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Shepard's® BriefCheck™ Summary Report

Cite # / Page	Citations	*Shepard's*®	QuoteCheck™	Full Text
1/2	169 Idaho 406, 417 Reclaim Idaho v. Denney	Caution	See Report	Caution
2/2	158 Idaho 799, 803 La Bella Vita, Ltd. Liab. Co. v. Shuler	Caution	See Report	Caution
3/3	169 Idaho 406, 417 Reclaim Idaho v. Denney	See #1	OK	See #1
4/3	547 P.3d 1190 Hastings v. Idaho Dep't of Water Res.	Done	No quotes	Done

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- Light Blue - No Analysis Phrase

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Appellate History: Requested

Citing Decisions: Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By:Date:Jan 1 1658 to Oct 24 2024

***Shepard's*®:** Reclaim Idaho v. Denney (In re Writ of Prohibition) 169 Idaho 406,497 P.3d 160,2021 Ida. LEXIS 143,2021 WL 3720965: (Idaho August 23, 2021)

No subsequent appellate history

Appellate History (1)

1. **Citation you *Shepardized*™**

Reclaim Idaho v. Denney (In re Writ of Prohibition), 169 Idaho 406, 497 P.3d 160, 2021 Ida. LEXIS 143, 2021 WL 3720965

Court: Idaho | **Date:** August 23, 2021

Citing Decisions (19)

Idaho Supreme Court

1. [Wurdemann v. State](), 555 P.3d 183, 2024 Ida. LEXIS 98, 2024 WL 4048331

LB **Cited by:** 555 P.3d 183 p.187

Discussion: | **Court:** Idaho | **Date:** August 22, 2024 | **Headnotes:**: HN22

2. [Wandruszka v. City of Moscow](), 554 P.3d 603, 2024 Ida. LEXIS 95, 2024 WL 3863546

G **Positive:** 554 P.3d 603 p.610

Discussion: | **Court:** Idaho | **Date:** August 19, 2024 | **Headnotes:**: HN6, HN7, HN8, HN12, HN16

3. [Labrador v. Idahoans for Open Primaries](), 2024 Ida. LEXIS 90, 2024 WL 3811265

Y **Distinguished by:**

Discussion: | **Court:** Idaho | **Date:** August 14, 2024 | **Headnotes:**: HN4, HN10, HN13, HN14, HN15, HN24, HN26, HN39

4. [Labrador v. Idahoans for Open Primaries](), 554 P.3d 85, 2024 Ida. LEXIS 87, 2024 WL 3770357

Y **Caution:** 554 P.3d 85 p.95

LB **Cited by:** 554 P.3d 85 p.92

Discussion: | **Court:** Idaho | **Date:** August 13, 2024 | **Headnotes:**: HN4, HN10, HN13, HN14, HN15, HN24, HN26, HN39

5. [Hawkins Cos., LLC v. State](), 554 P.3d 74, 2024 Ida. LEXIS 88, 2024 WL 3770355

G **Positive:** 554 P.3d 74 p.83

LB **Cited by:** 554 P.3d 74 p.80

Discussion: | **Court:** Idaho | **Date:** August 13, 2024 | **Headnotes:**: HN4, HN6, HN7, HN10, HN11, HN12, HN15

6. [Babe Vote v. McGrane](), 546 P.3d 694, 2024 Ida. LEXIS 39, 2024 WL 1560117

LB **Cited by:** 546 P.3d 694 p.703

Discussion: | **Court:** Idaho | **Date:** April 11, 2024

7. [Thompson v. Burley Inn, Inc.](), 546 P.3d 649, 2024 Ida. LEXIS 35, 2024 WL 1394139

Positive: 546 P.3d 649 p.656
Discussion: | **Court:** Idaho | **Date:** April 02, 2024 | **Headnotes:**: HN6, HN7, HN12

8. Idaho State Ath. Comm'n v. Off. of the Admin. Rules Coordinator, 542 P.3d 718, 2024 Ida. LEXIS 12

Cited by: 542 P.3d 718 p.725
Discussion: | **Court:** Idaho | **Date:** January 29, 2024 | **Headnotes:**: HN22

9. A.C. & C.E. Invs., Inc. v. Eagle Creek Irrigation Co., 540 P.3d 349, 2023 Ida. LEXIS 163

Cited by: 540 P.3d 349 p.359
Discussion: | **Court:** Idaho | **Date:** December 19, 2023

10. Idaho State Appellate Pub. DEF. v. Fourth Jud. Dist. Ct., 540 P.3d 311, 2023 Ida. LEXIS 160, 2023 WL 8705073

Cited by: 540 P.3d 311 p.320
Discussion: | **Court:** Idaho | **Date:** December 18, 2023

11. Idahoans For Open Primaries v. Labrador (In re Verified Petition for Writs of Certiorari & Mandamus), 172 Idaho 466, 533 P.3d 1262, 2023 Ida. LEXIS 96

Cited by: 172 Idaho 466 p.475; 533 P.3d 1262 p.1271
Discussion: | **Court:** Idaho | **Date:** August 16, 2023 | **Headnotes:**: HN13

12. Idahoans for Open Primaries v. Labrador (In re Verified Petition for Writs of Certiorari & Mandamus), 2023 Ida. LEXIS 89, 2023 WL 5122727

Cited by:
Discussion: | **Court:** Idaho | **Date:** August 10, 2023 | **Headnotes:**: HN13

13. Herndon v. City of Sandpoint, 172 Idaho 228, 531 P.3d 1125, 2023 Ida. LEXIS 71, 2023 WL 4111076

Cited by: 172 Idaho 228 p.241; 531 P.3d 1125 p.1138
Discussion: | **Court:** Idaho | **Date:** June 22, 2023 | **Headnotes:**: HN22

14. Associated Press v. Second Jud. Dist. (In re Petition for Writ of Mandamus or Writ of Prohibition), 172 Idaho 113, 529 P.3d 1259, 2023 Ida. LEXIS 47, 2023 WL 3050829

Cited by: 172 Idaho 113 p.118; 529 P.3d 1259 p.1264
Discussion: | **Court:** Idaho | **Date:** April 24, 2023 | **Headnotes:**: HN4, HN5, HN6, HN7,

HN10, HN12, HN15

15. Planned Parenthood Great Northwest v. State, 171 Idaho 374, 522 P.3d 1132, 2023 Ida. LEXIS 1, 2023 WL 110626

B **Neutral:** 171 Idaho 374 p.463522 P.3d 1132 p.1221

B **Neutral:** 171 Idaho 374 p.463522 P.3d 1132 p.1221

LB **Cited by:** 171 Idaho 374 p.398; 522 P.3d 1132 p.1156

Discussion: | **Court:** Idaho | **Date:** January 05, 2023

16. State v. Pizzuto, 171 Idaho 100, 518 P.3d 796, 2022 Ida. LEXIS 101, 2022 WL 3591723

LB **Cited by:** 171 Idaho 100 p.105; 518 P.3d 796 p.801

Discussion: | **Court:** Idaho | **Date:** August 23, 2022

17. Gabaldon v. West ADA Joint School Dist. #2, 169 Idaho 577, 498 P.3d 1206, 2021 Ida. LEXIS 177

LB **Cited by:** 169 Idaho 577 p.582; 498 P.3d 1206 p.1211

Court: Idaho | **Date:** November 22, 2021 | **Headnotes:**: HN6

Idaho Court of Appeals

18. State v. Wrede, 539 P.3d 1015, 2023 Ida. App. LEXIS 29

LB **Cited by:** 539 P.3d 1015 p.1019

Discussion: | **Court:** Idaho Ct. App. | **Date:** November 22, 2023 | **Headnotes:**: HN22

Idaho District Court

19. State v. Kaylor, 2023 Ida. Dist. LEXIS 43

LB **Cited by:**

Discussion: | **Court:** Idaho Dist. Ct. | **Date:** October 06, 2023 | **Headnotes:**: HN7, HN12

Other Citing Sources: (59)

Annotated Statutes

1. **Idaho Const. Art. 2, @ 1**

   Content: Statutes

2. **Idaho Const. Art. 3, @ 1**

   Content: Statutes

3. **Idaho Code sec. 34-1801A**

   Content: Statutes

4. **Idaho Code sec. 34-1805**

   Content: Statutes

5. **Idaho Code sec. 34-1813**

   Content: Statutes

Law Reviews and Periodicals

6. **ARTICLE: STATE CONSTITUTIONAL RIGHTS AND DEMOCRATIC PROPORTIONALITY**, 123 Colum. L. Rev. 1855

   Content: Law Reviews | **Date:** November 01, 2023

7. **ARTICLE: STATE INSTITUTIONS AND DEMOCRATIC OPPORTUNITY**, 72 Duke L.J. 275

   Content: Law Reviews | **Date:** November 01, 2022

8. **THE LEGALIZATION OF MARIJUANA IN URBAN COMMUNITIES: EESSAY: TAKING THE INITIATIVE: MARIJUANA LAW REFORM AND DIRECT DEMOCRACY**, 49 Fordham Urb. L.J. 553

Content: Law Reviews | **Date:** March 01, 2022

9. **RECENT CASE: STATE COURTS -- STATE STANDING DOCTRINE -- IDAHO SUPREME COURT RETAINS FEDERAL FRAMEWORK FOR ASSESSING STANDING TO SUE IN STATE COURT. -- Reclaim Idaho v. Denney, 497 P.3d 160 (Idaho 2021).**, 135 Harv. L. Rev. 1945

Content: Law Reviews | **Date:** May 01, 2022

10. **ARTICLE: Idaho's Law of Constitutional Interpretation: Lessons from Planned Parenthood Great Northwest v. State**, 59 Idaho L. Rev. 411

Content: Law Reviews | **Date:** 2023

11. **ARTICLE: Idaho's Law of Constitutional Interpretation: Lessons from Planned Parenthood Great Northwest v. State**, 59 Idaho L. Rev. 411

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12. **ARTICLE: CONFRONTING STRUCTURAL INEQUALITY IN STATE LABOR LAW**, 83 Md. L. Rev. 1192

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13. **NOTE: DEFAMATORY DISCLOSURES TO THE MEDIA IN KENTUCKY: TIME TO TALK ABOUT THE JUDICIAL PROCEEDINGS PRIVILEGE**, 51 N. Ky. L. Rev. 55

Content: Law Reviews | **Date:** 2024

14. **DIRECT DEMOCRACY: FROM THEORY TO PRACTICE SYMPOSIUM: The Separation of Legislative Powers in the Initiative Process**, 101 Neb. L. Rev. 125

Content: Law Reviews | **Date:** 2022

15. **DIRECT DEMOCRACY: FROM THEORY TO PRACTICE SYMPOSIUM: Changing the Rules for Direct Democracy in the Twenty-First Century in Response to Animal Welfare, Marijuana, Minimum Wage, Medicaid, Elections, and Gambling Initiatives**, 101 Neb. L. Rev. 40

Content: Law Reviews | **Date:** 2022

16. **DIRECT DEMOCRACY: FROM THEORY TO PRACTICE SYMPOSIUM: Introduction Direct Democracy: From Theory to Practice**, 101 Neb. L. Rev. 1

Content: Law Reviews | **Date:** 2022

17. **ARTICLE: Power and Politics in Original Jurisdiction**, 91 U. Chi. L. Rev. 83

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18. **ARTICLES: Administrative Capacity in Direct Democracy**, 57 U.C. Davis L. Rev. 1347

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19. **SPECIAL ISSUE: INTERPRETATION IN THE STATES: COUNTERING THE NEW ELECTION SUBVERSION: THE DEMOCRACY PRINCIPLE AND THE ROLE OF STATE COURTS**, 2022 Wis. L. Rev. 1337

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20. **ARTICLE: The Right to Amend State Constitutions**, 133 Yale L.J. F. 191

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21. **MARLAR v. GEARHART**, 2024 ID S. Ct. Briefs LEXIS 449

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22. **FLYNN v. SUN VALLEY BREWING CO.**, 2024 ID S. Ct. Briefs LEXIS 208

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23. **ARELLANO v. SUNRISE HOMES, INC.**, 2024 ID S. Ct. Briefs LEXIS 73

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24. **MCINNES v. MADISON COUNTY**, 2023 ID S. Ct. Briefs LEXIS 1250

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25. **FLYNN v. SUN VALLEY BREWING CO.**, 2023 ID S. Ct. Briefs LEXIS 1194

Content: Court Filings | **Date:** December 14, 2023

26. **IDAHO STATE ATH. COMM'N v. OFFICE OF THE ADMIN. RULES COORDINATOR**, 2023 ID S. Ct. Briefs LEXIS 1074

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27. **BABE VOTE & LEAGUE OF WOMEN VOTERS OF IDAHO v. MCGRANE**, 2023 ID S. Ct. Briefs LEXIS 1031

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28. **BABE VOTE & LEAGUE OF WOMEN VOTERS OF IDAHO v. MCGRANE**, 2023 ID S. Ct. Briefs LEXIS 1083

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29. **BABE VOTE & LEAGUE OF WOMEN VOTERS OF IDAHO v. MCGRANE**, 2023 ID S. Ct. Briefs LEXIS 1032

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30. **TODD R. BANKS v. PRIMARY THERAPY SOURCE**, 2023 ID S. Ct. Briefs LEXIS 571

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31. **IDAHOANS v. LABRADOR**, 2023 ID S. Ct. Briefs LEXIS 514

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32. **IDAHO v. BARR**, 2022 ID S. Ct. Briefs LEXIS 980

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33. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 821

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34. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 808

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35. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 801

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36. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 795

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37. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 830

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38. **PLANNED PARENTHOOD OF THE GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 812

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39. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 805

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40. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 743

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41. **PLANNED PARENTHOOD OF THE GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 735

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42. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 714

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43. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 820

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44. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 833

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45. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 792

Content: Court Filings | **Date:** July 20, 2022

46. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 838

Content: Court Filings | **Date:** June 27, 2022

47. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 814

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48. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 355

Content: Court Filings | **Date:** May 12, 2022

49. **PLANNED PARENTHOOD OF THE GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 791

Content: Court Filings | **Date:** April 28, 2022

50. **IDAHO v. PIZZUTO**, 2022 ID S. Ct. Briefs LEXIS 279

Content: Court Filings | **Date:** April 27, 2022

51. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 822

Content: Court Filings | **Date:** March 30, 2022

52. **PLANNED PARENTHOOD GREAT NORTHWEST v. IDAHO**, 2022 ID S. Ct. Briefs LEXIS 793

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53. **IDAHO v. PEREZ**, 2022 ID S. Ct. Briefs LEXIS 213

Content: Court Filings | **Date:** March 15, 2022

54. **IDAHO v. LANCASTER**, 2022 ID S. Ct. Briefs LEXIS 58

Content: Court Filings | **Date:** February 01, 2022

55. **JUSTICE v. NESSEL**, 2023 MI S. Ct. Briefs LEXIS 135

Content: Court Filings | **Date:** November 01, 2023

56. **JUSTICE v. NESSEL**, 2023 MI S. Ct. Briefs LEXIS 176

Content: Court Filings | **Date:** October 12, 2023

57. **JUSTICE v. NESSEL**, 2023 MI S. Ct. Briefs LEXIS 155

Content: Court Filings | **Date:** March 24, 2023

58. **JUSTICE v. NESSEL**, 2023 MI S. Ct. Briefs LEXIS 160

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59. **Poe**, 2024 U.S. Dist. Ct. Motions LEXIS 5903

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Table Of Authorities (84)

U.S. Supreme Court

1. Gray v. Sanders, 372 U.S. 368, 83 S. Ct. 801, 9 L. Ed. 2d 821, 1963 U.S. LEXIS 1944

   LB **Citing**

   First Ref:169 Idaho 406 at p.414
   Discussion: | **Court:** U.S. | **Date:** March 18, 1963

2. Susan B. Anthony List v. Driehaus, 573 U.S. 149, 134 S. Ct. 2334, 189 L. Ed. 2d 246, 2014 U.S. LEXIS 4169, 82 U.S.L.W. 4489, 24 Fla. L. Weekly Fed. S 851, 2014 WL 2675871

   G **Following**

   First Ref:169 Idaho 406 at p.419
   Court: U.S. | **Date:** June 16, 2014

3. Rucho v. Common Cause, 588 U.S. 684, 139 S. Ct. 2484, 204 L. Ed. 2d 931, 2019 U.S. LEXIS 4401, 27 Fla. L. Weekly Fed. S 1119, 2019 WL 2619470

   Y **Distinguishing**

   First Ref:169 Idaho 406 at p.425
   Discussion: | **Court:** U.S. | **Date:** June 27, 2019

4. Zivotofsky v. Clinton, 566 U.S. 189, 132 S. Ct. 1421, 182 L. Ed. 2d 423, 2012 U.S. LEXIS 2536, 80 U.S.L.W. 4260, 23 Fla. L. Weekly Fed. S 213, 75 A.L.R. Fed. 2d 637, 2012 WL 986813

   LB **Citing**

   First Ref:169 Idaho 406 at p.425
   Court: U.S. | **Date:** March 26, 2012

5. Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, 1962 U.S. LEXIS 1567

   LB **Citing**

   First Ref:169 Idaho 406 at p.425
   Discussion: | **Court:** U.S. | **Date:** March 26, 1962

6. Marbury v. Madison, 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60, 1803 U.S. LEXIS 352

LB **Citing**

First Ref:169 Idaho 406 at p.425
Discussion: | **Court:** U.S. | **Date:** February 24, 1803

7. [James v. Valtierra](), 402 U.S. 137, 91 S. Ct. 1331, 28 L. Ed. 2d 678, 1971 U.S. LEXIS 108

LB **Citing**

First Ref:169 Idaho 406 at p.433
Discussion: | **Court:** U.S. | **Date:** April 26, 1971

8. [West Virginia State Bd. of Educ. v. Barnette](), 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 1943 U.S. LEXIS 490, 147 A.L.R. 674

LB **Citing**

First Ref:169 Idaho 406 at p.433
Discussion: | **Court:** U.S. | **Date:** June 14, 1943

9. [Reynolds v. Sims](), 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506, 1964 U.S. LEXIS 1002

LB **Citing**

First Ref:169 Idaho 406 at p.437
Court: U.S. | **Date:** June 15, 1964

10. [Gunn v. Minton](), 568 U.S. 251, 133 S. Ct. 1059, 185 L. Ed. 2d 72, 2013 U.S. LEXIS 1612, 81 U.S.L.W. 4085, 24 Fla. L. Weekly Fed. S 39, 105 U.S.P.Q.2d (BNA) 1665, 85 A.L.R.6th 685

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.441
Discussion: | **Court:** U.S. | **Date:** February 20, 2013

11. [Lujan v. Defenders of Wildlife](), 504 U.S. 555, 112 S. Ct. 2130, 119 L. Ed. 2d 351, 1992 U.S. LEXIS 3543, 15 Immigr. Cas. Rep. A1-147, 60 U.S.L.W. 4495, 6 Fla. L. Weekly Fed. S 374, 92 Cal. Daily Op. Service 4985, 92 D.A.R. 7876, 92 D.A.R. 8967, 34 Env't Rep. Cas. (BNA) 1785, 22 Envtl. L. Rep. 20913

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.441
Court: U.S. | **Date:** June 12, 1992

12. ASARCO, Inc. v. Kadish, 490 U.S. 605, 109 S. Ct. 2037, 104 L. Ed. 2d 696, 1989 U.S. LEXIS 2652, 57 U.S.L.W. 4574

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.442
Discussion: | **Court:** U.S. | **Date:** May 30, 1989

13. Burdick v. Takushi, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245, 1992 U.S. LEXIS 3404, 60 U.S.L.W. 4459, 6 Fla. L. Weekly Fed. S 352, 92 Cal. Daily Op. Service 4783, 92 D.A.R. 7651

B **Dissenting opinion citing**

First Ref:169 Idaho 406 at p.444
Discussion: | **Court:** U.S. | **Date:** June 08, 1992

14. Anderson v. Celebrezze, 460 U.S. 780, 103 S. Ct. 1564, 75 L. Ed. 2d 547, 1983 U.S. LEXIS 145, 51 U.S.L.W. 4375

B **Dissenting opinion citing**

First Ref:169 Idaho 406 at p.445
Discussion: | **Court:** U.S. | **Date:** April 19, 1983

9th Circuit - Court of Appeals

15. Idaho Coalition United for Bears v. Cenarrusa, 342 F.3d 1073, 2003 U.S. App. LEXIS 18497, 2003 Cal. Daily Op. Service 8174, 2003 D.A.R. 10192

LB **Citing**

First Ref:169 Idaho 406 at p.414
Discussion: | **Court:** 9th Cir. Idaho | **Date:** September 08, 2003

D.C. Circuit - Court of Appeals

16. Carducci v. Regan, 714 F.2d 171, 230 U.S. App. D.C. 80, 1983 U.S. App. LEXIS 24958

LB **Citing**

First Ref:169 Idaho 406 at p.418
Discussion: | **Court:** D.C. Cir. Ct. of App. | **Date:** August 12, 1983

California Supreme Court

17. Serrano v. Priest, 20 Cal. 3d 25, 141 Cal. Rptr. 315, 569 P.2d 1303, 1977 Cal. LEXIS 168, 7 Envtl. L. Rep. 20795

LB **Citing**

First Ref:169 Idaho 406 at p.440

Discussion: | **Court:** Cal. | **Date:** October 04, 1977

18. Grosset v. Wenaas, 42 Cal. 4th 1100, 72 Cal. Rptr. 3d 129, 175 P.3d 1184, 2008 Cal. LEXIS 1414

Concurring opinion citing

First Ref:169 Idaho 406 at p.443

Discussion: | **Court:** Cal. | **Date:** February 14, 2008

Florida Supreme Court

19. Department of Revenue v. Kuhnlein, 646 So. 2d 717, 1994 Fla. LEXIS 1479, 19 Fla. L. Weekly S 467

Concurring opinion citing

First Ref:169 Idaho 406 at p.443

Discussion: | **Court:** Fla. | **Date:** September 29, 1994

Hawaii Supreme Court

20. Sierra Club v. DOT, 115 Haw. 299, 167 P.3d 292, 2007 Haw. LEXIS 254

Concurring opinion citing

First Ref:169 Idaho 406 at p.443

Discussion: | **Court:** Haw. | **Date:** August 31, 2007

Idaho Supreme Court

21. Phillips v. E. Idaho Health Servs., 166 Idaho 731, 463 P.3d 365, 2020 Ida. LEXIS 47

Citing

First Ref:169 Idaho 406 at p.417

Discussion: | **Court:** Idaho | **Date:** March 11, 2020

22. Ybarra v. Legis. of Idaho, 166 Idaho 902, 466 P.3d 421, 2020 Ida. LEXIS 116, 2020 WL 3410751

Citing

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** June 22, 2020

23. State v. Chambers, 166 Idaho 837, 465 P.3d 1076, 2020 Ida. LEXIS 107, 2020 WL 3026325

Citing

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** June 05, 2020

24. Zeyen v. Pocatello/Chubbuck Sch. Dist. No. 25, 165 Idaho 690, 451 P.3d 25, 2019 Ida. LEXIS 191, 2019 WL 5408479

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** October 23, 2019

25. Regan v. Denney, 165 Idaho 15, 437 P.3d 15, 2019 Ida. LEXIS 22, 2019 WL 1372182

LB **Citing**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** February 05, 2019

26. Coeur d'Alene Tribe v. Denney (In re Verified Petition for Writ of Mandamus), 161 Idaho 508, 387 P.3d 761, 2015 Ida. LEXIS 294

G **Following**
B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** November 20, 2015

27. State v. Philip Morris, Inc., 158 Idaho 874, 354 P.3d 187, 2015 Ida. LEXIS 198

G **Following**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** July 23, 2015

28. Davidson v. Wright, 143 Idaho 616, 151 P.3d 812, 2006 Ida. LEXIS 128

LB **Citing**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** September 27, 2006

29. Young v. City of Ketchum, 137 Idaho 102, 44 P.3d 1157, 2002 Ida. LEXIS 47

G **Following**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** March 26, 2002

30. Idaho Watersheds Project v. State Bd. of Land Comm'rs (In re Verified Petition for Writ of Prohibition), 133 Idaho 55, 133 Idaho 358, 982 P.2d 358, 1999 Ida. LEXIS 40

LB **Citing**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** April 02, 1999

31. Sweeney v. Otter, 119 Idaho 135, 804 P.2d 308, 1990 Ida. LEXIS 212

LB **Citing**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** December 24, 1990

32. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410, 1990 Ida. LEXIS 34

LB **Citing**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** March 13, 1990

33. Miles v. Idaho Power Co., 116 Idaho 635, 778 P.2d 757, 1989 Ida. LEXIS 135

G **Following**
B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** August 08, 1989

34. Bear Lake Educ. Ass'n v. Board of Trustees, 116 Idaho 443, 776 P.2d 452, 1989 Ida. LEXIS 107

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.418

Discussion: | **Court:** Idaho | **Date:** June 27, 1989

35. Koch v. Canyon County, 145 Idaho 158, 177 P.3d 372, 2008 Ida. LEXIS 12

LB **Citing**

First Ref:169 Idaho 406 at p.419

Discussion: | **Court:** Idaho | **Date:** January 25, 2008

36. Noh v. Cenarrusa (In re Action to Determine Constitutionality of Indian Gaming Initiative), 137 Idaho 798, 53 P.3d 1217, 2002 Ida. LEXIS 143

G **Following**

First Ref:169 Idaho 406 at p.419
Discussion: | **Court:** Idaho | **Date:** August 28, 2002

37. Selkirk-Priest Basin Ass'n v. State ex rel. Batt, 128 Idaho 831, 919 P.2d 1032, 1996 Ida. LEXIS 75

G **Following**

First Ref:169 Idaho 406 at p.419
Discussion: | **Court:** Idaho | **Date:** June 18, 1996

38. Greer v. Lewiston Golf & Country Club, 81 Idaho 393, 342 P.2d 719, 1959 Ida. LEXIS 231

LB **Citing**

First Ref:169 Idaho 406 at p.419
Discussion: | **Court:** Idaho | **Date:** July 15, 1959

39. Van Valkenburgh v. Citizens for Term Limits, 135 Idaho 121, 15 P.3d 1129, 2000 Ida. LEXIS 121

Y **Distinguishing**
G **Following**
B **Dissenting opinion citing**

First Ref:169 Idaho 406 at p.420
Discussion: | **Court:** Idaho | **Date:** December 06, 2000

40. Leavitt v. Craven, 154 Idaho 661, 302 P.3d 1, 2012 Ida. LEXIS 141, 2012 WL 2053762

LB **Citing**

First Ref:169 Idaho 406 at p.423
Discussion: | **Court:** Idaho | **Date:** June 08, 2012

41. State v. Idaho State Bd. of Land Comm'r (In re Verified Petition), 150 Idaho 547, 249 P.3d 346, 2010 Ida. LEXIS 230

LB **Citing**

First Ref:169 Idaho 406 at p.423
Discussion: | **Court:** Idaho | **Date:** December 23, 2010

42. Henry v. Ysursa (In re An Alternative Or Peremptory Writ of Prohibition), 148 Idaho 913, 231 P.3d 1010, 2008 Ida. LEXIS 175

LB **Citing**

First Ref:169 Idaho 406 at p.423
Discussion: | **Court:** Idaho | **Date:** September 24, 2008

43. Keenan v. Price, 68 Idaho 423, 195 P.2d 662, 1948 Ida. LEXIS 145

LB **Citing**

First Ref:169 Idaho 406 at p.423
Discussion: | **Court:** Idaho | **Date:** June 30, 1948

44. Troutner v. Kempthorne, 142 Idaho 389, 128 P.3d 926, 2006 Ida. LEXIS 2

LB **Citing**

First Ref:169 Idaho 406 at p.424
Discussion: | **Court:** Idaho | **Date:** January 06, 2006

45. Nye v. Katsilometes, 165 Idaho 455, 447 P.3d 903, 2019 Ida. LEXIS 128, 2019 WL 4009517

LB **Citing**

First Ref:169 Idaho 406 at p.425
Discussion: | **Court:** Idaho | **Date:** August 26, 2019

46. Idaho State AFL-CIO v. Leroy, 110 Idaho 691, 718 P.2d 1129, 1986 Ida. LEXIS 393, 121 L.R.R.M. (BNA) 2531

LB **Citing**

First Ref:169 Idaho 406 at p.425
Discussion: | **Court:** Idaho | **Date:** January 29, 1986

47. Gibbons v. Cenarrusa, 140 Idaho 316, 92 P.3d 1063, 2002 Ida. LEXIS 69

LB **Citing**

First Ref:169 Idaho 406 at p.426
Discussion: | **Court:** Idaho | **Date:** May 03, 2002

48. Dredge Mining Control-Yes! v. Cenarrusa, 92 Idaho 480, 445 P.2d 655, 1968 Ida. LEXIS 321

Y **Distinguishing**
B **Explaining**
B **Dissenting opinion citing**

First Ref:169 Idaho 406 at p.426
Discussion: | **Court:** Idaho | **Date:** October 04, 1968

49. Luker v. Curtis, 64 Idaho 703, 136 P.2d 978, 1943 Ida. LEXIS 41

R **Overruling in part**
G **Following**

First Ref:169 Idaho 406 at p.426
Discussion: | **Court:** Idaho | **Date:** April 28, 1943

50. Hayes v. Medioli (In re Name Change of Doe), 168 Idaho 511, 484 P.3d 195, 2021 Ida. LEXIS 57, 2021 WL 1201442

LB **Citing**

First Ref:169 Idaho 406 at p.427
Discussion: | **Court:** Idaho | **Date:** March 31, 2021

51. Rudeen v. Cenarrusa, 136 Idaho 560, 38 P.3d 598, 2001 Ida. LEXIS 147

LB **Citing**

First Ref:169 Idaho 406 at p.427
Discussion: | **Court:** Idaho | **Date:** December 13, 2001

52. Simpson v. Cenarrusa (In re Writ of Prohibition & Declaratory Judgment), 130 Idaho 609, 944 P.2d 1372, 1997 Ida. LEXIS 102

LB **Citing**

First Ref:169 Idaho 406 at p.427
Discussion: | **Court:** Idaho | **Date:** August 07, 1997

53. Idaho Sch. for Equal Educ. Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724, 1993 Ida. LEXIS 81

LB **Citing**

First Ref:169 Idaho 406 at p.427
Discussion: | **Court:** Idaho | **Date:** March 18, 1993

54. Marek v. Hecla, Ltd., 161 Idaho 211, 384 P.3d 975, 2016 Ida. LEXIS 361 

LB **Citing**

First Ref:169 Idaho 406 at p.428
Discussion: | **Court:** Idaho | **Date:** November 18, 2016

55. State v. Sanchez, 165 Idaho 563, 448 P.3d 991, 2019 Ida. LEXIS 100, 2019 WL 2462287 

LB **Citing**

First Ref:169 Idaho 406 at p.429
Discussion: | **Court:** Idaho | **Date:** June 13, 2019

56. Bradbury v. Idaho Judicial Council, 136 Idaho 63, 28 P.3d 1006, 2001 Ida. LEXIS 66 

LB **Citing**

First Ref:169 Idaho 406 at p.431
Discussion: | **Court:** Idaho | **Date:** July 10, 2001

57. Messerli v. Monarch Memory Gardens, 88 Idaho 88, 397 P.2d 34, 1964 Ida. LEXIS 284

Y **Distinguishing**

First Ref:169 Idaho 406 at p.431
Discussion: | **Court:** Idaho | **Date:** November 25, 1964

58. Johnston v. Boise City, 87 Idaho 44, 390 P.2d 291, 1964 Ida. LEXIS 215

Y **Distinguishing**

First Ref:169 Idaho 406 at p.431
Discussion: | **Court:** Idaho | **Date:** March 12, 1964

59. American Indep. Party v. Cenarrusa, 92 Idaho 356, 442 P.2d 766, 1968 Ida. LEXIS 303 

G **Following**

First Ref:169 Idaho 406 at p.437
Discussion: | **Court:** Idaho | **Date:** July 02, 1968

60. Westerberg v. Andrus, 114 Idaho 401, 757 P.2d 664, 1988 Ida. LEXIS 57

LB **Citing**

First Ref:169 Idaho 406 at p.438
Court: Idaho | **Date:** June 07, 1988

61. Smith v. Idaho Comm'n on Redistricting (In re Petition to Enjoin Implementation of the Redistricting Plan), 136 Idaho 542, 38 P.3d 121, 2001 Ida. LEXIS 140

G **Following**

First Ref:169 Idaho 406 at p.440
Discussion: | **Court:** Idaho | **Date:** November 29, 2001

62. County of Ada v. Red Steer Drive-Ins of Nev., Inc., 101 Idaho 94, 609 P.2d 161, 1980 Ida. LEXIS 434

G **Following**

First Ref:169 Idaho 406 at p.440
Discussion: | **Court:** Idaho | **Date:** April 03, 1980

63. McCormick v. Smith, 23 Idaho 487, 130 P. 999, 1913 Ida. LEXIS 83

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.441
Discussion: | **Court:** Idaho | **Date:** March 03, 1913

64. Olsen v. J.A. Freeman Co., 117 Idaho 706, 791 P.2d 1285, 1990 Ida. LEXIS 59, CCH Prod. Liab. Rep. P12485

B **Dissenting opinion citing**

First Ref:169 Idaho 406 at p.444
Discussion: | **Court:** Idaho | **Date:** May 07, 1990

65. Johnson v. Diefendorf, 56 Idaho 620, 57 P.2d 1068, 1936 Ida. LEXIS 74

B **Dissenting opinion citing**

First Ref:169 Idaho 406 at p.446

Discussion: | **Court:** Idaho | **Date:** May 01, 1936

Idaho Court of Appeals

66. Glengary-Gamlin Protective Ass'n v. Bird, 106 Idaho 84, 675 P.2d 344, 1983 Ida. App. LEXIS 286

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.441

Discussion: | **Court:** Idaho Ct. App. | **Date:** December 28, 1983

Indiana Supreme Court

67. Pence v. State, 652 N.E.2d 486, 1995 Ind. LEXIS 87

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.443

Discussion: | **Court:** Indiana Supreme Court | **Date:** June 20, 1995

Maine Supreme Judicial Court

68. Roop v. City of Belfast, 2007 ME 32, 915 A.2d 966, 2007 Me. LEXIS 31

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.443

Discussion: | **Court:** Me. | **Date:** February 22, 2007

Michigan Supreme Court

69. Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ., 487 Mich. 349, 792 N.W.2d 686, 2010 Mich. LEXIS 1657

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.443

Discussion: | **Court:** Mich. | **Date:** July 31, 2010

Mississippi Supreme Court

70. State v. Quitman County, 807 So. 2d 401, 2001 Miss. LEXIS 288

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.443

Discussion: | **Court:** Miss. | **Date:** October 31, 2001

Nevada Supreme Court

71. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 181 P.3d 670, 2008 Nev. LEXIS 22, 124 Nev. Adv. Rep. 21

Concurring opinion citing

First Ref:169 Idaho 406 at p.443
Discussion: | **Court:** Nev. | **Date:** April 17, 2008

72. Stockmeier v. Nev. Dep't of Corr. Psychological Review Panel, 122 Nev. 385, 135 P.3d 220, 2006 Nev. LEXIS 51, 122 Nev. Adv. Rep. 35

Concurring opinion citing

First Ref:169 Idaho 406 at p.443
Discussion: | **Court:** Nev. | **Date:** April 27, 2006

New Jersey Supreme Court

73. Crescent Park Tenants Asso. v. Realty Equities Corp., 58 N.J. 98, 275 A.2d 433, 1971 N.J. LEXIS 229

Concurring opinion citing

First Ref:169 Idaho 406 at p.443
Discussion: | **Court:** New Jersey Supreme Court | **Date:** March 22, 1971

New Mexico Supreme Court

74. ACLU of N.M. v. City of Albuquerque, 2008-NMSC-045, 144 N.M. 471, 188 P.3d 1222, 2008 N.M. LEXIS 420

Concurring opinion citing

First Ref:169 Idaho 406 at p.443
Discussion: | **Court:** N.M. | **Date:** June 27, 2008

North Carolina Supreme Court

75. Goldston v. State, 361 N.C. 26, 637 S.E.2d 876, 2006 N.C. LEXIS 1300

Concurring opinion citing

First Ref:169 Idaho 406 at p.443
Discussion: | **Court:** N.C. | **Date:** December 15, 2006

Oregon Supreme Court

76. Couey v. Atkins, 357 Ore. 460, 355 P.3d 866, 2015 Ore. LEXIS 516

Concurring opinion citing

First Ref:169 Idaho 406 at p.443
Discussion: | **Court:** Or. | **Date:** July 16, 2015

77. Kellas v. Dep't of Corr., 341 Ore. 471, 145 P.3d 139, 2006 Ore. LEXIS 974

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.443
Discussion: | **Court:** Or. | **Date:** October 12, 2006

78. Local No. 290, Plumbers & Pipefitters v. Oregon Dep't of Envtl. Quality (In re Air Containment Discharge Application of Willamette Indus.), 323 Ore. 559, 919 P.2d 1168, 1996 Ore. LEXIS 67

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.443
Discussion: | **Court:** Or. | **Date:** July 18, 1996

Pennsylvania Supreme Court

79. Housing Auth. v. Pennsylvania State Civ. Serv. Comm'n, 556 Pa. 621, 730 A.2d 935, 1999 Pa. LEXIS 1276

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.443
Discussion: | **Court:** Pa. | **Date:** April 30, 1999

Tennessee Supreme Court

80. Norma Faye Pyles Lynch Family Purpose LLC v. Putnam County, 301 S.W.3d 196, 2009 Tenn. LEXIS 835

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.443
Discussion: | **Court:** Tenn. | **Date:** December 16, 2009

Utah Supreme Court

81. Count My Vote, Inc. v. Cox, 2019 UT 60, 452 P.3d 1109, 2019 Utah LEXIS 160, 2019 WL 5090761

LB **Citing**

First Ref:169 Idaho 406 at p.430
Discussion: | **Court:** Utah | **Date:** October 10, 2019

82. Utah Safe to Learn-Safe to Worship Coalition, Inc. v. State, 2004 UT 32, 94 P.3d 217, 2004 Utah LEXIS 59, 498 Utah Adv. 10

LB **Citing**

First Ref:169 Idaho 406 at p.430
Discussion: | **Court:** Utah | **Date:** April 20, 2004

83. Jenkins v. Swan, 675 P.2d 1145, 1983 Utah LEXIS 1204

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.443

Discussion: | **Court:** Utah | **Date:** November 10, 1983

Wisconsin Supreme Court

84. Foley-Ciccantelli v. Bishop's Grove Condo. Ass'n, 2011 WI 36, 333 Wis. 2d 402, 797 N.W.2d 789, 2011 Wisc. LEXIS 326

B **Concurring opinion citing**

First Ref:169 Idaho 406 at p.443

Discussion: | **Court:** Wis. | **Date:** May 24, 2011

End of Document

Citation # 1 (as appears in page 2 of Document)
Reclaim Idaho v. Denney, 169 Idaho 406, 417

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169 Idaho 406, 417

About your quote:
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Your Quote:

The [Plaintiffs] asserted that the declarations were submitted too late for any reply, were unfair to the [Plaintiffs], and **[a particular]** declaration was too speculative. Typically, a motion to file a supplemental declaration is granted with a showing of good cause.

