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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

REBECCA ROE, by and through her parents and next friends, Rachel and Ryan Roe; SEXULAITY AND GENDER ALLIANCE, an association *Plaintiffs*, v. DEBBIE CRITCHFIELD, in her official capacity as Idaho State Superintendent of Public Instruction, et al., *Defendants.*	Case No. 1:23-cv-00315-DCN **UNOPPOSED MOTION IN SUPPORT OF ENTRY OF PROPOSED STIPULATED PROTECTIVE ORDER**

Defendants hereby move for entry of the Stipulated Protective Order (“Protective Order”) attached hereto as Exhibit 1, which sets forth a protocol that

has been agreed to by the parties. The parties anticipate the production of documents and information that a party may believe is, or may contain, confidential, proprietary, trade secret, or commercially or personally sensitive information, and which may be appropriately subject to protection under Federal Rule of Civil Procedure 26(c).

As set forth in the attached Stipulated Protective Order, the parties agree that good cause exists to protect the confidential nature of the information contained in certain documents, interrogatory responses, responses to requests for admission, or deposition testimony and that entry of the Protective Order is warranted to protect against such disclosure of documents and information.

The parties have executed the Stipulated Protective Order and the Plaintiffs do not oppose this motion or the entry of the Stipulated Protective Order. Accordingly, Defendants respectfully request that the Court enter the attached Stipulated Protective Order.

Dated: August 21, 2023

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: */s/ Rafael J. Droz*
RAFAEL J. DROZ
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 21, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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Exhibit 1

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REBECCA ROE, by and through her parents and next friends, Rachel and Ryan Roe; SEXULAITY AND GENDER ALLIANCE, an association *Plaintiffs*, v. DEBBIE CRITCHFIELD, in her official capacity as Idaho State Superintendent of Public Instruction, et al., *Defendants.*	Case No. 1:23-cv-00315-DCN **STIPULATED PROTECTIVE ORDER**

One or more of the parties in this matter anticipates the production of documents or information that at least one party considers to be, or to contain, confidential, proprietary, trade secret, or commercially or personally sensitive information, and that may be appropriately subject to protection under Federal Rule

of Civil Procedure 26(c).

The parties agree that good cause exists to protect the confidential nature of the information contained in certain documents, interrogatory responses, responses to requests for admission, or deposition testimony. The parties agree that the entry of this Stipulated Protective Order ("Protective Order") is warranted to protect against disclosure of such documents and information.

Based upon the above stipulation of the parties, and the Court being duly advised, IT IS HEREBY ORDERED as follows:

1. Use of any information or documents labeled "Confidential" and subject to this Protective Order, including all information derived therefrom, shall be restricted solely to the litigation of this case and shall not be used by any party for any other purpose. This Protective Order, however, does not restrict the disclosure or use of any information or documents lawfully obtained by the receiving party through means or sources outside of this litigation. Should a dispute arise as to any specific information or document, the burden shall be on the party claiming that such information or document was lawfully obtained through means and sources outside of this litigation.

2. The Parties acknowledge that this Protective Order does not confer blanket protections on all disclosures during discovery or in the course of making initial or supplemental disclosures under Rule 26(a). Designations under this Protective Order shall be made with care and shall not be made absent a good faith belief that the designated material satisfies the criteria set forth below. The Designating Party shall consider whether appropriate redactions can address the need for confidentiality in lieu of designating a document as confidential. If it comes to the attention of any party or non-party that discloses or produces any discovery material that designated material does not qualify for protection at all or does not

qualify for the level of protection initially asserted, the designating party must promptly notify all other parties that it is withdrawing or changing the designation.

3. The parties, and third parties subpoenaed by one of the parties, may designate as "Confidential" documents, testimony, written responses, or other materials produced in this case if they contain information that the producing party has a good faith basis for asserting is confidential under the applicable legal standards. The party shall designate each page of the document with a stamp identifying it as "Confidential," if practical to do so. Within thirty (30) days after receipt of the final transcript of the deposition of any party or witness in this case, a party or the witness may designate as "Confidential" any portion of the transcript that the party or witness contends discloses confidential information. Unless otherwise agreed, all deposition transcripts shall be treated as "Confidential" until the expiration of the thirty-day period.

