**Minority Report on House Bill 822**

We, the undersigned members of the Idaho House Judiciary, Rules and Administration Committee, respectfully dissent from the majority's decision to send House Bill 822 (H822) to the floor with a recommendation that it should pass. Pursuant to Rule 27 of the Idaho House of Representatives, we submit this Minority Report for entry into the House Journal.

We respectfully request that the legislative record reflect the following:

- H822's additional penalty of up to $100,000 is disproportionate to the nature of the offense and likely unconstitutional under the Excessive Fines Clause;
- The definition of "social transition" is overly broad and vague, creating unworkable standards for covered entities and chilling the lawful expression of Idaho's young people;
- The "aid or abet" provision likely restricts protected speech and imposes undefined liability on medical and mental health professionals;
- H822 contains no safety exception for children at knowable risk of abuse, homelessness, or parental violence;
- The bill creates compelled speech obligations that conflict with professional ethical and legal duties; and
- The House Judiciary and Rules Committee failed to ensure a proportionate number of the Idahoans who signed up to testify in opposition to H822 were heard.

**Excessive Fine Acts as a Disproportionate Penalty**

**H822's $100,000 civil penalty is not remedial in purpose and is grossly disproportionate to the offense it targets, exposing the state to a successful constitutional challenge.** This legislation opens the state of Idaho up to an excessive fine challenge under Idaho Const. art. I, § 6 (identical to the 8th Amendment of the Constitution of the United States). Section 12 of H822 authorizes the Attorney General to seek a penalty against a covered entity of up to $100,000, in addition to permitting a private right of action to alleged aggrieved parties for compensatory damages.

**The penalty cannot be justified as remedial when compared to the full landscape of Idaho law governing similar conduct involving children and schools.** *See e.g., Timbs v. Indiana*, 586 U.S. 148 (2019) (excessive fines clause applies to the states); *see also Nez Perce Cnty. Prosecuting Attorney v. Reese*, 142 Idaho 893, 136 P.3d 364 (Ct. App. 2006) ("among the most important factors when determining the gravity of the offense are other penalties authorized by the legislature").

**When measured against comparable Idaho statutes, the $100,000 penalty stands alone as singular and excessive.** Idaho's bathroom-access statute authorizes $5,000 per incident against a school (I.C. § 33-6601); the parental-notice and harmful-materials statutes authorize only $250 in statutory damages; false reporting of child abuse — conduct involving malice — carries $2,500 in statutory damages, or actual damages with possible trebling (I.C. § 16-1607);

parents breaching juvenile probation contracts face at most $1,000 (I.C. § 20-522); and criminal statutes involving alleged harm to children, such as enticement or DUI with a minor, authorize fines in the $1,000–$5,000 range (I.C. § 18-8004A). A court is therefore likely to find that a six-figure civil fine for a failure to report information is grossly disproportionate to the offense when compared to these lesser statutory penalties for other, often more serious, conduct.

**Overbroad and Vague Definition of "Social Transition" Creates Unworkable Standards and Chills the Expression of Idaho's Young People**

**H822 should have been rejected out of hand for the unreasonable legal exposure it poses to Idaho's schools, teachers, day care providers, and health care providers.**

H822 creates an unworkable standard for "covered entities," which are defined as "primary or secondary educational institutions, a child care provider, or a medical, behavioral, or mental health care provider." This is because the definition of "social transition" is overbroad, vague, and unworkable, and for the same reason, H822 will chill the expression of Idaho's young people — impermissibly interfering with the critical developmental stages in which children express themselves and thereby develop identity and confidence.

**The definition of "social transition" sweeps in ordinary, protected conduct that has no connection to clinical gender transition.**

H822 defines "social transition" as "the process by which an individual goes from identifying with and living as a gender that corresponds to the individual's sex to identifying with and living as a gender different from the individual's sex and may involve social, legal, or physical changes, including adopting a name, pronouns, appearance, or dress that does not correspond to the individual's sex." On its face, this definition would apply to a girl who chooses to wear a baggy hooded sweatshirt typically worn by boys, or a boy who grows his hair long and wears it in a ponytail.

**The overbroad definition will also lead to disparate and arbitrary application, because whether a child has "adopted an appearance or dress" not corresponding to their sex is entirely in the eye of the beholder.**

What one parent or guardian may perceive as an appearance inconsistent with their child's sex may not be perceived the same way by a teacher or health care provider subject to the law's reporting requirements. This subjectivity makes consistent enforcement impossible and exposes covered entities to unpredictable liability.