[169 Idaho 406, 417]

Retrieved Quote:

The **SOS and the Legislature filed a joint motion to strike the declaration of Joe Champion and the supplemental declaration of Dr. Gary Moncrief. The SOS and the Legislature** asserted that the declarations were submitted too late for any reply, were unfair to the **SOS** and **the Legislature, and Champion's** declaration was too speculative. Typically, a motion to file a supplemental declaration is granted with a showing of good cause.

[169 Idaho 406, 417]

Excerpt from document:

The SOS also objected to the declarations of Ysursa, Mayville, Moncrief, Daley, and Nettinga, arguing they stated impermissible conclusions of law that were otherwise irrelevant and should be stricken. Moreover, the SOS argues these declarations stated the incorrect constitutional test for this Court to apply in this case. To the extent that any of the declarations contained statements which could arguably be read as legal conclusions, this Court has disregarded such statements as a matter of course. Concerning the balance of the declarations, we find them relevant inasmuch as they contain evidence that has a tendency to make a fact of consequence more or less probable. See I.R.E. 401. Accordingly, we deny the balance of the SOS's motion to strike.

The SOS and the Legislature filed a joint motion to strike the declaration of Joe Champion and the supplemental declaration of Dr. Gary Moncrief. The SOS and the Legislature asserted that the declarations were submitted too late for any reply, were unfair to the SOS and the Legislature, and Champion's declaration was too speculative. Typically, a motion to file a supplemental declaration is granted with a showing of good cause. This case, which is being heard as an original action without the benefit of a trial record, presents constitutional issues of significant importance. It is essential that the Court have access to all the relevant facts necessary to reach an appropriate decision. Moreover, the SOS

successfully moved this Court to allow a supplemental declaration from its declarant, Dr. John R. Stevens. Therefore, we find there was good cause to admit Reclaim and the Committee's supplemental declarations. There was no unfair prejudice inasmuch as the SOS was allowed to submit its own supplemental declarations. Again, as with the aforementioned declarations, Champion's declaration was the type of opinion commonly and properly admitted under Idaho Rule of Evidence 702. It was not speculative because the declaration addressed opinions upon which an expert in the field can properly opine. Any objections to his methodologies go to the weight, not the admissibility, of his testimony. Therefore, the SOS and the Legislature's outstanding motion to strike the declaration of Champion and the supplemental declaration of Moncrief is also denied.

Before proceeding to the merits, we must determine whether the Petitioners have properly invoked this Court's original jurisdiction. We summarized the legal basis for exercising original jurisdiction in a recent case involving the legislature:

End of Document

Reclaim Idaho v. Denney (In re Writ of Prohibition)

Supreme Court of Idaho

August 23, 2021, Opinion

Docket Nos. 48784 and 48760

Reporter
169 Idaho 406 *; 497 P.3d 160 **; 2021 Ida. LEXIS 143 ***; 2021 WL 3720965

In Re: Petition for Writ of Prohibition.RECLAIM IDAHO, and the COMMITTEE TO PROTECT AND PRESERVE THE IDAHO CONSTITUTION, INC., Petitioner, v. LAWERENCE DENNEY, in his official capacity as the Idaho Secretary of State; and STATE OF IDAHO, Respondents, and SCOTT BEDKE in his official capacity as Speaker of the House of Representatives of the State of Idaho; CHUCK WINDER, in his official capacity as President Pro Tempore of the Idaho State Senate; SIXTY-SIXTH IDAHO LEGISLATURE, Intervenors-Respondents.In Re: Petition for Writ of Mandamus.MICHAEL STEPHEN GILMORE, a Qualified Elector of Ada County, Petitioner, v. LAWERENCE DENNEY, Idaho Secretary of State, in his official capacity, Respondent, and SCOTT BEDKE in his official capacity as Speaker of the House of Representatives of the State of Idaho; CHUCK WINDER, in his official capacity as President Pro Tempore of the Idaho State Senate; SIXTY-SIXTH IDAHO LEGISLATURE, Intervenors-Respondents.

Prior History: [*1]** Petition for Writ of Prohibition (Reclaim Idaho v. Denney, Docket No. 48784). Petition for Writ of Mandamus (Gilmore v. Denney, Docket No. 48760).

Disposition: The Petition for Writ of Prohibition is granted in part and denied in part.

The Petition for Writ of Mandamus is dismissed.

Core Terms

initiative, signatures, ballot, referendum, legislative district, qualify, voters, statewide, referenda, declarations, conditions, fundamental rights, strict scrutiny, rights, registered voter, repeal, original jurisdiction, election, referendum power, geographic, effective date, gathered, urgent, enact, veto, legislate, reserved, workable, polls, constitutional violation

Case Summary

Overview

HOLDINGS: [1]-*Idaho Code Ann. § 34-1805(2)* violates *Idaho Const. art. III, § 1* because the initiative and referendum powers are fundamental rights, reserved to the people of Idaho, to which strict scrutiny applies. A compelling state interest for limiting that right was not presented, the Legislature's solution is not a narrowly tailored one, and the court bars SB 1110 from taking effect and restores the previous version of *Idaho Code Ann. § 34-1805*; [2]-*Idaho Code Ann. § 34-1813(2)(a)*, which allows the legislature to set the effective date for initiatives as July 1 of the year following passage, violates *Idaho Const. art. III, § 1* because it infringes on the people's reserved power to enact legislation independent of the legislature.

Outcome

Petition for writ of prohibition granted in part and denied in part. Petition for writ of mandamus dismissed.

LexisNexis® Headnotes

Evidence > ... > Testimony > Lay

Witnesses > Personal Knowledge

HN1[] Lay Witnesses, Personal Knowledge

Idaho R. Evid. 602 requires that witnesses have personal knowledge of the evidence of the matter to which they testify.

Evidence > ... > Testimony > Expert Witnesses > Qualifications

HN2[] Expert Witnesses, Qualifications

While the test for determining whether a witness is qualified as an expert is not rigid. Practical experience or special knowledge must be shown to bring a witness within the category of an expert.

Civil Procedure > Pleading & Practice > Pleadings > Supplemental Pleadings

HN3[] Pleadings, Supplemental Pleadings

Typically, a motion to file a supplemental declaration is granted with a showing of good cause.

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

Constitutional Law > Separation of Powers

Civil Procedure > ... > Writs > Common Law Writs > Prohibition

HN4[] Common Law Writs, Mandamus

Idaho Const. art. V, § 9 vests the Idaho Supreme Court with original jurisdiction to issue writs of mandamus and prohibition, as well as all writs necessary or proper to the complete exercise of its appellate jurisdiction. This original jurisdiction is limited only by the separation of powers provisions contained in Idaho Const. art. II, § 1 and the Court's own rules. Any person may apply to the Court for the issuance of any extraordinary writ or other proceeding over which the Court has original jurisdiction. Idaho App. R. 5(a). The procedural guidelines over special writs are outlined in Rule 5. Once the Court asserts its original jurisdiction, it may issue writs of mandamus and/or prohibition. Idaho case law demonstrates that the Court has accepted original jurisdiction in matters where the petition alleges sufficient facts concerning a possible constitutional violation of an urgent nature.

Civil Procedure > ... > Justiciability > Case & Controversy Requirements > Actual Controversy

Constitutional Law > The Judiciary > Case or Controversy > Advisory Opinions

Civil Procedure > ... > Justiciability > Case & Controversy Requirements > Immediacy

Civil Procedure > ... > Justiciability > Ripeness > Immine nce

Civil Procedure > ... > Justiciability > Case & Controversy Requirements > Adverse Legal Interests

HN5[] Case & Controversy Requirements, Actual Controversy

A party must present a justiciable controversy in order to invoke the original jurisdiction of the Idaho Supreme Court and seek declaratory relief. A prerequisite to a declaratory judgment action is an actual or justiciable controversy. Justiciability is generally divided into subcategories—advisory opinions, feigned and collusive cases, standing, ripeness, mootness, political questions, and administrative questions. Concepts of justiciability, including standing, identify appropriate or suitable occasions for adjudication by a court. A justiciable controversy should be distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

Civil Procedure > ... > Justiciability > Standing > Persona l Stake

HN6[] Standing, Personal Stake

It is a fundamental tenet of American jurisprudence that a person wishing to invoke a court's jurisdiction must have standing. Standing determines whether an injury is adequate to invoke the protection of a judicial decision. Standing is a threshold determination by the court before reaching the merits of the case. The inquiry focuses on the party seeking relief and not on the issues the party wishes to have adjudicated. The Idaho Supreme Court has historically looked to the United States Supreme Court for guidance on issues of standing. The origin of Idaho's standing rule is a self-imposed constraint adopted from federal practice, as there is no case or controversy clause or an analogous provision in the Idaho Constitution as there is in the United States Constitution.

Civil Procedure > ... > Justiciability > Standing > Burdens of Proof

Constitutional Law > ... > Case or Controversy > Standing > Elements

Civil Procedure > ... > Justiciability > Standing > Injury in Fact

HN7 **Standing, Burdens of Proof**

To establish standing a plaintiff must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision. To satisfy the first element—an injury in fact—one must allege or demonstrate an injury that is concrete and particularized and actual or imminent, not conjectural or hypothetical. The common phrase "allege or demonstrate" used by the Idaho Supreme Court is an incomplete statement of the requirements for standing. The standing phrase allege or demonstrate actually requires a showing of a distinct palpable injury and fairly traceable causal connection between the claimed injury and the challenged conduct. Palpable injury has been defined by the Court as an injury that is easily perceptible, manifest, or readily visible.

Civil Procedure > Preliminary Considerations > Justiciability > Standing

Constitutional Law > The Judiciary > Case or Controversy > Standing

HN8 **Justiciability, Standing**

The bar for standing can vary with the circumstances of each individual case. It is admittedly imprecise and difficult to apply. However, the court has remained steadfast to the premise that standing can never be assumed based on a merely hypothetical injury. Thus, bare allegations are insufficient. Furthermore, a citizen and taxpayer may not challenge a governmental enactment where the injury is one suffered alike by all citizens and taxpayers of the jurisdiction. A petitioner must establish a peculiar or personal injury that is different than that suffered by any other member of the public.

Civil Procedure > Preliminary Considerations > Justiciability > Standing

Evidence > Weight & Sufficiency

Constitutional Law > The Judiciary > Case or Controversy > Standing

HN9 **Justiciability, Standing**

Mere disagreement with a law is not sufficient to establish standing.

Civil Procedure > Remedies > Writs > Common Law Writs

Civil Procedure > Preliminary Considerations > Justiciability > Standing

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions

HN10 **Writs, Common Law Writs**

Where petitioners have not met the traditional standing requirements, the Idaho Supreme Court may exercise jurisdiction to review a petition for extraordinary relief where the petition alleges sufficient facts concerning a possible constitutional violation of an urgent nature.

Civil Procedure > Preliminary Considerations > Justiciability > Standing

Constitutional Law > The Judiciary > Case or Controversy > Standing

HN11[] Justiciability, Standing

To qualify for relaxed standing, one still must show: (1) the matter concerns a significant and distinct constitutional violation, and (2) no party could otherwise have standing to bring a claim.

Civil Procedure > ... > Justiciability > Standing > Burdens of Proof

Constitutional Law > ... > Case or Controversy > Standing > Elements

Civil Procedure > ... > Justiciability > Standing > Injury in Fact

HN12[] Standing, Burdens of Proof

To establish standing a plaintiff must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision. To satisfy the requirement of an injury in fact, one must allege or demonstrate an injury that is concrete and particularized and actual or imminent, not conjectural or hypothetical. Standing requires a showing of a distinct palpable injury and fairly traceable causal connection between the claimed injury and the challenged conduct.

Civil Procedure > ... > Writs > Common Law Writs > Prohibition

HN13[] Common Law Writs, Prohibition

A writ is an extraordinary remedy that cannot be granted where an adequate remedy in the ordinary course of law already exists. One seeking a writ of prohibition must show two contingencies are met: (1) the tribunal, corporation, board or person is proceeding without or in excess of the jurisdiction of such tribunal, corporation, board, or person, and (2) that there is not a plain, speedy, and adequate remedy in the ordinary course of law.

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions

Governments > Courts > Authority to Adjudicate

HN14[] Subject Matter Jurisdiction, Jurisdiction Over Actions

Even if there is another remedy in the ordinary course of law in the trial courts, the Idaho Supreme Court has recently stated that its willingness to act upon its original jurisdiction includes cases requiring a determination of the constitutionality of recent legislation where there is urgency of the alleged constitutional violation and the urgent need for an immediate determination.

Civil Procedure > ... > Writs > Common Law Writs > Mandamus

HN15[] Common Law Writs, Mandamus

The Idaho Supreme Court may exercise jurisdiction to review a petition for extraordinary relief where the petition alleges sufficient facts concerning a possible constitutional violation of an urgent nature. Under this relaxed requirement, the Court has determined that one need not show a special injury to himself or his property in order to petition for mandamus. Specifically, the Court held that if (1) the matter concerns a significant and distinct constitutional violation, and (2) no party could otherwise have standing to bring a claim, it is willing to relax ordinary standing requirements.

Governments > Legislation > Enactment

HN16[] Legislation, Enactment

A citizen and taxpayer may not challenge a governmental enactment where the injury is one suffered alike by all citizens and taxpayers of the jurisdiction.

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

Governments > Legislation > Interpretation

HN17[] Case or Controversy, Constitutionality of Legislation

It is emphatically the province and duty of the judicial department to say what the law is. Passing on the constitutionality of statutory enactments, even enactments with political overtones, is a fundamental responsibility of the judiciary, and has been so since Marbury v. Madison. Interpretation of constitutional or statutory provisions is a familiar judicial exercise.

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

HN18[] Case or Controversy, Constitutionality of Legislation

Applying well-settled legal principles to an unsettled question of law is a judicial function almost as old as our republic.

Constitutional Law > State Constitutional Operation

Constitutional Law > Bill of Rights > Fundamental Rights > Unenumerated Rights

HN19[] Constitutional Law, State Constitutional Operation

Under the Idaho Constitution, all political power is inherent in the people. Idaho Const. art. I, § 2. Moreover, it is a fundamental principle that the people, in adopting the Idaho Constitution, instituted the government to do their will.

Constitutional Law > State Constitutional Operation

Governments > State & Territorial
Governments > Legislatures

HN20[] Constitutional Law, State Constitutional Operation

Idaho Const. art. III, § 1 establishes the legislative powers for the state of Idaho, including the power of direct legislation by the people.

Constitutional Law > State Constitutional Operation

Governments > State & Territorial
Governments > Elections

Governments > Legislation > Initiative & Referendum

HN21[] Constitutional Law, State Constitutional Operation

The Idaho Supreme Court has consistently recognized that a right is fundamental under the Idaho Constitution if it is expressed as a positive right, or if it is implicit in Idaho's concept of ordered liberty. Like voting, the Idaho Constitution plainly expresses the initiative and referendum power as a positive right: The people reserve to themselves the power. Idaho Const. art. III, § 1. This alone requires the Idaho Supreme Court to interpret the people's initiative and referendum rights as fundamental rights.

Constitutional Law > State Constitutional Operation

Governments > Legislation > Interpretation

HN22[] Constitutional Law, State Constitutional Operation

In interpreting the Idaho Constitution, the rules of statutory construction apply. The general rules of statutory construction apply to constitutional provisions as well as statutes. These rules of construction are well understood: The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. It should be noted that the court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the court need not consider rules of statutory construction. An ambiguous statutory or constitutional provision is one where reasonable construction of the language can result in more than one meaning. In that instance, the court must engage in statutory construction in order to determine and give effect to the legislative intent.

Constitutional Law > State Constitutional Operation

Governments > State & Territorial
Governments > Legislatures

HN23[] Constitutional Law, State Constitutional Operation

Idaho Const. art. III, § 1 establishes and defines the people's power to legislate directly, stating the people reserve to themselves the power. But it also provides that the exercise of this power is to be carried out under such conditions and in such manner as may be provided by acts of the legislature.

Constitutional Law > State Constitutional Operation

Governments > Legislation > Initiative & Referendum

Governments > State & Territorial
Governments > Legislatures

HN24[] Constitutional Law, State Constitutional Operation

A close reading of Idaho Const. art. III, § 1 convinces the Idaho Supreme Court that it establishes the people's fundamental right to legislate directly, as opposed to a power that is subservient to the will of the legislature. The conditions and manner provisions do not grant the legislature carte blanche in limiting that right. The referendum and initiative powers are described within the section of the constitution that establishes legislative power. Along with the power granted to the legislature, the initiative and referendum rights are "reserved" to the people. To ascertain the ordinary meaning of an undefined term in a statute or constitution, the court has often turned to dictionary definitions of the term. "Reserve" is defined as to hold in reserve or keep back. The people kept back for themselves a portion of the total legislative power they granted to the House of Representatives and the Senate. There is a straightforward reservation of a portion of the total legislative power to the people in the Idaho Constitution.

Constitutional Law > State Constitutional Operation

Governments > Legislation > Initiative & Referendum

HN25[] Constitutional Law, State Constitutional Operation

A referendum is a constitutional mechanism allowing the people to repeal a law already passed by the legislature. By its very nature, it cannot be independent of the legislature because it is a response to legislative action.

Constitutional Law > State Constitutional Operation

Governments > Legislation > Initiative & Referendum

Governments > Legislation > Interpretation

Governments > State & Territorial
Governments > Legislatures

HN26[] Constitutional Law, State Constitutional Operation

The language in Idaho Const. art. III, § 1 describing the people's initiative right is not limited to its subject matter. The paragraph on initiatives begins: The people reserve to themselves the power to propose laws, and enact the same at the polls independent of the legislature. What is reserved is expressly the power to propose laws and to enact laws—verbs closely associated with the act of legislating and not just choosing the subjects of legislation. The Idaho Supreme Court sees no need to strain for an interpretation when the plain language of the Idaho Constitution is clear: the people have the power to propose and enact laws on any subject. This power is both equivalent to that of the legislature and one which the people possess independent of the legislature.

Governments > Legislation > Initiative & Referendum

Governments > State & Territorial
Governments > Legislatures

HN27[] Legislation, Initiative & Referendum

The legislature's conditions and manner authority in Idaho Const. art. III, § 1 plainly relate to the process of direct legislation. Thus, while the legislature may determine how the people's right to legislate is initiated, it has not been given the power to effectively prevent the people from exercising this right by placing onerous conditions on the manner of its use.

Constitutional Law > State Constitutional Operation

Governments > State & Territorial
Governments > Elections

Governments > State & Territorial
Governments > Legislatures

HN28[] Constitutional Law, State Constitutional Operation

The right to vote is a fundamental right because the Idaho Constitution expressly guarantees the right to suffrage. While it is true that Idaho Const. art. VI, § 4 provides for the legislature's ability to prescribe qualifications, limitations, and conditions for the right of suffrage, this does not mean the Idaho legislature could, notwithstanding the Twenty-Sixth Amendment, constitutionally limit the franchise by raising the voting age from 18 to 35.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN29[] Fundamental Freedoms, Freedom of Speech

The legislature is permitted to place conditions on certain aspects of free speech. The ability of the legislature to make laws related to a fundamental right arises from the reality that, in an ordered society, few rights are absolute. However, the legislature's duty to give effect to the people's rights is not a free pass to override constitutional constraints and legislate a right into non-existence, even if the legislature believes doing so is in the people's best interest.

Constitutional Law > Bill of Rights > Fundamental Rights

Constitutional Law > State Constitutional Operation

HN30[] Bill of Rights, Fundamental Rights

Because the people of Idaho expressly reserved to themselves the powers to (1) approve or reject at the polls any act or measure passed by the legislature, and (2) propose laws and enact the same independent of the legislature, when they amended the Idaho Constitution in 1912, the Idaho Supreme Court concludes these powers are fundamental rights. Accordingly, while the legislature has authority to define the processes by which these rights are exercised, any legislation that effectively prevents the people from exercising these rights will be subject to strict scrutiny.

Constitutional Law > Bill of Rights > Fundamental Rights

Constitutional Law > Substantive Due Process > Scope

HN31[] Bill of Rights, Fundamental Rights

A law infringing on a fundamental right is subject to strict scrutiny: If a fundamental right is at issue, the appropriate standard of review to be applied to a law infringing on that right is strict scrutiny. Under the strict scrutiny standard of review, a law which infringes on a fundamental right will be upheld only where the State can demonstrate the law is necessary to promote a compelling state interest. Like the right to vote, the people's right to legislate is expressed as a positive right in the Idaho Constitution and is, therefore, fundamental.

Constitutional Law > Bill of Rights > Fundamental Rights

Constitutional Law > Substantive Due Process > Scope

HN32[] Bill of Rights, Fundamental Rights

Strict scrutiny is a well-established standard where fundamental rights are concerned. The standard for strict scrutiny is clear: Strict scrutiny should be applied to legislation dealing with fundamental rights or suspect classifications. Strict scrutiny requires that the government action be necessary to serve a compelling state interest, and that it is narrowly tailored to achieve that interest. Under the strict scrutiny standard of review, a law which infringes on a fundamental right will be upheld only where the State can demonstrate the law is necessary to promote a compelling state interest. Thus, strict scrutiny is the measuring stick that must be applied to the statutes in question.

Constitutional Law > State Constitutional Operation

Governments > Legislation > Initiative & Referendum

HN33[] Constitutional Law, State Constitutional Operation

The United States Supreme Court has recognized that state constitutional provisions for referendums demonstrate devotion to democracy, not to bias, discrimination, or prejudice.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Assembly

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN34[] Fundamental Freedoms, Freedom of Assembly

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections. Protecting the constitutional rights of both the majority and the minority is not only a vital role of the judicial branch, it is also one that judicial officers throughout Idaho are accustomed to performing on a daily basis.

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

Governments > Legislation > Interpretation

HN35[] Case or Controversy, Constitutionality of Legislation

The judiciary's role in adjudicating the constitutionality of legislative acts was recognized prior to final adoption of the United States Constitution: If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body.

Governments > Courts > Authority to Adjudicate

HN36[] Courts, Authority to Adjudicate

Just as the courts have the constitutional authority to exercise judicial review over the enactments of the legislature, it logically follows that the judiciary has a concomitant power to review direct legislation enacted by the people. Such review not only provides a sturdy bulwark for protecting the rights of both the majority and the minority, but it also is the proper and peculiar province of the courts.

Constitutional Law > State Constitutional Operation

Governments > Legislation > Initiative & Referendum

HN37[] Constitutional Law, State Constitutional Operation

The inherent purpose of Idaho Const. art. III, § 1's initiative and referendum power is to give the majority of the people an opportunity to have a voice in passing legislation.

Constitutional Law > State Constitutional Operation

Governments > Local Governments > Elections

Governments > Legislation > Initiative & Referendum

Governments > State & Territorial Governments > Elections

HN38[] Constitutional Law, State Constitutional Operation

The Idaho Constitution's reservation of legislative power to the state's qualified voters—allowing them to pass or repeal legislation independent of the legislature—must also come with a fair opportunity to qualify an initiative or referendum for the ballot to exercise this power, or the power is merely illusory.

Constitutional Law > State Constitutional Operation

Governments > State & Territorial
Governments > Elections

Governments > Legislation > Initiative & Referendum

HN39[] Constitutional Law, State Constitutional Operation

The people of Idaho have reserved to themselves an additional constitutional mechanism for affecting statewide policy and correcting legislative enactments they do not support—the initiative and referendum process. This power is meaningless unless it is accessible. Just as the Idaho Constitution protects the people's right to either reelect their legislators or elect new ones at the polls, it also protects the right to approve or reject a proposed initiative or referendum at the polls. It is not the proper role for any branch of the government to effectively nullify a constitutional mechanism reserved by the people to effect policy.

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

Governments > State & Territorial
Governments > Elections

Governments > Legislation > Initiative & Referendum

HN40[] Case or Controversy, Constitutionality of Legislation

Idaho Code Ann. § 34-1805(2) violates Idaho Const. art. III, § 1 because both tests under strict scrutiny have failed: (1) it was not shown that there is a compelling state interest in demonstrating support from every legislative district before voter initiated legislation or referenda are allowed to appear on the ballot, and (2) it has not been demonstrated that requiring signatures from all 35 legislative districts is a narrowly tailored way of achieving the goal of protecting the interests of rural or regional voters.

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

Governments > Legislation > Expiration, Repeal & Suspension

Governments > Legislation > Interpretation

HN41[] Case or Controversy, Constitutionality of Legislation

When a statute by express language repeals a former statute and attempts to provide a substitute therefor, which substitute is found to be unconstitutional, the repeal of the former statute is of no effect, unless it clearly appears that the legislature intended the repeal to be effective even though the substitute statute were found invalid.

Civil Procedure > ... > Writs > Common Law Writs > Prohibition

Governments > State & Territorial
Governments > Elections

Constitutional Law > The Judiciary > Case or Controversy > Constitutionality of Legislation

Governments > Legislation > Initiative & Referendum

HN42[] Common Law Writs, Prohibition

The Idaho Supreme Court has declared SB 1110 unconstitutional and granted a petition for a writ of prohibition barring its taking effect. Accordingly, Idaho Code Ann. § 34-1805 is restored to its previous state, whereby an initiative or referendum petition filed with the Secretary of State must include signatures from six percent of qualified electors at the time of the last general election in 18 legislative districts, provided the total number of signatures is equal to or greater than six percent of the registered voters in the state at the time of the last general election.

Governments > Legislation > Effect & Operation > Operability

HN43 **Effect & Operation, Operability**

The Legislature has the power to declare that its legislation is an emergency, which allows the legislation to have immediate effect.

Governments > Legislation > Effect & Operation > Prospective Operation

HN44 **Effect & Operation, Prospective Operation**

Generally, legislation does not go into effect sooner than 60 days after it is passed, except in case of an emergency. However, it is also true that legislation may contain a different effective date.

Governments > Legislation > Initiative & Referendum

Governments > Legislation > Effect & Operation > Prospective Operation

HN45 **Legislation, Initiative & Referendum**

Idaho Const. art. III, § 22 states that no act shall take effect until 60 days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law. Thus, the same standard, which allows the legislature considerable discretion in setting the effective date of legislation when an emergency is properly declared, should apply to legislation adopted by the people via the initiative process. The effective date crosses over into the substantive right reserved to the people.

Constitutional Law > State Constitutional Operation

HN46 **Constitutional Law, State Constitutional Operation**

Idaho Const. art. III, § 1 provides that the people reserve to themselves the power to propose laws, and enact the same at the polls independent of the legislature. Notably, independent of the legislature applies to both the power to propose laws and the power to enact laws. This necessarily includes the power to set the effective date, by which the laws are actually enacted.

Constitutional Law > State Constitutional Operation

Governments > Legislation > Initiative & Referendum

HN47 **Constitutional Law, State Constitutional Operation**

The power to legislate is derived from the same source. The Idaho Supreme Court reaffirms its prior holdings that initiative-created legislation stands on equal footing with laws enacted by the legislature. This necessarily includes permitting the drafters of initiatives to set effective dates, subject to the requirements in Idaho Const. art. III, § 22. To read Idaho Const. art. III, § 1 otherwise would disregard that the people may enact legislation independent of the legislature. Therefore, the amendments to Idaho Code Ann. § 34-1813(2)(a) are an unconstitutional infringement on the peoples' right to legislate independent of the legislature.

Governments > Legislation > Initiative & Referendum

Governments > State & Territorial Governments > Legislatures

HN48 **Legislation, Initiative & Referendum**

In Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1943), the Idaho Supreme Court made two misstatements in its description of the legislative power in Idaho, which the Court now disavows. First, the Court wrote that the government was divided into three departments, the first and foremost of which is the legislative power vested in the Senate and House of Representatives. The Court has since consistently emphasized that the three departments—the legislative, the executive, and the judiciary—are co-equal. Second, the Court described the 1912 constitutional amendment that reserved the initiative and referendum powers to the people as an afterthought and, thus, implied it was less important than other constitutional provisions. The Court recognizes that many of the people's most important

rights have come about by constitutional amendment, beginning with the Bill of Rights (Amendments I through X, inclusive), including the Thirteenth Amendment (abolishment of slavery) and the Twentieth Amendment (the recognition of women's suffrage). The Court disclaims any language that implies a right created by constitutional amendment is of lesser importance.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Catalyst Theory

HN49[] **Basis of Recovery, Catalyst Theory**

Three factors are to be considered under the private attorney general doctrine: (1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, (3) the number of people standing to benefit from the decision.

Governments > State & Territorial Governments > Elections

Governments > Legislation > Initiative & Referendum

HN50[] **State & Territorial Governments, Elections**

Idaho Code Ann. § 34-1805(2) violates Idaho Const. art. III, § 1 because the initiative and referendum powers are fundamental rights, reserved to the people of Idaho, to which strict scrutiny applies. A compelling state interest for limiting that right was not presented. Additionally, even if there were a compelling state interest, the Legislature's solution is not a narrowly tailored one. Therefore, the Idaho Supreme Court bars SB 1110 from taking effect. The Court restores the previous version of Idaho Code Ann. § 34-1805, which requires signatures from six percent of the qualified electors at the time of the last general election in each of at least 18 legislative districts, as well as signatures equal to or greater than six percent of the qualified electors in the state at the time of the last general election.

Constitutional Law > State Constitutional Operation

Governments > Legislation > Initiative & Referendum

HN51[] **Constitutional Law, State Constitutional Operation**

Idaho Code Ann. § 34-1813(2)(a) allows the legislature to set the effective date for initiatives as July 1 of the year following passage, violates Idaho Const. art. III, § 1 because it infringes on the people's reserved power to enact legislation independent of the legislature.

Counsel: Ferguson Durham, PLLC, Boise, for Petitioners. Deborah A. Ferguson argued.

Lawrence G. Wasden, Idaho Attorney General, Boise, for Respondent Lawerence Denney. Megan Larrondo argued.

Holland & Hart, LLP, Boise, for Intervenors-Respondents Scott Bedke, Chuck Winder and Sixty-Sixth Idaho Legislature. William G. Myers, III, argued.

Michael Stephen Gilmore, Boise, Petitioner, Pro se, argued.

Lawrence G. Wasden, Idaho Attorney General, Boise, for Respondent Lawerence Denney. Megan Larrondo argued.

Holland & Hart, LLP, Boise, for Intervenors-Respondents Scott Bedke, Chuck Winder and Sixty-Sixth Idaho Legislature. William G. Myers, III, argued.

Judges: MOELLER, Justice. Chief Justice BEVAN and Justice BURDICK CONCUR. STEGNER, J., specially concurring. BRODY, J., concurring in part and dissenting in part.

Opinion by: MOELLER

Opinion

[166]** **[*412]** MOELLER, Justice.

This case concerns the people's referendum and initiative rights, enshrined in *Article III, Section 1 of the Idaho Constitution*, which reads, in part:

> The people reserve **[***2]** to themselves the power to approve or reject at the polls any act or measure passed by the legislature.
> . . .
> The people reserve to themselves the power to propose laws, and enact the same at the polls independent of the legislature.
> . . .

These same provisions also contain language directing the Idaho Legislature to enact laws establishing the "conditions" and "manner" by which these rights will be exercised. *Id.* Today we are asked to determine whether recent limitations imposed by the Idaho legislature unconstitutionally infringe upon these rights.

I. INTRODUCTION

Two petitions have come before us seeking to invoke the Idaho Supreme Court's original jurisdiction in order to declare two statutes unconstitutional and to issue extraordinary writs—a writ of mandamus and a writ of prohibition. First, Michael Stephen Gilmore ("Gilmore") seeks a declaration that *Idaho Code section 34-1805(2)*, as amended by SB 1110, violates the people's constitutional initiative and referendum rights. SB 1110 requires that, for an initiative or referendum to appear on the ballot, organizers must obtain a threshold number of signatures from "each of the thirty-five (35) legislative districts" in the state. Gilmore argues this violates **[***3]** the *equal protection clause of the Idaho Constitution* and unconstitutionally divides the people's legislative power. Gilmore also petitions the Idaho Supreme Court for a writ of mandamus ordering the Idaho Secretary of State "not to implement" the statute as amended.

Gilmore's petition is opposed by the Idaho Secretary of State ("the SOS"), who is represented by the Attorney General, as well as the Intervenor-Respondents Scott Bedke, as Speaker of the House of Representatives of the State of Idaho; Chuck Winder, as President Pro Tempore of the Idaho State Senate; and the Sixty-Sixth Idaho Legislature (collectively "the Legislature"),[1] which retained independent counsel. Both the SOS and the Legislature argue that the changes enacted by SB 1110 are a lawful exercise of the legislature's constitutionally-delegated power to prescribe the conditions and manner under which initiatives and referenda may be carried out by the people. The SOS also asserts that Gilmore lacks standing, a writ of mandamus is an improper remedy, original jurisdiction is not warranted, and this case presents a nonjusticiable political question that the Idaho Supreme Court should not address.

Second, this case consolidates a subsequent petition filed by Reclaim Idaho **[***4]** ("Reclaim") and the Committee to Protect and Preserve the Idaho Constitution, Inc. ("the Committee"), which seeks a declaration that the new signature threshold mandated by SB 1110, requiring signatures from every legislative district, is unconstitutional. They also challenge the constitutionality of another statute, *Idaho Code section 34-1813(2)(a)*, which was amended in 2020 and states that an initiative may not become effective earlier than July 1 of the year following the vote in which it was passed. Reclaim and the Committee contend both amended statutes nullify the people's fundamental constitutional right to legislate directly. They seek a writ of prohibition to prevent the Secretary of State from enforcing these statutory provisions.

Reclaim and the Committee's petition is also opposed by the SOS, as Respondent, and the Legislature, as Intervenors. The SOS and the Legislature again argue that the **[**167]** **[*413]** challenged provisions fall within the legislature's authority granted in *Article III, Section 1 of the Idaho Constitution.* The SOS adds that a writ of prohibition is an inappropriate remedy and this Court lacks original jurisdiction to hear the petition. The Legislature further contends that the substance of the legislature's conditions on the people's initiative **[***5]** and referendum powers is a nonjusticiable political question.

II. BACKGROUND

A. Factual Background

In 2021, the Idaho Legislature passed SB 1110, which amended *Idaho Code section 34-1805(2)*, the statute that sets forth the process by which the people exercise their initiative and referendum rights. Governor Brad Little signed SB 1110 into law, but expressed reservations concerning the constitutionality of the legislation. Under the previous law, petition organizers needed to gather signatures from 6% of the total registered voters in the state at the time of the last general election, including 6% of registered voters from each of 18 legislative districts. SB 1110 increased the legislative district requirement to 35 districts—meaning petition organizers must now obtain signatures from 6% of registered voters at the time of the last general election in *every* legislative district in the state. *See I.C. § 34-1805(2)*. Because the bill contained an emergency clause, it became effective immediately.

[1] To avoid confusion, we have capitalized the word "Legislature" in this opinion when referring to the 2021 Idaho Legislature as a party in this case. When generally discussing the role and function of the legislature as a legislative body, it will not be capitalized.

A year earlier, in 2020, Governor Little signed into law a bill amending the second statute at issue in this case, *Idaho Code section 34-1813(2)(a)*. That statute now prevents any initiative approved by voters from taking effect before July 1 of the year following voter approval **[***6]** of the ballot initiative, effectively allowing the legislature six months from when it convenes in January to repeal any voter-passed legislation before it goes into effect. *See Idaho Const., art. III, § 8*. The Legislature insists that the amendments to both statutes are within its constitutional authority.

This is a dispute many years in the making. In 1912, the people of Idaho amended the state constitution to "reserve to themselves" initiative and referendum powers. The amendment added a second and third paragraph to *Article III, Section 1 of the Idaho Constitution*, which defines the legislative power of the state. As amended, this section reads:

> The legislative power of the state shall be vested in a senate and house of representatives. The enacting clause of every bill shall be as follows: "Be it enacted by the Legislature of the State of Idaho."
>
> The people reserve to themselves the power to approve or reject at the polls any act or measure passed by the legislature. This power is known as the referendum, and legal voters may, under such conditions and in such manner as may be provided by acts of the legislature, demand a referendum vote on any act or measure passed by the legislature and cause the same to be submitted to a vote of the people for their **[***7]** approval or rejection.
>
> The people reserve to themselves the power to propose laws, and enact the same at the polls independent of the legislature. This power is known as the initiative, and legal voters may, under such conditions and in such manner as may be provided by acts of the legislature, initiate any desired legislation and cause the same to be submitted to the vote of the people at a general election for their approval or rejection.

Idaho Const. art. III, § 1. The Idaho Constitution reserves to the people the power to legislate directly, while authorizing the legislature to prescribe the "conditions" and "manner" by which the people can do so. *Id.*

In 1915, the legislature passed enabling legislation for the exercise of those powers setting several onerous—if not impossible—conditions for a ballot proposition to qualify for the ballot. For one, the proposed legislation would have required all signatures to be witnessed by a judge or state official. Further, the threshold signature requirement to qualify for the ballot would have been high: 15% of voters in the last gubernatorial election in each of Idaho's counties for initiatives, and 10% in each of Idaho's counties for referenda.[2] **[**168]** **[*414]** Then-Governor Moses Alexander **[***8]** vetoed the bill, writing that it would have been "fatal" to the people's nascent initiative and referendum rights. In response, the legislature set a course of deliberate inaction, failing to pass any enabling legislation and allowing the people's initiative and referendum power to remain dormant for another 18 years.