4. If portions of documents or other materials deemed "Confidential," or any papers containing or making reference to confidential portions of such materials are filed with the Court, they shall be filed under seal and marked according to the provisions of District of Idaho Local Civil Rule 5.3. The parties acknowledge that this Protective Order may not entitle them to permanently seal all documents or information marked "Confidential" filed with the Court.

5. In seeking to file a document under seal, the parties understand there is a strong presumption in the Ninth Circuit in favor of access to court records and that sealing a document from public view is the exception. In addition, the parties understand that the Court will evaluate any motion to seal either under a finding of good cause for non-dispositive motions or a compelling reason supported by specific facts for dispositive motions. See *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). The designating party bears the burden to establish

the facts necessary to seal such information or documents.

6. If the designating party is filing with the Court documents or information that it marked "Confidential," it shall file a motion to seal pursuant to District of Idaho Local Civil Rule 5.3 that sets forth the specific facts necessary to justify the sealing of the documents or information. If the non-designating party is filing with the Court documents or information marked "Confidential" by another party, the non-designating party shall file a motion to seal pursuant to District of Idaho Local Civil Rule 5.3 explaining that it is not the party that designated the documents or information as "Confidential" and either: (a) setting forth its understanding as to why the documents or information have been designated "Confidential" by another party, or (b) specifically objecting to the documents or information being designated as "Confidential" by another party and/or maintained under seal by the Court. If the non-designating party raises an objection or fails to adequately support the justification for sealing, the designating party may respond to the motion to seal, setting forth the specific facts necessary to justify maintaining confidentiality and filing the documents under seal.

7. Use of any information, documents, or portions of documents marked "Confidential," including all information derived therefrom, shall be restricted solely to the following persons, who agree to be bound by the terms of this Protective Order, unless additional persons are added by the stipulation of counsel or authorized by the Court:

a. Outside counsel of record for the parties, and the administrative staff of outside counsel's law firms.

b. In-house counsel for the parties, and the administrative staff for each in-house counsel.

c. Any party to this action who is an individual, and every employee, director, officer, member, or manager

of any party to this action who is not an individual, but only to the extent necessary to further the interest of the parties in this litigation.

d. Independent consultants or expert witnesses (including partners, associates, and employees of the firm which employs such consultant or expert) retained by a party or its attorneys for purposes of this litigation, but only to the extent necessary to further the interest of the parties in this litigation.

e. The Court and its personnel, including, but not limited to, stenographic reporters regularly employed by the Court and stenographic reporters not regularly employed by the Court who are engaged by the Court or the parties during the litigation of this action.

f. The authors and the original recipients of the documents.

g. Any court reporter or videographer reporting a deposition.

h. Employees of copy services, microfilming or database services, trial support firms, and/or translators who are engaged by the parties during the litigation of this action.

i. Any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Protective Order.

j. Any fact witness in this matter to whom disclosure is reasonably necessary.

k. Any other person with the prior written consent of the designating party.

8. Prior to being shown any documents produced by another party marked "Confidential," any person listed under paragraphs 7(d), 7(i), 7(j), and 7(k) shall agree to be bound by the terms of this Order by signing the agreement attached as Exhibit A.

9. Whenever information designated as "Confidential" pursuant to this Protective Order is to be discussed by a party or disclosed in a deposition proceeding, the designating party may exclude from the room any person, other than persons designated in paragraph 7, as appropriate, for that portion of the deposition.

10. Notwithstanding the above, the Court shall determine a party's right to use documents or information marked "Confidential" at a hearing, trial, or other proceeding in this action. The Court may also require the redaction of personal identifiers of confidential information before use at a hearing, trial, or other proceeding in this action. The designation of "Confidential" shall not affect the Court's determination as to whether the material shall be received into evidence; nor shall such designation constitute the authentication of such material or a waiver of any right to challenge the relevance, confidentiality, or admissibility of such material. This Protective Order shall not govern the admission of evidence at trial in open court. Should a designating party believe that documents, materials, or information designated as "Confidential" should not be used in open court during trial, the designating party will have the burden to seek such protections from the Court prior to trial.

