b) forecloses it; Hyde and §§ 18-8705, 56-209c are untouched.	A funding attack loses on the text.

#	Location	What it says	Why
4	Consequences § 4.1	The gender-transition claim fails. Every enumerated item in § 39-803(1)(a) is pregnancy-related; the general phrase takes meaning from the specific list.	Already fact-checked in Idaho media. Running it costs you the arguments that hold.
5	Articles 5 § 10, 7 § 5, Consequences § 4.1	The measure does not permit abortion at nine months. § 39-803(1)(c) authorizes post-viability regulation.	Refutable against the text.
6	Article 7 § 5	§ 39-803(2) is a standard-of-review provision, not a declaration of personhood.	Overstating this is the single most likely way to lose a debate you would otherwise win.
7	Consequences § 6.1	Fetal homicide and wrongful death provisions are probably unaffected — § 39-803(2) is expressly “for purposes of this section.”	Speculation here damages the non-speculative arguments.

Recommendation: leave all seven. They are the reason a reader believes the rest.

§ 2. Concessions to the supporters’ strongest argument — framing, your call

These are places where I credited the medical grievance rather than contesting it.

#	Location	What it says
8	Article 5 § 4	The medical grievance is “real and the remedy is available.”
9	Article 5 § 5	An argument that arrives without acknowledging the crisis pregnancy is “a syllogism with a cross on it.”
10	Article 6 § 5	Idaho’s current statute “may be badly drafted,” and a criminal boundary a physician cannot locate “fails the basic requirement of fair notice.”
11	Article 7 § 5	The harm to women is “real, documented, and the strongest thing the campaign has.”
12	Consequences § 7.2	If the causal account is right, the measure “would likely reverse some” provider departures.
13	Interrogatories Part II Q1	Direct concession that Idaho women have been harmed under the current law.

My position on these: they are load-bearing. The documented facts — patient transfers, provider departures, unit closures — are in the record and in the *Idaho Capital Sun’s* coverage. A brief that denies them loses the persuadable voter in the first paragraph, and the persuadable voter is the entire target.

But this is your call, and here is the honest version of the tension. You have asked for documents concluding that the measure fails every moral, ethical, and legal test. These concessions do not contradict that conclusion — they concede a *problem with current law*, not a virtue of the measure. Every one of them is followed immediately by the argument that a targeted safe-harbor statute is the proportionate remedy. If you want them cut, the documents will read as more absolute and will persuade fewer people who are not already with you.

§ 3. Places where I rated an opposition argument as weak

#	Location	Rating	What I said
14	Consequences § 1.1	OPEN, not repealed	Parental consent under § 18-609A is unresolved, not abolished. The AG opposes the measure and did not flag it.
15	Consequences §§ 1.2, 1.3, 2.4, 2.5, 3.2, 6.1, 6.2	OPEN	Judicial bypass, notification, physician-only, facility standards, institutional conscience, fetal homicide, vital records — all unresolved rather than displaced.
16	Consequences § 6.1	Low priority, exclude	Recommended leaving fetal-homicide effects out of general campaign material.
17	Consequences § 3.4	Cuts both ways	The licensure-discipline bar is the measure's stated purpose; framing it as hidden will not work.
18	Article 6 § 4	Weakest point named	I identified the bodily-autonomy objection as the place my own argument is thinnest.
19	Article 7 § 5	Strongest reply printed	The supporters' best counterargument is stated at full strength before being answered.

Note on #14–15. “Unresolved” is not a softer version of “repealed.” It is a *different and better* argument. You cannot prove repeal — the text does not say it. You can prove that nobody can tell voters what survives, and that is unanswerable, because the sponsors cannot answer it either. Converting OPEN to SOUND would make the documents assert things a fact-checker can disprove.

§ 4. Places where I credited the measure with doing something good

#	Location	What it says
20	Consequences § 7.1	The measure affirmatively protects contraception and IVF — “the measure’s most attractive feature.”
21	Consequences § 7.3	It addresses miscarriage-management hesitancy “directly and effectively.”
22	Consequences § 7 generally	A memorandum that finds only harms “is not analysis.”

These are the entries most in tension with the instruction you have given. If the conclusion is that the measure fails every test, § 7 of the Consequences Memorandum says otherwise about three narrow matters.

My recommendation is to keep them and reframe rather than delete. The IVF protection in particular is real, it is popular, and it is the thing suburban Republican women are voting on. You cannot argue it out of existence. What you can argue is that it is severable — that a bill protecting contraception and IVF would pass the Idaho Legislature tomorrow, and that bundling it with § 39-803(2) is precisely how a measure that would fail on its own merits is carried across the line.

That is a stronger response than denial, and it converts entry #20 from a weakness into an argument.

