

IN THE SENATE  
SENATE RESOLUTION NO. F22-R03  
BY SOCIAL ACTION COORDINATOR HETTINGA AND PRO TEMPORE SMITH  
SPONSORED BY SENATOR CROWLEY

A RESOLUTION STATING STUDENT’S DISSENT FOR THE LEGAL RAMIFICATIONS ON  
UNIVERSITY OF IDAHO EMPLOYEES FROM THE “NO PUBLIC FUNDS FOR ABORTION ACT”

1. WHEREAS, University of Idaho employees received a memo Friday, September 23rd detailing General Counsel recommendations for UI employees when discussing abortion and providing contraceptives in and out of the classroom. <sup>1</sup>
2. WHEREAS, the guidance from General Counsel is based on the following sections of Idaho State Code Title 18: <sup>1</sup> §18-603 <sup>2</sup> relating to the provision and discussion of contraceptives; §18-5702 <sup>3</sup> relating to the punishment for misuse of public funds; and Title 18 Chapter 87 <sup>4</sup>, the No Public Funds for Abortion Act.
3. WHEREAS, General Counsel’s role at the University of Idaho is to protect and advise on legal matters pertaining to the business transactions of the university. Their opinions come from legal research and prior court cases and their main objective is to protect the university from legal repercussions. <sup>8</sup>
4. WHEREAS, the purpose of General Counsel’s memo is to protect employees of the University of Idaho from potential lawsuits or legal ramifications primarily related to the No Public Funds for Abortion Act. <sup>1</sup> Guidance is aimed at reducing legally risky behaviors, some of which are outlined in following clauses.
5. WHEREAS, university employees are prohibited from promoting abortion, counseling in favor of abortion, referring for abortion, dispensing emergency contraception, and advertising or promoting services for abortion or the prevention of conception. <sup>1 2 4</sup> Barring staff and faculty members’ ability to counsel students on a medical procedure may be harmful to students considering all options or just seeking information.
6. WHEREAS, General Counsel cites Idaho State Code §18-603 in its recommendation for the university to stop any provision of standard birth control outside of a clinical setting. <sup>1 2</sup> Condoms may be provided to prevent the spread of STIs, but they may not be promoted as a method of birth control. <sup>1</sup>
7. WHEREAS, a 2020 briefing paper by the Institute for Women’s Policy Research states that unintended pregnancies have extremely detrimental impacts on students’ educational success. <sup>5</sup> More than half of pregnancies in 18 to 24 year olds are unintended. <sup>5</sup> These pregnancies can be prevented by access to and education on contraceptive options, <sup>5</sup> which is not an option under the recent Counsel guidance. <sup>1</sup>
8. WHEREAS, General Counsel’s memo calls for a careful approach to discussing abortion in the classroom. Classroom discussions on abortion are limited only when abortion is a topic “relevant to the class subject” and is contingent on instructor neutrality. <sup>1</sup>
9. WHEREAS, there are a multitude of courses at the University of Idaho which are not directly related to abortion but discuss current events, state and local law, biological processes, medical procedures, literature, philosophy, religion, and more. <sup>6</sup> Abortion may fit into any of these

categories without being a main class focus, meaning academic freedom may be encroached upon by limiting class discussion topics.

10. WHEREAS, the University of Idaho encourages academic freedom among all students and staff. Political discussions among contentious issues are vital for the understanding and growth of students and the Idaho Legislature should not cast a shade of doubt on University of Idaho employees when having these conversations.
11. WHEREAS, University employees who are found guilty of violating the laws in Title 18, Chapter 87 are at risk of misdemeanor or felony charges, fines, jail time, termination of employment, and disqualification for any other state employment position which handles public funds.<sup>34</sup>
12. WHEREAS, at the urging of the Legislature, the State Board of Education voted to make student government-related fees optional for students so they could choose where their tuition and fees are directed.<sup>10</sup> In State Code §18-8706, state law specifically prohibits the use of tuition and fees paid by students for the provision of abortion services or education.<sup>4</sup> This is hypocritical state policy and a clear overreach of the state government attempting to limit the use of private funds.
13. WHEREAS, the No Public Funds for Abortion Act is not clear in its impacts on student employees of the University. Student employees may feel pressure to avoid abortion-related subjects beyond their work duties for fear of prosecution. Additionally, members of student organizations may avoid abortion-related subjects for fear of their faculty advisors being incriminated. The guidance on this act has negative impacts on students' freedom of expression.
14. WHEREAS, the First Amendment clearly protects Freedom of Speech. Furthermore, noncommercial speech, otherwise known as pure or political speech, is given the highest degree of protection under strict scrutiny analysis.<sup>9</sup>
15. WHEREAS, freedom of speech and the ability to have open and honest communication about political topics is an important aspect of a college education. Limiting a professor's ability to bring up issues like abortion impedes academic freedom and results in a subpar educational experience than students otherwise would have gotten.
16. WHEREAS, the Foundation for Individual Rights and Expression (FIRE) issued a statement criticizing General Counsel's memo, stating the guidance encroaches on academic freedom and freedom of speech, both of which are central to the student experience at public universities.<sup>11</sup>
17. WHEREAS, the White House's Press Secretary issued a statement saying, "To be clear, nothing under Idaho law justifies the university's decision to deny students access to contraception. But the situation in Idaho speaks to the unacceptable consequences of extreme abortion bans."<sup>7</sup>
18. WHEREAS, regardless of individual opinion on abortion services and contraception, the University of Idaho should stand up for freedom of speech on its campus for students and employees - in the classroom, in resource centers, in offices, and beyond.
19. THEREFORE, BE IT RESOLVED, the Senate body of Associated Students of University of Idaho calls on University of Idaho administration to stand up for its employees and students by:
  - a. Revising Guidance on Abortion Laws to protect freedom of speech on campus relating to abortion and contraception; and
  - b. Advocating for changes to Title 18, Chapter 87 of Idaho State Code in the 2023 Legislative session.