In 1933, the legislature finally acted, passing a law which allowed an initiative or referendum to qualify for the statewide ballot if proponents obtained signatures from 10% of the statewide votes cast in the prior gubernatorial election. That law, which included no geographic distribution requirement for signatures, remained in effect for 64 years—from 1933 until 1997. During that time, 24 initiatives and three referenda qualified for the ballot.[3] In 1984, the legislature again attempted to make the process more onerous, by passing a bill that increased the signature requirement from 10% of the votes cast in the last gubernatorial election to 20%. Then-Governor John Evans vetoed the bill, observing that it would give Idaho "the dubious distinction" of enacting the most restrictive conditions on the initiative power in the nation. As Governor Alexander had before, Governor **[***9]** Evans wrote that the legislature's requirements would make the people's direct legislative power a "dead letter."

Then, in 1997, citing unspecified abuses in the people's use of their direct legislative power—and on the heels of a successful 1994 voter initiative that created term limits[4] —the legislature succeeded in changing the initiative and referendum procedure. The new law required signatures from 6% of *registered* voters, as opposed to persons *qualified* to vote. And, for the first time, those signatures were subject to a geographic

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[2] As of the end of 1915, Idaho had 37 counties. Extrapolated from public data provided by the State of Idaho at http://www.idaho.gov/aboutidaho/county/index.html .

[3] Because there are no accurate records from this time period reflecting the number of unsuccessful attempts to qualify an initiative or referendum for the ballot, we cannot accurately determine the percentage that successfully made the ballot.

[4] The term limits initiative passed in 36 of Idaho's 44 counties, with a 59% majority vote.

distribution requirement: the 6% total signatures gathered from registered voters statewide had to include signatures from 22 of Idaho's 44 counties, equal to 6% of the qualified electors in each county at the time of the last general election. This geographic distribution requirement was later challenged in federal court, and subsequently struck down by the United States Court of Appeals for the Ninth Circuit. *Idaho Coal. United for Bears v. Cenarrusa, 342 F.3d 1073 (9th Cir. 2003)*. The Ninth Circuit concluded that, because Idaho counties have vastly disparate populations, the 22-county requirement violated equal protection and the "one person, one vote" principle by granting more power to those signing petitions in less **[***10]** populous counties. *Id. at 1078-79*. *See generally Gray v. Sanders, 372 U.S. 368, 381, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963)* ("The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the *Fifteenth*, *Seventeenth*, and *Nineteenth Amendments* can mean only one thing—one person, one vote."). Thus, the requirement that petition organizers obtain signatures from 6% of registered voters statewide went forward without any geographic distribution requirement. Under this law, which existed unchanged from 1998 to 2013, only four initiatives and four referenda qualified for the ballot out of 63 circulated voter petitions.

Despite the fact that few voter-initiated propositions were making it to the ballot, the legislature again added a more restrictive signature threshold in 2013. This came on the heels of three successful referenda in 2012 that repealed the so-called "Luna Laws"—education legislation that, among other things, limited teachers' ability to negotiate contracts and tied teacher pay to standardized test scores. The Ninth Circuit, in dicta to *Idaho Coal. United for Bears*, had suggested that a geographic distribution requirement based on legislative districts, which are roughly equal in population, would not violate the United States Constitution's *equal protection clause*. *342 F.3d at 1078*; *U.S. Const. amend. XIV*. In 2013, **[***11]** the legislature passed just such a geographic distribution **[**169]** **[*415]** requirement, mandating that petition organizers gather signatures from 6% of registered voters at the time of the last general election in each of at least 18 of Idaho's 35 legislative districts, provided that the total number of signatures gathered was equal to or greater than 6% of registered voters statewide at the time of the last general election. The new 18 legislative district requirement remained in place from 2013 until the passage of SB 1110 in 2021. Over the last eight years, 14 voter petitions have been circulated; of those, only two initiatives and no referenda qualified for the statewide ballot.

The two initiatives which qualified under the 18 legislative district requirement both appeared on the ballot in 2018. The first attempt to sponsor an initiative was mounted by Reclaim Idaho, a grassroots, mostly volunteer organization, which sought to expand Medicaid coverage in Idaho ("Medicaid Expansion"). Reclaim exceeded the signature requirement, obtaining signatures from 6% of qualified electors in 21 of Idaho's 35 legislative districts. The second initiative sought to authorize "historic" horse racing in Idaho ("Horse **[***12]** Racing"). Horse Racing relied on paid signature gatherers. This petition also exceeded the signature requirement, obtaining signatures from 6% of the qualified electors in 22 of Idaho's 35 legislative districts. At the polls in November, Medicaid Expansion passed with 60.6% of the statewide vote; Horse Racing failed, garnering only 46.6% statewide support.

In 2019, in the immediate aftermath of Medicaid Expansion passing, the legislature again attempted to make qualifying initiatives and referenda more difficult, proposing legislation that would have required signatures from 10% of registered voters statewide at the time of the last general election, including at least 10% of registered voters in 32 of Idaho's 35 legislative districts. *See* H.B. 296 (Idaho 2019); S.B. 1159a (Idaho 2019). Further, the bills would have required all signatures to be gathered in just 180 days, rather than the 18 months previously allowed. However, Governor Little, like Governors Alexander and Evans before him, vetoed the bill, expressing concern about its constitutionality.

The following year, in 2020, the legislature amended one of the two statutes at issue here, *Idaho Code section 34-1813(2)(a)*. The amendment now prevents initiatives **[***13]** from setting an effective date "earlier than July 1 of the year following the vote on the ballot initiative." *ID LEGIS 336 (2020), 2020 Idaho Laws Ch. 336 (H.B. 548)*. Pursuant to *Article III, Section 8 of the Idaho Constitution*, the legislature convenes annually on the second Monday in January. This means the legislature would have six months to repeal or amend any voter-passed law before it took effect.

Most recently, in 2021, the legislature passed SB 1110, which amended the other statute at issue, *Idaho Code section 34-1805(2)*, by requiring that, to qualify an initiative or referendum for the ballot, organizers must now obtain signatures from 6% of registered voters in

"each of the thirty-five (35) legislative districts" in the state, almost doubling the prior geographic distribution requirement. The Legislature correctly notes that the amendment did not change the overall number of signatures needed to qualify for the ballot because both versions of the law still require signatures equal to or greater than 6% of registered voters statewide.

Currently, Reclaim Idaho is working to qualify two initiatives for the 2022 ballot. The first is the "Quality Education Act," which proposes increasing funding for K-12 education in Idaho. On June 16, the Secretary of **[***14]** State approved the Quality Education Act petition for signature gathering. The second is the "Initiative Rights Act," which would eliminate the geographic distribution requirement for initiatives mandated by SB 1110. In declarations submitted to this Court, Reclaim avers that the new signature requirement for qualifying initiatives for the statewide ballot poses an undue burden on an organization made up of volunteers, even if an initiative has broad statewide support.

The Committee has also filed a referendum with the Secretary of State seeking to repeal SB 1110, which it is attempting to qualify for the 2022 ballot. They will have 60 days to **[**170]** **[*416]** collect those signatures once the legislature adjourns *sine die*.[5]

B. Procedural Background

On April 26, 2021, Gilmore, a qualified elector from Ada County, filed a verified petition with this Court for issuance of a writ of mandamus to prevent the SOS from implementing *Idaho Code section 34-1805(2)*'s geographic requirement that signatures obtained for qualifying an initiative or referendum for the ballot must include 6% of registered voters in each of Idaho's 35 legislative districts. The SOS opposed Gilmore's petition. The Legislature sought and was granted permission to intervene, **[***15]** so that it could also oppose the petition.

On May 7, 2021, Reclaim and the Committee filed a verified petition with this Court, naming the SOS as respondent. They seek a declaration that the geographic distribution requirement in *Idaho Code section 34-1805(2)* violates *Article III, Section 1 of the Idaho Constitution*, as does *Idaho Code section 34-1813(2)(a)*. They also seek a peremptory writ of prohibition from this Court prohibiting the SOS or any state official from enforcing these provisions. The SOS opposed Reclaim and the Committee's petition. Again, the Legislature was granted permission to intervene, so that it could also oppose this petition. On June 3, 2021, this Court ordered that the two cases be consolidated for the purposes of oral argument and the issuance of this Court's opinion.

On June 2, 2021, the SOS filed a motion to strike certain paragraphs from eight declarations submitted by Reclaim and the Committee. On June 14, 2021, the SOS and the Legislature filed a joint motion to strike two additional declarations submitted by Reclaim and the Committee. On June 21, 2021, we entered an order granting the SOS's motion to strike, in part, as to three of the declarations. We reserved ruling on the objections to the remaining declarations until after oral argument and permitted the **[***16]** SOS to file additional responsive declarations. We afforded Reclaim and the Committee, as well as the SOS, additional time during oral argument to address the outstanding motions.

III. THE MOTIONS TO STRIKE

Initially, we will address the SOS's and the Legislature's remaining motions to strike. Pursuant to this Court's Order of June 21, 2021, we granted the SOS's motion to strike, in part, by striking portions of the declarations of Linda Larson (paragraph 7), Karen Lansing (paragraph 10), and Jessica Mahuron (paragraphs 8 and 9). We reserved ruling on the SOS's motion to strike portions of the declarations of Ben Ysursa, Luke Mayville, Dr. Gary Moncrief, David Daley, and Robin Nettinga. We also reserved ruling on the SOS's and the Legislature's joint motion to strike the declaration of Joe Champion and the supplemental declaration of Dr. Gary Moncrief.

HN1[↑] *Idaho Rule of Evidence 602* requires that witnesses have personal knowledge of the evidence of the matter to which they testify. *Idaho Rule of Evidence 701* sets forth the standard for opinion testimony from lay witnesses:

> If a witness is not testifying as an expert, testimony in the form of an opinion or inference is limited to one that is:
>
> (a) rationally based on the witness's

[5] The Idaho Senate adjourned its 2021 legislative session in May; however, the Idaho House of Representatives refused to do so, opting instead to recess to a date no later than December 31, 2021. Thus, the 60-day window for gathering the required signatures for the referendum has not yet commenced.

perception;

[*17]** (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of *Rule 702*.

For expert witness testimony, *Idaho Rule of Evidence 702* governs:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand **[**171]** **[*417]** the evidence or to determine a fact in issue.

The SOS's motion to strike concerned testimony in the Ysursa, Mayville, Moncrief, Daley, and Nettinga declarations that the SOS claims is speculative as to how the 35 legislative district requirement will affect future signature drives. The SOS asserts these statements are impermissible under *Idaho Rule of Evidence 602*, *701*, and *702*. We disagree. These declarants, based on their considerable personal knowledge and experience with the initiative and referendum processes in Idaho, provided both facts and opinion that comply with the requirements of *Idaho Rules of Evidence 602*, *701*, and *702*. In sum, the respective expertise of the declarants in these topics permits them to offer such opinions, and we conclude that they were not **[***18]** unduly speculative. In some instances, the SOS's objections appear to go more to the weight of the testimony, but not to its admissibility. This Court is competent to determine the weight we should afford those opinions.

HN2[⬆] We recently emphasized that, while "[t]he test for determining whether a witness is qualified as an expert is 'not rigid[,]' . . . . [p]ractical experience or special knowledge must be shown to bring a witness within the category of an expert." *Phillips v. E. Idaho Health Servs., Inc., 166 Idaho 731, 755, 463 P.3d 365, 389 (2020)*. Mayville and Moncrief adequately demonstrated their qualifications, experience, and expertise to give expert opinions. Their declarations provided the type of opinions commonly and properly admitted under *Idaho Rule of Evidence 702*. Contrary to the SOS's assertions, the declarations were not speculative because each addressed opinions upon which an expert in the field can properly opine. Likewise, the remaining declarants provided factual information based on their experience, observations, and personal knowledge.

The SOS also objected to the declarations of Ysursa, Mayville, Moncrief, Daley, and Nettinga, arguing they stated impermissible conclusions of law that were otherwise irrelevant and should be stricken. Moreover, the SOS argues these declarations **[***19]** stated the incorrect constitutional test for this Court to apply in this case. To the extent that any of the declarations contained statements which could arguably be read as legal conclusions, this Court has disregarded such statements as a matter of course. Concerning the balance of the declarations, we find them relevant inasmuch as they contain evidence that has a tendency to make a fact of consequence more or less probable. *See I.R.E. 401*. Accordingly, we deny the balance of the SOS's motion to strike.

The SOS and the Legislature filed a joint motion to strike the declaration of Joe Champion and the supplemental declaration of Dr. Gary Moncrief. The SOS and the Legislature asserted that the declarations were submitted too late for any reply, were unfair to the SOS and the Legislature, and Champion's declaration was too speculative. ***HN3***[⬆] Typically, a motion to file a supplemental declaration is granted with a showing of good cause. This case, which is being heard as an original action without the benefit of a trial record, presents constitutional issues of significant importance. It is essential that the Court have access to all the relevant facts necessary to reach an appropriate decision. Moreover, **[***20]** the SOS successfully moved this Court to allow a supplemental declaration from its declarant, Dr. John R. Stevens. Therefore, we find there was good cause to admit Reclaim and the Committee's supplemental declarations. There was no unfair prejudice inasmuch as the SOS was allowed to submit its own supplemental declarations. Again, as with the aforementioned declarations, Champion's declaration was the type of opinion commonly and properly admitted under *Idaho Rule of Evidence 702*. It was not speculative because the declaration addressed opinions upon which an expert in the field can properly opine. Any objections to his methodologies go to the weight, not the admissibility, of his testimony. Therefore, the SOS and the Legislature's outstanding motion to strike the declaration of Champion and the supplemental declaration of Moncrief is also denied.

IV. STANDING AND JUSTICIABILITY ISSUES

A. The legal basis for exercising our original jurisdiction

Before proceeding to the merits, we must determine whether the Petitioners have **[**172] [*418]** properly invoked this Court's original jurisdiction. ***HN4***[↑] We summarized the legal basis for exercising original jurisdiction in a recent case involving the legislature:

> Article V, Section 9 of the Idaho Constitution vests this Court with original **[***21]** jurisdiction to issue writs of mandamus and prohibition, as well as 'all writs necessary or proper to the complete exercise of its appellate jurisdiction.' This original jurisdiction is limited only by the separation of powers provisions contained in Article II, Section 1 of the Idaho Constitution and this Court's own rules. Mead v. Arnell, 117 Idaho 660, 663, 791 P.2d 410, 413 (1990). 'Any person may apply to the Supreme Court for the issuance of any extraordinary writ or other proceeding over which the Supreme Court has original jurisdiction.' I.A.R. 5(a). The procedural guidelines over special writs are outlined in Idaho Appellate Rule 5. Once this Court asserts its original jurisdiction, 'it may issue writs of mandamus and/or prohibition.' Mead, 117 Idaho at 663-64, 791 P.2d at 413-14.

Ybarra v. Legislature by Bedke, 166 Idaho 902, 906, 466 P.3d 421, 425 (2020); *see also* Regan v. Denney, 165 Idaho 15, 19, 437 P.3d 15, 19 (2019). Our case law demonstrates that we have accepted original jurisdiction in matters where "the petition alleges sufficient facts concerning a possible constitutional violation of an urgent nature, . . ." Sweeney v. Otter, 119 Idaho 135, 138, 804 P.2d 308, 311 (1990). *See also* Idaho Watersheds Project v. State Bd. of Land Commissioners, 133 Idaho 55, 57, 982 P.2d 358, 360 (1999).

B. Standards for determining justiciability and standing

HN5[↑] A party must present a justiciable controversy in order to invoke the original jurisdiction of this Court and seek declaratory relief. We have been clear: "A prerequisite to a declaratory judgment action is an actual or justiciable controversy. Justiciability is generally divided into subcategories—advisory **[***22]** opinions, feigned and collusive cases, standing, ripeness, mootness, political questions, and administrative questions." Miles v. Idaho Power Co., 116 Idaho 635, 639, 778 P.2d 757, 761 (1989). "'Concepts of justiciability, including standing, identify appropriate or suitable occasions for adjudication by a court.'" Coeur d'Alene Tribe v. Denney, 161 Idaho 508, 513, 387 P.3d 761, 766 (2015) (quoting State v. Philip Morris, Inc., 158 Idaho 874, 881, 354 P.3d 187, 194 (2015)). As we noted in *Phillip Morris*, this Court has previously explained that a justiciable controversy should be

> distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. . . . The controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests. . . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

158 Idaho at 881, 354 P.3d at 194 (quoting Davidson v. Wright, 143 Idaho 616, 620, 151 P.3d 812, 816 (2006)).

HN6[↑] Additionally, "[i]t is a fundamental tenet of American jurisprudence that a person wishing to invoke a court's jurisdiction must have standing." Young v. City of Ketchum, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002). Standing determines whether an injury is adequate to invoke the protection of a judicial decision. Coeur d'Alene Tribe, 161 Idaho at 513, 387 P.3d at 766. Standing is a threshold determination by this Court before reaching the merits of the case. Philip Morris, 158 Idaho at 881, 354 P.3d at 194. "The inquiry **[***23]** 'focuses on the party seeking relief and not on the issues the party wishes to have adjudicated.'" *Id.* (quoting Young, 137 Idaho at 104, 44 P.3d at 1159). This Court has historically looked to the United States Supreme Court for guidance on issues of standing. *Id.* "'[T]he origin of Idaho's standing [rule] is a self-imposed constraint adopted from federal practice, as there is no 'case or controversy' clause or an analogous provision in the Idaho Constitution as there is in the United States Constitution.'" Regan, 165 Idaho at 21, 437 P.3d at 21 (quoting Coeur d'Alene Tribe, 161 Idaho at 513, 387 P.3d at 766) (citing U.S. Const. art. III, § 2, cl. 1).[6]

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[6] We recognize the criticism the Court has received in the past, including that contained in the concurring opinion, for allegedly departing from common law standing principles, dating back to Idaho's early statehood, by adopting federal standing

[173]** **[*419]** HN7[] "[T]o establish standing 'a plaintiff must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a like[lihood] that the injury will be redressed by a favorable decision.'" *Philip Morris, 158 Idaho at 881, 354 P.3d at 194* (quoting *Susan B. Anthony List v. Driehaus, 573 U.S. 149, 157-58, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014)*. To satisfy the first element—an injury in fact—one must "allege or demonstrate" an injury that is "'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* (quoting *Susan B. Anthony, 573 U.S. at 157-58*). The common phrase "allege or demonstrate" used by this Court "is an incomplete statement of the requirements for standing." *Id.* This Court clarified in *Young* that the standing phrase "allege or demonstrate" **[***24]** actually "requires a showing of a '*distinct palpable injury*' and 'fairly traceable causal connection between the claimed injury and the challenged conduct.'" *Young, 137 Idaho at 104, 44 P.3d at 1159* (emphasis added) (quoting *Miles, 116 Idaho at 639, 778 P.2d at 761*). "Palpable injury" has been defined by this Court as "an injury that is easily perceptible, manifest, or readily visible." *Philip Morris, 158 Idaho at 881, 354 P.3d at 194*.

HN8[] The bar for standing can vary with the circumstances of each individual case. *Id. at 882, 354 P.3d at 195*. It is admittedly "imprecise and difficult to apply." *Young, 137 Idaho at 104, 44 P.3d at 1159*. However, we have remained steadfast to the premise that "standing can never be assumed based on a merely hypothetical injury." *Philip Morris, 158 Idaho at 882, 354 P.3d at 195* (citing *Young, 137 Idaho at 104, 44 P.3d at 1159*). Thus, bare allegations are insufficient. *Id.* Furthermore, "'a citizen and taxpayer may not challenge a governmental enactment where the injury is one suffered alike by all citizens and taxpayers of the jurisdiction.'"[7] *Noh v. Cenarrusa, 137 Idaho 798, 800, 53 P.3d 1217, 1219 (2002)* (quoting *Miles, 116 Idaho at 641, 778 P.2d at 763*). A petitioner must "'establish a peculiar or personal injury that is different than that suffered by any other member of the public.'" *Id.* (quoting *Selkirk-Priest Basin Ass'n v. State, 128 Idaho 831, 834, 919 P.2d 1032, 1035 (1996)*).

[174]** **[*420]** **C. Gilmore's petition fails to raise a justiciable claim.**

1. Gilmore does not meet the requirements for standing.

The SOS asserts that Gilmore lacks standing for this Court to hear his petition. The SOS argues Gilmore's alleged injury **[***25]** is generalized in that SB 1110 affects Gilmore in an identical fashion to all other Idahoans. We agree with the SOS's assessment and conclude that Gilmore lacks standing because he has failed to present a "'peculiar or personal injury that is different than that suffered by any other member of the public.'" *Noh, 137 Idaho at 800, 53 P.3d at 1219* (quoting *Selkirk-Priest, 128 Idaho at 834, 919 P.2d at*

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principles in *Bear Lake Education Ass'n v. Bd. of Trustees of Bear Lake Sch. Dist. No. 33, 116 Idaho 443, 448, 776 P.2d 452, 457 (1989)*. *See* Michael S. Gilmore, *Standing Law in Idaho: A Constitutional Wrong Turn*, *31 IDAHO L. REV. 509 (1995)*; *Zeyen v. Pocatello/Chubbuck Sch. Dist. No. 25, 165 Idaho 690, 705-08, 451 P.3d 25, 40-43 (2019)* (Stegner, J., dissenting). However, notwithstanding his noted law review article on this topic, Gilmore does not argue for this Court to reassess its standing principles and revert to common law standing principles. In fact, Gilmore cites the federal standing principles adopted by this Court—injury in fact, causal connection, and redressability—and argues their applicability to his case. Therefore, the concept of judicial restraint would suggest that this Court not address an issue that was not raised: "'[t]he premise of our adversarial system is that appellate courts do not sit as self-directed boards of legal inquiry and research, but essentially as arbiters of legal questions presented and argued by the parties before them.'" *State v. Chambers, 166 Idaho 837, 847, 465 P.3d 1076, 1086 (2020)* (Brody, J., concurring) (quoting *Carducci v. Regan, 714 F.2d 171, 177, 230 U.S. App. D.C. 80 (D.C. Cir. 1983)*). Therefore, notwithstanding the persuasive arguments of the concurring opinion, this case simply does not present a compelling reason for "leaving behind thirty years of jurisprudence on standing."

[7] This Court has recognized the U.S. Supreme Court's narrow exception regarding taxpayer standing. "'Taxpayers have been held qualified to maintain an action to test the validity of a statute or ordinance which increases the tax burden. Generally cases so holding involve an alleged illegal expenditure of public money.'" *Koch v. Canyon Cnty., 145 Idaho 158, 161, 177 P.3d 372, 375 (2008)* (quoting *Greer v. Lewiston Golf & Country Club, Inc., 81 Idaho 393, 397, 342 P.2d 719, 722 (1959)*). "[T]his Court has never questioned the standing of a taxpayer to challenge expenditures that allegedly violate *Article VIII, § 3*." *Id. at 162, 177 P.3d at 376*. Neither Gilmore nor Reclaim Idaho has cited *Koch* as authority this Court should apply—and probably for good reason. These petitions do not involve governmental expenditures, allegations that any expenditures violate *Article VIII, § 3*, or argument that the parties have standing through the taxpayer exception challenging expenditure of public money.

1035).

In *Young*, plaintiffs filed a complaint against the City of Ketchum for declaratory relief and a writ of prohibition regarding the City's involvement in a professional services contract and a related lease. Young, 137 Idaho at 103, 44 P.3d at 1158. The City entered into a contract with the Sun Valley-Ketchum Chamber of Commerce ("Chamber"), which provided that the Chamber would provide tourist information to the public and marketing services to promote the area. *Id.* In consideration of the services provided, the City was required to pay the Chamber money, which was raised via the local option nonproperty tax.[8] *Id.* A group of plaintiffs, consisting of concerned citizens who resided in and paid property taxes to the City, unsuccessfully challenged the contract in district court. *Id.* On appeal to this Court, we held that the plaintiffs lacked standing.

Plaintiffs alleged they suffered a distinct and palpable injury **[***26]** as concerned citizens and property owners living in the city. Id. at 105, 44 P.3d at 1160. The plaintiffs complained:

> (1) the option tax expenditures attract visitors and second homeowners to the area, which in turn has driven up the value of land and increased the amount they pay in property taxes; (2) the option tax is not actually paid by local businesses, but are paid by both residents and visitors; and (3) the City raised cash to make payments to the Chamber by reducing option tax expenditures for basic government functions . . . .

Id. This Court rejected the plaintiffs' assertions, reasoning that their alleged injury is more akin to an indirect effect that all citizens and taxpayers in the City share. We noted that none of the plaintiffs were business owners. *Id.* Therefore, the Court held, "Plaintiffs have made no allegations that such an injury is any different or distinct from any other citizen or property owner in the Ketchum area. This is insufficient to confer standing." *Id.*

Gilmore points to this Court's opinion in Van Valkenburgh v. Citizens for Term Limits, 135 Idaho 121, 15 P.3d 1129 (2000), in support of his assertion that he meets the standing requirements. In *Van Valkenburgh*, petitioners sought a writ of prohibition and a declaratory judgment to prevent the Secretary of **[***27]** State from carrying out any action regarding a new ballot initiative—"The Congressional Term Limits Pledge Act of 1998" ("Term Limits Act"). Id. at 123, 15 P.3d at 1131. The Term Limits Act required the Secretary of State to place information on ballots for voters on whether a particular Congressional candidate had taken or broken a term limits pledge. Petitioners alleged that the law violated their right to vote because it "greatly diminishes the likelihood the candidate of their choice will prevail in the election." Id. at 123-25, 15 P.3d at 1131-33. The State, defending the Term Limits Act, argued the petitioners' injury is no different from the injury suffered by any other Idaho citizen. *Id.* However, the Court rejected the State's argument and agreed with the petitioners, reasoning:

> We believe the Petitioners have met the requirement of demonstrating a distinct injury because they have alleged I.C. § 34-907B adversely impacts only those registered voters who oppose the term limits pledge, or who support candidates who oppose the term limits pledge. Those who support the specific term limits pledge contained in the law are not injured by the use of the ballot legend, and it in fact benefits those who support the term limits pledge **[**175]** **[*421]** by increasing the likelihood **[***28]** their candidate will be elected.

Id. Accordingly, this Court found the petitioners alleged an injury not suffered by all citizens and taxpayers alike, thus they had standing. *Id.*

Gilmore's reliance on Van Valkenburgh is misplaced. Gilmore argues he is akin to the petitioners in *Van Valkenburgh* because: (1) he has established an injury in fact—SB 1110 diminishes the chance that hypothetical, future initiatives and referenda Gilmore might support will ever make it to the ballot; and (2) his injury is not an injury suffered by all citizens of Idaho—SB 1110 only negatively impacts those who are opposed to it.

First, it is certainly true that SB 1110 may diminish the chance an initiative or referendum Gilmore supports makes it to the ballot in the future; however, Gilmore's claimed injury is based on pure conjecture. Gilmore suggests that all Idahoans do not share his injury because SB 1110 only makes it harder for Idahoans like Gilmore, who may support a hypothetical future initiative or referendum, to qualify it for the ballot; whereas, it causes no injury to those who would oppose a hypothetical future initiative or referendum. Gilmore's analogy is too speculative and generalized. Gilmore **[***29]** has not identified any initiative or referendum he *currently* supports, which SB 1110

[8] This was essentially a municipal sales tax.

makes more difficult to qualify for the ballot. Gilmore merely alleges that it will be harder for initiatives and referenda he *might* support in the future to reach the ballot because of SB 1110. Simply put, while Gilmore has shown that he is personally vexed by the passage of SB 1110, he has not effectively demonstrated that he currently has a dog in this fight. The Court's analysis might be different had Gilmore demonstrated his participation in a pending initiative or referendum drive in Idaho. Here, however, Gilmore can only claim that there might be some hypothetical initiative or referenda in the future that he desires to support, which SB 1110 may prevent from qualifying for the ballot.

Second, Gilmore further claims that he has standing because he is in a class of injured Idahoans that is unique: those who generally favor initiatives and referenda. Gilmore asserts that SB 1110 does not injure those opposed to "citizen legislation" because it aligns with their core values—it only injures those who favor it. Gilmore's distinction is creative, but if this Court were to adopt his view, it would essentially **[***30]** grant standing to almost every citizen that opposes any newly passed law. It is hardly a stretch to assume that almost every bill passed by the legislature has an opponent somewhere who feels personally aggrieved, yet standing requires more than mere disappointment. In comparison, the Term Limits Act in *Van Valkenburgh* did not affect all citizens in Idaho equally. It made it more difficult for specific candidates and their supporters who oppose term limits pledges to be successful in the next election. This is an actual and discernible injury.

For example, if the legislature enacted a new law that capped Idaho's speed limit to a maximum of 55 miles per hour statewide, some may be opposed to the law and some may favor it. However, would citizens in the former group have standing to challenge the law in court based solely on their personal disagreement with the legislature's action? Likely no, because standing is rooted in the injury suffered by the party challenging the law, not whether the party is merely opposed to the law on principle. To have standing, an opponent of the new speed limit would at least have to demonstrate a "distinct and palpable" injury related to the speed limit **[***31]** change, such as an Uber driver or a commercial trucking firm whose livelihoods were adversely affected by the change, in order to make an arguable case for standing.[9] *See* Miles, 116 Idaho at 639, 778 P.2d at 761.

[9] This is not to say that there may not be other significant impediments to bringing such a case.

Here, Gilmore's proposed distinction is too similar to the hypothetical above. Just because Gilmore favors citizen legislation and SB 1110 impedes citizen legislation, Gilmore argues he has standing. This is not a proper basis for standing. ***HN9***[⬆] Mere disagreement with a law is not sufficient to establish standing. Gilmore fails to meet the test set forth by this Court in *Phillip Morris* by pointing to a **[**176]** **[*422]** "distinct and palpable injury" that he has suffered and is unique to him, and one "that is easily perceptible, manifest, or readily visible." Philip Morris, 158 Idaho at 881, 354 P.3d at 194. Aside from his argument that SB 1110 makes it generally more difficult for all initiatives and referenda to qualify for the ballot, Gilmore cannot point to an injury personal to him that is "concrete and particularized." *Id.* (quoting Driehaus, 573 U.S. at 157-58). Therefore, we conclude that Gilmore lacks standing.

2. Gilmore's petition does not meet the requirements for relaxed standing.

Over the last few decades this Court has relaxed traditional standing requirements in order to hear cases involving alleged **[***32]** constitutional violations that would otherwise go unaddressed because no one could satisfy traditional standing requirements. *See, e.g.,* Coeur d'Alene Tribe, 161 Idaho 508, 387 P.3d 761; Regan, 165 Idaho 15, 437 P.3d 15. ***HN10***[⬆] Where petitioners have not met the traditional standing requirements, we have nevertheless held that we may "'exercise jurisdiction to review a petition for extraordinary relief where the petition alleges sufficient facts concerning a possible constitutional violation of an urgent nature.'" Coeur d'Alene Tribe, 161 Idaho at 513, 387 P.3d at 766 (quoting Idaho Watersheds Project, 133 Idaho at 57, 982 P.2d at 360).

HN11[⬆] To qualify for relaxed standing, one still must show: (1) the matter concerns a significant and distinct constitutional violation, *and* (2) no party could otherwise have standing to bring a claim. Id. Here, Gilmore essentially raises the same issues as Reclaim and the Committee. However, inasmuch as we hold below that Reclaim and the Committee have demonstrated they have standing, Gilmore's argument for us to exercise relaxed standing is undermined because he can no longer meet the second prong of our relaxed standing test—that *no other party* could have standing to bring a claim. Therefore, because Reclaim and the Committee have shown that they are parties with proper standing before this Court, Gilmore does not meet the relaxed standing requirements **[***33]** for this Court to hear his

petition.

D. Reclaim and the Committee have raised justiciable claims and have demonstrated that this Court should exercise original jurisdiction over their petition.

The SOS contends that Reclaim and the Committee lack standing because their alleged injuries are speculative, arguing it is unclear whether Reclaim and the Committee will have problems qualifying their future initiatives of referenda for the ballot under SB 1110. Furthermore, both the SOS and the Legislature contend that the issues raised in Reclaim and the Committee's petition lack the urgency necessary to trigger original jurisdiction. The SOS asserts that Reclaim and the Committee should ask a district court for a preliminary injunction or a temporary restraining order because this case involves inherently factual questions and, therefore, there should be discovery, depositions, testimony, and cross-examination. Moreover, they argue that Reclaim and the Committee have plenty of time to collect signatures for a referendum because the time to collect signatures has not begun because the House has not yet adjourned *sine die*. Finally, the Legislature asserts that Reclaim and the Committee raise **[***34]** a purely political question that this Court should not entertain.

1. Reclaim and the Committee satisfy the requirements of standing.

HN12[↑] As noted above, "to establish standing 'a plaintiff must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a like[lihood] that the injury will be redressed by a favorable decision.'" *Philip Morris, 158 Idaho at 881, 354 P.3d at 194* (quoting *Susan B. Anthony, 573 U.S. at 157-58*). The SOS only challenges the first element of standing—an injury in fact. To satisfy the requirement of an injury in fact, one must "allege or demonstrate" an injury that is "'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* (quoting *Susan B. Anthony, 573 U.S. at 157-58*). Standing "requires a showing of a 'distinct palpable injury' and 'fairly traceable causal connection **[**177]** **[*423]** between the claimed injury and the challenged conduct.'" *Young, 137 Idaho at 104, 44 P.3d at 1159* (quoting *Miles, 116 Idaho at 639, 778 P.2d at 761*).

Here, we find Reclaim and the Committee have met the burden of demonstrating injury in fact. Reclaim has demonstrated that it is currently sponsoring two initiatives for the ballot in 2022. Likewise, the Committee has a proposed referendum approved by the SOS awaiting the Idaho House of Representatives adjournment *sine die*. Because SB 1110 increases **[***35]** the burden on both petitioners to qualify their proposed initiatives and referendum for the ballot, it results in a distinct and palpable injury in fact. While it is yet to be seen whether SB 1110 will preclude either from qualifying their matters for the 2022 ballot, the fact that the legislature has placed a significantly greater burden for getting their petitions certified for the ballot is clear. Petitioners would now have to obtain 6% of the registered voter's signatures in all thirty-five legislative districts, instead of the previous requirement of eighteen. Thus, Reclaim and the Committee have shown a particularized injury; one that is "fairly traceable" to SB 1110. Therefore, they have met their burden to establish standing before this Court.

2. The urgent and important circumstances of this case justify the Court exercising its original jurisdiction to consider whether to issue a writ of prohibition.

HN13[↑] A writ is an extraordinary remedy that cannot be granted where an adequate remedy in the ordinary course of law already exists. *Leavitt v. Craven, 154 Idaho 661, 665, 302 P.3d 1, 5 (2012)*; *Wasden ex rel. State v. Idaho State Bd. of Land Comm'rs, 150 Idaho 547, 551-52, 249 P.3d 346, 350-51 (2010)*. One seeking a writ of prohibition must show two contingencies are met: "[(1)] 'the tribunal, corporation, board or person is proceeding without or **[***36]** in excess of the jurisdiction of such tribunal, corporation, board, or person, and [(2)] that there is not a plain, speedy, and adequate remedy in the ordinary course of law.'" *Wasden, 150 Idaho at 551-52, 249 P.3d at 350-51* (quoting *Henry v. Ysursa, 148 Idaho 913, 915, 231 P.3d 1010, 1012 (2008)*).

The SOS asserts that a writ of prohibition is inappropriate because Secretary of State Denney is not exceeding his powers in any way since he did not enact the statutory provisions. However, we have issued a writ of prohibition against the Idaho Secretary of State under similar circumstances in the past to prevent him from acting pursuant to an unconstitutional statute. *See Van Valkenburgh, 135 Idaho at 124, 15 P.3d at 1132* (noting review was urgent due to a deadline imposed on the

Secretary of State and issuing a writ of prohibition prohibiting the Secretary of State from carrying out term limits pledge directions from I.C. § 34-907B on the ballot). *See generally* Sweeney v. Otter, 119 Idaho at 138, 804 P.2d at 311 (accepting jurisdiction because "the petition alleges sufficient facts concerning a possible constitutional violation of an urgent nature" and deciding whether the Lieutenant Governor could break a tie in Senate leadership elections); Keenan v. Price, 68 Idaho 423, 429, 195 P.2d 662, 664 (1948) (accepting jurisdiction because of the "importance of the question[] presented" and the "urgent necessity for immediate determination").

HN14[↑] Even if there is another remedy **[***37]** in the ordinary course of law in the trial courts, this Court has recently stated, "[o]ur willingness to act upon our original jurisdiction includes cases requiring a determination of the constitutionality of recent legislation where there is 'urgency of the alleged constitutional violation and the urgent need for an immediate determination.'" Ybarra, 166 Idaho at 906, 466 P.3d at 425 (quoting Regan, 165 Idaho at 21, 437 P.3d at 21). For example, in *Coeur d'Alene Tribe*, the Senate and the House of Representatives passed SB 1011, which repealed a law that allowed wagering on "historical" horse races. 161 Idaho at 511, 387 P.3d at 764. About a week later, then Governor C.L. "Butch" Otter vetoed the bill. *Id.* Senate officials filed letters that stated because the Governor's veto came after the five-day constitutional deadline, SB 1011 became law before the veto took effect. Id. at 512, 387 P.3d at 765. The Senate nevertheless called a vote to override the veto, but did not receive enough votes. *Id.* The President of the Senate sustained the Governor's veto and **[**178]** **[*424]** declared that SB 1011 failed to become law. *Id.* The Tribe requested the Secretary of State to certify it as law, which the Secretary of State refused. *Id.* The Tribe then petitioned this Court for a writ of mandamus ordering the Secretary of State to certify SB 1011 **[***38]** as law. *Id.*

This Court initially concluded that the petitioner failed to "provid[e] facts to show actual or imminent losses of profit or rights greater than the average citizen, the [petitioner] has not demonstrated a 'distinct and palpable' injury sufficient to confer standing." Id. at 513, 387 P.3d at 766 (quoting Troutner v. Kempthorne, 142 Idaho 389, 391, 128 P.3d 926, 928 (2006)). **HN15**[↑] Yet, this Court noted that it may nonetheless "'exercise jurisdiction to review a petition for extraordinary relief where the petition alleges sufficient facts concerning a possible constitutional violation of an urgent nature.'" *Id.* (quoting Idaho Watersheds Project, 133 Idaho at 57, 982 P.2d at 360). Under this relaxed requirement, this Court determined that one need not show a special injury to himself or his property in order to petition for mandamus. Id at 514, 387 P.3d at 767. Specifically, the Court held that if (1) the matter concerns a significant and distinct constitutional violation, and (2) no party could otherwise have standing to bring a claim, it is willing to relax ordinary standing requirements. *Id.* Examining the petitioner's claim under this standard, this Court held that the case concerned a significant and distinct constitutional violation (if the petitioner's allegations were taken as true), and no other party would have standing to bring the petition, or **[***39]** the willingness to do so. *Id.* Therefore, this Court applied relaxed traditional standing requirements and heard the petitioner's writ. Id at 514-15, 387 P.3d at 767-68.