11. Each party reserves the right to dispute the confidential status of documents or information claimed by any other party or subpoenaed party in accordance with this Protective Order. If a party believes that any documents or materials have been inappropriately designated as "Confidential" by another party or subpoenaed party, that party shall confer in good faith with counsel for the designating party. As part of that conferral, the designating party must assess whether redaction is a viable alternative to a confidential designation. If the parties cannot reach an agreement, the parties shall use the Court's informal discovery dispute process to seek a resolution, if the Court uses one. If the parties are unable

to resolve the matter informally, the designating party shall file an appropriate motion before the Court requesting that the Court determine whether the Protective Order covers the document in dispute. The designating party bears the burden of establishing good cause for why the document should not be disclosed. A party who disagrees with another party's designation must nevertheless abide by that designation until the matter is resolved by agreement of the parties or by order of the Court.

12. The inadvertent failure to designate a document, testimony, or other material as "Confidential" prior to disclosure shall not operate as a waiver of the party's right to later designate the document, testimony, or other material as "Confidential" or limit in any way a party's ability to recall or "claw back" privileged materials that may have been inadvertently disclosed. The receiving party or its counsel shall not disclose such documents or materials if that party knows or reasonably should know that a claim of confidentiality would be made by the producing party. Promptly after receiving notice from the producing party of confidentiality claim, the receiving party or its counsel shall inform the producing party of all pertinent facts relating to the prior disclosure of the newly designated documents or materials and shall make reasonable efforts to retrieve such documents and materials and to prevent further disclosure.

13. Designation by either party of information or documents as "Confidential," or failure to so designate, will not constitute an admission that information or documents are or are not confidential or trade secrets. Neither party may introduce into evidence in the litigation, other than a motion to determine whether the Protective Order covers the information or documents in dispute, the fact that the other party designated or failed to designate information or documents as "Confidential."

14. Upon the request of the producing party, within 30 days after the entry of a final judgment no longer subject to appeal on the merits of this case, or the execution of any agreement between the parties to resolve and settle this case, the parties, and any person authorized by this Protective Order to receive confidential information, shall return to the producing party or third party, or destroy, all information and documents subject to this Protective Order. Returned materials shall be delivered in sealed envelopes marked “Confidential” to respective counsel. The party requesting the return of materials shall pay the reasonable costs of responding to its request. Notwithstanding the foregoing, counsel for a party may retain archival copies of confidential documents including any copies which contain work-product.

15. This Protective Order shall not constitute a waiver of any party’s or non- party’s right to oppose any discovery request or object to the admissibility of any document, testimony, or other information.

16. Nothing in this Protective Order shall prejudice any party from seeking amendments to expand or restrict the rights of access to, and use of, confidential information, or other modifications, subject to order by the Court.

17. Nothing in this order limits or alters the obligations and procedures imposed by the Court’s Order Granting Plaintiff’s Motion to Proceed Anonymously, dated August 3, 2023.

18. The restrictions on disclosure and use of confidential information shall survive the conclusion of this action.

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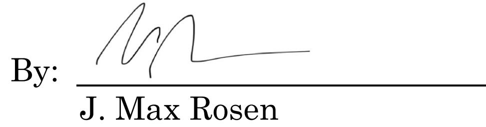
/ / /

So stipulated:

MUNGER TOLLES & OLSON, LLP

By: 
J. Max Rosen

Counsel for Plaintiffs

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ *Lincoln Davis Wilson*
Chief, Civil Litigation and
Constitutional Defense

Counsel for Defendants

The Court has reviewed the reasons offered in support of entry of this Stipulated Protective Order and finds that there is good cause to protect the confidential nature of certain information. Accordingly, the Court adopts the above Stipulated Protective Order in this action.

IT IS SO ORDERED.

DATED: ________________

____
David C. Nye
Chief U.S. District Court Judge

EXHIBIT A

I, ________________________, have been advised by counsel of record for

__________________________ in ____

of the protective order governing the delivery, publication, and disclosure of confidential documents and information produced in this litigation. I have read a copy of the protective order and agree to abide by its terms.

____
Signed

____
Printed

____
Date

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

REBECCA ROE, by and through her parents and next friends Rachel and Ryan Roe, SEXUALITY AND GENDER ALLIANCE, an association,

Plaintiffs,

v.