**The definition is also impermissibly vague because it fails to distinguish between temporary or voluntary expressions and more lasting changes intended to address gender dysphoria.**

Under the proposed law, it is unclear whether a girl who adopts what may be perceived as a traditionally masculine style of dress for a week is engaged in a “social transition,” as compared to a girl who changes her appearance permanently with the specific intent to therapeutically address gender dysphoria. The bill contains no requirement of persistence, no clinical threshold, and no intent requirement.

**The bill’s undefined terms — including “facilitate,” “contribute,” “appearance,” and “mannerisms” — leave covered entities with no workable standard for compliance.**

Because “facilitate or contribute” is undefined, a counselor who listens without discouraging, a teacher who uses a student’s nickname, or a coach who does not immediately report a student’s change in clothing could each arguably be in violation. Teachers are therefore forced to choose between over-reporting nearly everything to avoid liability, or risking $100,000 in penalties — an impossible standard that is not workable policy.

Due to these overbreadth and vagueness problems, H822 subjects Idaho’s schools, teachers, administrators, doctors, and mental health professionals to unreasonable legal exposure while diverting attention and resources from the core missions of education and health care.

**Perhaps most critically, H822 chills the free expression of Idaho’s young people.**

H822 defines parents who believe their child was “subjected to social transition procedures” as aggrieved persons entitled to private causes of action. To subject someone to something implies coercion or force. However, due to the vague definition of “social transition,” it is unclear whether a female student who is given a nickname by her friends and coaches that could be construed as a “boy name” is being coerced or simply celebrated. H822 would effectively punish Idaho's children for expression that carries no indicia of unjust or involuntary compulsion and causes no demonstrable harm to themselves or anyone else**.**

**The “Aid or Abet” Provision Likely Restricts Protected Speech and Creates Unconstitutionally Vague Liability**

**Section 32-1016(8)’s prohibition on “aiding or abetting” a child’s efforts to obtain sex transition procedures likely restricts constitutionally protected speech and imposes undefined liability on licensed professionals.**

The provision states: “A covered entity shall not aid or abet a child’s efforts to obtain sex transition procedures.” Courts have repeatedly held that the First Amendment protects medical professionals when they provide information or referrals to patients, and this provision could prohibit doctors, therapists, and school counselors from providing even basic information about medical care to a minor.

**The phrase “aid or abet” is a criminal term of art that is undefined in this civil statute, creating serious vagueness concerns.**

Idaho Code § 18-204 defines aiding and abetting in the criminal context as conduct by persons "concerned in the commission of a crime." Importing that language into a civil statute without definition fails to give covered entities fair notice of what conduct is prohibited. The phrase could encompass counseling, answering questions, providing educational materials, or making a referral — conduct that is both lawful and professionally required.

**The provision also risks unconstitutional viewpoint discrimination by permitting professionals to discourage gender-affirming care while exposing them to liability for discussing it as a medical option.**

Courts treat one-sided restrictions on professional speech as viewpoint discrimination, which is strongly disfavored under the First Amendment. A doctor or counselor could freely advise against gender-affirming care but face civil liability for presenting it as a legitimate medical option — a distinction the Constitution does not permit the government to draw.

**H822 Contains No Safety Exception, Placing Children at Risk**

**One of H822's most serious flaws is its complete absence of any safety exception, forcing mandatory disclosure even when a covered entity has credible reason to believe that disclosure will endanger the child.**

The bill contains no carve-out for situations involving known parental hostility, prior violence, religious coercion, risk of homelessness, or active suicide risk. Mandated reporters — including social workers, therapists, and school counselors — are trained to assess precisely these complex risk factors, and the bill strips them of that professional judgment entirely.

By eliminating clinical discretion in safety assessments, H822 directly undermines Idaho's suicide prevention infrastructure.

Students who fear parental reaction will avoid counselors, avoid trusted teachers, and avoid mental health support altogether. The result is not greater safety — it is more fear, more isolation, and less access to care for Idaho's most vulnerable young people.