Likewise, in *Regan*, the petitioner asserted that Idaho Code section 56-267, a statute enacted directly by the people through the same initiative power at issue here, had violated Idaho's Constitution by delegating future lawmaking authority regarding Medicaid expansion to the federal government. 165 Idaho at 17, 437 P.3d at 17. **HN16**[↑] This Court noted that "'a citizen and taxpayer may not challenge a governmental enactment where the injury is one suffered alike by all citizens and taxpayers of the jurisdiction.'" Id. at 21, 437 P.3d at 21 (quoting Noh, 137 Idaho at 800, 53 P.3d at 1219). The petitioner conceded that he could not satisfy the traditional standing requirements. *Id.* Yet, this Court, relying on *Coeur d'Alene Tribe*, relaxed the traditional requirements because of the urgent nature of the alleged constitutional violation. *Id.* (noting the 90-day requirement in the new law for the Department to submit the necessary plan amendments created an urgent need to hear the case immediately). *But see* Regan 165 Idaho at 29-33, 437 P.3d at 29-33 (Brody, J., concurring in part and dissenting in part) (Moeller, J., concurring in part and dissenting in part). Here, if we take the allegations in Reclaim and the Committee's **[***40]** petition as true, "there is 'urgency of the alleged constitutional violation and the urgent need for an immediate determination.'" Ybarra, 166 Idaho at 906, 466 P.3d at 425 (quoting Regan, 165 Idaho at 21, 437 P.3d at 21). This case presents an issue of a vital and urgent constitutional nature. Both Reclaim and the Committee are attempting to qualify initiatives and a referendum for the 2022 ballot. The legislature's actions amounted to a one-two punch for groups like Reclaim and the Committee—it passed a law that made the initiative and referendum process more difficult for proponents of future ballot propositions, while simultaneously making it more difficult for those

opposed to the new law to pass a referendum to repeal that very law.

The SOS argues that because there is no urgency for this Court to address the petition, the matter should begin at the district court level. However, SB 1110 contains its own emergency clause that enacted it as soon as the Governor signed it. *See* Idaho Const. art. III, § 22; I.C. § 67-510. By its wording, this began the short, 60-day period for a referendum to circulate in all 35 legislative districts to obtain the 6% of registered voters' signatures necessary for the referendum to appear on the ballot. *See* Regan, 165 Idaho at 21, 437 P.3d at 21 (exercising original jurisdiction, in part, because of the **[***41]** urgent nature of the alleged constitutional violation and the short timeline in the new law for the Department to submit the necessary plan amendments). By comparison, previous referenda **[**179]** **[*425]** had eighteen months to garner 6% of the registered voters' signatures in the then-required 18 legislative districts. Because it is unknown when the Idaho House of Representatives will adjourn *sine die*, there is great uncertainty as to when that 60-day period will begin. This will clearly hamper the organizational efforts of groups like the Committee who have a referendum already filed with the SOS. Accordingly, we conclude that Reclaim and the Committee have properly invoked our original jurisdiction to decide this matter.

3. Reclaim and the Committee's petition does not present a purely political question.

The Legislature contends that Reclaim and the Committee's petition presents a nonjusticiable political question that this Court should not entertain because it "would be substituting its judgment for that of another coordinate branch of government, when the matter was one properly entrusted to that other branch." Miles, 116 Idaho at 639, 778 P.2d at 761.

This is an argument we have addressed before, and one that the United States Supreme **[***42]** Court resolved long ago. ***HN17***[] We have previously recognized that "'[i]t is emphatically the province and duty of the judicial department to say what the law is.'" Nye v. Katsilometes, 165 Idaho 455, 463, 447 P.3d 903, 911 (2019) (quoting Marbury v. Madison, 5 U.S. 137, 177, 2 L. Ed. 60 (1803)). "Passing on the constitutionality of statutory enactments, even enactments with political overtones, is a fundamental responsibility of the judiciary, and has been so since *Marbury v. Madison*." Miles, 116 Idaho at 640, 778 P.2d at 762. Interpretation of constitutional or statutory provisions is a "familiar judicial exercise." Zivotofsky ex rel. Zivotofsky v. Clinton, 566 U.S. 189, 196, 132 S. Ct. 1421, 182 L. Ed. 2d 423 (2012).

The assertion that this case is nonjusticiable because it poses a political question "is akin to the political question abstention doctrine of the federal court system which is outlined in Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). However, as presented here, the issue is more correctly viewed under the doctrine of separation of powers, which is embraced in art. 2 § 1 of the Idaho Constitution." Miles, 116 Idaho at 639, 778 P.2d at 761. We have turned to and relied upon the considerations in Baker when addressing such questions in the past. *Id.*; *see also Idaho State AFL-CIO v. Leroy, 110 Idaho 691, 718 P.2d 1129 (1986)*. "[J]udicial action must be governed by standard, by rule, and must be principled, rational, and based upon reasoned distinctions found in the Constitution or laws." Rucho v. Common Cause, 139 S. Ct. 2484, 2507, 204 L. Ed. 2d 931 (2019) (italics omitted, internal quotation marks and citation omitted). One indication that a case raises a political question is the **[***43]** lack of "judicially discoverable and manageable standards" available to the Court to resolve the question. *Leroy, 110 Idaho at 695, 718 P.2d at 1133*. Another would be a case where this Court is asked to take sides on a purely ideological matter, as opposed to a legitimate legal or constitutional question. *See, e.g.,* Regan, 165 Idaho at 32-33, 437 P.3d at 32-33, (Moeller, J., concurring in part and dissenting in part) ("[Petitioner's] arguments are largely ideological and dogmatic in nature—not legal—and demonstrate that the intent behind the petition is to have this Court redefine the proper role of federalism in Idaho. In sum, this Court is not really being asked to address an urgent constitutional issue created by the passage of [Medicaid expansion]; rather, Regan is asking this Court to take sides in an ideological debate concerning political philosophy."). While there is admittedly a political component to almost any controversial subject the legislature addresses, the issue presented here is not purely political—it is predominantly a legal and constitutional question that this Court may and properly should answer.

The Legislature relies on the U.S. Supreme Court's recent opinion in *Rucho*, which concerned the issue of partisan gerrymandering. The Court held that **[***44]** it presented a nonjusticiable political issue under the federal constitution. 139 S. Ct. at 2493-2508. The Court noted that gerrymandering is a hyper-political process: "Partisan gerrymandering claims rest on an instinct that

groups **[**180]** **[*426]** with a certain level of political support should enjoy a commensurate level of political power and influence." *Id. at 2499*. Essentially, the Court reasoned that such cases "ask the courts to make their own political judgment about how much representation particular political parties *deserve*—based on the votes of their supporters—and to rearrange the challenged districts to achieve that end." *Id.* (emphasis in original). The Court struggled with a "legal standard[] discernible in the Constitution for making such judgments, let alone limited and precise standards that are clear, manageable and politically neutral." *Id. at 2500*. Therefore, it declined to hear the issue, holding, "we have no commission to allocate political power and influence in the absence of a constitutional directive or legal standards to guide us in the exercise of such authority." *Id. at 2508*.

This Court has addressed similar initiative and referendum issues before. *See, e.g., Dredge Mining Control-Yes!, Inc. v. Cenarrusa, 92 Idaho 480, 445 P.2d 655 (1968)*; *Gibbons v. Cenarrusa, 140 Idaho 316, 92 P.3d 1063 (2002)* (finding the legislature could immediately repeal a voter-passed **[***45]** initiative by declaring an emergency); *Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1943)* (holding that the legislature can repeal an initiative passed by the people). In *Dredge Mining*, this Court reviewed a statutory requirement that required signatories of an initiative to be a legal voter, among other requirements. *Id. at 481, 445 P.2d at 656*. In its analysis, this Court held that, "[t]he statutory scheme set up by the legislature, although restrictive and perhaps cumbersome, is reasonable and workable." *Id. at 484, 445 P.2d at 659*. Whether this Court continues to follow the "reasonable and workable" standard laid out by *Dredge Mining* will be discussed below, but for purposes of this discussion, it is clear this Court has been able to address such issues before.

Rucho is distinguishable because this case concerns the constitutionality of specific statutes enacted by the legislature, rather than the inherently political exercise of dispersing political power, such as in the case of gerrymandering. Judicial review of these statutes does not raise a purely political question. ***HN18***[⬆] "[A]pplying well-settled legal principles to an unsettled question of law . . . is a judicial function almost as old as our republic." *Nye, 165 Idaho at 463, 447 P.3d at 911*. The Legislature correctly notes that this Court is asked to determine "at what **[***46]** point does permissible conditioning of initiatives and referenda to ensure statewide support become unconstitutional?" However, this question does not require us to engage in any sort of political calculus. Rather, it requires this Court to focus on the statute enacted and determine whether it is constitutional as amended. While there are undoubtedly political undertones to this case, this Court need not address such concerns in exercising its fundamental responsibility to (1) "say what the law is" and (2) resolve the overarching constitutional issues raised by Reclaim and the Committee concerning the statutes in question. *Marbury, 5 U.S. at 177*; *Miles, 116 Idaho at 640, 778 P.2d at 762*.

V. CONSTITUTIONAL ISSUES

HN19[⬆] We begin our constitutional analysis by recognizing that under the Idaho Constitution, "*All* political power is inherent in the people." *Idaho Const. art. I, § 2* (emphasis added). Moreover, it is a fundamental principle that the people, in adopting the Idaho Constitution, instituted the government to do their will. *See id.* Here, the legislature has passed a law (*I.C. § 34-1805(2)*) making it undeniably more difficult for the people to qualify an initiative or referendum for a statewide vote and another (*I.C. § 34-1813(2)(a)*) effectively granting the legislature time to repeal any initiative passed **[***47]** by a majority of the state's voters before it ever takes effect. The question before this Court is whether the legislature has acted within its delegated power to prescribe the "conditions" and "manner" for the people's exercise of direct legislative power, or whether it has exceeded its power. Thus, the Idaho Supreme Court is called upon to act in its role as the final arbiter of the meaning of the Idaho Constitution, to give effect to that meaning, and to protect against encroachments on the people's constitutionally enshrined power. For the reasons set forth below, we conclude that the Legislature has acted beyond its constitutional authority and **[**181]** **[*427]** violated the people's fundamental right to legislate directly.

A. The initiative and referendum powers reserved in the Idaho Constitution are fundamental rights.

HN20[⬆] As previously noted, Article III, Section I of the Idaho Constitution establishes the legislative powers for the state of Idaho, including the power of direct legislation by the people:

> The legislative power of the state shall be vested in a senate and house of representatives. The enacting clause of every bill shall be as follows: "Be it enacted by the Legislature of the State of Idaho."

> *The people reserve to themselves the* ***[***48]*** *power to approve or reject* at the polls any act or measure passed by the legislature. This power is known as the referendum, and legal voters may, *under such conditions and in such manner as may be provided by acts of the legislature*, demand a referendum vote on any act or measure passed by the legislature and cause the same to be submitted to a vote of the people for their approval or rejection.
>
> *The people reserve to themselves the power to propose laws, and enact the same* at the polls *independent of the legislature*. This power is known as the initiative, and legal voters may, *under such conditions and in such manner as may be provided by acts of the legislature*, initiate any desired legislation and cause the same to be submitted to the vote of the people at a general election for their approval or rejection.

Idaho Const. art. III, § 1 (emphasis added).

HN21[↑] This Court has consistently recognized that "a right is fundamental under the Idaho Constitution if it is expressed as a positive right, or if it is implicit in Idaho's concept of ordered liberty." *Van Valkenburgh, 135 Idaho at 126, 15 P.3d at 1134* (citing *Idaho Sch. For Equal Educ. Opportunity, 123 Idaho 573, 581-82, 850 P.2d 724, 732-33 (1993)*; *Simpson v. Cenarrusa, 130 Idaho 609, 615, 944 P.2d 1372, 1378 (1997)*). *Van Valkenburgh* dealt with the right to vote and held that voting was a fundamental right "because the Idaho Constitution expressly guarantees the right **[***49]** of suffrage." *Id.* We have not previously applied this test to the people's direct legislative power. However, like voting, the Idaho Constitution plainly expresses the initiative and referendum power as a positive right—*"The people reserve to themselves the power . . . ."* *Idaho Const. art. III, § 1*. This alone requires us to interpret the people's initiative and referendum rights as fundamental rights.

The SOS and the Legislature ask us to read the initiative and referendum provisions of the Idaho Constitution as merely defining a power that is subject to total control by the legislature. We do not agree. **HN22**[↑] In interpreting the Idaho Constitution, the rules of statutory construction apply. *Rudeen v. Cenarrusa, 136 Idaho 560, 567, 38 P.3d 598, 605 (2001)* ("The general rules of statutory construction apply to constitutional provisions as well as statutes."). These rules of construction are well understood:

> The objective of statutory interpretation is to derive the intent of the legislative body that adopted the act. Statutory interpretation begins with the literal language of the statute. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The statute should be considered as a whole, and words should be given their plain, **[***50]** usual, and ordinary meanings. It should be noted that the Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

In Re Doe, 168 Idaho 511, , 484 P.3d 195, 200 (2021) (internal quotations omitted). An ambiguous statutory or constitutional provision is one where reasonable construction of the language can result in more than one meaning. *Id.* In that instance, this Court must engage in statutory construction in order to determine and give effect to the legislative intent. *Id.*

Analyzing the nature of the initiative/referendum power requires us to reconcile a tension in the language of the constitutional **[**182]** **[*428]** provision. **HN23**[↑] *Article III, Section 1* establishes and defines the people's power to legislate directly, stating, *"The people reserve to themselves the power . . . ."* But it also provides that the exercise of this power is to be carried out *"under such conditions and in such manner as may be provided by acts of the legislature . . . ."* *Id.* The SOS and the Legislature aver that the conditions and manner phrasing controls, **[***51]** thereby establishing the ultimate authority of the legislature to place boundaries around initiatives and referenda. Reclaim and the Committee argue that the people's right predominates. They insist the conditions and manner language only entrusts the legislature with providing a process through which the people can exercise their reserved right—not suppressing it.

HN24[↑] A close reading of *Article III, Section 1* convinces us that it establishes the people's fundamental right to legislate directly, as opposed to a power that is subservient to the will of the legislature. The conditions and manner provisions do not grant the legislature *carte blanche* in limiting that right. First, the referendum and initiative powers are described within the section of the constitution that establishes legislative power. Along with the power granted to the legislature, the initiative and referendum rights are "*reserved*" to the

people. "To ascertain the ordinary meaning of an undefined term in a statute [or constitution], we have often turned to dictionary definitions of the term." *Marek v. Hecla, Ltd., 161 Idaho 211, 216, 384 P.3d 975, 980 (2016)*. *Merriam-Webster* defines "reserve" as to "hold in reserve" or "keep back." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY, *Reserve* (10th Ed. 1993). As applied **[***52]** here, the people kept back for themselves a portion of the total legislative power they granted to the House of Representatives and the Senate. The SOS and Legislature's perspective—that the legislature has the authority to limit the people's initiative and referendum rights, even to the point of near extinction—is simply not supported by the straightforward reservation of a portion of the total legislative power to the people in the Idaho Constitution.

Second, we must give full effect to the phrase "*independent of the legislature*," which appears in the paragraph on initiatives. The first sentence of the initiatives paragraph reads, "The people reserve to themselves the power to propose laws, and enact the same at the polls *independent of the legislature*." *Idaho Const. art. III, § 1* (emphasis added). The SOS urges us to read this phrase as describing only the people's freedom to determine the *subject matter* of initiative-based laws. According to the SOS, if the power itself were intended to be independent of the legislature, then it would have also appeared in the paragraph on referenda, which is otherwise the linguistic parallel of the initiatives paragraph. Therefore, the SOS argues, it must mean the opposite: **[***53]** that everything *except* the subject matter of initiatives is dependent on the legislature.

However, there are two significant flaws with this reasoning. First, and most basically, ***HN25***[⬆] ***HN26***[⬆] a referendum is a constitutional mechanism allowing the people to repeal a law already passed by the legislature. By its very nature, it cannot be "independent of the legislature" because it is a response to legislative action. This is a simple enough explanation as to why the phrase "independent of the legislature" does not appear in the referenda paragraph, and a far more self-evident explanation than the one offered by the SOS, which would require us to bend the meaning of the entire initiative and referendum power around an inference about an omission. Second, the language describing the people's initiative right is not limited to its subject matter. The paragraph on initiatives begins: "The people reserve to themselves the power *to propose laws, and enact the same* at the polls independent of the legislature." What is reserved is expressly the power *to propose* laws and *to enact* laws—verbs closely associated with the act of legislating and not just choosing the subjects of legislation. The SOS would have **[***54]** us read into the provision a phrase that is not there— "subject matter"—and ignore what is otherwise plainly stated. We see no need to strain for an interpretation when the plain language of the Idaho Constitution is clear: the people have the power to propose and enact laws on any subject. This power is both equivalent to that of the legislature and one which the people possess "independent of the legislature."

[183]** **[*429]** The conditions and manner language, on the other hand, does not provide authority to the legislature beyond defining the *process* by which initiatives and referenda are qualified for the ballot. For example, in the initiatives paragraph, the language appears as follows:

> This power is known as the initiative, and legal voters may, *under such conditions and in such manner as may be provided by acts of the legislature*, initiate any desired legislation and cause the same to be submitted to the vote of the people at a general election for their approval or rejection.

Idaho Const. art. III, § 1 (emphasis added). The conditions and manner language for initiatives comes between the words "may" and "initiate," thus qualifying that verb phrase—i.e., legal voters *may initiate* any desired legislation, but that process **[***55]** of *initiation* is subject to legislated conditions and manner. The interpretation is identical for the paragraph related to referenda. There, the conditions and manner language comes between "may" and "demand," thus qualifying that the legislature may place conditions on and determine the manner by which voters *may demand* a referendum. Both "initiate" and "demand" relate to the procedures by which an initiative or referendum, respectively, may be pursued. ***HN27***[⬆] The legislature's conditions and manner authority plainly relate to the *process* of direct legislation. Thus, while the legislature may determine *how* the people's right to legislate is initiated, it has not been given the power to effectively prevent the people from exercising this right by placing onerous conditions on the manner of its use.

The SOS and the Legislature maintain that the initiative and referendum power cannot be a fundamental right if the right is not "self-executing," but instead relies on the legislature to enact the processes which give the right effect. For support, they point to the history of the initiative and referendum powers—that after the

constitutional amendment enshrining these powers was passed in 1912, **[***56]** the legislature did not pass enabling legislation for more than twenty years,[10] thwarting the constitutional amendment passed by the people. This is flawed and troubling logic. Simply because the legislature failed to act does not mean they were justified in doing so, nor does it signal that the drafters of the amendment intended to give the people an impotent and illusory power.

More persuasively, we look to the number of other important rights which, like the initiative and referendum powers, are considered fundamental even though the legislature has the authority to set conditions or procedures related to the right. For example, ***HN28***[↑] the right to vote is a fundamental right because the Idaho Constitution expressly guarantees the right to suffrage. *Van Valkenburgh, 135 Idaho at 126, 15 P.3d at 1134* (citing *Idaho Const. art. I, § 19*) ("No power, civil or military shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage."). While it is true that *Article VI, Section 4 of the Idaho Constitution* provides for the legislature's ability to "prescribe qualifications, limitations, and conditions for the right of suffrage . . . ," this does not mean the Idaho legislature could, notwithstanding the *Twenty-sixth Amendment*, constitutionally limit the franchise by raising the voting age from 18 to 35. ***HN29***[↑] Similarly, **[***57]** the legislature is permitted to place conditions on certain aspects of free speech. *See, e.g., State v. Sanchez, 165 Idaho 563, 569, 448 P.3d 991, 997 (2019)* (holding that statutes criminalizing threats against public servants is within the "wide range of conduct" that the state has the "power to prohibit"). The ability of the legislature to make laws related to a fundamental right arises from the reality that, in an ordered society, few rights are absolute. However, the legislature's duty to give effect to the people's rights is not a free pass to override constitutional constraints and legislate a right into nonexistence, even if the legislature believes doing so is in the people's best interest.

Therefore, ***HN30***[↑] because the people of Idaho expressly "reserve[d] to themselves the power[s]" **[**184]** **[*430]** to (1) "approve or reject at the polls any act or measure passed by the legislature," and (2) "propose laws and enact the same ... independent of the legislature," when they amended the Idaho Constitution in 1912, we conclude these powers are fundamental rights. Accordingly, while the legislature has authority to define the processes by which these rights are exercised, any legislation that effectively prevents the people from exercising these rights will be subject **[***58]** to strict scrutiny, as explained below.

B. Because Idaho's initiative and referendum powers are fundamental rights, any effort to limit those rights is subject to strict scrutiny.

The proper constitutional standard to be applied when reviewing legislation that impacts the people's initiative and referendum rights is a matter of first impression. ***HN31***[↑] In *Van Valkenburgh*, we held without qualification that a law infringing on a fundamental right is subject to strict scrutiny:

> [I]f a fundamental right is at issue, the appropriate standard of review to be applied to a law infringing on that right is strict scrutiny. Under the strict scrutiny standard of review, a law which infringes on a fundamental right will be upheld only where the State can demonstrate the law is necessary to promote a compelling state interest.

135 Idaho at 126, 15 P.3d at 1134 (internal citations omitted). We have already concluded that, like the right to vote, the people's right to legislate is expressed as a positive right in the Idaho Constitution and is, therefore, fundamental. *See id.* Because our fundamental rights jurisprudence is unequivocal that such rights are subject to strict scrutiny, that is the standard we must apply here.

The SOS and the Legislature **[***59]** ask us to apply a lower standard of scrutiny based on reasoning from *Dredge Mining*, where we held that the legislature has the authority to require a process to verify and certify that signatures come from registered voters because those requirements fall within the conditions and manner language of *Article III, Section 1 of the Idaho Constitution*. *92 Idaho at 483, 445 P.2d at 658*. In so ruling, we acknowledged that the procedures for the initiative and referendum power are not self-executing, and we described the legislature's signature verification and certification requirements as being, among other things, "reasonable and workable":

> The statutory scheme set up by the legislature, although restrictive and perhaps cumbersome, is *reasonable and workable*. Changes designed to make it less restrictive and burdensome in its operation are for the legislature to enact. The trial

[10] While the 1915 legislature passed enabling legislation, Governor Alexander vetoed the law because the severe requirements would have been "fatal" to the initiative and referendum power.

> court did not err in its conclusion of law that the provisions of the law enacted by the legislature pertaining to the initiative procedures are reasonable.

Id. at 484, 445 P.2d at 659 (emphasis added; internal citations omitted). The SOS and the Legislature now claim that *Dredge Mining* established a "reasonable and workable" standard for analyzing legislative acts which affect the direct legislation process.[11]

[185]** **[*431]** We disagree that *Dredge Mining* established the applicable legal standard for scrutinizing legislative acts for a simple reason: we did not apply a fundamental rights analysis in *Dredge Mining*. The focus of our analysis was on giving effect to language in *Article VI, Section 2 of the Idaho Constitution* to conclude that a "legal voter" is one who is registered to vote. *Id. at 482-83, 445 P.2d at 657-58*. Next, we affirmed the language of the trial court that the legislature's procedures for verifying that signatures came from registered voters were "not unreasonable" and were "workable." *Id. at 483, 445 P.2d at 658*. We were simply not called upon to engage in the same type of constitutional analysis in *Dredge Mining* that we must engage in here—*i.e.*, first determining the nature of the right at stake and then arriving at **[***61]** an appropriate level of scrutiny. Rather, *Dredge Mining* focused on cases dealing with the State's police power, a governmental power not invoked by any party in this case.[12] The case before us is different because the initiative and referendum powers retained by the people are expressed in the Idaho Constitution as fundamental rights.

HN32[↑] Additionally, we note that strict scrutiny is a well-established standard where fundamental rights are concerned. It is a standard which exists within a significant body of case law from both the Idaho Supreme Court and the United States Supreme Court to guide us in its application. The "reasonable and workable" standard preferred by the dissent has not been applied as a standard of constitutional review since *Dredge* in 1968 and we would be breaking new legal ground if we suddenly applied it now. In fact, it is far from clear how such a standard would be applied. On the other hand, the standard for strict scrutiny is clear: "Strict scrutiny should be applied to legislation dealing with fundamental rights or suspect classifications. Strict scrutiny requires that the government action be necessary to serve a compelling state interest, and **[***62]** that it is narrowly tailored to

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[11] The SOS and the Legislature would have us read *Dredge Mining* ***[***60]*** as providing a standard akin to the rational basis standard. However, if *Dredge Mining's* "reasonable and workable" language were to be read as a legal standard, it is closer to the "undue burden" standard employed recently by the Utah Supreme Court. *See Count My Vote, Inc. v. Cox, 2019 UT 60, 452 P.3d 1109, 1118 (Utah 2019)*; *Utah Safe to Learn-Safe To Worship Coal., Inc. v. State, 2004 UT 32, 94 P.3d 217, 226 (Utah 2004)*. The Utah Supreme Court has recognized that state's initiative and referendum powers are fundamental rights. However, that court also observed, "This right, though fundamental under our state constitution, is not unfettered, but comes with a built-in limitation." *Id. at 226*. To that end, the court employed a flexible standard:

> [A] court should assess whether a legislative "enactment is reasonable, whether it has a legitimate legislative purpose, and whether the enactment reasonably tends to further that legislative purpose." And in "evaluating the reasonableness of the challenged enactment and its relation to the legislative purpose," we have said that "courts should weigh the extent to which the right of initiative is burdened against the importance of the legislative purpose."

Count My Vote, 452 P.3d at 1118 (internal citations omitted). The Utah Supreme Court described the "undue burden" standard as being similar to its "minimal scrutiny" standard but "more exacting." *Id. at 1118*. However, this standard has yet proved to be workable inasmuch as that court acknowledged that it had not yet determined the "manner and means" by which a party could establish the "nature and extent" of the burden on the initiative right, nor how this was to be weighed against the legislative purpose. *Id. at 1118-19*.

[12] In *Dredge Mining*, this Court further concluded that when a statute is "reasonable and workable," it is the purview of the legislature to make additional changes that will "make it less restrictive and burdensome in its operation ..." *Dredge Mining, 92 Idaho at 484, 445 P.2d at 659*. Notably, the cases cited in support of this assertion all deal with the state's police power—a power to act with broad authority to ensure the public health, safety, and welfare of its citizens. *See Messerli v. Monarch Memory Gardens, Inc., 88 Idaho 88, 96, 397 P.2d 34, 39 (1964)* (regarding the constitutionality of a statute protecting against fraud in contracts for funerary services and body disposal); *Johnston v. Boise City, 87 Idaho 44, 52, 390 P.2d 291, 295 (1964)* (regarding eminent domain and compensation); *Berry v. Koehler*, 84 Idaho 170, 176, 369 P.2d 1010, 1013 (1961) (regarding a statute defining the practice of dentistry). The need for the state's police power has not been invoked here by the SOS or the Legislature. Even if it had, it would not be possible to conclude that the Legislature's actions have made the initiative and referenda process "less restrictive and burdensome in its operation."

achieve that interest." *Bradbury v. Idaho Jud. Council, 136 Idaho 63, 69, 28 P.3d 1006, 1012 (2001)* (internal citations omitted). *See also Van Valkenburgh 135 Idaho at 126, 15 P.3d at 1134* ("Under the strict scrutiny standard of review, a law which infringes on a fundamental right will be upheld only where the State can demonstrate the law is necessary to promote a compelling state interest."). Thus, strict scrutiny is the measuring stick that must be applied to the statutes in question.

C. *Idaho Code section 34-1805(2)*, which requires a threshold amount of signatures from all 35 legislative districts, is unconstitutional.

1. Requiring signatures from all 35 legislative districts does not promote a compelling state interest.

The SOS avers that *Idaho Code section 34-1805(2)* survives strict scrutiny because "the state has an 'important regulatory interest' in ensuring an initiative petition has a modicum of statewide support before it is placed on the ballot." According to the SOS, the amended statute (1) protects the state by ensuring the ballot is not inundated with localized legislation and (2) increases voter involvement and voter inclusivity across the entire state. The stated purpose of SB1110 is: "to increase voter involvement and inclusivity **[**186]** **[*432]** in the voter initiative/referendum process." Thus, given the fundamental right at stake, **[***63]** we must determine whether SB 1110's stated purpose identifies a compelling state interest.

To begin, we look to the history of how the legislature has previously exercised its conditions and manner authority. Since we have described this history in detail above, we will briefly summarize it here. In 1912, following the amendments to *Article III, Section 1 of the Idaho Constitution*, the legislature had the duty to pass enabling legislation for the people's newly enshrined initiative and referendum rights. The legislature eventually passed an enabling act in 1915, but it was so restrictive that then Governor Alexander vetoed it. Thus, the legislature's failure to provide reasonable procedures meant that the people's rights to propose initiatives and referenda lay dormant for more than twenty years. Finally, in 1933, the legislature set the signature requirements simply at 10% of the statewide votes cast in the prior gubernatorial election. This remained the requirement for 64 years, and during this time only 24 initiatives and three referenda qualified for the ballot. In 1984, the legislature attempted to double the number of signatures needed to qualify initiatives and referenda for the ballot to 20%. However, then Governor Evans, **[***64]** just as Governor Alexander had before him, vetoed the legislation because it appeared bent on rendering the initiative and referendum power a "dead letter."

From 1994 to 2012, the people twice succeeded in passing or repealing significant legislation at the polls—the 1994 initiative creating term limits, and the 2012 repeal of education legislation known as the "Luna Laws." Both times the legislature responded by placing new, more difficult requirements on the process for qualifying voter-based petitions. In 1997, the legislature created a 22-county geographic distribution requirement for signatures, which was subsequently struck down by the Ninth Circuit for violating equal protection principles. *Idaho Coal. United for Bears, 342 F.3d at 1079*. Over the next fifteen years (1998-2013), when the signature requirement was simply 6% of registered voters statewide, only four initiatives and four referenda qualified for the ballot out of 63 voter petitions circulated. In 2013, following the repeal of the "Luna Laws," the legislature again adopted a geographic distribution requirement, this time based on legislative districts of roughly equal population size, which the Ninth Circuit had suggested would not violate the *Equal Protection Clause*. *See id. at 1078* ("Idaho could **[***65]** achieve the same end through a geographic distribution requirement that does not violate equal protection, for example, by basing any such requirement on existing state legislative districts."). This legislation mandated that the signatures of the requisite 6% of registered voters statewide include 6% of registered voters as of the last general election in at least 18 of Idaho's 35 legislative districts.

Over the next eight years, until the passage of SB 1110 in 2021, only 14 voter petitions were circulated. Of those, just two initiatives and no referenda qualified for the statewide ballot. In 2018, despite years of opposition by the legislature, voters passed one of those initiatives: legislation which expanded access to Medicaid. Medicaid Expansion passed with widespread support, garnering over 60% of the vote statewide, including majority votes in 35 out of Idaho's 44 counties. The following year, the legislature passed stricter requirements for obtaining signatures, which were later vetoed by Governor Little. And again, in 2021, the legislature passed an even stricter geographic requirement, SB 1110, which Governor Little signed

despite noting concerns about its constitutionality. **[***66]**

We approach the present legislation from this historical context—one which shows an unmistakable pattern by the legislature of constricting the people's initiative and referendum powers after they successfully use it. At oral argument, the Legislature repeatedly asserted that this was necessary to prevent the minority from being "trammeled by the majority." We acknowledge, as James Madison argued in the Federalist Papers, one advantage of a republican form of government over a direct democracy is that it may provide greater protection to minority interests. *See* THE FEDERALIST NO. 10 (James Madison). ***HN33***[⬆] Nonetheless, the United States Supreme Court has recognized that **[**187]** **[*433]** state constitutional "[p]rovisions for referendums demonstrate devotion to democracy, not to bias, discrimination, or prejudice." *James v. Valtierra, 402 U.S. 137, 141, 91 S. Ct. 1331, 28 L. Ed. 2d 678 (1971)*. Here, the SOS and the Legislature have offered no supporting evidence of a compelling need to further restrict the people's initiative and referendum power in order to protect minority interests. In short, they have failed to demonstrate how minority rights have been "trammeled" by the initiative process in Idaho. It is difficult to find, as the SOS and the Legislature suggest, that there is a **[***67]** realistic threat that the interests of any group of Idaho citizens are currently at risk due to the initiative process previously in effect when (1) so few initiatives or referenda have even qualified for the ballot in the last 109 years, and (2) the legislature still possesses the authority to repeal initiatives once passed, as they have done before. In fact, no actual or perceived threat to minority interests necessitating SB 1110's signature requirement has been identified by the legislature. The most recent examples—the referenda overturning the "Luna Laws" in 2012 and the Medicaid Expansion initiative in 2018—actually may have been examples of the majority of Idaho voters acting in a democratic fashion to *protect* minority interests (educators and the poor) when the Idaho Legislature would not.

In the end, should the protection of minority rights have been the aim of the legislature in enacting further restrictions on the initiative and referendum process, we recognize that there already exists a mechanism in place to perform this function, as former United States Supreme Court Justice Robert Jackson adroitly explained:

> ***HN34***[⬆] The very purpose of a *Bill of Rights* was to withdraw certain subjects from **[***68]** the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied *by the courts*. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; *they depend on the outcome of no elections*.
>
> *VW. a. State Bd. of Educ. v. Barnette, 319 U.S. 624, 638, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943)* (emphasis added). Protecting the constitutional rights of both the majority and the minority is not only a vital role of the judicial branch, it is also one that judicial officers throughout Idaho are accustomed to performing on a daily basis. ***HN35***[⬆] Indeed, the judiciary's role in adjudicating the constitutionality of legislative acts was recognized prior to final adoption of the United States Constitution:
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> > If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. *It is not otherwise to be supposed, that the Constitution could intend to* ***[***69]*** *enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority*. ... A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body.
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> THE FEDERALIST NO. 78, at 492 (Alexander Hamilton) (B. Wright ed. 1961) (emphasis added). ***HN36***[⬆] Importantly, just as the courts have the constitutional authority to exercise judicial review over the enactments of the legislature, it logically follows that the judiciary has a concomitant power to review direct legislation enacted by the people. *See, e.g., Regan, 165 Idaho at 22, 437 P.3d at 22*. Such review not only provides a sturdy bulwark for protecting the rights of both the

majority and the minority,[13] but it also, as Hamilton **[**188]** **[*434]** concluded, is the "proper and peculiar province of the courts." THE FEDERALIST NO. 78, at 492.

Additionally, the SOS and the Legislature insist that the 35 legislative district requirement is justified because it assures that voter-initiated legislation that qualifies for the ballot has a "modicum of statewide support." To prove this, they point to the same two initiatives that qualified for the ballot in 2018. Both initiatives—Medicaid Expansion and Horse Racing—were required to present signatures from 6% of qualified electors statewide, including 6% of qualified electors as of the last general election in at least each of 18 legislative districts. *See* I.C. § 34-1805 (2013). The SOS points out that both initiatives qualified for the ballot without first demonstrating support in all areas of the state. ("Historical Horse Racing did not obtain a qualifying number of signatures in any legislative district in Northern Idaho, while Medicaid Expansion did not obtain sufficient signatures in legislative districts in the midsection of the state."). Thus, the SOS claims, *Idaho Code section 34-1805(2)*'s requirement that petitioners obtain a qualifying number of signatures in each of Idaho's 35 legislative districts "provides a system of checks and balances for direct legislation, which creates a check on the will of the **[***71]** majority."

We see little evidentiary or logical support for the position that the state has a compelling interest in ensuring that initiatives and referenda demonstrate a threshold level of support in *every* legislative district before qualifying for the ballot. For example, there is simply no logical reason why a ballot proposition supported by 6 percent of the voters in 34 out of 35 legislative districts has not clearly established that it has statewide support. More importantly, the suggestion that the proponents of a ballot proposition must demonstrate "a modicum of statewide support" just to qualify for the ballot is simply inapposite to ***HN37***[⬆] the inherent purpose of *Article III, Section 1*'s initiative and referendum power, which is to give the majority of the people an opportunity to have a voice in passing legislation. It must be remembered that SB 1110 only addresses qualifying for the ballot; once qualified, a proposition still requires a majority vote to pass. ***HN38***[⬆] The Idaho Constitution's reservation of legislative power to the state's qualified voters—allowing them to pass or repeal legislation "independent of the legislature"—must also come with a fair opportunity to qualify an initiative or referendum **[***72]** for the ballot to exercise this power, or the power is merely illusory. The SOS and the Legislature have failed to demonstrate an interest compelling enough to justify the placing of such an onerous procedural hurdle on the proponents of an initiative or referendum before the majority ever gets to weigh-in on the issue.