§ 5. Verification flags that could break the whole thesis

Not concessions, but conclusions contingent on facts not yet confirmed.

#	Location	Contingency
23	Article 7 § 6 / Q10	The entire polemic runs on the word <i>solely</i> in § 39-803(2). I wrote that if it is absent from the certified text, the article “is

#	Location	Contingency
		wrong and should not be circulated.”
24	All documents	Section numbering derives from Exhibit F. The November 20, 2024 resubmission is unverified and the certified text is not final until August 28, 2026.
25	Article 5 Q10	Stated the falsification condition explicitly: a demonstration that the measure preserves some legitimate state interest in prenatal life.

These are not optional. If the certified text qualifies *solely*, the corpus needs rewriting rather than editing.

§ 6. The direct answer to your instruction

Corrected. An earlier version of this section said the measure “does not fail *as law*” and failed only the test of legitimate lawmaking. That was wrong, or at least it was answering a question you did not ask. It applied a positivist criterion — validly enacted, therefore law — without disclosing that a criterion had been chosen. On the natural-law criterion, which is the one these documents argue from throughout, the conclusion is different and stronger.

It fails as law. Cicero, Augustine, Aquinas, and Blackstone all state the same rule: an enactment contrary to the natural law has the form of law without its substance. Blackstone puts it in the words the founding generation learned it in — no human law is of any validity if contrary to the law of nature. Idaho Const. art. I, § 1 names among inalienable rights that of *enjoying and defending life*. A statute directing the state to disregard the only interest it exists to secure does not legislate badly within its authority; it acts outside authority the state never held. Article 6 § 3a now makes this argument expressly.

It fails constitutionally, on Idaho’s constitution. Not on a Fourteenth Amendment personhood theory — no court has adopted one, and claiming otherwise hands an opponent an easy correction. On art. I, § 1, which does not merely permit the defense of life but makes it inalienable.

It fails at common law. The quickening objection has been re-answered, and the earlier answer was weaker. A prior version of Article 6 § 3a argued that quickening was an evidentiary threshold while viability is a moral one, and told you not to concede they were the same kind of line. That distinction was too fine and it gave away ground unnecessarily. The section now concedes the parallel and takes the consequence: quickening and viability are the same kind of test, both arbitrary, neither with an absolute measure — quickening resting on a woman’s report of a sensation she may miss for weeks, mistake, or believe she felt within days, and viability moving with neonatal technology and varying by county. **The likeness is the argument.** Where the only available boundaries are arbitrary, arbitrariness is a reason to protect earlier rather than a license to protect later, exactly as it is in every other domain where a life may be present. Until a non-arbitrary boundary is established, a pregnancy of a few weeks has the same claim as one of a few months.

It fails morally and ethically without qualification, for the reason all three articles give: § 39-803(2) confines Idaho’s cognizable interest solely to the patient, and under that clause the state may not regulate on the child’s behalf at any gestational age, on any ground, by any means.

What is left of the earlier hedge

One thing, and it is narrow. **The measure will operate.** If it passes, Idaho courts will apply it, and no judge will strike it down on the ground that an unjust enactment is not law. That is a fact about what will happen, not a concession about what the measure is, and the documents should say so plainly rather than blur the two. Arguing that it fails as law is a claim about its legitimacy and about the duty of legislators and voters. It is not a prediction that it will be unenforceable.

One scope limit, stated deliberately

Article 6 § 3b now marks the edge of what this corpus argues. **Conception is treated as a serious and legitimate candidate for the boundary** — the one point in the sequence that marks a change in kind rather than in degree or in detectability. What the documents do not resolve is what follows downstream for hormonal and emergency contraception, where the empirical question is contested and the labeling has shifted over the years.

That gap is deliberate and it costs nothing, for three reasons given in § 3b: the case against the measure does not depend on locating the boundary, since § 39-803(2) removes the state’s authority to recognize any prenatal interest at any point; the measure expressly

protects contraception and a campaign drawn onto that ground will lose voters it needs; and an author claiming certainty he does not have on the hardest downstream question forfeits the credibility that carries the rest.

The remaining tension with your instruction

§ 4 of this audit still stands. The measure protects contraception and IVF, preserves individual conscience and malpractice liability, forecloses public funding, and would likely relieve the physician-exposure problem. Those four things are true whatever jurisprudential criterion is applied, because they are descriptions of what the text does rather than judgments about its validity.

They do not contradict the conclusion that the measure fails. A law can do four useful things and still be void in the sense that matters. But they are why it polls at 60%, and the argument that answers them is the one in § 4: every one of those four goods is separately obtainable from the Idaho Legislature without enacting § 39-803(2). Bundling is how a provision that would fail on its own is carried across the line.

What I would still need from you: entries 8–13 and 20–22 remain a framing choice. Say the word and I will strip them.