**H822 Creates Compelled Speech Obligations That Conflict with Professional Legal and Ethical Duties**

**H822's mandatory disclosure requirements constitute compelled speech that conflicts with the legal confidentiality obligations and professional ethical standards governing Idaho's licensed health and mental health care providers.**

HIPAA, state medical privacy laws, and the ethical codes of the American Psychological Association, American Medical Association, National Association of Social Workers, and American Counseling Association all impose obligations of confidentiality that this bill directly

overrides. Providers forced to choose between their legal and ethical duties on one hand and state-mandated disclosure on the other face an impossible conflict — one the bill does nothing to resolve.

**The bill's mandatory disclosure structure forces licensed professionals to convey the government's preferred message regardless of their clinical judgment, which is the hallmark of unconstitutional compelled speech.**

When a school counselor is required to disclose a student's confidential communication to parents — even when the counselor believes disclosure will cause harm — the state is dictating the content of professional communication and penalizing refusal with massive statutory damages. This coercive structure strengthens a compelled speech challenge under the First Amendment.

**Committee Failed to Hear Proportionate Testimony in Opposition to H822**

**A meaningful legislative committee public hearing is an indispensable element of representative democracy in Idaho, and the committee's handling of H822's first public hearing fell far short of that standard.**

Without a fair opportunity for the public to be heard, the legislature cannot fully understand the real-world impacts of the policies it considers, cannot claim that proposed legislation meets the public's approval, and cannot determine whether it has overlooked important considerations.

**The first public hearing on H822 elicited high public interest, yet the committee heard primarily from ideological proponents of the bill rather than from the Idahoans who had signed up to testify.**

Dozens of Idahoans registered to testify in opposition, including professionals in medicine, social work, mental health, and public education, as well as members of the communities most directly impacted by the proposed legislation. Their desired participation reflects a significant level of concern among Idahoans with relevant expertise and lived experience. This testimony was not heard.

**The scheduling of H822 alongside two other public hearings on a day when the House floor was required to convene a mere 90 minutes after the committee was called to order was foreseeable and preventable.**

H822 was known, or reasonably should have been expected, to draw significant public attendance and interest. Despite this, the bill was afforded only 14 minutes of public testimony — a severely limited timeframe that prevented the committee from hearing from the many Idahoans who had taken the time to participate in the legislative process and denied them a meaningful opportunity to share their concerns.

**Summary of Recommendations**

We respectfully request that the legislative record reflect the following:

1. **H822's penalty of up to $100,000 is disproportionate to the nature of the offense** and is likely unconstitutional under the Excessive Fines Clause of Idaho Const. art. I, § 6 and the Eighth Amendment, particularly when compared to Idaho's own statutory penalties for more serious conduct involving children and schools;

2. **The definition of "social transition" is overly broad and vague**, creating unworkable compliance standards for covered entities, exposing teachers, counselors, and health care providers to unpredictable liability, and chilling the lawful expression of Idaho's young people;

3. **The undefined terms "facilitate," "contribute," "appearance," and "mannerisms"** leave covered entities without fair notice of what conduct is prohibited, inviting arbitrary enforcement and costly litigation;

4. **The "aid or abet" provision likely restricts constitutionally protected speech**, imposes undefined liability on licensed professionals, and risks unconstitutional viewpoint discrimination by permitting professionals to discourage gender-affirming care while penalizing any discussion of it as a medical option;

5. **H822 contains no safety exception** for children at risk of abuse, parental violence, homelessness, or suicide, stripping licensed professionals of the clinical judgment they are trained and ethically required to exercise;

6. **H822's mandatory disclosure requirements constitute compelled speech** that conflicts with HIPAA, state medical privacy law, and the professional ethical obligations of Idaho's licensed health and mental health care providers; and

7. **The House Judiciary and Rules Committee failed to ensure a proportionate number of Idahoans who signed up to testify in opposition to H822 were heard**, depriving the committee of critical expert and community testimony and falling short of the standards of meaningful public participation that representative democracy requires.

**Conclusion**

H822 is constitutionally vulnerable, operationally unworkable, and harmful to the very children and professionals it purports to protect. We respectfully dissent from the committee majority's decision to advance H822. With deep concern for the legal and practical implications of this legislation, we submit this Rule 27 Minority Report.

This report is hereby submitted on March 10, 2026 by the Minority Members of the House Judiciary and Rules Committee:

Representative Ilana Rubel, House Minority Leader, District 18
Representative John Gannon, District 17
Representative Chris Mathias, District 19