The same is true of the rationale that SB 1110 was necessary to address concerns that the ballot might become "cluttered" with initiatives representing special interests. While we are mindful that California has had to contend with cluttered ballots,[14] Idaho's experience over the same period of time has been very different. We note first that, in the 109 years since the initiative and referendum power was created—88 years since the legislature passed enabling legislation—only 30 initiatives and seven referenda have ever made it onto the ballot. Only 28 initiatives and seven referenda qualified for the ballot in the 80 years (1933-2013)[15] when there was no geographic distribution requirement at all for gathering signatures. However, even if more initiatives and referenda qualified for the ballot in Idaho, the SOS and the Legislature would still have failed to establish that **[***73]** special interest "clutter" is a sufficient reason to limit fundamental rights.

[189]** **[*435]** In sum, the legislature has crafted a dramatic check on the ballot qualification process without showing a compelling need for such a check. Importantly, a thorough check is already built into the process: that every qualifying initiative or referenda is subject to a statewide, majority vote in which every qualified elector has an equal say. Thus, we conclude that the SOS and the Legislature have failed to demonstrate a compelling state interest justifying the restrictions in SB 1110.

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[13] For an assessment of how the courts have acted as check on the initiative and referendum processes to protect minority rights when needed, *see* David B. Magleby, *Let the Voters Decide? An Assessment of the Initiative and Referendum* ***[***70]*** *Process*, *66 U. Colo. L.Rev. 13, 40-42 (1995)*.

[14] According to data from the California Secretary of State's webpage, 392 initiatives have qualified for the ballot in California since 1912. *See* https://www.sos.ca.gov/elections/ballot-measures/resources-and-historical-information/history-california-initiatives .

[15] This includes the period in which the Ninth Circuit struck down Idaho's 22-county signature requirement for qualifying initiatives and referenda for the ballot. Technically, the 22-county geographic distribution requirement was in effect from 1997 to 2001, but no direct legislation made it to the ballot in those years.

2. The requirement for signatures from all 35 legislative districts is not narrowly tailored.

Even if we were to accept, *arguendo*, the SOS and the Legislature's argument that there is a compelling state interest in demonstrating a "modicum of statewide support," we still cannot conclude that requiring signatures from 6% of registered voters in every one of the state's 35 legislative districts is narrowly tailored to achieve that goal. The statement of purpose to SB 1110 explains that it will accomplish its goals "by ensuring signatures are gathered from each of the 35 legislative districts, so every part of Idaho is included **[***74]** in the process." However, instead of crafting a narrow solution to address this concern, SB 1110 resolves it by placing an absolute veto power into the hands of any one legislative district in the state.

The SOS and the Legislature's argument is based on the unsupported assumption that a failure to gather enough signatures to qualify an initiative for the ballot in any one legislative district means that voters in the district do not support the initiative, or that there is not "a modicum of statewide support" for the initiative. There is little evidence to support such an inference. Medicaid Expansion is a salient example. In that case, organizers *qualified* the petition for the ballot without relying on signatures from districts in the middle of the state because the campaign was not required to do so. Yet, voters still passed the initiative by winning a majority of the vote in 35 of Idaho's 44 counties, amassing over 60% of the statewide vote. Moreover, even though many of the qualifying signatures were gathered where the state's population is more concentrated, the majority of the counties where the initiative passed were rural. Of course, Medicaid Expansion is only a single example. **[***75]** Yet, due to the relatively few initiatives that have passed in Idaho in recent years—only one has passed since 2002—the SOS and the Legislature have been unable to provide us with contrary evidence.

Instead of historic examples, the Legislature invokes the *possibility* of an extreme future scenario: If the 18-legislative-district requirement for signatures remains in effect, organizers *could* qualify an initiative or referendum by gathering signatures from only four populous counties—Ada, Canyon, Kootenai, and Bonneville—which alone currently encompass 18 legislative districts. Yet, such a scenario has never occurred. In the most recent initiative campaigns, both Medicaid Expansion and Horse Racing proponents ran extremely efficient and organized campaigns, with Medicaid Expansion relying on regional networks of volunteers, and Horse Racing deploying paid signature gatherers. To qualify for the ballot, Medicaid Expansion gathered signatures from 6% of registered voters in 26 counties; Horse Racing did the same in approximately 20 counties. Although these are only two limited, but recent, examples, in neither of these well-run campaigns did the petition organizers qualify their initiatives **[***76]** for the ballot by obtaining signatures from only four counties.

However, again assuming, *arguendo*, that the Legislature's scenario was realized—an initiative qualified for the statewide ballot by garnering signatures from only Ada, Canyon, Kootenai, and Bonneville counties—it would still not mean that the initiative did not represent a diverse array of statewide interests. Although Ada and Canyon County are adjacent to one another in the southwest region of the state, Canyon County is decidedly more rural and politically distinguishable from Ada County. There, the population centers of Nampa and Caldwell serve largely rural interests. Even Ada County, which is home to Idaho's most populous city, Boise, with approximately 228,000 people as of the **[**190]** **[*436]** last census,[16] includes large tracts of rural land and more than 1,300 farms comprising more than 112,000 acres in 2017.[17] Importantly, notwithstanding the population of Boise, the SOS and the Legislature have failed to show that the political interests of Ada County as a whole are consistent with those of Boise. Similarly, Bonneville County, outside of Idaho Falls and Ammon, is indisputably a large rural county. The Legislature casts *Idaho Code section 34-1805(2)* as necessary **[***77]** to ensure that a diversity of interest, such as urban and rural voters, can weigh-in on a proposed initiative. However, even based on just these four counties, the reality is that counties with large "urban" centers in Idaho also contain significant amounts of agricultural land and have diverse and unique political makeups. Thus, the interests of the voters in these four counties are more grayscale than black or white.

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[16] According to current U.S. Census data, the City of Boise has a population of 228,965. https://data.census.gov/cedsci/profile?g=1600000US1608830 .

[17] *See* U.S. Dep't. of Agric., 2017 Census of Agriculture, Idaho State and County Data (April 2019), https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_2_County_Level/Idaho/ idv1.pdf .

The Legislature also claims it must protect against one region of the state dominating the rest with its local agenda. Yet, the four counties in their example could not be more geographically, culturally, and economically diverse. Kootenai County is in the state's panhandle, about 400 miles north from Boise and borders the State of Washington, while Bonneville County is about 300 miles east of Boise on the state's southeastern border with Wyoming. Ada County and Canyon County are both near Idaho's southwestern border with Oregon. If an organizer somehow qualified a ballot proposition by obtaining signatures from legislative districts in only these four counties, the signatures would have to come from voters in three far-flung corners of the state, representing varied **[***78]** regional interests, including both urban and rural interests, and spanning two time zones. This would certainly suggest a "modicum of statewide support" for the proposition. Moreover, we reiterate that the initiative and referendum processes come with a protection against local provincialism already built in: the requirement that direct legislation must be passed by a majority vote at the polls in November.

Interestingly, the SOS also argues that the new 35-legislative-district requirement is not impossible to satisfy because, due to the way legislative districts overlay counties, sponsors of initiative and referenda would only need to gather signatures "in about a third of Idaho's 44 counties (14 of 44)" and that "[s]carcely populated counties need not be visited." Of course, this only emphasizes the SOS and the Legislature's logical dilemma: on the one hand, they argue interests across the state must be represented; on the other hand, they argue that SB 1110 would require signatures from only 14 counties in the state. At best, it looks as though the Legislature has devised a requirement that nearly doubles the previous threshold—from 18 to 35 legislative districts—while also claiming **[***79]** that it would not affect anyone very much.

Rather than evenly distributing power across the state, the Legislature has achieved just the opposite. By requiring a threshold of support from every legislative district in the state, the Legislature has essentially given every legislative district veto power over qualifying initiatives and referenda for the ballot. While this might theoretically assure that voters with minority interests will have a voice, it will achieve this end at a terrible cost. For example, a lone urban district in Boise could thwart an agricultural initiative with strong statewide support. Likewise, a paid special interest lobby could derail a popular initiative it dislikes by focusing its opposition efforts on a single legislative district with which it shares common interests. Indeed, the consequences of this would be felt across the political spectrum as the respective strengths of a majority or minority group ebbs and flows over time. In sum, rather than protecting the interests of minority voters, in reality the Legislature has given minority voters an effective veto over the will of the majority of voters.

[191]** **[*437]** If the Legislature's actual goal is to prevent any initiative **[***80]** or referendum from qualifying for the ballot, then this is probably an effective tactic. However, this is inconsistent with the constitutional requirement of a "narrowly drawn" solution. *Rudeen, 136 Idaho at 570, 38 P.3d at 608*. If the goal were to assure that all voters across the state have a voice, the Legislature has done this in a way that is devoid of *any* tailoring at all. Ultimately, the effect of SB 1110 is to prevent a perceived, yet *unsubstantiated* fear of the "tyranny of the majority," by replacing it with an *actual* "tyranny of the minority." This would result in a scheme that squarely conflicts with the democratic ideals that form the bedrock of the constitutional republic created by the Idaho Constitution,[18] and seriously undermines the people's initiative and referendum powers enshrined therein.

The SOS and the Legislature have argued that if statewide voters do not agree with the Legislature's policies, and cannot garner sufficient signatures to qualify an initiative or referendum for the ballot, the proper recourse is to elect different legislators. While it is true that the biennial election cycle affords the people one way to exercise their voting power to influence legislation, this is hardly a panacea **[***81]** when it comes to statewide issues—the people in one portion of the state have no ability to vote out a powerful legislator from another. More importantly, this argument ignores the fact that ***HN39***[⬆] the people of Idaho have reserved to themselves an additional constitutional mechanism for affecting statewide policy and correcting legislative enactments they do not support—the initiative and referendum process. This power is meaningless unless it is accessible. Just as the Idaho Constitution

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[18] *See U.S. Const. art. IV, § 4* ("The United States shall guarantee to every State in this Union a Republican Form of Government, . . ."); Idaho Admission Bill, 26 Stat. L. 215, ch. 656 (July 3, 1890) ("[The Idaho] Constitution is republican in form, and is in conformity with the Constitution of the United States."); *Reynolds v. Sims, 377 U.S. 533, 566, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964)* (Acknowledging the "democratic ideals of equality and majority rule.").

protects the people's right to either reelect their legislators or elect new ones at the polls, it also protects the right to approve or reject a proposed initiative or referendum at the polls. It is not the proper role for any branch of the government to effectively nullify a constitutional mechanism reserved by the people to effect policy.

In sum, ***HN40***[⬆] *Idaho Code section 34-1805(2)* violates *Article III, Section 1 of the Idaho Constitution* because the SOS and the Legislature have failed both tests under strict scrutiny: (1) they have not shown that there is a compelling state interest in demonstrating support from *every* legislative district before voter initiated legislation or referenda are allowed to appear on the ballot, and (2) they have failed to demonstrate that requiring **[***82]** signatures from all 35 legislative districts is a narrowly tailored way of achieving the goal of protecting the interests of rural or regional voters.

3. The previous version of Idaho Code section 34-1805 is restored.

Reclaim and the Committee ask this Court to strike the entire geographic requirement from *Idaho Code section 34-1805*. However, *section 34-1805(2)*'s 35-district requirement replaced a previous version of the statute with an 18-district requirement, and Reclaim and the Committee have not directly challenged the constitutionality of that previous legislation. Because there is no emergency cited that would warrant the Court exercising its original jurisdiction to deal with a statute which has been in effect for at least eight years, we deny Reclaim and the Committee's request to hold *Idaho Code section 34-1805* unconstitutional as it existed prior to the 2021 amendments. Thus, the proper remedy is to restore the previous version of the statute with its 18-district requirement.

The Idaho Supreme Court, in *American Independent Party in Idaho, Inc. v. Cenarrusa, 92 Idaho 356, 442 P.2d 766 (1968)*, considered the constitutionality of a statute that increased the signature requirement for qualifying new political parties. In holding that the amended statute was unconstitutional because it would make organizing a new political party "a practical impossibility," this **[***83]** **[**192]** **[*438]** Court held that the previous version of the statute "remain[ed] in full force and effect":

> ***HN41***[⬆] When a statute by express language repeals a former statute and attempts to provide a substitute therefor, which substitute is found to be unconstitutional, the repeal of the former statute is of no effect, unless it clearly appears that the legislature intended the repeal to be effective even though the substitute statute were found invalid.

Id. at 359, 442 P.2d at 769 (internal citations omitted).

For the reasons outlined herein, ***HN42***[⬆] we have declared SB 1110 unconstitutional and granted Reclaim and the Committee's petition for a writ of prohibition barring its taking effect. Accordingly, *Idaho Code section 34-1805* is restored to its previous state, whereby an initiative or referendum petition filed with the Secretary of State must include signatures from 6% of qualified electors at the time of the last general election in 18 legislative districts, provided the total number of signatures is equal to or greater than 6% of the registered voters in the state at the time of the last general election.

In so ruling, we clarify that we have not decided the question of whether *section 34-1805*, with its 18 legislative district requirement, is also unconstitutional. Accordingly, **[***84]** we deny this claim for relief without prejudice.

D. *Idaho Code section 34-1813(2)(a)*, which requires all voter-approved initiatives to take effect no sooner than July 1 of the following year, is also unconstitutional.

In 2020, the legislature amended *Idaho Code section 34-1813* to include a provision that no initiative may take effect until July 1 of the year following the election in which it was approved:

> A statewide initiative may contain an effective date, if passed, that shall be no earlier than July 1 of the year following the vote on the ballot initiative. If no effective date is specified in the petition, the effective date of a statewide initiative that has been approved by the electorate shall be July 1 of the following year.

Idaho Code § 34-1813(2)(a). Similar to the 2021 amendments to *section 34-1805(2)*, Reclaim and the Committee argue that this provision is unconstitutional. We agree.

Reclaim and the Committee claim that the constitutional right reserved to the people to legislate directly by initiative in *Article III, Section 1 of the Idaho Constitution* is expressly "independent of the legislature," which

means the legislature has no authority to set the effective date for initiative based legislation. For support, they cite previous case law in which this Court reasoned that, once passed, initiative laws stand on "equal **[***85]** footing" with laws passed by the legislature. *See* Westerberg, 114 Idaho at 404, 757 P.2d at 667 (citing Luker, 64 Idaho at 706, 136 P.2d at 979).

HN43[↑] The Legislature has the power to declare that its legislation is an emergency, which allows the legislation to have immediate effect. *See Idaho State AFL-CIO v. Leroy, 110 Idaho 691, 698, 718 P.2d 1129, 1136 (1986)*. To this end, Reclaim and the Committee aver that the people have a commensurate right to place an effective date into the legislation the people pass. Accordingly, they argue that, because Idaho Code section 34-1813(2)(a) intrudes upon that right, it violates the people's independent legislative power under Article III, Section 1 of the Idaho Constitution. Critically, they contend that, "[t]he only conceivable purpose [the Legislature] could have in imposing a blanket requirement of a July 1 or later effective date—some eight months after passage—is to give itself the opportunity to repeal a successful initiative in the session before July 1." Thus, they ask this Court to issue a writ prohibiting state officials from enforcing the effective date language in Idaho Code section 34-1813(2)(a).

[*439] In response, the SOS states that the effective date of legislation is a procedural matter and, therefore, within the purview of the legislature's conditions and manner authority under Article III, Section 1. Again, the SOS argues that "independent of the legislature" language of the Constitution only allows the people to determine the **[***86]** subject matter of the legislation but does not create independence **[**193]** in the legislative process. Further, the SOS argues there are practical considerations in "setting a consistent default effective date for all initiatives . . . ." To some extent, these echo the very concerns described by Reclaim and the Committee: that the Legislature does not wish to have legislation take immediate effect so they can repeal it in the next legislative session. The SOS notes that most legislation in Idaho does not include an effective date, and that July 1 is the default date, unless another effective date is included. HN44[↑] Generally, legislation does not go into effect sooner than 60 days after it is passed, except in case of an emergency. However, it is also true that legislation *may* contain a different effective date.

HN45[↑] Article III, Section 22, of the Idaho Constitution states: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law." Thus, the same standard, which allows the legislature considerable discretion in setting the effective date of legislation when an emergency is properly declared, **[***87]** should apply to legislation adopted by the people via the initiative process. Although the SOS argues that the effective date is merely procedural, we conclude that it crosses over into the substantive right reserved to the people. HN46[↑] Article III, Section 1 provides that the people reserve to themselves the "power to *propose* laws, and *enact* the same at the polls *independent of the legislature*." Notably, "independent of the legislature" applies to both the power to propose laws and the power to *enact* laws. This necessarily includes the power to set the effective date, by which the laws are actually enacted.

In *Luker*, we held that initiative-based legislation was subject to amendment and repeal by the legislature because, after the law is passed, the constitutional amendment that created the initiative right placed initiative legislation "on an equal footing" with other legislative acts. 64 Idaho at 706, 136 P.2d at 979. HN47[↑] In other words, "[t]he power to legislate is . . . derived from the same source." *Id.* As noted previously, we reaffirm our prior holdings that initiative-created legislation stands on equal footing with laws enacted by the legislature.[19] We conclude that this necessarily includes permitting the drafters of initiatives to set effective **[***88]** dates, subject to the requirements in

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[19] HN48[↑] In Luker, this Court made two misstatements in its description of the legislative power in Idaho, which we now disavow. First, we wrote that the government was divided into three departments, "the first and foremost of which is the legislative power" vested in the Senate and House of Representatives. *Id.* (citing Idaho Const. art. III, § 1). We have since consistently emphasized that the three departments—the legislative, the executive, and the judiciary—are co-equal. Second, we described the 1912 constitutional amendment that reserved the initiative and referendum powers to the people as an "*afterthought*" and, thus, implied it was less important than other constitutional provisions. *Id.* (emphasis added). We recognize that many of the people's most important rights have come about by constitutional amendment, beginning with the Bill of Rights (Amendments I through X, inclusive), including the Thirteenth Amendment (abolishment of slavery) and the Twentieth Amendment (the recognition of women's suffrage). We disclaim any language that implies a right created by constitutional amendment is of lesser importance.

Article III, Section 22, of the Idaho Constitution. To read *Article III, Section 1* otherwise would disregard that the people may enact legislation "independent of the legislature." Therefore, we conclude that the amendments to *Idaho Code section 34-1813(2)(a)* are an unconstitutional infringement on the peoples' right to legislate independent of the legislature.

VI. ATTORNEY FEES UNDER THE PRIVATE ATTORNEY GENERAL DOCTRINE

Reclaim and the Committee request an award of attorney fees under the private attorney general doctrine. ***HN49***[↑] Three factors are to be considered under this doctrine:

> (1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, (3) the number of people standing to benefit from the decision.

[194]** **[*440]** *Ada Cnty. v. Red Steer Drive-Ins of Nevada, Inc., 101 Idaho 94, 100, 609 P.2d 161, 167 (1980)* (citing *Serrano v. Priest, 20 Cal. 3d 25, 141 Cal. Rptr. 315, 569 P.2d 1303, 1314 (Cal. 1977)*). In *Smith v. Idaho Comm'n on Redistricting, 136 Idaho 542, 546, 38 P.3d 121, 125 (2001)*, we held that the private attorney general doctrine was applicable, even without a factual record, where petitioners "pursued the vindication of [a] right vigorously and the pursuit of such benefited a large number of Idahoans."

Reclaim and the Committee likewise assert that theirs is exactly the kind of case for which the doctrine was created: one pursued to protect the public and uphold **[***89]** the Idaho Constitution. Further, they note that no one from the public sector was able to effectively challenge the statute. Because the Attorney General's Office was charged with advising and representing the state officials who created the legislation at issue, and they ultimately represented the SOS in this action, there was no public entity available to protect the people's rights that Reclaim and the Committee defended. Thus, private enforcement was their only alternative. Additionally, the Legislature intervened to defend the contested legislation, using taxpayer funds to do so. Finally, Reclaim and the Committee's efforts in vindicating the people's constitutional right to pass and repeal legislation potentially benefits every citizen of Idaho.

Therefore, under the circumstances unique to this case, we conclude that attorney fees are warranted under the private attorney general doctrine. The contested legislation constituted a grave infringement on the people's constitutional rights, making this matter vital to the public interest to people across Idaho. Accordingly, this Court grants attorney fees for Reclaim and the Committee, to be apportioned equally between the SOS and the **[***90]** Legislature, inasmuch as both were active in opposing the petition.

VII. CONCLUSION

For the reasons set forth herein, we dismiss Gilmore's petition because he lacks standing. However, Reclaim and the Committee have established standing for this Court to hear their petition, and we conclude that this Court should hear the petition as it presents possible constitutional violations, which have an urgent need for immediate determination. Because the challenged legislation does not raise a purely political question, it falls within this Court's fundamental responsibility to act in its original jurisdiction and pass on its constitutionality.

Regarding the merits of Reclaim and the Committee's petition, we grant the petition in part by declaring that ***HN50***[↑] *section 34-1805(2)* violates *Article III, Section 1 of the Idaho Constitution* because the initiative and referendum powers are fundamental rights, reserved to the people of Idaho, to which strict scrutiny applies. We conclude that the SOS and the Legislature have failed to present a compelling state interest for limiting that right. Additionally, even if there were a compelling state interest, the Legislature's solution is not a narrowly tailored one. Therefore, we also grant the petition for a writ of prohibition **[***91]** barring SB 1110 from taking effect. However, we deny without prejudice the request to further strike the geographic distribution requirement in the previous statute. Instead, we restore the previous version of *section 34-1805*, which requires signatures from 6% of the qualified electors at the time of the last general election in each of at least 18 legislative districts, as well as signatures equal to or greater than 6% of the qualified electors in the state at the time of the last general election.

HN51[↑] We further declare that *section 34-1813(2)(a)*, which allows the legislature to set the effective date for initiatives as July 1 of the year following passage, violates *Article III, Section 1 of the Idaho Constitution* because it infringes on the people's reserved power to enact legislation independent of the legislature. Accordingly, we grant Reclaim and the Committee's petition for a writ of prohibition preventing the Secretary

of State from enforcing this provision.

As the prevailing parties, Reclaim and the Committee are awarded their reasonable attorney fees under the private attorney general doctrine. Likewise, they are further entitled **[**195]** **[*441]** to recover their costs as a matter of course.

Chief Justice BEVAN and Justice BURDICK CONCUR.

Concur by: STEGNER; BRODY (In Part)

Concur

STEGNER, J., specially **[***92]** concurring.

I concur with the ultimate holding and reasoning of the majority in its resolution of the claims of Reclaim and the Committee. I agree with my colleagues that *Idaho Code sections 34-1805(2)* (2021) and *34-1813(2)(a)* (2020) constitute unconstitutional attempts by the Legislature to limit the people's ability to enact and repeal legislation "independent of the legislature." *Idaho Const. art. III, § 1*. However, I write to explain my disagreement with my colleagues' analysis regarding Gilmore's standing, or rather, lack of standing. I feel no need to dissent because the determination that Gilmore lacks standing "does not affect the outcome of the instant appeal." *Glengary-Gamlin Protective Ass'n v. Bird, 106 Idaho 84, 87, 675 P.2d 344, 347 (Ct. App. 1983)*. The question of Gilmore's standing is therefore unimportant to the ultimate resolution of these cases as the claims of Reclaim and the Committee are coterminous with Gilmore's.

This concurrence begins with an analysis of our state constitution. The Idaho Constitution guarantees that "[c]ourts of justice shall be open to *every person*, and a speedy remedy afforded for *every injury of person, property or character*, and right and justice shall be administered without sale, denial, delay, or prejudice." *Idaho Const. art. I, § 18* (italics added). Considering this guarantee—and the noticeable absence of a "case or **[***93]** controversy" requirement in the Idaho Constitution—use of the federal standing framework in Idaho is not only legally unsound, but constitutionally incorrect.

This Court is not bound by the "case" or "controversy" language contained in the United States Constitution.[1] The "case or controversy" language presents a jurisdictional requirement applicable only to federal courts; federal courts are courts of limited jurisdiction, and can only hear cases they have been granted jurisdiction to hear. *Gunn v. Minton, 568 U.S. 251, 256, 133 S. Ct. 1059, 185 L. Ed. 2d 72 (2013)*; *see also U.S. Const. art III, § 2*. In dramatic contrast, state courts are courts of *general* jurisdiction. *See, e.g.McCormick v. Smith, 23 Idaho 487, 489, 130 P. 999, 1001 (1913)* ("Unless the jurisdiction conferred by the Constitution and laws of the United States upon the federal courts is made exclusive of the state courts, *state courts retain jurisdiction of all actions wherein they are competent to take jurisdiction under their own laws*.") (italics added); *see also Idaho Const. art. V, § 20* ("The district court shall have original jurisdiction *in all cases*, both at law and in equity, and such appellate jurisdiction as may be conferred by law.") (Italics added.) In other words, the starting premise in state court is inclusion and a presumption of jurisdiction, as opposed to exclusion and the opposite **[***94]** presumption.

Moreover, federal standing jurisprudence is rooted in a federal constitutional provision which has no equivalent in the Idaho Constitution. *See, e.g.Lujan v. Defs. of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)* ("Though some of [the federal standing] elements express merely prudential considerations that are part of judicial self-government, the core component of [federal] standing is an essential and unchanging part of the case-or-controversy requirement of Article III."); *compare U.S. Const. art III, § 2*, *with* IDAHO CONST. art. V (generally). In the words of the United **[**196]** **[*442]** States Supreme Court: "[T]he constraints of

[1] This Court observed in *Bear Lake Educational Association, by and through Belnap v. Board of Trustees of Bear Lake School District No. 33, 116 Idaho 443, 448, 776 P.2d 452, 457 (1989)*, that "some elements of standing in the federal system are colored by the constitutional requirements of a 'case' or 'controversy[.]'" However, it appears that subsequently, the federal standing framework was wholly adopted without any such qualifying language. *See, e.g.Miles v. Idaho Power Co., 116 Idaho 635, 641, 778 P.2d 757, 763 (1989)* (referring to "the case or controversy requirement of standing"). Twenty-five years later, in *Coeur d'Alene Tribe v. Denney*, the Court acknowledged that the Idaho Constitution contains no analogous provision requiring a "case or controversy[.]" but described adoption of the federal standard as a "self-imposed constraint adopted from federal practice[.]" *161 Idaho 508, 513, 387 P.3d 761, 766 (2015)*. No additional explanation has ever been provided.

Article III [of the federal constitution] do not apply to state courts, and accordingly *the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability* even when they address issues of federal law[.]" *ASARCO Inc. v. Kadish, 490 U.S. 605, 617, 109 S. Ct. 2037, 104 L. Ed. 2d 696 (1989)* (italics added).

Notwithstanding this fact, the Idaho appellate courts began employing the federal standing framework in the 1980s without explanation. *See, e.g.Glengary-Gamlin Protective Ass'n, Inc., 106 Idaho at 87, 675 P.2d at 347*. Significantly, "none of the cases [utilizing the federal standing framework] have ever tried to reconcile or explain the 'case or controversy' requirement in the federal constitution **[***95]** to any provision in the Idaho Constitution, Idaho statute, or Idaho common law." *Zeyen v. Pocatello/Chubbuck Sch. Dist. No. 25, 165 Idaho 690, 706, 451 P.3d 25, 41 (2019)* (Stegner, J., dissenting).

This Court remains in the small minority of states that do not meaningfully distinguish between sources of state and federal standing. Most states acknowledge the distinction "between the structure of the state and federal courts, and avoid adopting federal doctrine without regard to their own precedent or circumstances." Wyatt Sassman, *A Survey of Constitutional Standing in State Courts*, 8 KY. J. EQUINE, AGRIC. & NAT. RESOURCES L. 349, 398 (2016). Results vary widely in those states that have grappled with the issue. Some states retain very loose standing frameworks that are heavily context-dependent.[2] Other states' frameworks have more shape, but emphasize the state's liberal approach to standing.[3] Still other states reduce standing to the existence of a "real" or "actual controversy,"[4] or rely on the existence and source of the legal cause of action to determine whether a plaintiff has standing.[5] Other states consider the federal standing framework to be persuasive and adopt it in part or wholesale as a matter of judicial policy, prudence, or restraint, or as a result of another state constitutional mandate.[6] Wherever **[**197]** **[*443]** these states ultimately **[***96]** arrived on standing, however, the core reasoning is the same: the state constitution does not contain the same limitations as the U.S. Constitution, and the state is free to set its own standing

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[2] *Roop v. City of Belfast, 2007 ME 32, 915 A.2d 966 (Me. 2007)* ("Unlike the language of *article III, section 2 of the United States Constitution*, the Maine Constitution contains no 'case or controversy' requirement. Therefore, '[o]ur standing jurisprudence is prudential, rather than constitutional.' The basic premise underlying the doctrine of standing is to 'limit access to the courts to those best suited to assert a particular claim.' There is no set formula for determining standing.") (citations omitted); *Foley-Ciccantelli v. Bishop's Grove Condominium Ass'n, Inc., 2011 WI 36, 333 Wis. 2d 402, 797 N.W. 2d 789, 799 (Wis. 2011)* (identifying "three aspects of standing[:] the personal interest, the adverse effect, and judicial policy").

[3] *See*, *e.g.*, *State v. Quitman Cnty., 807 So.2d 401, 405 (Miss. 2001)*; *Jenkins v. Swan, 675 P.2d 1145, 1149 (Utah 1983)*; *Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York, 58 N.J. 98, 275 A.2d 433, 437-38 (N.J. 1971)*.

[4] *See* ***Dep't of Revenue v. Kuhnlein, 646 So.2d 717, 720-21 (Fla. 1994)*** (requiring a "real controversy"); *Goldston v. State, 361 N.C. 26, 637 S.E.2d 876, 882 (N.C. 2006)* (requiring an "actual controversy").

[5] *Grosset v. Wenaas, 42 Cal. 4th 1100, 72 Cal. Rptr. 3d 129, 175 P.3d 1184 (Cal. 2008)* (referring to the statutory cause of action in determining whether a plaintiff has a cause of action); *Lansing Schools Educ. Ass'n v. Lansing Bd. of Educ., 487 Mich. 349, 792 N.W.2d 686, 696 (Mich. 2010)*; *Stockmeier v. Nevada Dep't of Corrs. Psychological Review Panel, 122 Nev. 385, 135 P.3d 220, 225 (Nev. 2006)*, abrogated on other grounds by *Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 181 P.3d 670 (Nev. 2008)* (examining whether statute giving rise to suit at bar provided standing to sue); *Kellas v. Dep't of Corrs., 341 Ore. 471, 145 P.3d 139, 142 (Or. 2006)* ("The source of law that determines that question is the statute that confers standing in the particular proceeding that the party has initiated, 'because standing is not a matter of common law but is, instead, conferred by the legislature.'") (quoting *Local No. 290 v. Dep't of Environ. Quality, 323 Ore. 559, 919 P.2d 1168 (Or. 1996)*).

[6] *Sierra Club v. Dep't of Transp., 115 Haw. 299, 167 P.3d 292, 312 (Haw. 2007)* (acknowledging borrowed justiciability requirements from federal framework "based on this court's prudential rules of judicial self-governance"); *Pence v. State, 652 N.E.2d 486, 488 (Ind. 1995)*; *ACLU of New Mexico v. City of Albuquerque, 2008- NMSC 045, 144 N.M. 471, 188 P.3d 1222, 1226-27 (N.M. 2008)* ("'While we recognize that standing in our state courts does not have the constitutional dimensions that are present in federal court, New Mexico's standing jurisprudence indicates that our state courts have long been guided by the traditional federal standing analysis."); *Hous. Auth. of Cnty. of Chester v. Pennsylvania State Civ. Serv. Comm'n, 556 Pa. 621, 730 A.2d 935, 941 (Pa. 1999)* (acknowledging distinction between federal and state standing frameworks, but only examining statutory source of standing when federal framework not met); *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty., 301 S.W.3d 196, 202-03 (Tenn. 2009)*.

requirements.

Our neighbors in Oregon and Utah have both expressly rejected the federal framework for standing because there is no state constitutional equivalent of the "case or controversy" requirement,[7] with the Oregon Supreme Court writing:

> [W]e cannot import federal law regarding justiciability into our analysis of the Oregon Constitution and rely on it to fabricate constitutional barriers to litigation with no support in either the text or history of Oregon's charter of government.
> As former Justice Linde of this court has explained:
>
> > "In sum, rejecting premature or advisory litigation is good policy, but rigid tests of 'justiciability' breed evasions and legal fictions. It is prudent to keep judicial intervention within statutory or established equitable and common law remedies. It is not prudent to link a decision declining adjudication to non-textual, self-created constitutional barriers, and thereby to foreclose lawmakers from facilitating impartial, reasoned resolutions **[***97]** of legal disputes that affect people's public, rather than self-seeking, interests. Requirements that rest only on statutory interpretations can be altered to meet desired ends, but change becomes harder once interpretations are elevated into supposedly essential doctrines of 'justiciability.'"

Kellas v. Dep't of Corrs., 341 Ore. 471, 145 P.3d 139, 143 (Or. 2006) (quoting Hans A. Linde, *The State and the Federal Courts in Governance: Vive La Différence*! *46 WM. & MARY L. REV. 1273, 1287-88 (2005)*).

Blind adoption of the federal framework is not only legally unsound, but more importantly, it is a fundamental rejection of Idaho's unique judicial power and constitutional guarantee. I again urge my colleagues to address this issue. I recognize that leaving behind thirty years of jurisprudence on standing is a significant departure from our recent jurisprudence. However, the trek back to the true course—the *Idaho* constitution—will be shorter if begun now. It is never too late to correct a mistake. Only then can Idaho's courts truly satisfy the mandate of our state constitution: "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, **[***98]** delay, or prejudice." *Idaho Const. art. I, § 18*. Notwithstanding my disagreement with this Court's analysis regarding Gilmore's standing, I concur.

Dissent by: BRODY (In Part)

Dissent

BRODY, J., concurring in part and dissenting in part.

I concur with the Court's conclusion that SB 1110 is unconstitutional. I dissent from subsections III.B and III.C of the opinion where the Court adopts and applies strict scrutiny to invalidate the law. I would hold that SB 1110 is unconstitutional because it is not "reasonable and workable" under the standard articulated by the Court in *Dredge Mining Control-Yes!, Inc. v. Cenarrusa, 92 Idaho 480, 484, 445 P.2d 655, 659 (1968)*. I otherwise concur and join the other portions of the Court's opinion.

Standards of review matter. Strict scrutiny is the most exacting standard of constitutional review. It takes the usual presumption—that legislation is constitutional unless those **[**198]** **[*444]** opposing it can prove otherwise, *see* *Olsen v. J.A. Freeman Co., 117 Idaho 706, 709, 791 P.2d 1285, 1288 (1990)*and turns it on its head. Strict scrutiny presumes legislation is *un*constitutional unless the government can prove otherwise by establishing it is necessary to further a compelling interest. *Van Valkenburgh v. Citizens for Term Limits, 135 Idaho 121, 126, 15 P.3d 1129, 1134 (2000)*.

In this case, the Court holds that strict scrutiny must apply because the referendum and initiative rights are fundamental:

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[7] *See* *Jenkins, 675 P.2d at 1149* ("[N]o similar requirement exists in the Utah Constitution. We previously have held that 'this Court may grant standing where matters of great public interest and societal impact are concerned.' However, the requirement that the plaintiff have a personal stake in the outcome of a legal dispute is rooted in the historical and constitutional role of the judiciary in Utah."); *see also* *Couey v. Atkins, 357 Ore. 460, 355 P.3d 866, 885 (Or. 2015)* ("Neither of the judicial-power provisions was patterned after the judicial-power provisions of the federal constitution, which expressly limited the exercise of judicial power by federal courts to specifically enumerated categories of 'cases' and 'controversies.' To the contrary, the constitution vested '*[a]ll judicial power*' in the courts, without limitation or qualification.") (italics in original).

> "We have already concluded that, just like the right to vote, the **[***99]** people's right to legislate is expressed as a positive right in the Idaho Constitution and is, therefore, fundamental. Our fundamental rights analysis is unequivocal that such rights are subject to strict scrutiny, and that is the standard we must apply here."

Must? We *must* apply strict scrutiny when the Idaho Constitution expressly grants the legislature the authority to regulate the conditions and manner in which the people exercise their initiative and referendum rights? In other words, we *must* presume the legislature has acted unconstitutionally, absent proof to the contrary, when it does what the constitution says it may do? This cannot be so.

I understand our Court has typically applied strict scrutiny in cases impacting fundamental rights. I disagree, however, with following that tradition here. The Court needs only look as far as the decision in *Van Valkenburgh v. Citizens for Term Limits, 135 Idaho 121, 15 P.3d 1129 (2000)*the case it cites for the proposition that strict scrutiny applies—to see that a reflexive application of the standard is unwarranted. Specifically, in finding strict scrutiny applied, the Court distinguished the circumstances of *Van Valkenburgh* from those of *Burdick v. Takushi, 504 U.S. 428, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992)*, a decision that limns the fallacies in the Court's application of strict **[***100]** scrutiny here.

In *Burdick*, a registered voter from Hawaii wanted to vote for a write-in candidate in the primary and general elections. *504 U.S. at 430*. He was informed by state officials that there was no provision for write-in voting so he sued the state, arguing that the prohibition violated the *First* and *Fourteenth Amendments of the United States Constitution*. *Id.* The voter argued that strict scrutiny should be applied to the case because the prohibition involved the fundamental right to vote. *Id. at 432*.The United States Supreme Court soundly rejected his argument, holding that strict scrutiny would impermissibly tie the state's hands to regulate as expressly permitted by the Constitution:

> *Petitioner proceeds from the erroneous assumption that a law that imposes any burden upon the right to vote must be subject to strict scrutiny. Our cases do not so hold*.
>
> It is beyond cavil that "voting is of the most fundamental significance under our constitutional structure." It does not follow, however, that the right to vote in any manner and the right to associate for political purposes through the ballot are absolute. *The Constitution provides that States may prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives,"* *Art. I, § 4, cl. 1*, and the Court **[***101]** therefore has recognized that States retain the power to regulate their own elections. Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes."
>
> Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends." *Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are **[**199]** **[*445]** operated equitably and efficiently*. Accordingly, the mere fact that a State's system "creates barriers ... tending to limit the field of candidates from **[***102]** which voters might choose ... does not of itself compel close scrutiny."