DEBBIE CRITCHFIELD, in her official capacity as Idaho State Superintendent of Public Instruction, et. al.,

Defendants.

Case No. 1:23-cv-00315-DCN

MEMORANDUM DECISION AND ORDER

I. INTRODUCTION

Before the Court is Plaintiffs' Motion for Temporary Restraining Order ("TRO"). Dkt. 34. Defendants oppose the motion. Dkt. 39. Because oral argument would not significantly aid its decision-making process, the Court will decide the motion on the briefing. Dist. Idaho Loc. Civ. R. 7.1(d)(1)(B). For the reasons below, the Court GRANTS the Motion and will issue a TRO until further notice.

II. BACKGROUND

On July 6, 2023, Plaintiffs filed the above-entitled civil rights action challenging Idaho Senate Bill 1100 ("S.B. 1100"). Dkt. 1. S.B. 1100 was adopted on March 22, 2023, took effect on July 1, 2023, and requires, among other things, that students in Idaho public schools use the bathroom or locker room that corresponds with his or her biological sex,

i.e. the person's sex assigned at birth. Plaintiffs allege this law is unconstitutional and disproportionately harms students who identify as transgender.

Alongside their Complaint, Plaintiffs filed a Motion to Proceed Anonymously (Dkt. 13)[1] and a Motion for Preliminary Injunction (Dkt. 15) ("PI Motion"). Defendants then filed a Motion for Extension of Time requesting an approximately 60-day extension to respond to Plaintiffs' PI Motion. Dkt. 21. The Court partially granted the request, extended the briefing deadlines, and set the PI Motion for a hearing on September 13, 2023. Dkt. 31.

Notably, in their opposition to Defendants' Motion for Extension, Plaintiffs argued the Court could grant the extension, but if it did, it should also take other actions to protect Plaintiffs' rights in the interim—such as sua sponte issuing a TRO. Dkt. 25, at 3–4. In its Decision, the Court noted that while it *could* take various actions to accomplish certain goals, it would not do so of its own accord. Dkt. 31, at 4 (explaining it would not take any further action "sua sponte").

On July 28, 2023, Plaintiffs filed the instant Motion for TRO, in which they formally ask the Court to do what they previously suggested the Court could do sua sponte: issue a TRO until the Court's scheduled hearing and decision on the PI Motion. Dkt. 34.

Like their prior suggestion that the Court act sua sponte, Plaintiffs suggest in their present Motion that the Court can issue a TRO without a response from Defendants. Dkt. 34-1, at 3, 7.[2] While this is true, *see* Fed. R. Civ. P. 65(b), the Court strongly prefers to hear

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[1] The Court recently granted this motion. Dkt. 38.

[2] Plaintiffs recognized, however, that the Court would likely want a response from Defendants. Dkt. 34-1, at 7 n.1.

from both sides on any issue when feasible. Here, Defendants asked the Court to give them a short time to respond. Dkt. 35. The Court obliged and set an expedited briefing schedule. Dkt. 36. The Court also asked the parties to focus on the "status quo" question in their briefing as that would likely be its "main focus in determining Plaintiffs' TRO Motion." Dkt. 37.

III. LEGAL STANDARD

A preliminary injunction and a TRO generally serve the same purpose of "preserv[ing] the status quo ante litem pending a determination of the action on the merits." *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980); Fed. R. Civ. P. 65.

A plaintiff seeking a preliminary injunction or TRO "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *CTIA-The Wireless Ass'n v. City of Berkeley*, 854 F.3d 1105, 1114 (9th Cir. 2017) (quoting *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008)).

IV. ANALYSIS

Although the issues in this case are "complex" and "weighty," Dkt. 31, at 4, the question today is relatively simple: what is the status quo that must be preserved pending resolution of Plaintiffs' PI Motion?

The 2023-2024 school year begins next week, on August 16, 2023. Plaintiffs request

that the Court enter a TRO prohibiting S.B. 1100 from going into effect[3] until the Court issues a full ruling on the PI Motion. Dkt. 34. They contend a short, prohibitory TRO will preserve the status quo and prevent harm. Defendants oppose the request, arguing the TRO Plaintiffs are requesting is mandatory and will *change*, rather than *preserve*, the status quo.