20. BE IT FURTHER RESOLVED, the Senate body of Associated Students of University of Idaho calls upon the Idaho Legislature to repeal sections of the No Public Funds for Abortion Act related to speech, counseling, referrals, and use of privately paid tuition and fees.

COPIES OF THIS RESOLUTION SHALL BE SENT TO:

UI President Scott Green  
UI Provost and Executive Vice President Torrey Lawrence  
UI Dean of Students Blaine Eckles  
UI Director of Women's Center Lysa Salsbury  
UI Governmental Relations Liaison Caroline Nilsson Troy  
UI Office of the General Counsel  
UI Faculty Senate  
UI Staff Council  
UI Graduate and Professional Student Association  
UI Student Bar Association  
Senator David Nelson  
Representative Brandon Mitchell  
Governor Brad Little  
Idaho State Board of Education  
Idaho Democratic Party  
Republican Party of Idaho  
Argonaut  
Idaho Statesman  
Capitol Sun  
Moscow-Pullman Daily News  
Idaho Education News  
Planned Parenthood Generation Action at the University of Idaho  
Movimiento Activista Social at the University of Idaho  
College Republicans at the University of Idaho  
Young Democrats at the University of Idaho  
ACLU of Idaho  
Idaho Student Association  
Foundation for Individual Rights and Expression

SOURCES REFERENCED

1. Memo from UI General Counsel:  
<https://drive.google.com/file/d/1Tz5t4g1SCiWXa8S0APNdoKPTPMOKzunU/view?usp=sharing>
2. State Code §18-603: <https://legislature.idaho.gov/statutesrules/idstat/title18/t18ch6/sect18-603/#:~:text=18%2D603.,or%20facilitating%20miscarriage%20or%20abortion.>
3. State Code §18-5702:  
<https://legislature.idaho.gov/statutesrules/idstat/Title18/T18CH57/SECT18-5702/>
4. State Code Title 18 Chapter 87:  
<https://legislature.idaho.gov/statutesrules/idstat/title18/t18ch87/#:~:text=CHAPTER%2087%20NO%20PUBLIC%20FUNDS%20FOR%20ABORTION%20ACT&text=GOVERNMENT%20CONTRACTS%20WITH%20ABORTION%20PROVIDERS%20OR%20THEIR%20AFFILIATES%20PROHIBITED.&text=CONTRACTS%20FOR%20ABORTION%20PROCEDURES%20PROHIBITED.&text=USE%20OF%20PUBLIC%20FUNDS%20FOR%20ABORTION%20PROHIBITED>
5. “Improving Success in Higher Education through Increased Access to Reproductive Health Services,” 2020: <https://iwpr.org/wp-content/uploads/2020/07/CERH-Higher-Ed-brief.pdf>

6. University of Idaho Academic Offerings/Course Catalog: <https://catalog.uidaho.edu/academic-offerings/>
7. White House statement: [https://www.idahostatejournal.com/freeaccess/white-house-calls-idaho-abortion-laws-extreme-and-backwards-in-response-to-university-memo/article\\_594b5dfe-3e9a-11ed-a7cd-578779567c36.html](https://www.idahostatejournal.com/freeaccess/white-house-calls-idaho-abortion-laws-extreme-and-backwards-in-response-to-university-memo/article_594b5dfe-3e9a-11ed-a7cd-578779567c36.html)
8. Office of the General Counsel: <https://www.uidaho.edu/general-counsel>
9. Freedom of Speech protections: <https://learning.mheducation.com/static/awd/index.html? t=1664339623706#/>
10. State Board of Education Optional Student Fees: <https://www.ktvb.com/article/news/education/isbe-optional-student-fees-plan/277-cb7cf930-22b7-45fe-a92d-3f863f75f626>
11. FIRE demands University of Idaho retract policy limiting faculty speech on abortion: <https://www.thefire.org/fire-demands-university-of-idaho-retract-policy-limiting-faculty-speech-on-abortion/>