504 U.S. at 432-34 (citations omitted) (emphasis added). After rejecting the petitioner's strict scrutiny argument, the *Burdick* Court went on to apply a more flexible balancing test articulated by the Court in *Anderson v. Celebrezze, 460 U.S. 780, 782, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983)*. *Burdick, 504 U.S. at 433-34*. Ultimately, it upheld Hawaii's prohibition on write-in voting. *Id. at 441*.

To be clear, I do not advocate for the application of what is now known as the *Anderson-Burdick* flexible balancing test that federal courts apply in federal voting cases. My point in raising *Burdick* is two-fold. First, *Burdick* illustrates that the application of strict scrutiny in a case involving fundamental rights is not always a given. And, second, the express provision in the United States Constitution which grants states the authority to set the time, place, and manner of voting for senators and representatives, necessitated a more deferential

standard of review than strict scrutiny. The same logic applies here. *Article III, section 1 of the Idaho Constitution* grants the legislature the authority to set the conditions and manner for the exercise of referendum and initiative rights; good sense and the constitutional text necessitate a standard that lets it do so.

Over half a century ago, our Court articulated **[***103]** the standard that I would apply to this case in *Dredge Mining Control-Yes!, Inc. v. Cenarrusa, 92 Idaho 480, 484, 445 P.2d 655, 659 (1968)*. The Court's decision today does not convince me that we should jettison that precedent. It is true that the *Dredge Mining* court did not address strict scrutiny as a standard of review. In fact, the modern doctrine of strict scrutiny did not actually emerge until the late 1960s, about the time when *Dredge Mining* was decided. Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, *54 UCLA L. Rev. 1267, 1284-85 (2007)*. That does not mean, however, that *Dredge Mining* has no precedential value as the Court seems to conclude.

The Court contends that *Dredge Mining* did not establish the standard of review applicable here because, instead of conducting a fundamental rights analysis, the Court was focused on an issue of statutory interpretation—whether the term "legal voter" in the version of *Idaho Code section 34-1805* then in effect was synonymous with the term "qualified elector" in *Article VI, section 2 of the Idaho Constitution.* *See Dredge Mining at 482-83, 445 P.2d at 657-58*. To be sure, the *Dredge Mining* Court spent a lot of ink discussing this statutory interpretation issue. But it also squarely addressed what can only be read as a constitutional challenge to the signature verification requirements enacted by the legislature in connection with initiatives. Here was the assignment of error and **[***104]** the Court's summary of the arguments made by the proponent of the initiative:

> In its conclusions of law VI, the trial court stated:
>
> > 'The Legislature is charged with the duty of establishing a procedure whereby the people can place initiative matters on the ballot. The legislative procedures outlined in Chapter 18 of Title 34, Idaho Code, are not unreasonable and must be complied with. While they may be cumbersome they are nevertheless workable and if any changes are required therein, they should be promulgated by the Legislature and not by the Court.'
>
> *Appellant has assigned this conclusion as error and contends that the trial court should have concluded that the certification of signatures by the clerks of the various district courts was a practical impossibility under the Idaho voter registration laws*. The Idaho initiative law is nearly identical to that enacted by the Oregon legislature. Appellant contends that the requirement for certification of signatures by clerks of the courts in Oregon is workable under its election and registration laws, but that the same procedure is unworkable in Idaho because of differences in statutory **[**200]** **[*446]** enactments concerning the registration of voters.

92 Idaho at 483, 445 P.2d at 658 (emphasis **[***105]** added).

Right on the heels of this discussion, the Court recognized the people's constitutional right to initiative set forth in *Article 3, section 1* and the legislature's authority to regulate that right:

> *Idaho Const. Art. 3, § 1* reserves to the people the right to propose legislation by initiative, but only 'under such conditions and in such manner as may be provided by acts of the legislature * * *.' This court has specifically held in *Johnson v. Diefendorf, 56 Idaho 620, 57 P.2d 1068 (1936)*, that the right of referendum (also provided in *Idaho Const. Art. 3, § 1*) is not self-executing, but rather its exercise is dependent upon the statutory scheme enacted by the legislature. The legislature has established such a scheme by enactment of I.C. Title 34, Chapter 18.

Id. Then, after a discussion of how the signature verification process actually worked at the time, the Court upheld the signature verification requirements because they were "reasonable and workable":

> *The statutory scheme set up by the legislature, although restrictive and perhaps cumbersome, is reasonable and workable*. Changes designed to make it less restrictive and burdensome in its operation are for the legislature to enact. The trial court did not err in its conclusion of law that the provisions of the law enacted by the legislature pertaining **[***106]** to the initiative procedures are reasonable.

Dredge Mining Control-Yes!, Inc., 92 Idaho at 484, 445 P.2d at 659.

The bottom line is that the *Dredge Mining* Court squarely confronted the tension that exists between the people's right to an initiative and the legislature's

authority to regulate that right. The Court resolved that tension by applying a "reasonable and workable" test and ultimately concluded that the signature verification requirements enacted by the legislature passed constitutional muster. This is the same test I would apply today. SB 1110 is not reasonable and workable. I agree wholeheartedly with the Court's conclusion that SB 1110 gives every legislative district in the state veto power and turns a perceived fear of "tyranny of the majority" into an actual "tyranny of the minority." I would invalidate SB 1110 on that ground.

LexisNexis

Shepard's®: Report Content

Appellate History: Requested

Citing Decisions: Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By:Date:Jan 1 1658 to Oct 24 2024

***Shepard's*®:** La Bella Vita, LLC v. Shuler 158 Idaho 799,353 P.3d 420,2015 Ida. LEXIS 179,165 Lab. Cas. (CCH) P61609: (Idaho July 13, 2015)

Subsequent appellate history contains possible negative analysis

Appellate History (3)

1. **Citation you *Shepardized*™**

La Bella Vita, LLC v. Shuler, 158 Idaho 799, 353 P.3d 420, 2015 Ida. LEXIS 179, 165 Lab. Cas. (CCH) P61609

Court: Idaho | **Date:** July 13, 2015

Subsequent

2. **Decision reached on appeal by and**
Remanded by and
Costs and fees proceeding at and
Request granted:

La Bella Vita, LLC v. Shuler, 2018 Ida. App. Unpub. LEXIS 329, 2018 WL 4959103

Court: Idaho Ct. App. | **Date:** October 15, 2018

3. **Opinion withdrawn by and**
Substituted opinion at and
Decision reached on appeal by and
Remanded by and
Costs and fees proceeding at and
Request denied by:

La Bella Vita, LLC v. Shuler, 2018 Ida. App. Unpub. LEXIS 429, 2018 WL 6839341

Court: Idaho Ct. App. | **Date:** December 31, 2018

Citing Decisions (22)

Idaho Supreme Court

1. Bracken v. City of Ketchum, 172 Idaho 803, 537 P.3d 44, 2023 Ida. LEXIS 118

   Cited by: 172 Idaho 803 p.813; 537 P.3d 44 p.54
   Discussion: | **Court:** Idaho | **Date:** September 15, 2023 | **Headnotes:**: HN9

2. Dupuis v. E. Idaho Health Servs., 168 Idaho 648, 485 P.3d 144, 2021 Ida. LEXIS 77, 2021 WL 1416551

   Cited by: 168 Idaho 648 p.652; 485 P.3d 144 p.148
   Discussion: | **Court:** Idaho | **Date:** April 15, 2021

3. Owen v. Smith, 168 Idaho 633, 485 P.3d 129, 2021 Ida. LEXIS 79, 2021 WL 1399413

   Cited by: 168 Idaho 633 p.640; 485 P.3d 129 p.136
   Court: Idaho | **Date:** April 14, 2021 | **Headnotes:**: HN3, HN4, HN7

4. Gomersall v. St. Luke's Reg'l Med. Ctr., 168 Idaho 308, 483 P.3d 365, 2021 Ida. LEXIS 33, 2021 WL 1045210

   Cited by: 168 Idaho 308 p.313; 483 P.3d 365 p.370
   Discussion: | **Court:** Idaho | **Date:** March 19, 2021

5. Owen v. Smith, 167 Idaho 758, 477 P.3d 193, 2020 Ida. LEXIS 226

   Cited by: 167 Idaho 758 p.765; 477 P.3d 193 p.200
   Court: Idaho | **Date:** November 16, 2020 | **Headnotes:**: HN3, HN4, HN7

6. Packer v. Riverbend Communs., LLC, 167 Idaho 205, 468 P.3d 1283, 2020 Ida. LEXIS 167

   Cited by: 167 Idaho 205 p.209; 468 P.3d 1283 p.1287
   Discussion: | **Court:** Idaho | **Date:** August 03, 2020 | **Headnotes:**: HN3

7. Eldridge v. West, 166 Idaho 303, 458 P.3d 172, 2020 Ida. LEXIS 33, 2020 WL 770347

   Cited by: 166 Idaho 303 p.308; 458 P.3d 172 p.177
   Court: Idaho | **Date:** February 18, 2020 | **Headnotes:**: HN3

8. Eldridge v. West, 2019 Ida. LEXIS 237, 2019 WL 6974275

Cited by:

Discussion: | **Court:** Idaho | **Date:** December 20, 2019 | **Headnotes:**: HN3

9. Gordon v. United States Bank Nat'l Ass'n, 166 Idaho 105, 455 P.3d 374, 2019 Ida. LEXIS 232, 2019 WL 6884983

Cited by: 166 Idaho 105 p.112; 455 P.3d 374 p.381

Discussion: | **Court:** Idaho | **Date:** December 18, 2019 | **Headnotes:**: HN3, HN7

10. Trumble v. Farm Bureau Mut. Ins. Co., 166 Idaho 132, 456 P.3d 201, 2019 Ida. LEXIS 231, 2019 U.S.P.Q.2d (BNA) 481508, 2019 WL 6870935

Caution: 166 Idaho 132 p.151456 P.3d 201 p.220

Caution: 166 Idaho 132 p.151456 P.3d 201 p.220

Cited by: 166 Idaho 132 p.140456 P.3d 201 p.209

Cited by: 166 Idaho 132 p.140456 P.3d 201 p.209

Discussion: | **Court:** Idaho | **Date:** December 17, 2019 | **Headnotes:**: HN3, HN4, HN7, HN11, HN14

11. E. Side Highway Dist. v. Delavan, 167 Idaho 325, 470 P.3d 1134, 2019 Ida. LEXIS 222, 2019 WL 6724484

Cited by: 167 Idaho 325 p.340; 470 P.3d 1134 p.1149

Discussion: | **Court:** Idaho | **Date:** December 11, 2019

12. First Sec. Corp. v. Belle Ranch, LLC, 165 Idaho 733, 451 P.3d 446, 2019 Ida. LEXIS 193, 2019 WL 5539589

Cited by: 165 Idaho 733 p.740; 451 P.3d 446 p.453

Discussion: | **Court:** Idaho | **Date:** October 28, 2019 | **Headnotes:**: HN3

13. D.A.F. v. Lieteau, 166 Idaho 124, 456 P.3d 193, 2019 Ida. LEXIS 183, 2019 WL 4924954

Cited by: 166 Idaho 124 p.126; 456 P.3d 193 p.195

Court: Idaho | **Date:** October 07, 2019 | **Headnotes:**: HN3

14. Sec. Inv'r Fund LLC v. Crumb, 165 Idaho 280, 443 P.3d 1036, 2019 Ida. LEXIS 90, 2019 WL 2911069

Cited by: 165 Idaho 280 p.285; 443 P.3d 1036 p.1041

Court: Idaho | **Date:** May 23, 2019 | **Headnotes:**: HN3

15. Greenwald v. Western Sur. Co., 164 Idaho 929, 436 P.3d 1278, 2019 Ida. LEXIS 65, 2019 WL 1230911

LB **Cited by:** 164 Idaho 929 p.937; 436 P.3d 1278 p.1286
Court: Idaho | **Date:** March 15, 2019 | **Headnotes:**: HN3, HN4, HN7

16. Lee v. Willow Creek Ranch Estates, 164 Idaho 396, 431 P.3d 4, 2018 Ida. LEXIS 199, 2018 WL 6188276

LB **Cited by:** 164 Idaho 396 p.400; 431 P.3d 4 p.8
Discussion: | **Court:** Idaho | **Date:** November 28, 2018 | **Headnotes:**: HN9

17. State v. Herrera, 164 Idaho 261, 429 P.3d 149, 2018 Ida. LEXIS 171, 2018 WL 4265640

LB **Cited by:** 164 Idaho 261 p.271; 429 P.3d 149 p.159
Discussion: | **Court:** Idaho | **Date:** September 07, 2018 | **Headnotes:**: HN8

18. Medical Recovery Servs., LLC v. Ugaki-Hicks, 163 Idaho 651, 417 P.3d 248, 2018 Ida. LEXIS 109, 2018 WL 2034701

LB **Cited by:** 163 Idaho 651 p.655; 417 P.3d 248 p.252
Discussion: | **Court:** Idaho | **Date:** May 02, 2018 | **Headnotes:**: HN8

19. Sherman Storage, LLC v. Global Signal Acquisitions II, LLC, 159 Idaho 331, 360 P.3d 340, 2015 Ida. LEXIS 271

LB **Cited by:** 159 Idaho 331 p.338; 360 P.3d 340 p.347
Discussion: | **Court:** Idaho | **Date:** November 02, 2015 | **Headnotes:**: HN9

Idaho Court of Appeals

20. La Bella Vita, LLC v. Shuler, 2018 Ida. App. Unpub. LEXIS 429, 2018 WL 6839341

LB **Cited by:**
Court: Idaho Ct. App. | **Date:** December 31, 2018

21. La Bella Vita, LLC v. Shuler, 2018 Ida. App. Unpub. LEXIS 329, 2018 WL 4959103

LB **Cited by:**
Discussion: | **Court:** Idaho Ct. App. | **Date:** October 15, 2018

9th Circuit - U.S. District Courts

22. Bigrentz, Inc. v. KGM Enters., LLC, 2023 U.S. Dist. LEXIS 204818, 2023 U.S.P.Q.2d (BNA) 1361, 2023 WL 7496726

158 Idaho 799, 803

Cited by:

Discussion: | **Court:** Dist. Idaho | **Date:** November 13, 2023

Other Citing Sources: (28)

Annotated Statutes

1. **Idaho Code sec. 48-801**

   Content: Statutes

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2. **ARTICLE: AUTOMATED TRADE SECRET ASSET MANAGEMENT: SFP CLASSIFICATION, EONA PROOFS, BLOCKCHAINING, AND DTSA CIVIL SEIZURE ORDERS**, 20 UIC Rev. Intell. Prop. L 143

   Content: Law Reviews | **Date:** 2021

Treatise Citations

3. Responding to Motions for Summary Judgment
   1 Idaho Practice: Pre-Trial Civil Procedure @ 13.09

   Content: Treatises

4. **No Title**, 1 Milgrim on Trade Secrets Scope

   Content: Treatises

5. **Governing Law Respecting Trade Secret Protection**, 1 Milgrim on Trade Secrets @ 1.01

   Content: Treatises

6. **Secrecy, a Requisite Element**, 1 Milgrim on Trade Secrets @ 1.03

   Content: Treatises

7. **Use of Contract to Protect Trade Secrets: Pros and Cons**, 1 Milgrim on Trade Secrets @ 4.02

   Content: Treatises

8. **Burden of Proof and Defenses**, 4 Milgrim on Trade Secrets @ 15.01

Content: Treatises

Briefs

9. **RUPP v. CITY OF POCATELLO**, 2024 ID S. Ct. Briefs LEXIS 586

Content: Court Filings | **Date:** June 18, 2024

10. **IDAHO v. RODRIGUEZ**, 2023 ID S. Ct. Briefs LEXIS 1264

Content: Court Filings | **Date:** December 20, 2023

11. **DODD v. JONES**, 2023 ID S. Ct. Briefs LEXIS 863

Content: Court Filings | **Date:** October 10, 2023

12. **EVANS v. WRIGHT**, 2023 ID S. Ct. Briefs LEXIS 647

Content: Court Filings | **Date:** July 24, 2023

13. **SNAP! MOBILE, INC. v. RAISE**, 2023 ID S. Ct. Briefs LEXIS 491

Content: Court Filings | **Date:** July 17, 2023

14. **SNAP! MOBILE, INC. v. RAISE**, 2023 ID S. Ct. Briefs LEXIS 75

Content: Court Filings | **Date:** February 14, 2023

15. **KRALL v. HAGADONE HOSPITALITY**, 2023 ID S. Ct. Briefs LEXIS 81

Content: Court Filings | **Date:** February 07, 2023

16. **CHRISTMANN v. STATE FARM MUT. AUTO. INS. CO.**, 2022 ID S. Ct. Briefs LEXIS 685

Content: Court Filings | **Date:** August 22, 2022

17. **HANKS v. CITY OF BOISE**, 2022 ID S. Ct. Briefs LEXIS 672

Content: Court Filings | **Date:** July 27, 2022

18. **MARTIN v. THE THELMA V. GARRETT LIVING**, 2021 ID S. Ct. Briefs LEXIS 439

Content: Court Filings | **Date:** May 10, 2021

19. **ROUWENHORST v. v.**, 2020 ID S. Ct. Briefs LEXIS 3348

Content: Court Filings | **Date:** May 29, 2020

20. **BURNS CONCRETE, INC. v. TETON COUNTY**, 2019 ID S. Ct. Briefs LEXIS 1523

Content: Court Filings | **Date:** September 30, 2019

21. **GREGORY v. STALLINGS**, 2019 ID S. Ct. Briefs LEXIS 1323

Content: Court Filings | **Date:** August 20, 2019

22. **TRUMBLE v. FARM BUR. INS. SERV. CO.**, 2019 ID S. Ct. Briefs LEXIS 228

Content: Court Filings | **Date:** February 28, 2019

23. **IDAHO INDEP. BANK v. FRANTZ**, 2018 ID S. Ct. Briefs LEXIS 888

Content: Court Filings | **Date:** August 22, 2018

24. **HANSEN v. WHITE**, 2017 ID S. Ct. Briefs LEXIS 543

Content: Court Filings | **Date:** December 15, 2017

25. **LA BELLA VITA v. v.**, 2017 ID S. Ct. Briefs LEXIS 545

Content: Court Filings | **Date:** December 14, 2017

26. **DAVISON v. DEBEST PLUMBING**, 2017 ID S. Ct. Briefs LEXIS 942

158 Idaho 799, 803

Content: Court Filings | **Date:** August 14, 2017

27. **WESTOVER v. Idaho Counties Risk Mgmt. Program**, 2017 ID S. Ct. Briefs LEXIS 256

Content: Court Filings | **Date:** June 20, 2017

28. **STATE v. FOLK**, 2017 ID S. Ct. Briefs LEXIS 740

Content: Court Filings | **Date:** January 11, 2017

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Idaho Supreme Court

1. Gibson v. Ada County, 138 Idaho 787, 69 P.3d 1048, 2003 Ida. LEXIS 61

   G **Following**

   First Ref:158 Idaho 799 at p.803
   Discussion: | **Court:** Idaho | **Date:** April 09, 2003

2. Campbell v. Kvamme, 155 Idaho 692, 316 P.3d 104, 2013 Ida. LEXIS 373, 2013 WL 6857991

   LB **Citing**

   First Ref:158 Idaho 799 at p.804
   Discussion: | **Court:** Idaho | **Date:** December 31, 2013

3. Fragnella v. Petrovich, 153 Idaho 266, 281 P.3d 103, 2012 Ida. LEXIS 156, 2012 WL 2344867

   LB **Citing**

   First Ref:158 Idaho 799 at p.804
   Discussion: | **Court:** Idaho | **Date:** June 21, 2012

4. O'Connor v. Harger Constr., Inc., 145 Idaho 904, 188 P.3d 846, 2008 Ida. LEXIS 94

   G **Following**

   First Ref:158 Idaho 799 at p.804
   Discussion: | **Court:** Idaho | **Date:** May 09, 2008

5. Gem State Ins. Co. v. Hutchison, 145 Idaho 10, 175 P.3d 172, 2007 Ida. LEXIS 229

   LB **Citing**

   First Ref:158 Idaho 799 at p.804
   Discussion: | **Court:** Idaho | **Date:** December 24, 2007

6. Silicon Int'l Ore, LLC v. Monsato Co., 155 Idaho 538, 314 P.3d 593, 2013 Ida. LEXIS 335, 82 U.C.C. Rep. Serv. 2d (CBC) 152, 2013 WL 6190607

G **Following**

First Ref:158 Idaho 799 at p.805
Discussion: | **Court:** Idaho | **Date:** November 27, 2013

7. Wesco Autobody Supply, Inc. v. Ernest, 149 Idaho 881, 243 P.3d 1069, 2010 Ida. LEXIS 189

LB **Citing**

First Ref:158 Idaho 799 at p.805
Discussion: | **Court:** Idaho | **Date:** November 24, 2010

8. Van v. Portneuf Med. Ctr., 147 Idaho 552, 212 P.3d 982, 2009 Ida. LEXIS 103

LB **Citing**

First Ref:158 Idaho 799 at p.805
Discussion: | **Court:** Idaho | **Date:** July 07, 2009

9. McPheters v. Maile, 138 Idaho 391, 64 P.3d 317, 2003 Ida. LEXIS 12

LB **Citing**

First Ref:158 Idaho 799 at p.805
Discussion: | **Court:** Idaho | **Date:** January 24, 2003

10. Smith v. Meridian Joint Sch. Dist. No. 2, 128 Idaho 714, 918 P.2d 583, 1996 Ida. LEXIS 69

LB **Citing**

First Ref:158 Idaho 799 at p.805
Discussion: | **Court:** Idaho | **Date:** June 03, 1996

11. Weisel v. Beaver Springs Owners Ass'n, 152 Idaho 519, 272 P.3d 491, 2012 Ida. LEXIS 57, 2012 WL 666033

G **Following**

First Ref:158 Idaho 799 at p.806
Discussion: | **Court:** Idaho | **Date:** March 01, 2012

12. Andersen v. Prof'l Escrow Servs., 141 Idaho 743, 118 P.3d 75, 2005 Ida. LEXIS 109

G **Following**

First Ref:158 Idaho 799 at p.806
Discussion: | **Court:** Idaho | **Date:** June 21, 2005

13. Basic Am., Inc. v. Shatila, 133 Idaho 726, 992 P.2d 175, 1999 Ida. LEXIS 138, 15 I.E.R. Cas. (BNA) 1441

G **Following**

First Ref:158 Idaho 799 at p.807
Discussion: | **Court:** Idaho | **Date:** December 22, 1999

14. Petricevich v. Salmon River Canal Co., 92 Idaho 865, 452 P.2d 362, 1969 Ida. LEXIS 239

LB **Citing**

First Ref:158 Idaho 799 at p.816
Discussion: | **Court:** Idaho | **Date:** March 25, 1969

End of Document

Citation # 2 (as appears in page 2 of Document)
La Bella Vita, Ltd. Liab. Co. v. Shuler, 158 Idaho 799, 803

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158 Idaho 799, 803

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[the defendant] agreed to this condition and represented that no additional argument would be offered. On the issue of supplementation, the court ruled from the bench, permitting the submission of the outstanding discovery materials while cautioning the parties that additional argument would not be considered

[158 Idaho 799, 803]

Retrieved Quote:

agreed to this condition and represented that no additional argument would be offered. On the issue of supplementation, the court ruled from the bench, permitting the submission of the outstanding discovery materials while cautioning the parties that additional argument would not be considered.

[158 Idaho 799, 803]

Excerpt from document:
La Bella Vita failed to include in the appellate record the underlying moving papers and memoranda in support of, and in opposition to, the summary judgment motion, the transcript of the hearing on the same, and a related motion to strike supplemental briefing offered in opposition to summary judgment. Therefore, the facts surrounding these filings and the arguments advanced are derived from the register of actions and the district court's recital in its memorandum decision and order granting summary judgment against La Bella Vita. Gibson v. Ada Cnty., 138 Idaho 787, 790, 69 P.3d 1048, 1051 (2003). La Bella Vita did include in the record, however, the affidavits filed in support and opposition of the summary judgment motion.
At the conclusion of the summary judgment hearing, La Bella Vita requested an opportunity to supplement the record with certain outstanding discovery items. Shuler and Eikova did not object to this request, so long as no additional briefing or argument would be submitted by La Bella Vita. La Bella Vita **agreed to this condition and represented that no additional argument would be offered. On the issue of supplementation, the court ruled from the bench, permitting the submission of the outstanding discovery materials while cautioning the parties that additional argument would not be considered.** The court explained that the motion would be taken under advisement as of the date the supplemental items were received.

On October 21, 2013, the district court received the additional information, which included Shuler's outstanding discovery responses, Eikova's business formation papers filed with the Secretary of State, as well as an affidavit from La Bella Vita's attorney. In addition, La Bella Vita filed a document entitled, "Supplemental Brief in Opposition to Motion for Summary Judgment." In response, Shuler and Eikova moved the court to strike the supplemental brief, arguing it violated both the rules governing summary judgment and also the court's ruling memorializing the agreement between the parties that no additional argument would be provided or considered. For the reasons outlined in greater detail below, the court struck the supplemental brief, as well as affidavits filed in response to the motion to strike.

End of Document

La Bella Vita, LLC v. Shuler

Supreme Court of Idaho

July 13, 2015, Filed

Docket No. 42092, 2015 Opinion No. 65

Reporter
158 Idaho 799 *; 353 P.3d 420 **; 2015 Ida. LEXIS 179 ***; 165 Lab. Cas. (CCH) P61,609

LA BELLA VITA, LLC, an Idaho limited liability company, Plaintiff-Appellant, v. AMANDA SHULER and EIKOVA SALON AND SPA, LLC, an Idaho limited liability company, Defendant-Respondent, and CASSIE MOSER, BRITNEY HARRINGTON, KORTNI ELLETT, JARA DALEY, and EMILY COFFIN, Defendants.

Subsequent History: Decision reached on appeal by, Remanded by, Costs and fees proceeding at, Request granted *La Bella Vita, LLC v. Shuler, 2018 Ida. App. Unpub. LEXIS 329 (Idaho Ct. App., Oct. 15, 2018)*

Prior History: [*1]** Appeal from the District Court of the Sixth Judicial District of the State ofIdaho, Bannock County. Hon. Robert C. Naftz, District Judge.

Disposition: The district court's grant of summary judgment is reversed. This case is remanded for further consideration consistent with this Opinion. The award of fees and costs to respondent is vacated.

Core Terms

shower, baby, client list, district court, confidential, summary judgment, employees, confidentiality agreement, salon, trade secret, misappropriation, invitations, supplemental brief, customers, confidential information, attorney's fees, customer list, client-related, supplemental, lists, deposition, costs, summary judgment motion, discovery, qualifies, genuine, opened, grant summary judgment, motion to strike, front desk

Case Summary

Overview

HOLDINGS: [1]-A district court did not err in striking the supplemental brief offered in opposition to summary judgment and the affidavits offered in response to the motion to strike where the salon failed to contest the alternative ground relied upon by the district court in striking those materials; [2]-The district court erred in granting a competitor and former employee summary judgment on the salon's misappropriation of trade secrets claim where there were genuine issues of fact as to whether a baby shower list and the salon's client list and client-related information qualified as confidential and trade secret under *Idaho Code Ann. § 48-801(5)* and whether the information was taken or used for the competitor's benefit; [3]-The award of attorney fees and costs to the competitor and former employee was vacated as they had not prevailed as required by *Idaho Code Ann. § 12-120(3)*.

Outcome
Judgment reversed, attorney fees and cost award vacated.

LexisNexis® Headnotes

Civil Procedure > Judgments > Summary Judgment > Evidentiary Considerations

HN1[] **Summary Judgment, Evidentiary Considerations**

Summary judgment proceedings are decided on the basis of admissible evidence. The admissibility of evidence contained in affidavits and depositions in support of or in opposition to a motion for summary judgment is a threshold matter to be addressed before applying the liberal construction and reasonable inferences rule to determine whether the evidence creates a genuine issue of material fact for trial.

Civil Procedure > ... > Summary Judgment > Appellate Review > Standards of Review

HN2 **Appellate Review, Standards of Review**

The Supreme Court of Idaho applies an abuse of discretion standard when determining whether testimony offered in connection with a motion for summary judgment is admissible. A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason.

Civil Procedure > ... > Summary Judgment > Appellate Review > Standards of Review

HN3 **Appellate Review, Standards of Review**

When reviewing a ruling on a summary judgment motion, the Supreme Court of Idaho applies the same standard used by the district court.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

HN4 **Entitlement as Matter of Law, Appropriateness**

Under *Idaho R. Civ. P. 56(c)*, summary judgment is proper if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. If a review of the evidence reveals no disputed issues of material fact, then summary judgment should be granted.

Civil Procedure > ... > Summary Judgment > Burdens of Proof > Movant Persuasion & Proof

HN5 **Burdens of Proof, Movant Persuasion & Proof**

The burden of establishing the absence of a genuine issue of material fact is on the party moving for summary judgment.

Civil Procedure > Judgments > Summary Judgment > Evidentiary Considerations

HN6 **Summary Judgment, Evidentiary Considerations**

The Supreme Court of Idaho will construe the record in the light most favorable to the party opposing the motion for summary judgment, drawing all reasonable inferences in that party's favor.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > ... > Summary Judgment > Burdens of Proof > Scintilla Rule

HN7 **Entitlement as Matter of Law, Appropriateness**

Summary judgment is improper if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented. However, a mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment.

Civil Procedure > Appeals > Record on Appeal

HN8 **Appeals, Record on Appeal**

The party appealing a decision of the district court bears the burden of ensuring that the Supreme Court of Idaho is provided a sufficient record for review of the district court's decision. When a record or exhibit not included

in the record on appeal is unavailable to the party who wishes to make it part of the record for appeal, it is incumbent on that party to move the district court, or petition the Supreme Court, to order augmentation of the record on appeal with the relevant record(s) or exhibit(s). When a party appealing an issue presents an incomplete record, the Supreme Court will presume that the absent portion supports the findings of the district court. The Supreme Court will not presume error from a silent record or from the lack of a record.

Civil Procedure > Appeals > Record on Appeal

Civil Procedure > ... > Summary Judgment > Appellate Review > Standards of Review

HN9 **Appeals, Record on Appeal**

In the context of summary judgment, the Supreme Court of Idaho has repeatedly held that an appellant's failure to address an independent ground for a grant of summary judgment is fatal to the appeal. The fact that one of the grounds may be in error is of no consequence and may be disregarded if the judgment can be sustained upon one of the other grounds.

Civil Procedure > ... > Summary Judgment > Appellate Review > General Overview

HN10 **Summary Judgment, Appellate Review**

When reviewing a summary judgment ruling on appeal, the Supreme Court of Idaho's review is limited to the pleadings, depositions, and admissions on file, together with any affidavits, to determine whether there exists any genuine or disputed issue as to any material fact. *Idaho R. Civ. P. 56(c)*.

Trade Secrets Law > Civil Actions > Burdens of Proof

Trade Secrets Law > Misappropriation Actions > Elements of Misappropriation > Existence & Ownership

HN11 **Civil Actions, Burdens of Proof**

To prevail in a claim brought under the Idaho Trade Secrets Act, a plaintiff must show that a trade secret actually existed. *Idaho Code Ann. § 48-801*.

Trade Secrets Law > Trade Secret Determination Factors > General Overview

HN12 **Trade Secrets Law, Trade Secret Determination Factors**

See *Idaho Code Ann. § 48-801(5)*.

Trade Secrets Law > Trade Secret Determination Factors > General Overview

HN13 **Trade Secrets Law, Trade Secret Determination Factors**

To help determine whether information qualifies as a trade secret, the Supreme Court of Idaho relied on the Restatement of Torts and looked at the following six factors: (1) the extent to which the information is known outside [the plaintiff's] business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. All of these factors address the issue of whether the information in question is generally known or readily ascertainable.

Trade Secrets Law > Misappropriation Actions > Elements of Misappropriation > Existence & Ownership

Trade Secrets Law > Trade Secret Determination Factors > General Overview

HN14 **Elements of Misappropriation, Existence & Ownership**

To prevail in a claim brought under the Idaho Trade Secrets Act, a plaintiff must show that a trade secret actually existed. *Idaho Code Ann. § 48-801*. To determine whether information qualifies as a trade secret, the Supreme Court of Idaho looks at six factors, all of which address the issue of whether the information

in question is generally known or readily ascertainable.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

HN15 **Basis of Recovery, Statutory Awards**

Idaho Code Ann. § 12-120(3) allows for the recovery of attorney fees by the prevailing party in a civil action to recover on any commercial transaction.

Civil Procedure > Appeals > Costs & Attorney Fees

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

HN16 **Appeals, Costs & Attorney Fees**

A prerequisite to an award of attorney fees under *Idaho Code Ann. § 12-120(3)* is that the party prevails.

Counsel: Maguire Law, P.C., Pocatello, attorneys for appellant. David Maguire argued.

Racine, Olsen, Nye, Budge & Bailey, Chtd., Pocatello, attorneys for respondent. Lane V. Erickson argued.

Judges: W. JONES, J. Chief Justice BURDICK, Justices EISMANN, J. JONES and HORTON CONCUR.

Opinion by: W. JONES

Opinion

[*801] [422]** W. JONES, J.

I. Nature of the Case

This is a misappropriation of trade secrets case arising out of a dispute between two competing businesses providing spa and salon services in Pocatello, Idaho, La Bella Vita, LLC (La Bella Vita) and Eikova Salon and Spa, LLC (Eikova). In February 2011, a number of employees left their employment at La Bella Vita to open Eikova, a new salon nearby. La Bella Vita brought suit alleging that these employees took its confidential client information to create and promote Eikova. After conducting discovery, La Bella Vita voluntarily dismissed all of the defendants except **[***2]** Amanda Shuler and Eikova, as well as all of the claims except the violation of the Idaho Trade Secrets Act and breach of the confidentiality agreement. On motion by **[**423] [*802]** the remaining defendants, the district court granted summary judgment against La Bella Vita on these remaining issues. La Bella Vita appeals the district court's decision to strike a supplemental brief offered in opposition to summary judgment, and also argues that disputed issues of material fact should have precluded the entry of summary judgment.

II. Factual and Procedural Background

Candy Barnard-Davidson (Davidson) is the owner and founder of La Bella Vita. Davidson started La Bella Vita in 1998 and has owned it to the present day. The individually named defendants in this action, Amanda Shuler (Shuler), Cassie Moser (Moser), Britney Harrington (Harrington), Kortni Ellett (Ellett), Jara Dalley (Dalley), and Emily Coffin (Coffin), are all former employees of La Bella Vita. While employed there, they held the following titles: Shuler was a Hair Stylist, Salon Manager, Co-Manager, and Trainer; Moser was a Hair Stylist; Harrington was a Hair Stylist; Ellett was a Front Desk Receptionist; Dalley was Front Desk Receptionist; **[***3]** and, Coffin was a Receptionist and Front Desk Manager. These individuals left their employment with La Bella Vita in mid-February 2011 to work for Eikova, a new spa and salon founded by Shuler. The circumstances of this collective departure give rise to this action.

Shuler and the other individually named defendants gave their notice of termination to Davidson in early February and left their employment with La Bella Vita on or about February 16, 2011. At the time of their joint departure, they constituted approximately half of La Bella Vita's employees. On February 22, 2011, Shuler opened Eikova for business at a location just around the corner from La Bella Vita. Eikova immediately began servicing clients, including some customers who were previously regular patrons of La Bella Vita.

On January 23, 2013, La Bella Vita filed suit in district court alleging that Shuler and the other defendants took protected or confidential information from La Bella Vita which they used to create and promote Shuler's new business, Eikova. In addition to the individual defendants, Eikova was named as a defendant in the action. Specifically, La Bella Vita alleged that these former employees wrongfully **[***4]** took and used its confidential client lists, calendars, scheduling lists, client

contact information, and other information regarding products, services, and client preferences in the creation and promotion of Eikova. The defendants jointly answered the complaint on March 8, 2013, denying the allegations and raising affirmative defenses.

None of the defendants signed a non-compete agreement in favor of Davidson or La Bella Vita; however, all but one of the individually named defendants[1] signed a "Confidentiality Agreement" whereby they promised to keep certain information confidential. Confidential information was defined in the agreement as including the following:

> [La Bella Vita's] trade secrets and confidential or proprietary information, such as client lists, client prospect material, price lists, rate structures, client service records, salon appointment books, payroll information, sales and profit data, marketing strategies and information, chemical information and formulas and any other information of a technical, financial or business nature that is unique to [La Bella Vita] and/or provides [La Bella Vita] with a competitive advantage in the marketplace. Confidential information **[***5]** does not include any information or material that is generally known by the public.

On July 31, 2013, Shuler and the other defendants jointly moved for summary judgment on all claims alleged in the complaint.[2] **[**424]** **[*803]** La Bella Vita timely opposed this motion, and oral argument was heard by the district court on October 7, 2013. At the outset of this hearing, however, La Bella Vita conceded that all of the defendants except Shuler and Eikova should be dismissed from the action. Given this oral representation, as well as La Bella Vita's written opposition to the summary judgment motion, the district court dismissed Moser, Harrington, Ellett, Dalley, and Coffin from the suit. In addition, La Bella Vita represented to the court at the hearing that only two issues remained in the action, an alleged violation of the Idaho Trade Secrets Act (ITSA) and an alleged breach of the confidentiality agreement signed by Shuler as a condition of her employment at La Bella Vita. As such, the court dismissed the remaining claims set forth in the complaint. For these reasons, the summary judgment hearing focused only on these two claims against **[***6]** the remaining defendants, Shuler and Eikova.

At the conclusion of the summary judgment hearing, La Bella Vita requested an opportunity to supplement the record with certain outstanding discovery items. Shuler and Eikova did not object to this request, so long as no additional briefing or argument would be submitted by La Bella Vita. La Bella Vita agreed to this condition and represented that no additional argument would be offered. On the issue of supplementation, the court ruled from the bench, permitting the submission of the **[***7]** outstanding discovery materials while cautioning the parties that additional argument would not be considered. The court explained that the motion would be taken under advisement as of the date the supplemental items were received.