Defendants are incorrect on both fronts.

Both sides admit that prior to S.B. 1100 being adopted by the Idaho Legislature—and long before it went into effect last month—there was a patchwork of regulations and rules concerning which students could use which restrooms[4] in Idaho schools. Dkt. 39, at 2; Dkt. 40, at 2. Some school districts (approximately 75% of the 115 school districts in Idaho) maintained rules mandating sex-separate restrooms, changing facilities, and overnight accommodations. Dkt. 39-1, at 2. A smaller percentage (25%) had policies in place that allowed for individuals to use facilities consistent with their chosen gender identity.

Then S.B. 1100 passed. S.B. 1100 requires that schools mandate students use restrooms consistent with their biological sex.

Because of this, Defendants assert the status quo the Court must maintain is sex-separate bathrooms. But this is not accurate. The relevant "status quo" for purposes of an injunction "refers to the legally relevant relationship *between the parties* before the controversy arose." *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1061 (9th Cir.

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[3] Like most bills in Idaho, S.B. 1100 became law on July 1, 2023. That said, because no public school districts have yet to go back into session, it is not really "in effect" yet.

[4] For ease, the Court will consistently refer just to restrooms, but S.B. 1100 also encompasses locker rooms, overnight accommodations etc.

2014) (emphasis in original); *see also Regents of Univ. of California v. Am. Broad. Companies, Inc.*, 747 F.2d 511, 514 (9th Cir. 1984) (for purposes of injunctive relief, the status quo means "the last uncontested status which preceded the pending controversy") (cleaned up). In this suit, Plaintiffs contests the enforceability and constitutionality of S.B. 1100. The status quo, therefore, is the policy in Idaho prior to S.B. 1100's passage and enactment.[5]

So even though some school districts did, in fact, have policies separating bathroom usage, others did not. Thus, while S.B. 1100 may "codify[] the common practice," of sex-separate bathrooms, Dkt. 39, at 2, that does not mean the new law is the status quo. Simply put, the status quo concerning bathroom usage in Idaho schools was diverse; but no law, no restriction, and no mandate dictated those policies. In other words, keeping the status quo at this stage is doing just that: leaving schools to their own devices without any input from the state of Idaho, and without any formal regulations one way or the other.

Reviewing what would happen if the Court ruled the other way helps see why this must be the case. If the Court were to allow S.B. 1100 to go into full force and effect, it would *require* all schools to adopt the sex-separated policy. Doing this would not be a change for some schools and would be a change for others. But the mere fact that S.B. 1100

[5] The Court finds the timing of Plaintiffs' lawsuit does not change is analysis. *See Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 378 (4th Cir. 2012) ("The status quo to be preserved by a preliminary injunction [] is not the circumstances existing at the moment the lawsuit or injunction request was actually filed, but the last uncontested status between the parties which preceded the controversy.") (cleaned up); *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) ("The status quo ante litem refers not simply to any situation before the filing of a lawsuit, but instead to the last uncontested status which preceded the pending controversy.") (cleaned up). The last uncontested status in this case between these two parties was the landscape before S.B. 1100 passed.

dictates a state-wide policy is the change that upends the status quo of there not being a policy in the first instance. Asking school districts to implement this specific regime would change the school-by-school status quo that has been in place for numerous years.

This dovetails into the difference between a prohibitory injunction and a mandatory injunction. The Court turns to that issue next.

A prohibitory injunction preserves the status quo by preventing a party from taking some action before a determination on the merits of the action. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009). *See also Heckler v. Lopez,* 463 U.S. 1328, 1333 (1983) (a prohibitory injunction "freezes the positions of the parties until the court can hear the case on the merits"). By contrast, a mandatory injunction "orders a responsible party to take action." *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996). Because mandatory injunctions "go[ ] well beyond simply maintaining the status quo," they are "particularly disfavored" and subject to a heightened burden of proof. *Marlyn Nutraceuticals*, 571 F. 3d at 879. *See also Diamond House of SE Idaho v. City of Ammon*, 381 F. Supp. 3d 1262, 1270 (D. Idaho 2019).