On October 21, 2013, the district court received the additional information, which included Shuler's outstanding discovery responses, Eikova's business formation papers filed with the Secretary of State, as well as an affidavit from La Bella Vita's attorney. In addition, La Bella Vita filed a document entitled, "Supplemental Brief in Opposition to Motion for Summary Judgment." In response, Shuler and Eikova moved the court to strike the supplemental brief, arguing it violated both the rules governing summary judgment and also the court's ruling memorializing the agreement between the parties that no additional argument would be provided or considered. For the reasons outlined in greater detail below, the court struck the supplemental brief, as well as affidavits filed in response to the motion to strike.

Turning to the substance of the summary judgment motion, and after receiving and reviewing the outstanding discovery items, the district court addressed the **[***8]** two claims that remained in the operative complaint, an alleged breach of the confidentiality agreement and an alleged violation of the ITSA. La Bella Vita argued that Shuler and Eikova violated the ITSA and confidentiality agreement in two ways: one

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[1] Every defendant except Coffin signed the "Confidentiality Agreement."

[2] La Bella Vita failed to include in the appellate record the underlying moving papers and memoranda in support of, and in opposition to, the summary judgment motion, the transcript of the hearing on the same, and a related motion to strike supplemental briefing offered in opposition to summary judgment. Therefore, the facts surrounding these filings and the arguments advanced are derived from the register of actions and the district court's recital in its memorandum decision and order granting summary judgment against La Bella Vita. *Gibson v. Ada Cnty., 138 Idaho 787, 790, 69 P.3d 1048, 1051 (2003)*. La Bella Vita did include in the record, however, the affidavits filed in support and opposition of the summary judgment motion.

was the wrongful use of a "baby shower list," and the other was the improper accessing of La Bella Vita's official client list. The district court went through the affidavits offered in support of, and in opposition to, summary judgment and found that La Bella Vita failed to demonstrate the existence of a "trade secret" under the ITSA, and that even if some of the disputed information could conceivably qualify as confidential, there was no evidence to establish that Shuler actually took or used any of the allegedly confidential information in the creation of Eikova's client list.

In granting summary judgment, the district court rejected La Bella Vita's argument that the only way Eikova's client list could have been composed was through the misappropriation of La Bella Vita's confidential client list. Specifically, the court found that the affidavit testimony offered in support of the motion sufficiently described the alternative and independent **[***9]** methods and sources used to generate Eikova's client list, and that La Bella Vita provided only conjecture, assumptions, and beliefs, not evidence, in opposition to this affidavit testimony. The district court further declared that the finding of no trade secret dispensed of the second issue, breach of confidentiality agreement. Without a trade secret, the district court reasoned that there could be no breach of the confidentiality agreement. For these reasons, the court granted summary judgment **[**425]** **[*804]** on the two remaining claims in favor of Shuler and Eikova.

On November 27, 2013, La Bella Vita filed a motion entitled "Motion to Amend or Alter Decision on Summary Judgment."[3] La Bella Vita brought its motion on four grounds, specifically *Rules 11(a)(2)(B)*, *52(b)*, *60(b)*, and *61 of the Idaho Rules of Civil Procedure.* Shuler and Eikova opposed this motion, oral argument was heard on January 13, 2014, and the district court took the matter under advisement at the conclusion of the hearing. The district court entered a memorandum decision and order on February 3, 2014, wherein it addressed each theory of relief and rejected all arguments advanced. Specifically, the court found that La Bella Vita again failed to provide any specific facts or concrete evidence regarding **[***10]** Shuler's alleged misappropriation of information, and that the "newly acquired evidence" provided was not new and had already been considered by the court in its previous decision.

Shuler and Eikova filed a motion seeking attorney fees and costs prior to the resolution of the reconsideration motion, and filed a supplemental memorandum of costs after receiving the court's written order on reconsideration. On April 8, 2014, the district court entered a memorandum and order awarding attorney fees and costs to Shuler and Eikova pursuant to *Idaho Rule of Civil Procedure 54(e)(1)* and *Idaho Code section 12-120(3)*, finding that this action qualified as a commercial transaction.

La Bella Vita appeals the district court's decisions (1) striking its supplemental opposition brief in response to summary judgment and the affidavits offered in response to the motion to strike, (2) granting summary judgment in favor of Shuler **[***11]** and Eikova, and (3) awarding attorney fees to Shuler and Eikova. Shuler and Eikova argue the district court properly struck the additional filings, granted summary judgment, and awarded fees and costs. Shuler and Eikova seek attorney fees and costs on appeal.

III. Issues on Appeal

1. Whether the district court abused its discretion in striking the supplemental brief offered in opposition to summary judgment and the affidavits submitted in response to the motion to strike.

2. Whether the district court erred in granting summary judgment against La Bella Vita.

3. Whether the district court erred in granting attorney fees and costs to Shuler and Eikova.

4. Whether Shuler and Eikova are entitled to attorney fees and costs on appeal

IV. Standard of Review

A. Motion to Strike

HN1[↑] "Summary judgment proceedings are decided on the basis of admissible evidence." *Campbell v. Kvamme, 155 Idaho 692, 696, 316 P.3d 104, 108 (2013)*. "The admissibility of evidence contained in affidavits and depositions in support of or in opposition

[3] La Bella Vita failed to include in the appellate record its motion for reconsideration. For this reason, the following facts surrounding reconsideration are surmised from the register of actions, the district court's recitation of facts and arguments in its memorandum decision and order denying this motion, and the briefs submitted on appeal.

to a motion for summary judgment is a threshold matter to be addressed before applying the liberal construction and reasonable inferences rule to determine whether the evidence creates a genuine issue of material fact for trial." *Fragnella v. Petrovich, 153 Idaho 266, 271, 281 P.3d 103, 108 (2012)*. ***HN2***[⬆] "This Court **[***12]** applies an abuse of discretion standard when determining whether testimony offered in connection with a motion for summary judgment is admissible." *Gem State Ins. Co. v. Hutchison, 145 Idaho 10, 15, 175 P.3d 172, 177 (2007)*. "A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason." *O'Connor v. Harger Constr., Inc., 145 Idaho 904, 909, 188 P.3d 846, 851 (2008)*.

B. Summary Judgment

HN3[⬆] "When reviewing a ruling on a summary judgment motion, this Court applies **[**426]** **[*805]** the same standard used by the district court." *Wesco Autobody Supply, Inc. v. Ernest, 149 Idaho 881, 890, 243 P.3d 1069, 1078 (2010)*. ***HN4***[⬆] "Under *Rule 56(c) of the Idaho Rules of Civil Procedure*, summary judgment is proper if 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Silicon Int'l Ore, LLC v. Monsanto Co., 155 Idaho 538, 544, 314 P.3d 593, 599 (2013)* (quoting *I.R.C.P. 56(c)*). If a review of the evidence reveals no disputed issues of material fact, then summary judgment should be granted. *Smith v. Meridian Joint Sch. Dist. No. 2, 128 Idaho 714, 718-19, 918 P.2d 583, 587-88 (1996)*.

HN5[⬆] "The burden of establishing the absence of a genuine issue of material fact is on the moving party," and ***HN6***[⬆] this Court "will construe the record in the light most favorable to the party opposing the motion for summary judgment, drawing all reasonable inferences in that party's **[***13]** favor." *Wesco Autobody, 149 Idaho at 890, 243 P.3d at 1078*. Given these standards, ***HN7***[⬆] summary judgment is improper "if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented." *McPheters v. Maile, 138 Idaho 391, 394, 64 P.3d 317, 320 (2003)*. However, a "mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment." *Van v. Portneuf Med. Ctr., 147 Idaho 552, 556, 212 P.3d 982, 986 (2009)*.

C. Record on Appeal

> ***HN8***[⬆] The party appealing a decision of the district court bears the burden of ensuring that this Court is provided a sufficient record for review of the district court's decision. When a record or exhibit not included in the record on appeal is unavailable to the party who wishes to make it part of the record for appeal, it is incumbent on that party to move the district court, or petition this Court, to order augmentation of the record on appeal with the relevant record(s) or exhibit(s). When a party appealing an issue presents an incomplete record, this Court will presume that the absent portion supports the findings of the district court. We will not presume error from a silent record or from the lack of a record.

Gibson v. Ada Cnty., 138 Idaho 787, 790, 69 P.3d 1048, 1051 (2003) (citations and quotations omitted).

V. Analysis

A. The district court did not err in striking the supplemental [*14] brief offered in opposition to summary judgment and the affidavits offered in response to the motion to strike**.

At the conclusion of the hearing on Shuler and Eikova's motion for summary judgment, La Bella Vita moved the court for permission to supplement the summary judgment record with certain outstanding discovery items. Shuler and Eikova did not oppose the request, so long as additional argument was not permitted. La Bella Vita agreed to this condition on the record and the court ruled from the bench. Specifically, the court allowed for the submission of the outstanding discovery materials, but cautioned the parties that additional argument would not be considered. The district court received the additional information, which included an affidavit from La Bella Vita's attorney, Shuler's discovery responses establishing the precise dates Eikova began making and inputting client appointments prior to its February 22, 2011 opening, as well as Eikova's business formation papers. However, in addition to the agreed-upon discovery responses, La Bella Vita also filed a

"Supplemental Brief in Opposition to Motion for Summary Judgment." In response to this supplemental opposition, Shuler **[***15]** and Eikova moved to strike the brief, arguing it violated the procedural rules governing summary judgment, the parties' agreement, and the court's ruling memorializing the parties' agreement.

La Bella Vita opposed the motion to strike, supported by new affidavits from Davidson and one of its customers, Shannon McCarrel (McCarrel). La Bella Vita argued that supplemental briefing was necessary because the outstanding discovery responses revealed **[**427]** **[*806]** new information material to the summary judgment analysis. After reviewing the motion to strike and the response, the district court struck the supplemental brief and the additional affidavits filed in opposition to the motion to strike. The district court reached its decision on dual grounds. For one, and citing *Idaho Rule of Civil Procedure 56*, the district court found that "there is no rule of civil procedure allowing a party opposing a motion for summary judgment to file a second, supplemental brief in opposition." Specifically, it found that *Rule 56(c)* "does not provide for a party opposing summary judgment to file a second opposition brief." Instead, the district court found that the Rule provides the adverse party "one opportunity to submit opposing affidavits and/or an answering **[***16]** brief," documents which must be filed "'at least 14 days prior to the date of the hearing.'" Second, and alternatively, the district court found that La Bella Vita's filing of a supplemental brief was in violation of the court's order and the parties' agreement that supplementation would be permitted so long as no additional argument was submitted. Because La Bella Vita violated this order, the district court found good cause to strike the supplemental brief and additional affidavits.

On appeal, La Bella Vita contends that the district court erred in striking its supplemental opposition brief and the affidavits offered in response to the motion to strike. Specifically, La Bella Vita argues that the court erred in finding that the filing of a supplemental brief is not permitted under the civil rules. Whereas the district court found nothing in *Rule 56* permits the filing of a supplemental opposition brief, La Bella Vita asserts that "there is nothing in the Rules of [Civil] Procedure that [prohibits] the supplementation." This Court need not reach this issue, however, because the district court based its ruling on two grounds and La Bella Vita has failed on appeal to challenge an alternative **[***17]** and independent ground for the court's decision. Specifically, the district court granted the motion to strike on two alternative grounds: procedure, and second, violation of the court's order memorializing the parties' agreement.

HN9[] In the context of summary judgment, the Court has repeatedly held that "an appellant's failure to address an independent ground for a grant of summary judgment is fatal to the appeal." *Weisel v. Beaver Springs Owners Ass'n, Inc., 152 Idaho 519, 525-26, 272 P.3d 491, 497-98 (2012)*. "[T]he fact that one of the grounds may be in error is of no consequence and may be disregarded if the judgment can be sustained upon one of the other grounds." *Andersen v. Prof'l Escrow Servs., Inc., 141 Idaho 743, 746, 118 P.3d 75, 78 (2005)* (citation and quotations omitted). These same principles apply here. La Bella Vita failed to contest the alternative ground relied upon by the district court in striking the supplemental brief and affidavits, specifically the parties' agreement and La Bella Vita's violation of the court's order memorializing this agreement. This provides an adequate and independent basis for the decision to strike. By failing to raise and challenge this ground on appeal, La Bella Vita has waived this issue and conceded a valid basis for the court's decision. As such, the court's grant of the motion to strike stands.

B. The district court [*18] erred in finding no disputed issues of material fact in granting summary judgment in favor of Shuler and Eikova.**

HN10[] When reviewing a summary judgment ruling on appeal, this Court's review is limited to the pleadings, depositions, and admissions on file, together with any affidavits, to determine whether there exists any genuine or disputed issue as to any material fact.[4]

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[4] Because appellant La Bella Vita failed to include in the appellate record the moving and opposing papers surrounding summary judgment, and because neither party disputes the district court's characterization of the arguments in its memorandum decision and order granting summary judgment, this Court's analysis is based upon the district court's recital of the arguments below. Furthermore, at the outset of the summary judgment hearing, La Bella Vita stipulated to the dismissal of all defendants except Shuler and Eikova and all claims except **[***19]** for the breach of confidentiality agreement and violation of ITSA. La Bella Vita does not appeal the dismissal of these parties or claims. Lastly, because it is held in section V(A), *supra*, that the district court did not err in striking the supplemental brief in opposition to summary judgment as well as the additional affidavits filed by La Bella Vita in response to the motion to strike, this Court's review is limited to the original moving and opposing summary

[428]** **[*807]** I.R.C.P. 56(c). Based upon a thorough review of these items, and for the reasons outlined in greater detail below, this Court holds that the affidavit and deposition testimony, when viewed in a light most favorable to La Bella Vita, supports the vacation of the summary judgment for Shuler and Eikova.

In the complaint, La Bella Vita alleges that Shuler violated the confidentiality agreement and ITSA by taking and using proprietary and confidential client information. On summary judgment, the district court found that La Bella Vita failed to demonstrate that the information at issue was confidential or constituted a trade secret. Notwithstanding this finding, the district court further determined that La Bella Vita failed to submit any evidence to show that Shuler actually took and used any of the allegedly confidential **[***20]** information for Eikova's benefit. As framed by the district court in granting summary judgment, its analysis of the ITSA claim also disposed of the breach of confidentiality claim. The district court reasoned that "when there is no evidence of any misappropriation of trade secrets, there can be no breach of a confidentiality agreement." Thus, the court's findings and conclusions on summary judgment as to both claims were based almost entirely on its determination of the ITSA claim.

HN11[↑] To prevail in a claim brought under the ITSA, "[a] plaintiff must show that a trade secret actually existed." Basic American, Inc. v. Shatila, 133 Idaho 726, 734, 992 P.2d 175, 183 (1999); Idaho Code § 48-801. Pursuant to the ITSA:

> **HN12**[↑] "Trade secret" means information, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that:
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> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
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> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Idaho Code § 48-801(5). **HN13**[↑] To help determine whether information qualifies as a trade secret, the *Basic American* Court relied on the **[***21]** Restatement and looked at the following six factors:

> (1) the extent to which the information is known outside [the plaintiff's] business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Basic American, 133 Idaho at 735, 992 P.2d at 184 (quoting *Restatement of Torts § 757 cmt. b* (1939)) (alteration in original). "All of these factors address the issue of whether the information in question is generally known or readily ascertainable." Wesco Autobody Supply, Inc. v. Ernest, 149 Idaho 881, 898, 243 P.3d 1069, 1086 (2010).

There are genuine factual disputes regarding the nature of the information at issue in this case, specifically whether it qualifies as confidential and trade secret. Furthermore, there is a dispute as to whether this information was misappropriated, or taken and used, for Eikova's benefit. In moving for and opposing summary judgment, the parties supported their positions primarily with affidavit testimony from numerous employees and customers. Although there are numerous **[***22]** affiants, the testimony was substantially similar with certain important distinctions.

For example, in opposing summary judgment, La Bella Vita relies on affidavit testimony from many of its clients describing how they were notified by representatives of Eikova **[**429]** **[*808]** about its opening. These clients all assert that they keep their contact information confidential, but attest that La Bella Vita had this information. Because they consider their information to be non-public, they each were surprised when they were contacted by Eikova representatives without solicitation. Although lacking any direct evidence of misappropriation, these affiants each imply that Eikova could have only obtained this information from the records kept at La Bella Vita.

In support of summary judgment, Shuler and Eikova rely on affidavit testimony from a number of La Bella Vita's former employees—parties who transitioned to employment with Eikova. These employees all unambiguously assert that they never took or misappropriated, in any form, La Bella Vita's client lists,

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judgment papers, memoranda, affidavits, and deposition transcripts attached as exhibits to the same. The Davidson affidavit dated October 22, 2013 and the McCarrel affidavit dated October 25, 2013 will not be considered.

scheduling lists, client calendars, client information, or any other information of any type for any advertising or client outreach in the creation, promotion, **[***23]** or opening of Eikova. Instead, each affiant describes a more organic process for the development of Eikova's client list. Specifically, Shuler and her new employees generated their own advertising lists from people they already knew, both socially and professionally. These lists were allegedly created from a variety of other sources, including: cell phone and email contacts, church membership directories, social media connections, suggestions and referrals from family and friends, public phone books, online directories, internet searches, word of mouth, and use of referral cards. Eikova employees also participated in local fundraisers and craft shows as a way of introducing Eikova to the community.

Furthermore, Shuler specifically testified in her affidavit:

> ... I had many clients and customers who specifically sought me out when they learned that I was no longer employed by [La Bella Vita]. Many of my clients and customers did not receive any advertising directly from me, my employees[,] or [Eikova][,] but came to me at my new salon anyway when they learned that I had opened my own salon.

Based upon a thorough review of the record, there are three genuine disputes of material fact which **[***24]** render this case inappropriate for summary adjudication. First, there is a dispute surrounding the "baby shower list," specifically whether Davidson authorized the use and release of La Bella Vita's official client list in generating or supplementing the invitation list for the baby shower being thrown in Shuler's honor. Second, there is a dispute about La Bella Vita's business practices and whether these practices compromised the confidentiality of its official client list and other client-related information. Third, there is a dispute regarding whether Shuler actually took and used any confidential information in the creation and promotion of Eikova.

1. Baby Shower List

The factual dispute regarding the baby shower list is most clearly demonstrated through a comparison of Davidson's testimony and the testimony of Shuler and Amy Comstock-Combs (Combs). The dispute revolves around the creation and use of the baby shower list utilized to send out invitations for Shuler's shower. At the center of the baby shower is Combs, a mutual client and friend of both Davidson and Shuler. Combs met Davidson at a craft show when Davidson was new to Pocatello and before she started La Bella Vita. Combs **[***25]** was one of Davidson's original clients when La Bella Vita opened. However, on a date Davidson had overbooked herself, Davidson referred Combs to Shuler. Satisfied with Shuler's work, Combs elected for Shuler to be her regular stylist. While Shuler was still employed at La Bella Vita, she became pregnant and a baby shower was held in her honor. These facts are all not in dispute.

It is further undisputed that La Bella Vita's official client list was used to create or supplement a mailing list for Shuler's baby shower invitations. There is a genuine dispute, however, as to whether Davidson authorized the use of La Bella Vita's client list for this purpose.

Combs testified regarding the inception and creation of the baby shower list as follows:

> **[**430] [*809]** When I found out [Shuler] was pregnant I thought it would be fun to have a baby shower for her. I discussed this with [Davidson]. We talked about if we should have it at the salon or at someplace else. We decided to have it at the [s]crapbook store [where] I was working at [the time] because the salon would still be open at the time we were having the shower and that might not be the best thing for customers still having services. Also parking would be an issue. **[***26]**
> I was in charge of the invitations for the baby shower for [Shuler] and I enlisted the help of my sister Tam[my] Comstock who also had worked at the salon. [Davidson] said she would get me a Client/Customer list of names and information so I could send out invitations for the shower. I distinctly remember [Davidson] instructing the receptionist to get me a Client/Customer list of names and information for the invitations. I used the Client/Customer list of names and information that was given to me at [Davidson's] direction to create the invitations for the baby shower that [Davidson] and I held for Mandi Shuler together.
> [Davidson] never asked me to return or to give back the Client/Customer list of names and information that was given to me. Further, [Davidson] never asked me to keep the Client/Customer list of names and information confidential in any way. She simply directed that it be given to me.
> Corroborating Combs' testimony, Shuler asserted in her affidavit as follows:
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> While I was employed by [La Bella Vita] and prior to a baby shower that was being given for me, [La

> Bella Vita] Owner, Candy Barnard-Davidson[,] directed me to clean up the Client/Customer list. She told me that the Client/Customer **[***27]** list was being given to Amy Comstock-Combs[,] a non-employee friend[,] so that invitations could be sent out for the baby shower. Candy Barnard-Davidson later admitted to me that she gave the Client/Customer list to Amy Comstock-Combs and that the invitations in fact were sent out from the information contained in [La Bella Vita's] Client/Customer list.

Shuler reiterated in her deposition, "[Davidson] gave permission for two of my clients [Combs and Comstock] to take my client list and put on a baby shower for me."

Further, Shuler testified about cleaning up La Bella Vita's client list so that the same could be used for baby shower invitations. In pertinent part, Shuler stated:

> Jodi Espindola and I printed a client list for me. So you can --- in the computer system [at La Bella Vita], you can [for example] go in and specify clients of Mand[i] Shuler and print off a list according to dates. And [Davidson] didn't want invitations sent to men or multiple invitations being sent to [the same household], so I just went through and combined --- if there was a mother with two daughters, I would put parentheses around them and write "daughters" next to two daughters --- like daughter and whoever the **[***28]** mother was.
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> And then after I was done with that, [Davidson] was in town, and she looked over the list. We thought the amount of invitations looked correct, and [Combs] came and picked the baby shower list up from [Davidson].

It was Shuler's understanding that Combs then "gave the list to Tammy [Comstock], [who] is [Combs'] sister, and Tammy typed the list up in label format[,] ... printed [those] labels[,] and sent out mailers."

The testimony of Combs and Shuler regarding the baby shower list, however, is directly contradicted by Davidson's affidavit testimony. In opposition to summary judgment, Davidson testified that "[Shuler] was never directed by me to 'clean up' the La Bella Vita customer list and give it to [Combs] for the purpose of sending out invitations for the baby shower." Further, Davidson unequivocally declared, "I never stated or admitted to anyone that the client list was given to [Combs] for the purpose of sending out baby shower invitations," and that "use of [the client] list for that purpose was not authorized." Thus, Davidson flatly denies authorizing use of La Bella Vita's client list for the purpose of developing the invitation list for Shuler's baby shower.

[431]** T **[*810]** he **[***29]** conflicting testimony regarding the genesis of the baby shower list creates a genuine factual dispute which simply cannot be construed against La Bella Vita on summary judgment.

2. La Bella Vita's Client List and Client-Related Information

As to La Bella Vita's official client list and related information, there is also a factual dispute as to whether this information qualifies as confidential and trade secret, specifically regarding whether La Bella Vita took the steps necessary to protect this information. Davidson addressed La Bella Vita's confidentiality and privacy practices, testifying in pertinent part:

> [La Bella Vita's] data system included the names, phone numbers, physical addresses, email addresses, special dates (birthday, anniversaries), services and product profiles used by the client, color formulas, personal intake forms for spa services, and referral information. This information was generated for the specific purpose of keeping the clients as customers and maintaining good client relations. I was careful to ensure that all of this information was included as part of our confidentiality contract with our employees. The importance of keeping this information confidential **[***30]** was discussed in the confidentiality contract as well as the employee handbook.
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> ... All [employees] were trained to know that the customers of La Bella Vita were customers and clients of La Bella Vita and not [customers of] the employees.
>
> I hired Amanda Shuler as the Salon Manager in February of 2006. Initially she shared the Salon Manager responsibilities with Christina Entzel. Ultimately [Shuler] became the overall Salon Manager in April 2010. Her responsibilities included overseeing the entire operation of the business, including: a) hiring employees; b) training employees; c) assuring the employees were familiar with the Employee Handbook and the Confidentiality Agreement which they needed to sign in order to work at the salon; d) protection of our intellectual property including the types of services that we provided and the client contact information.
>
> Amanda Shuler had been trained and was

instructed to carefully guard the information which we had concerning our clients and I specifically reviewed with her the procedures that were to be followed in the spa when I was not there to [e]nsure that the employees did not disclose this confidential information to anyone.

The client information **[***31]** was made available to employees in order to allow them to use it for salon/spa business and promotions, as for example sending "Thank You" cards or notifying them of promotions that the spa was offering. We also would use the client list to update [our] current client information. This was all done inside the La Bella Vita premises and was supposed to be done in a way that the information did not become public. Most of our clients are women and, in my experience, they do not like to have their personal information shared with anyone else. They want their information that is given to La Bella Vita kept at that location and not to be used for any other purpose.

...

With respect to the allegations that I compromised my client list, scheduling list, client calendars, client information and any other information that was declared confidential under the Confidentiality Agreement, I state unequivocally that at no time did I ever authorize any of these documents to be released to anybody.

...

Employees were given daily scheduling lists but these lists were never shown or placed in a location where a client or third party could see them. Employees of La Bella Vita were specifically instructed not **[***32]** to disclose this information or to make it visible to the eyes of customers or third parties inside the premises at any time. It was the specific responsibility of Amanda Shuler to ensure that the calendars, scheduling lists and client lists were not readily available to anyone other than employees of La Bella Vita. At the end of each day the employees of La Bella Vita were required to return their daily calendars with **[**432]** **[*811]** the information contained thereon, and any information that the employees had added, to the front desk. These lists were supposed to be shredded by the employees at the front desk. Amanda Shuler was responsible for making sure this got done. This was done to [e]nsure that the information was not left lying around. It was also the responsibility of the front desk employees to obtain additional updated information regarding the client to be added to the computer system.

Furthermore, current La Bella Vita employee Christina Entzel stated, "During my time working at La Bella Vita, [Davidson] [has] had a very strict business practice [of keeping] client lists confidential. . . . [She] was extremely careful with respect to confidentiality of the lists and did not allow anyone to use **[***33]** it for any purpose outside La Bella Vita."

Providing a contrary view, and in support of summary judgment, Shuler and other former La Bella Vita employees testified that this client-related information was loosely protected and often left out in public spaces in the salon, allowing patrons and other visitors easy access to it. Specifically, Shuler and the individually named defendants submitted identical affidavit testimony regarding the handling of client information and the institutional steps taken by La Bella Vita to safeguard the confidentiality of this information. The affiants testified as follows:

> Additionally, while I was employed by [La Bella Vita], I personally observed that it was the common practice for [La Bella Vita] employees to print copies of [La Bella Vita's] Client/Customer list, client information and scheduling lists out on the front desk, or in their work areas to write thank you cards and for other reasons. I also personally observed that people who were not employed by [La Bella Vita], including customers, friends and/or family of the employees, were in these locations throughout the day. Anyone in these areas, including non-employees[,] could pick up, look at, **[***34]** review or even take a copy of [the] Client/Customer list at any time. [La Bella Vita's] owner saw this happening and never took any action to correct it.
>
> Further, it was also the practice of [La Bella Vita] to have its employees prepare a written schedule for each day and to have the written schedule taped up or sitting out at their work station area. Any person receiving services during that day, or any family or friends who happened to be in the salon could see the names and information of all of the customers who were scheduled for services. [La Bella Vita's] owner saw this happening and never took any action to correct it.

Thus, there is directly conflicting testimony regarding La Bella Vita's practices with respect to its treatment and protection of client information. This creates a disputed issue as to one of six factors discussed in *Basic American*, specifically the third factor which considers

"the extent of measures taken ... to guard the secrecy of the information."

However, even with Shuler's affidavit testimony purporting to undermine La Bella Vita's privacy practices, Shuler admits during her deposition that she understood this client material was intended to be confidential **[***35]** and proprietary to La Bella Vita. The following exchange during Shuler's deposition is instructive in this regard:

> Q: All right. Is there anything in the confidentiality agreement that you disagree with in hindsight?
> A (Shuler): No.
> Q: I mean, you agree[d] to be bound by its terms?
> A: Correct.
> Q: What did you understand you were signing when you signed the confidentiality agreement?
> A: That I would not take a client list from [La Bella Vita] and use it or give it away or sell it or anything that way.
> Q: Is it your contention that the confidentiality agreement was limited to a client list?
> A: People that I could have access to only by La Bella Vita, yes.
> Q: I'm not sure I understand your answer.
>
> **[**433] [*812]** A: We couldn't take [Davidson's] confidential information that was in her computer, client list, a printed list or a written list of formulas, addresses, phone numbers, any of her information, any notes from message therapists, anything like that.

Shuler further articulated her understanding that the confidentiality agreement came into existence as a condition of employment at La Bella Vita in response to a former employee who took the client list when she was terminated. While Davidson denies any knowledge of **[***36]** any prior theft of La Bella Vita's client list by a disgruntled former employee, Davidson agrees the information is meant to be proprietary and confidential to La Bella Vita and that the purpose of the confidentiality agreement is to protect client-related information from outside use and dissemination.

Furthermore, the deposition testimony of Dalley lends support for the proposition that La Bella Vita employees understood that their primary obligation under the confidentiality agreement was to keep the personal and service-related information of clients confidential. It is worth noting that it was Shuler, as Dalley's supervisor, who discussed and explained the confidentiality agreement to Dalley at the time she signed the document.

The consistent testimony from Davidson, Shuler, and La Bella Vita's current and former employees regarding their understanding of the confidentiality agreement and its coverage of the salon's official client information, together with the conflicting testimony on La Bella Vita's business practices, creates a genuine factual dispute as to the confidential nature of La Bella Vita's client list and client-related information. This factual dispute cannot be construed **[***37]** against La Bella Vita on summary judgment.

3. Misappropriation

Setting aside whether the information at issue is confidential, there are genuine disputes regarding misappropriation. On summary judgment, the district court found insufficient evidence to establish Shuler actually took and used confidential information belonging to La Bella Vita. However, this finding was built upon the court's unsupported determination that the baby shower list did not contain any confidential information. In section V(B)(1), *supra*, this Court holds that there are in fact disputed issues as to the confidential nature of the baby shower list. Furthermore, and although the trial court made no direct findings as to the nature of La Bella Vita's official client information, this Court further holds in section V(B)(2), *supra*, that there are disputed issues as to whether this information qualifies as confidential. For the reasons outlined below, this Court further holds that there is conflicting evidence on the issue of misappropriation.

As to La Bella Vita's client list and related information, Shuler and the other former La Bella Vita employees unequivocally deny taking any of La Bella Vita's official client-related **[***38]** information, but also aver that the La Bella Vita client list was compromised by sloppy business practices. Despite these assertions, Shuler and these former employees do not dispute that, under the terms of the confidentiality agreement, this client-related information was intended to be confidential and proprietary to La Bella Vita. As to the baby shower list, it is undisputed that this list was derived, at least in part, directly from La Bella Vita's official client list. It is further undisputed that Shuler utilized the baby shower list in the creation or supplementation of Eikova's client list. What is disputed is whether this use of the baby shower list constitutes a misappropriation of a trade secret.

Shuler and others at her direction admit to using the baby shower list in the creation of Eikova's client list. These same individuals, however, deny taking or using

any of La Bella Vita's official client information, specifically stating that the information they used did not come directly from La Bella Vita's computer system. This is a distinction without a difference, and the following exchanges during Shuler's deposition illustrate this point:

> Q: Do you know what happened to **[***39]** the --- this [baby shower] list after the baby shower invitations were printed?
>
> **[**434] [*813]** A (Shuler): After the baby shower, Tammy [Comstock] gave me the list in label format so I could send thank you cards to my clients.
> Q: Okay. How about the [baby shower] list itself?
> A: I don't know what happened to it.
> Q: Did you make any effort to retrieve it?
> A: No. It could have ended up at the salon and shredded. I'm not sure.
> ...
> Q: So just to make sure I have this in the record, you are telling me that you did not use any client list or any derivation of a client list for the purpose of contacting any of your clients that went with you to Eikova?
> A: I still had the baby shower list Tammy Comstock had given me.
> Q: Do you have that [baby shower] list today?
> A: No, I don't.
> Q: What happened to it?
> A: I threw it away.
> Q: Do you remember when you threw it away?
> A: Yeah. I had a notebook that I transferred most of the information to that I could --- I kind of put as many of my clients in alphabetical order that I could think of at home, and as soon as I transferred the people on that list I still serviced, which I didn't service all of them anymore, I threw it away.
>
> Q: When did you decide that you were entitled to use **[***40]** the baby shower list as a basis for contacting people to let them know you were moving to Eikova?
> A: I don't think I felt like I was entitled to it. It was given to me.
> Q: But didn't you still consider that to be confidential information up until the time you left?
> A: No. It was given to me from an outside party. My clients' names --- many of them weren't even spelled on it correctly.
> Q: The fact that it had been prepared for your daughter's --- your daughter's baby shower, you didn't --- you decided at that point in time it was no longer confidential?
> A: Tammy [Comstock] could have given that list to anyone.

Dalley corroborates Shuler's testimony that the baby shower list was used to generate or supplement Eikova's client list. A pertinent portion of Dalley's deposition transcript reads as follows:

> Q: I would like to have you tell me what information you have regarding that --- that [baby shower] list. I mean, what can you tell me about it?
>
> A (Dalley): I was not employed at La Bella Vita at the time that list was given or printed. I have seen the list after we had opened Eikova. That's --- we used that information --- a lot of it were [Shuler's] friends, family, people that she already knew, **[***41]** because it was her baby shower. There wouldn't be people that she wasn't familiar with.
> Q: I see. So the information you have about the baby shower list is information that other people told you?
> A: I've seen the list of the baby shower.
> Q: You've seen the list. Oh, all right. Do you know where that list is today?
> A: I don't.
> Q: Where was the last place you saw it?
> A: When [Shuler] compiled the information from it and gave it to us to use to contact people at Eikova once it had opened.
> Q: Okay. What information was on the list?
> A: Names and addresses of [Shuler's] friends and family.
> Q: How many people were on the list?
> A: I'm not sure.
> Q: How many pages was the list?
> A: I believe it was two or three pages.
> Q: Did you get the list from Amanda Shuler?
> A: I never had my own copy of the list.
> Q: Oh. What did you have?
>
> **[**435] [*814]** A: We had one --- like, at the salon, so it was never mine. It was at Eikova. It was just there, and it was at the very beginning.
> ...
> Q: So you had possession of a list when you were at the front desk?
> A: Sure. Yes.
> Q: And you used that list and entered it in the computer ---
> A: Yes.
> Q: --- and contacted the people that were on the

list?
A: Yes.

Q: And you were told by Amanda Shuler that the list **[***42]** was from her baby shower?
A: Information from the --- yes.
Q: Okay. I'm just trying to figure out what she told you so that you knew what the list was.
A: It had all of that information on it, baby shower --- baby shower names and then [the stuff that] she had added to it from her own information. Does that make sense?
Q: Yes.
A: Okay.
Q: So there were names on there that were from a baby shower list, as well as additional names that Amanda Shuler had placed on the list?
A: Yes.
Q: But that was a list that Amanda Shuler gave you?
A: That was at the salon, yes.

Thus, the testimony of Shuler and Dalley demonstrates that the baby shower list was at least partially derived from La Bella Vita's official client list and also used as a primary source in the creation of Eikova's client list. This goes to the heart of misappropriation.

Lastly, the affidavit testimony of La Bella Vita clients offered in opposition to summary judgment provides circumstantial evidence of misappropriation. The affidavit testimony of these clients is substantially similar in most respects, with each affiant stating that their contact information is private and non-public and implying that Eikova could have only obtained this **[***43]** information from La Bella Vita's official records. The district court dismissed these accusations as too tenuous and speculative to survive summary judgment because there was not any direct evidence of misappropriation. The district court's characterization of this testimony as conjecture is not entirely misplaced. A person's contact information can be ascertained in a variety of ways, including through the involuntary sharing or selling of information. It is nearly impossible to completely control these other avenues and there are a variety of methods Eikova could have utilized to obtain this information, even though these clients considered the same to be non-public and confidential.

However, Margaret Beatty's (Beatty) testimony deviates in one significant way from the testimony of the other clients: specificity. Beatty had an appointment at La Bella Vita in February 2011, the same month Eikova opened. Shortly after Eikova's opening, Beatty testified, "I was contacted by someone from Eikova at the front desk to tell me that my appointment with [Harrington] had been moved from La Bella Vita to Eikova. This was done without my knowledge or consent." This testimony creates a disputed **[***44]** issue as to misappropriation, as it provides a sufficiently definite nexus between La Bella Vita's internal appointment calendar and Eikova's. This testimony supports the assertion that Eikova took and used La Bella Vita's confidential client contact and scheduling information.

For all of these reasons, there are genuine disputes on the issue of misappropriation, disputes which cannot be construed against La Bella Vita on summary judgment.

4. District Court's Memorandum Decision and Order on Summary Judgment

The district court made many key findings on summary judgment, findings which are undercut by the genuine factual disputes discussed above. In granting summary judgment against La Bella Vita, the district court determined that La Bella Vita failed to "come forward with sufficient evidence to **[**436]** **[*815]** raise a question of fact regarding a violation of a trade secret." First, the district court found that La Bella Vita failed to keep the information contained in the baby shower list confidential given that non-employees Combs and Comstock received certain client information in the planning of Shuler's baby shower and that the baby shower list is still unreturned. Considering Davidson's testimony **[***45]** unequivocally denouncing this use of La Bella Vita's information, this finding does not rest on solid ground. Notwithstanding Davidson's testimony, the trial court reasoned that because this information was released and remains unconfined, it is no longer confidential. This rationale presents only half of the story.

It is undisputed that everyone at La Bella Vita understood or considered this client-related information to be confidential, at least at the inception of their respective terms of employment. There are disputes as to whether sloppy business practices compromised this intent, and also whether the official client list was properly accessed in the creation of the baby shower list. The district court found that despite these disputed facts, because this baby shower list was created, distributed, and remains at large, these acts suggest this information is not and was never confidential. The outcome of this lawsuit will likely rest in large part on whether this baby shower list was properly created and

released in the first place. The district court's rationale fails to account for the discrepancies over whether the client-related information was intended or understood as confidential **[***46]** and the steps taken to prevent a leak of the same.