By granting the TRO today, the Court is not mandating or requiring that school districts in Idaho do anything—including adopt policies that would allow students to use restrooms that coincide with their gender identity. Nor is it requiring Defendants to do anything. It is simply prohibiting, for the time being, the enforcement of a new State-wide law and allowing the continuation of school-by-school imposition of policies.

In sum, the Court finds that the status quo was the legal landscape before S.B. 1100 was passed, and that landscape did not require sex-separate or sex-inclusive restrooms.

Each school district was free to implement its own policies or regulations. That system continues today.

Now, the Court recognizes that, when deciding a TRO, it should look at the standard *Winter* factors[6] "not merely on preservation of the status quo." *Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco*, 512 F.3d 1112, 1116 (9th Cir. 2008) (cleaned up). The conundrum in this case—like many cases where competing constitutional rights are at stake—is that both sides allege factors two, three, and four lean their way. Both contend the equities tip in their favor, that the public interest supports their view, and that they will each suffer future harm if the Court does not rule as they suggest. Without delving substantively into the parties' respective arguments, the Court simply notes these three factors are roughly even. The Court concludes its review of the *Winter* factors with factor one—a likelihood of success on the merits.

As the Court has noted elsewhere, a Plaintiff's ability to demonstrate "a likelihood of success on the merits, or serious questions going to the merits, is the most important element of a preliminary injunction." *Perlot v. Green*, 609 F. Supp. 3d 1106, 1126 (D. Idaho 2022) (citing *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (cleaned up). This showing, however, is only *preliminary* because the parties have typically not engaged in any discovery by the time a preliminary injunction motion is filed. A TRO that precedes a PI, such as this, is even more removed from the merits and substance of the

[6] These factors include: (1) A likelihood of success on the merits; (2) likely irreparable harm in the absence of a preliminary injunction; (3) that the balance of equities weighs in favor of an injunction; and (4) that an injunction is in the public interest. *Winter*, 555 U.S. at 20.

case.[7] Said another way, at this point the Court is effectively tasked with trying to make a pre-preliminary call on the prospects of Plaintiffs' claims. It cannot do so at this time with any degree of certainty.

Notably, there is already a circuit split on the issues raised in this case. The Fourth Circuit has decided that denying gender-affirming bathroom access can violate both Title IX and the Equal Protection Clause, while the Eleventh Circuit found no violations based on substantially similar facts. *Compare Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020), *with Adams ex rel. Kasper v. School Board of St. Johns County*, 57 F.4th 791 (11th Cir. 2022) (*en banc*). And just last week, the Seventh Circuit effectively joined the Fourth Circuit when it upheld preliminary injunctions entered in two district court cases dealing with these same issues. *See A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 2023 WL 4881915 (7th Cir. Aug. 1, 2023).

Candidly, against this divided backdrop, the Court does not know if Plaintiffs will be able to show success on the merits or not at the upcoming hearing. Hence the Court's focus today on the status quo. Ultimately, the Court finds the *Winter* factors do not tip strongly one way or the other. The Court does find, however, that preserving the status quo pending a more complete review is the most fitting approach at the current juncture.

V. CONCLUSION

Today, the Court puts a pause on S.B. 1100. It does not find it unconstitutional. It

[7] For example, in this case, Defendants' deadline to respond to Plaintiffs' PI Motion (and Plaintiffs' Complaint) is still weeks away. Limited discovery has taken place in the form of retained experts and reports, but again, the Court only has those from Plaintiffs.

does not find it constitutional. This is not a full adjudication of *any* argument on the merits. The Court is simply holding S.B. 1100 in abeyance and preserving the situation as it existed prior to the parties' disagreement, which is that S.B. 1100 *will not* be in effect when school starts on August 16, 2023. School districts may choose how to organize their bathrooms, changing facilities, and overnight accommodations—whether that is sex-separate or transgender-inclusive; whether it is consistent with what it did last year or not. But the State of Idaho will not be mandating that decision at this time.

VI. ORDER

1. Plaintiffs' Motion for Temporary Restraining Order (Dkt. 34) is GRANTED.
2. The provisions of S.B. 1100 are held in abeyance until the Court has an opportunity to rule on the merits of this action.
3. The TRO will last until the Court issues a decision on Plaintiffs' PI Motion unless ordered otherwise.

DATED: August 10, 2023

David C. Nye
Chief U.S. District Court Judge