Second, the district court found that under the ITSA, information qualifies as confidential only if it cannot be derived from other means. The court cited Shuler's testimony that she and her Eikova employees generated their own lists from a variety of sources, including word or mouth from friends, family, and acquaintances, social media contacts, church directories, and internet databases and searches. This analysis, however, fails to account for, or even acknowledge, Shuler's heavy reliance on the baby shower list as a source of inspiration in the creation of Eikova's list. Given this reliance on the baby shower list, it is unclear from the record whether Shuler and the other Eikova employees would have been capable of deriving or recreating the same information utilizing these others means. While the district court dismissed as speculative the client testimony that the only way Eikova could have obtained their information was by taking all or some of La Bella Vita's client list, the trial court failed to acknowledge the use of the baby shower list, a list which is an undisputed derivative of the client list.

Lastly, and "notwithstanding **[***47]** the finding that the information contained on the baby shower list was not confidential," the district court also found that La Bella Vita failed to meet its burden of establishing whether Shuler "actually used any of the information contained in the baby shower list" or whether Shuler "wrongfully took or used any other 'confidential' information." This finding, however, is contradicted by Shuler's affidavit testimony wherein she expressly admits to using information contained in the baby shower list in the creation of Eikova's new client list. Shuler testified, "I had a notebook [where] I transferred most of the information ... [from the baby shower list]." More specifically, she stated that she created an Eikova list in her notebook by "put[ting] as many of [her] clients in alphabetical order that [she] could think of [while brainstorming] at home," and that she supplemented this notebook list with most of the information from the baby shower list. Shuler concluded, "[A]s soon as I transferred the people on [the baby shower] list I still serviced, [since] I didn't service all of them anymore, I threw it away."

Regarding La Bella Vita's claim that Shuler breached the confidentiality agreement, **[***48]** the court failed to squarely address this issue, reasoning that without a violation of the ITSA, there could not be a breach of the agreement. Because this Court holds that there are genuine factual issues as to the existence of a trade secret and a misappropriation of the same, there remains an issue as to whether the confidentiality agreement was breached by Shuler and Eikova.

[437] [*816] 5. Summary of Disputed Issues Precluding Summary Judgment**

When viewed in a light most favorable to La Bella Vita, there are numerous disputed factual issues regarding whether the information at issue in this case qualifies as confidential and trade secret. These disputed issues render this case inappropriate for summary judgment against La Bella Vita. As to La Bella Vita's client list and client-related information, the affidavit and deposition testimony of Davidson and current and former La Bella Vita employees conflicts as to the salon's practices regarding the safeguarding of this information. There is no dispute, however, that La Bella Vita employees understood the same information as being confidential and proprietary to La Bella Vita, signing a confidentiality agreement to that end.[5] As to the baby shower **[***49]** list, there is a genuine dispute as to whether Davidson authorized the accessing and use of La Bella Vita's official client list to assist in the creation of the shower list. Davidson emphatically denies granting such permission, while Shuler and Combs testify to the contrary.

As stated above, ***HN14***[↑] to prevail in a claim brought under the ITSA, "[a] plaintiff must show that a trade secret actually existed." *Basic American, Inc. v. Shatila, 133 Idaho 726, 734, 992 P.2d 175, 183 (1999)*; *I.C. § 48-801*. To determine whether information qualifies as a trade secret, this Court looks at six factors, "[a]ll of [which] address the issue of whether the information in question is generally known or readily ascertainable." *Wesco Autobody Supply, Inc. v. Ernest, 149 Idaho 881, 898, 243 P.3d 1069, 1086 (2010)*. The emphatic denials by Shuler and the other named defendants that they did not take La Bella Vita's client list or any derivation of the same are rendered meaningless by admissions from the same that the baby shower list was utilized in the

[5] All employees except Coffin signed the Confidentiality Agreement. This raises an additional question regarding whether La Bella Vita's client-related information was properly protected, given that Coffin had access to this information but was not constrained by the agreement.

creation of Eikova's client list. It is undisputed that La Bella **[***50]** Vita's client-related information was intended and understood by its employees and management to be confidential and proprietary to La Bella Vita. While there is a dispute about whether this information is actually confidential and trade secret, or might have been initially but otherwise lost its confidential character over time, all parties expressed an understanding that the purpose underlying the confidentiality agreement signed by Shuler and the other La Bella Vita employees was to protect this information. Shuler and Eikova admit that the baby shower list was, at least in part, derived from this official information, and also used to generate Eikova's list. The aforementioned disputes over whether Davidson authorized use of this official information in the creation of the baby shower list and whether La Bella Vita's business practices somehow compromised the confidentiality of its client information preclude resolution of this action on summary judgment. The law is settled that these sorts of factual disputes defeat a motion for summary judgment. *Petricevich v. Salmon River Canal Co., 92 Idaho 865, 868-69, 452 P.2d 362, 365-66 (1969)*.

Further, there are disputes regarding misappropriation. Shuler admitted to taking and using the baby shower list in the creation of **[***51]** Eikova's client list. The baby shower list is a derivation of La Bella Vita's formal client list, and the affidavit testimony, viewed in a light most favorable to La Bella Vita, establishes that official information was accessed in the creation of the shower list. Beyond the baby shower list, however, there is no concrete evidence of Shuler taking client information directly from La Bella Vita's system. While the testimony of La Bella Vita clients is mostly circumstantial, Beatty's testimony regarding the unsolicited phone call she received from Eikova regarding her "new" appointment at Eikova provides some evidence that Eikova improperly accessed La Bella Vita's official appointment calendar.

Lastly, it is worth noting that the district court never squarely reached the issue of whether La Bella Vita's client list and other client-related information is confidential—both at the inception of defendants' terms of employment and also whether it maintained **[**438]** **[*817]** its intended confidential character over time. Instead, the court focused solely on the character and nature of the baby shower list. However, an analysis of the baby shower list cannot be conducted in a vacuum. A proper analysis of the **[***52]** baby shower list, by necessity, implicates the character and nature of the official client information from which it was derived.

C. The award of attorney fees and costs to Shuler and Eikova is vacated.

HN15[⬆] *Idaho Code section 12-120(3)* allows for the recovery of attorney fees by the prevailing party in a civil action to recover on any commercial transaction. After the grant of summary judgment in favor of Shuler and Eikova, the district court entered a memorandum and order awarding attorney fees and costs to Shuler and Eikova pursuant to *Idaho Rule of Civil Procedure 54* and *Idaho Code section 12-120(3)*, finding this action qualifies as a commercial transaction. Given the reversal of the district court's decision, Shuler and Eikova are no longer the prevailing parties in this case. Thus, the award of attorney fees is vacated.

D. Shuler and Eikova are not entitled to attorney fees on appeal.

Shuler and Eikova seek attorney fees on appeal pursuant to *Idaho Code section 12-120(3)*. ***HN16***[⬆] A prerequisite to an award of attorney fees under this section is that the party prevails. Shuler and Eikova are not the prevailing party in this appeal. Therefore, they do not qualify for an award of attorney fees. La Bella Vita does not seek fees on appeal.

VI. Conclusion

The district court's grant of summary judgment in favor of **[***53]** Shuler and Eikova is reversed, and this case is remanded for further consideration consistent with this decision. The award of fees and costs in favor of Shuler and Eikova is also vacated. Costs on appeal are awarded to La Bella Vita.

Chief Justice BURDICK, Justices EISMANN, J. JONES and HORTON CONCUR.

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Shepard's request: 169 Idaho 406, 417

The *Shepard's*® report for this citation is identical to citation #1

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Citation # 3 (as appears in page 3 of Document)
Reclaim Idaho v. Denney, 169 Idaho 406, 417

QuoteCheck™ Report

169 Idaho 406, 417

About your quote:
Your quote is substantially the same as the retrieved quote.
QuoteCheck ™ Request: 169 Idaho 406, 417

Your Quote:
a motion to file a supplemental declaration is granted with a showing of good cause.

[169 Idaho 406, 417]

Retrieved Quote:
a motion to file a supplemental declaration is granted with a showing of good cause.

[169 Idaho 406, 417]

Excerpt from document:
The SOS also objected to the declarations of Ysursa, Mayville, Moncrief, Daley, and Nettinga, arguing they stated impermissible conclusions of law that were otherwise irrelevant and should be stricken. Moreover, the SOS argues these declarations stated the incorrect constitutional test for this Court to apply in this case. To the extent that any of the declarations contained statements which could arguably be read as legal conclusions, this Court has disregarded such statements as a matter of course. Concerning the balance of the declarations, we find them relevant inasmuch as they contain evidence that has a tendency to make a fact of consequence more or less probable. See I.R.E. 401. Accordingly, we deny the balance of the SOS's motion to strike.
The SOS and the Legislature filed a joint motion to strike the declaration of Joe Champion and the supplemental declaration of Dr. Gary Moncrief. The SOS and the Legislature asserted that the declarations were submitted too late for any reply, were unfair to the SOS and the Legislature, and Champion's declaration was too speculative. Typically, **a motion to file a supplemental declaration is granted with a showing of good cause.** This case, which is being heard as an original action without the benefit of a trial record, presents constitutional issues of significant importance. It is essential that the Court have access to all the relevant facts necessary to reach an appropriate decision. Moreover, the SOS successfully moved this Court to allow a supplemental declaration from its declarant, Dr. John R. Stevens. Therefore, we find there was good cause to admit Reclaim and the Committee's supplemental declarations. There was no unfair prejudice inasmuch as the SOS was allowed to submit its own supplemental declarations. Again, as with the aforementioned declarations, Champion's declaration was the type of opinion commonly and properly admitted under Idaho Rule of Evidence 702. It was not speculative because the declaration addressed opinions upon which

an expert in the field can properly opine. Any objections to his methodologies go to the weight, not the admissibility, of his testimony. Therefore, the SOS and the Legislature's outstanding motion to strike the declaration of Champion and the supplemental declaration of Moncrief is also denied.

Before proceeding to the merits, we must determine whether the Petitioners have properly invoked this Court's original jurisdiction. We summarized the legal basis for exercising original jurisdiction in a recent case involving the legislature:

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Full text request: 169 Idaho 406, 417
The full text of this report is identical to citation #1

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Appellate History: Requested

Citing Decisions: Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By:Date:Jan 1 1658 to Oct 24 2024

***Shepard's*®:** Hastings v. Idaho Dep't of Water Res. 547 P.3d 1190,2024 Ida. LEXIS 42: (Idaho April 24, 2024)

No subsequent appellate history

Appellate History (1)

1. **Citation you *Shepardized*™**

Hastings v. Idaho Dep't of Water Res., 547 P.3d 1190, 2024 Ida. LEXIS 42

Court: Idaho | **Date:** April 24, 2024

Citing Decisions (0)

No documents found in Citing Decisions.

Other Citing Sources: (4)

Annotated Statutes

1. **Idaho Code sec. 9-101**

   Content: Statutes

2. **Idaho Code sec. 42-3809**

   Content: Statutes

Briefs

3. **RUPP v. CITY OF POCATELLO**, 2024 ID S. Ct. Briefs LEXIS 586

   Content: Court Filings | **Date:** June 18, 2024

4. **RUPP v. CITY OF POCATELLO**, 2024 ID S. Ct. Briefs LEXIS 526

   Content: Court Filings | **Date:** June 12, 2024

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Idaho Supreme Court

1. Krinitt v. Idaho Dep't of Fish & Game, 162 Idaho 425, 398 P.3d 158, 2017 Ida. LEXIS 215, 2017 WL 2951677

   LB **Citing**

   Discussion: | **Court:** Idaho | **Date:** July 11, 2017

2. Gagnon v. W. Bldg. Maint., Inc., 155 Idaho 112, 306 P.3d 197, 2013 Ida. LEXIS 238, 2013 WL 4039443

   LB **Citing**

   Discussion: | **Court:** Idaho | **Date:** August 09, 2013

3. Ticor Title Co. v. Stanion, 144 Idaho 119, 157 P.3d 613, 2007 Ida. LEXIS 63

   LB **Citing**

   Discussion: | **Court:** Idaho | **Date:** March 21, 2007

4. Smith v. Excel Fabrication, LLC, 172 Idaho 725, 535 P.3d 1098, 2023 Ida. LEXIS 116

   LB **Citing**

   Discussion: | **Court:** Idaho | **Date:** September 15, 2023

5. St. Luke's Health Sys. v. Bd. of Comm'rs, 168 Idaho 750, 487 P.3d 342, 2021 Ida. LEXIS 87

   LB **Citing**

   Discussion: | **Court:** Idaho | **Date:** May 19, 2021

6. St. Alphonsus Reg'l Med. Ctr. v. Elmore Cnty. (In re T.A.), 158 Idaho 648, 350 P.3d 1025, 2015 Ida. LEXIS 136

   LB **Citing**

   Discussion: | **Court:** Idaho | **Date:** May 22, 2015

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LB **Citing**

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8. Sallaz v. Rice, 161 Idaho 223, 384 P.3d 987, 2016 Ida. LEXIS 372, 91 U.C.C. Rep. Serv. 2d (CBC) 261

LB **Citing**

Discussion: | **Court:** Idaho | **Date:** November 23, 2016

9. Bass v. Esslinger, 171 Idaho 699, 525 P.3d 737, 2023 Ida. LEXIS 22

LB **Citing**

Discussion: | **Court:** Idaho | **Date:** March 02, 2023

10. Lunneborg v. My Fun Life, 163 Idaho 856, 421 P.3d 187, 2018 Ida. LEXIS 129, 2018 WL 3150964

LB **Citing**

Discussion: | **Court:** Idaho | **Date:** June 28, 2018

11. State v. Lemmons, 158 Idaho 971, 354 P.3d 1186, 2015 Ida. LEXIS 209

LB **Citing**

Discussion: | **Court:** Idaho | **Date:** August 20, 2015

12. Andrews v. Moore, 14 Idaho 465, 94 P. 579, 1908 Ida. LEXIS 35

LB **Citing**

Discussion: | **Court:** Idaho | **Date:** March 06, 1908

13. Estate of Ekic v. Geico Indem. Co., 163 Idaho 895, 422 P.3d 1101, 2018 Ida. LEXIS 125, 2018 WL 3134880

LB **Citing**

Discussion: | **Court:** Idaho | **Date:** June 27, 2018

14. Fagen, Inc. v. Lava Beds Wind Park, LLC, 159 Idaho 628, 364 P.3d 1193, 2016 Ida. LEXIS 14

Citing

Discussion: | **Court:** Idaho | **Date:** January 26, 2016

15. Jenkins v. Boise Cascade Corp., 141 Idaho 233, 108 P.3d 380, 2005 Ida. LEXIS 36, 22 I.E.R. Cas. (BNA) 1751

Citing

Discussion: | **Court:** Idaho | **Date:** February 23, 2005

16. Idahoans For Open Primaries v. Labrador (In re Verified Petition for Writs of Certiorari & Mandamus), 172 Idaho 466, 533 P.3d 1262, 2023 Ida. LEXIS 96

Citing

Discussion: | **Court:** Idaho | **Date:** August 16, 2023

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Hastings v. Idaho Dep't of Water Res.

Supreme Court of Idaho

April 24, 2024, Opinion Filed

Docket No. 50273

Reporter
547 P.3d 1190 *; 2024 Ida. LEXIS 42 **

JOHN HASTINGS, JR., Plaintiff-Counterdefendant-Appellant, v. IDAHO DEPARTMENT OF WATER RESOURCES, a political subdivision of the STATE OF IDAHO, Defendant-Counterclaimant-Respondent.

Prior History: [1]** Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Lynn G. Norton, District Judge.

Disposition: The order of the district court is affirmed.

Core Terms

consent order, district court, restoration, parties, statute of limitations, judicial notice, deadline, discovery, summary judgment, terms, alteration, enforcement action, conditions, motion for continuance, channel, civil penalty, compliance, stream, River, streambank, argues, notice, two-year, stipulated facts, counterclaim, completion, contends, refund, additional discovery, file a petition

Case Summary

Overview

HOLDINGS: [1]-The Idaho Department of Water Resources was properly awarded summary judgment because its enforcement action was not time-barred under *Idaho Code Ann. § 42-3809*; [2]-The district court did not err in taking judicial notice of the conditional permit because the permit was an official document evidencing an official act of the Department under *Idaho Code Ann. § 9-101(3)*; by referring to the conditional permit only to establish the date of its expiration and confirm the notice given to plaintiff of his right to request a hearing, the court did not consider facts outside the scope of the bifurcated proceeding; [3]-The district court did not err in denying plaintiff's motion to continue summary judgment for the purpose of conducting discovery; he failed to meet his burden to show what further discovery would reveal that was essential to justify his opposition.

Outcome
Judgment affirmed.

LexisNexis® Headnotes

Civil Procedure > Judgments > Summary Judgment > Burdens of Proof

Civil Procedure > ... > Summary Judgment > Appellate Review > Standards of Review

Civil Procedure > Judgments > Summary Judgment > Entitlement as Matter of Law

Civil Procedure > ... > Summary Judgment > Burdens of Proof > Movant Persuasion & Proof

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes

HN1 **Summary Judgment, Burdens of Proof**

When reviewing a trial court's ruling on summary judgment, an appellate court applies the same standard of review used by the trial court in ruling on the underlying motion. The court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Idaho R. Civ. P. 56(a). All facts are read in the light most favorable to the nonmoving party, with reasonable inferences drawn in that party's favor. The moving party bears the burden to prove no genuine issues of material fact exist. Where there are no disputed issues of material fact, what remains is a question of law, over which the appellate court exercises free review.

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

Governments > Legislation > Interpretation

HN2 **Standards of Review, Questions of Fact & Law**

Statutory interpretation is a question of law over which an appellate court exercises free review. The objective of statutory interpretation is to give effect to the legislative intent. A court begins with an examination of the literal words of a statute, and gives words their plain, usual, and ordinary meanings. Provisions should not be read in isolation, but must be interpreted in the context of the entire document. The court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the court need not consider rules of statutory construction. Likewise, when the language in a contract is clear and unambiguous, its interpretation is a question of law and the language will be given its plain meaning.

Governments > State & Territorial
Governments > Property > Water Rights

Real Property Law > Water Rights > Administrative Allocations

HN3 **Property, Water Rights**

The Idaho Stream Channel Alteration Act protects Idaho's stream channels and environments for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. Idaho Code Ann. § 42-3801. Under Idaho Code Ann. § 42-3809, the Director of the Idaho Department of Water Resources is vested with the power and authority to enforce the provisions of the chapter and rules and regulations promulgated pursuant to it. No alteration of any stream channel can be made without the Director's approval under the Act. Idaho Code Ann. § 42-3803(a). The Director is also vested with authority to commence enforcement actions against any person who is in substantial violation of the Act, provided the action is brought within two years of the Director's actual or constructive knowledge of the violation.

Governments > Legislation > Statute of Limitations > Time Limitations

Real Property Law > Water Rights > Administrative Allocations

Governments > State & Territorial
Governments > Property > Water Rights

Real Property Law > Water Rights > Appropriation Rights

HN4 **Statute of Limitations, Time Limitations**

A statute of limitations does not begin to run until a cause of action has accrued. Under Idaho Code Ann. § 42-3809, an enforcement action cannot be brought until the Director of the Idaho Department of Water Resources has knowledge or ought reasonably to have had knowledge of the violation. The two-year period begins to run at that time.

Governments > State & Territorial
Governments > Property > Water Rights

Real Property Law > Water Rights > Administrative Allocations

Real Property Law > Water Rights > Appropriation Rights

Real Property Law > Water Rights > Water Dispute Procedures

HN5 **Property, Water Rights**

Under the administrative rules of the Idaho Department of Water Resources, a permit applicant has a right to seek a hearing on a limited or conditioned permit. *Idaho Admin. Code r. 37.03.07.070*.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Evidence > Judicial Notice > Adjudicative Facts

HN6 **Standards of Review, Abuse of Discretion**

Whether a district court erred in taking judicial notice is an evidentiary question reviewed under an abuse of discretion standard. There is no abuse of discretion where a trial court (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.

Evidence > Judicial Notice > Adjudicative Facts > Facts Generally Known

Evidence > Judicial Notice > Adjudicative Facts > Verifiable Facts

Evidence > Judicial Notice > Adjudicative Facts > Judicial Records

HN7 **Adjudicative Facts, Facts Generally Known**

Pursuant to *Idaho R. Evid. 201*, a court may take judicial notice on its own initiative or it must take judicial notice if a party requests it and the court is supplied with the necessary information. *Idaho R. Evid. 201(c)*. The rule governs judicial notice of adjudicative facts that are not subject to reasonable dispute. *Idaho R. Evid. 201(a)* and *(b)*. An adjudicative fact is a controlling or operative fact, rather than a background fact; a fact that concerns the parties to a judicial or administrative proceeding and that helps the court or agency determine how the law applies to those parties. In the case of stipulations, stipulated facts admitted by the parties are the facts and the consideration of additional evidence that could be introduced for the purpose of changing or altering said facts is improper.

Civil Procedure > Pretrial Matters > Continuances

Civil Procedure > ... > Summary Judgment > Appellate Review > Standards of Review

Civil Procedure > ... > Summary Judgment > Opposing Materials > Motions for Additional Discovery

Civil Procedure > ... > Summary Judgment > Supporting Materials > Discovery Materials

Civil Procedure > ... > Summary Judgment > Burdens of Proof > Nonmovant Persuasion & Proof

HN8 **Pretrial Matters, Continuances**

A court has discretion to grant or deny a motion for a continuance to conduct further discovery. Thus, an appellate court reviews the denial of a motion to continue for an abuse of discretion. For summary judgment purposes, a court may continue the hearing for good cause shown, *Idaho R. Civ. P. 56(b)(3)*, or grant a nonmoving party relief from summary judgment where the nonmovant shows it cannot present facts essential to justify its opposition, *Rule 56(d)*. For additional discovery, the party seeking a continuance bears the burden of establishing what further discovery would reveal that is essential to justify their opposition, making clear what information is sought and how it would preclude summary judgment. In ruling on the motion, the court may consider the moving party's prior lack of diligence in pursuing discovery.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > English Rule

Governments > Local Governments > Claims By & Against

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

Governments > State & Territorial Governments > Claims By & Against

HN9 **Basis of Recovery, English Rule**

Idaho Code Ann. § 12-117(1) mandates that a court shall award attorney fees to the prevailing party in any proceeding involving as adverse parties a state agency or a political subdivision and a person, where the court determines that the non-prevailing party acted without a reasonable basis in fact or law. The statute is the exclusive basis for awarding attorney fees in a case between a person and a governmental entity as adverse parties.

Counsel: J. Kahle Becker, Attorney at Law, Boise, for Appellant. J. Kahle Becker argued.

Raúl R. Labrador, Idaho Attorney General, Boise, for Respondent. Meghan M. Carter argued.

Judges: MOELLER, Justice. Chief Justice BEVAN, Justices BRODY, ZAHN and MEYER concur.

Opinion by: MOELLER

Opinion

[*1193] MOELLER, Justice.

This appeal arises from litigation between the Idaho Department of Water Resources (the "Department") and John Hastings, Jr., a landowner in Blaine County who made unauthorized alterations to the Big Wood River. Hastings appeals from the district court's decision to award summary judgment to the Department on the issue of a statute-of-limitations defense and the partial judgment entered against him. He contends that the Department was barred from pursuing an enforcement action against him based on the statute of limitations set forth in *Idaho Code section 42-3809*. For the reasons explained below, we affirm the district court.

I. Factual and Procedural Background

Hastings owns real property in Ketchum, Idaho, adjacent to the Big Wood River and upstream from the Warm Springs Bridge. **[**2]** During a period of high spring runoff and summer flooding in 2017, Hastings placed rock armoring, or "emergency riprap," along 193 feet of the streambank to stabilize it. While initially done with verbal approval from the city, the work ultimately removed riparian vegetation and discharged fill material below the mean high-water mark of the Big Wood River without a permit from the Department for altering the channel.

On September 11, 2017, the Department issued a notice of violation to Hastings for unauthorized alterations to the Big Wood River. Hastings was ordered to cease all unauthorized work below the mean high-water mark of the river. He was also ordered to submit a streambank bioengineering plan for river restoration, including "measures for replanting the riparian area(s)" with native trees and shrubs "and measures to restore fish and wildlife habitat."

Hastings and the Department met for a compliance conference on October 3, 2017. On January 26, 2018, Hastings and the Department entered into a consent order and agreement (the "Consent Order") under *Idaho Code section 42-1701B*. The Consent Order required Hastings to pay a civil penalty and submit a restoration plan for the streambank. The Consent Order **[**3]** laid out the following terms:

> 1) By February 15, 2018, Respondent shall pay a civil penalty in the amount of $10,000 and submit a Joint Application for Permit ("application") to the Department that proposes a plan to restore the streambank at the subject lands. The restoration plan must be designed to reduce further erosion and help restore more functional riverine conditions and include the following minimum requirements:
>
> > a. bioengineering treatments to incorporate large woody material along the streambank (e. g. root wad engineered log jam and brush or tree revetment)
> >
> > b. a planting plan to help re-establish a native riparian buffer between the Big **[*1194]** Wood River and the upland parcel at the subject lands.
>
> 2) Respondent shall comply with the terms and conditions of any permit the Department issues subsequent to the submittal of an acceptable application and restoration plan pursuant to Order paragraph no. 1.
>
> 3) Respondent shall contact the Department immediately after completing the restoration plan at the subject lands. The Department shall inspect the completed work within 14 days after notification of completion to determine if the work meets the criteria and conditions of the restoration **[**4]** plan.
>
> 4) The Department agrees to refund Respondent $7,500 of the civil penalty if the Respondent successfully completes the restoration plan by December 31, 2018, and meets the requirements of Order paragraphs 1-3. If there are circumstances beyond the control of Respondent, he will contact

the Department by November 30, 2018, to request an extension of the deadline stated above.

5) Upon execution of this agreement, the Department's receipt of the agreed civil penalty described above, and full compliance with the terms contained herein, NOV no. E2017-1236 will be considered resolved.

Hastings paid the $10,000 civil penalty pursuant to the Consent Order. Brockway Engineering, on behalf of Hastings, filed a proposed restoration plan with the Department, which it rejected. Over the next few months, two revised plans were submitted but were each rejected for failing to comply with the terms of the Consent Order. Although not at issue in this appeal, Hastings maintains that all of his proposals were in compliance with the Consent Order.

Immediately following the rejection of Brockway Engineering's revised plans, Hastings contacted Aaron Golart, the Department's Stream Channel Coordinator, **[**5]** to request an extension of time to complete the restoration required by the Consent Order. Golart granted the extension in an email to Hastings's attorney on November 2, 2018. Golart's email stated: "With respect to the time extension you have requested, [the Department] is willing to grant the request to extend the time to complete construction on the restoration until March 15, 2019." The parties agree that, aside from the extension of the deadline, the terms of the Consent Order were not modified and no new agreement was entered. The parties also agree that this email was a valid extension of the deadline originally set forth in the Consent Order.

Brockway Engineering then submitted a third revised plan that addressed the Department's concerns for the river restoration. Hastings and his corporation, Embassy Auditoriums, Inc., also submitted a joint application to the Department seeking a stream channel alteration permit for streambank stabilization. The Department conditionally approved Hastings's restoration plan by issuing a "Conditional Permit," which imposed several conditions related to completion of the restoration work required in the Consent Order. However, Hastings opposed **[**6]** these conditions and filed a petition for a hearing on May 21, 2019, as authorized by the Department's Administrative Rule 37.03.07.70, which was adopted pursuant to the Idaho Rules of Administrative Procedure ("IDAPA"). Hastings's petition stated that "[c]ertain requirements [in the Conditional Permit]. . . are inconsistent with the Consent Order and the agreement that led to the filing of the Restoration Plan." In the same petition, Hastings also stated that he "would be willing to participate in an informal meeting to discuss resolution of this matter" to avoid unnecessary delay or litigation. While a declaration provided by a Department employee indicated that the Department entered "discussions on the conditional terms of the [Conditional] Permit" with Hastings, the Department also noted that the parties eventually "reached an impasse."

The record is silent concerning what, if anything, happened for the next two years, until November 15, 2021, when Hastings filed an action in Ada County District Court seeking a declaratory judgment against the Department. In his complaint, he sought a ruling from the court declaring that the Department could no longer pursue an enforcement action against him. Hastings asserted **[*1195]** **[**7]** that the two-year statute of limitations set forth in *Idaho Code section 42-3809*, the statute authorizing the director of the Department to commence an administrative enforcement action for violation of an order governing the alteration of a stream channel, had run. In the alternative, Hastings argued that he was entitled to a declaratory judgment clarifying his rights and obligations in conducting restoration activities on the properties identified in the Consent Order.

Four days later, the Department initiated an administrative proceeding pursuant to *Idaho Code section 42-3809* naming Hastings as a party. On December 21, 2021, it filed an answer and counterclaim in Hastings's district court action seeking specific performance in accordance with *Idaho Code sections 42-1701B(4)* and *42-3809*, which would require Hastings to comply with the Consent Order. Hastings filed an answer to the counterclaim asserting numerous affirmative defenses, including the two-year statute of limitations under *Idaho Code section 42-3809*. None of the pleadings filed in the district court action to this point were verified.

The parties agreed to bifurcate the issues in the district court action to first address the statute of limitations defense. To that end, both sides stipulated to a set of facts limited to just that issue. **[**8]** The district court granted their request. The stipulated facts were filed with the court, and the parties subsequently filed cross-motions for summary judgment. The Department's motion for summary judgment attached a certified copy of the Conditional Permit and asked the district court to take judicial notice of it. The 32-page attachment included: a certified copy of the Conditional Permit, the Department's IDAPA rules pertaining to the Stream

Channel Alteration Act and the Conditional Permit's approval, and Hastings's joint application for the Conditional Permit, including his proposed restoration plan by Brockway Engineering. In response to the Department's request for judicial notice, Hastings filed an objection and a motion to strike the Conditional Permit from the record. Hastings also filed a motion to continue so that he could pursue additional discovery and he requested sanctions under *Rule 11 of the Idaho Rules of Civil Procedure*.

After reviewing the motions, the district court denied the motion to strike and determined that, for summary judgment purposes, it would take judicial notice of the Conditional Permit. It determined that the Department did not submit "the [Conditional Permit] as evidence [for] proof of matters **[**9]** related to the damages of the riverbed or needed restoration," but it was instead submitted "as evidence of the dates for the expiration of the [Conditional] Permit, that [Hastings] was informed he was entitled to request a hearing on any objections to the [Conditional] Permit pursuant to administrative rules, and that any hearing request was therefore not a violation of the Consent Order." Further, the district court found that the Conditional Permit was "an official document" appropriate for judicial notice under *Idaho Code section 9-101(3)* and *Idaho Rule of Evidence 201* "since it is not subject to reasonable dispute that this is the Conditional Permit referenced by the parties . . . ." The court also granted Hastings's motion to continue in part, but did not allow Hastings to complete additional discovery. The parties filed supplemental briefing, and Hastings verified his earlier pleadings. Hastings then filed a motion to reconsider the district court's decision taking judicial notice of the Consent Order and denying a continuance for further discovery.

The district court heard oral arguments on the cross-motions for summary judgment on July 25, 2022. Hastings argued that the statute of limitations began to run either: (1) when he **[**10]** failed to complete construction by the extended deadline of March 15, 2019,[1] or (2) when he filed a petition for hearing on May 21, 2019, to express his disagreement with the terms of the Conditional Permit. Because the Department did not bring an enforcement action until it filed its counterclaim on December 21, 2021, Hastings argued that the enforcement action was untimely and barred by the two-year statute of limitations regardless of which date applied. **[*1196]** The Department disagreed, arguing that a cause of action did not accrue until Hastings filed for declaratory judgment on November 15, 2021. Up to that point, the Department maintains that it believed that Hastings intended to complete the stream channel restoration work in accordance with the terms and conditions of the Consent Order.

In a written decision following the hearing, the district court denied Hastings's motion for reconsideration on taking judicial notice and denying a continuance. The district court found that Hastings recognized the Conditional Permit as "a true and correct Conditional Permit issued after the joint application was filed on March 15, 2019." In concluding that it could take judicial notice of the Conditional **[**11]** Permit, the district court explained that it would only consider the document "to the extent it addresses whether the filing of the Petition for Hearing triggered the statute of limitations." The court also determined that a continuance for "additional" discovery was unwarranted, noting that Hastings "has still not served any discovery requests . . . ."

The district court then granted summary judgment to the Department on the statute of limitations issue. In reaching this conclusion, the district court first considered the plain language of the Consent Order and whether it set a firm construction deadline for the restoration work. The district court determined that it did not. The court reasoned that while the Consent Order listed a deadline, it was not for completion of the required restoration; rather, it set a deadline for Hastings to qualify for a partial refund of the civil penalty it imposed. Thus, Hastings's failure to meet the Consent Order's deadline was not a violation of the agreement that would trigger the statute of limitations—it only meant that Hastings was not entitled to a $7500 reduction of the fine. Additionally, the Conditional Permit advised Hastings of his right **[**12]** to request a hearing and object to the Conditional Permit's terms. Thus, the court determined that the "use of an appeal right provided for by regulatory rule to object to certain terms of the Conditional Permit was not a violation of the Consent Order." The district court explained: "It was reasonable for the Department to interpret Hastings's request for a hearing as an attempt to resolve disputes between Hastings and the Department so that Hastings could comply with the Consent Order."

In examining when the statute of limitations began to run, the district court determined that "the earliest possible date that the Department 'ought to have reasonably known' that Hastings violated the Consent

[1] The district court's order mistakenly states the extended deadline as "March 15, 2021," which is a typographical error inconsistent with the record and stipulated facts of the parties.

Order was December 31, 2019," because that was the "proposed completion date" Hastings listed in his permit application. Because the Department filed its counterclaim within two years of this date, the district court found the enforcement action timely. Based on this analysis, the district court entered a partial judgment against Hastings on just the statute of limitations issue pursuant to *Idaho Rule of Civil Procedure 54(b)*. He timely appealed and the remaining issues in the case were stayed pending a decision from this Court. **[**13]** At the time Hastings brought this appeal, he had not commenced restoration of the streambank and the Department had not refunded any portion of the $10,000 penalty.

II. Standards of Review

HN1[⬆] When reviewing a trial court's ruling on summary judgment, we apply the same standard of review used by the trial court in ruling on the underlying motion. *Krinitt v. Idaho Dep't of Fish & Game, 162 Idaho 425, 428, 398 P.3d 158, 161 (2017)* (citation omitted). "The court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *I.R.C.P. 56(a)*. All facts are read in the light most favorable to the nonmoving party, with reasonable inferences drawn in that party's favor. *Gagnon v. W. Bldg. Maint., Inc., 155 Idaho 112, 114-15, 306 P.3d 197, 199-200 (2013)* (citation omitted); *Ticor Title Co. v. Stanion, 144 Idaho 119, 122, 157 P.3d 613, 616 (2007)*. The moving party bears the burden to prove no genuine issues of material fact exist. *Gagnon, 155 Idaho at 114-15, 306 P.3d at 199-200*. Where there are no disputed issues of material fact, "what remains is a question of law, over **[*1197]** which this Court exercises free review." *Krinitt, 162 Idaho at 428, 398 P.3d at 161*.

This appeal also raises issues of interpretation—both statutory and contractual. ***HN2***[⬆] Statutory interpretation is a question of law over which we exercise free review. *Smith v. Excel Fabrication, LLC, 172 Idaho 725, 728, 535 P.3d 1098, 1101 (2023)*. The objective of statutory interpretation is to give effect to the legislative intent. *St. Luke's Health Sys., Ltd. v. Bd. of Comm'rs of Gem Cnty., 168 Idaho 750, 755-56, 487 P.3d 342, 347-48 (2021)* (quoting *St. Alphonsus Reg'l Med. Ctr. v. Elmore Cnty., 158 Idaho 648, 652, 350 P.3d 1025, 1029 (2015)*). This Court "begins with **[**14]** an examination of the literal words of a statute," and gives words "their plain, usual, and ordinary meanings." *Id.* (quoting *St. Alphonsus Reg'l Med. Ctr., 158 Idaho at 652-53, 350 P.3d at 1029-30*).

> Provisions should not be read in isolation, but must be interpreted in the context of the entire document. . . . [T]he Court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and the Court need not consider rules of statutory construction.

Id. (citation omitted). Likewise, "[w]hen the language in a contract is clear and unambiguous, its interpretation is a question of law and the language will be given its plain meaning." *Harris v. State ex rel. Kempthorne, 147 Idaho 401, 405, 210 P.3d 86, 90 (2009)*.

Additional standards of review will be addressed in turn.

III. Analysis

The primary issue before this Court is whether the district court erred in its application of the two-year statute of limitations period codified in *Idaho Code section 42-3809* for enforcement actions under *Idaho's Stream Channel Alteration Act, Idaho Code sections 42-3801 to 42-3811*. More specifically, this appeal asks this Court to determine when the Department knew, or reasonably ought to have known, that Hastings was in violation of the Consent Order—the triggering event to start the statute **[**15]** of limitations. In addition to this key issue, Hastings argues that the district court erred by (1) taking judicial notice of the Conditional Permit and (2) denying his motion to continue proceedings for discovery.

A. The Department's enforcement action against Hastings is not barred by the statute of limitations.

Hastings suggests that this is a case of first impression inasmuch as *Idaho Code section 42-3809* has not been previously interpreted by this Court. He contends that the Department was on notice that he would not comply with the Consent Order when he either (1) failed to complete construction by the extended deadline of March 15, 2019, or (2) filed a petition for hearing on May 21, 2019, to express his disagreement with the terms of the Conditional Permit. Because the Department did not file an enforcement action until it lodged its counterclaim on December 21, 2021, Hastings argues that the action is untimely and barred by the two-year statute of

limitations. The Department responds that the statute of limitations in *Idaho Code section 42-3809* begins to run when a party substantially violates the terms of a consent order. The Department argues that since Hastings was in compliance with the Consent Order until he filed his action **[**16]** for a declaratory judgment, the statute of limitations did not begin to run until he commenced this litigation. We agree with the Department's analysis.

HN3[↑] The Stream Channel Alteration Act protects Idaho's stream channels and environments "for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality." *I.C. § 42-3801*. Under *Idaho Code section 42-3809*, the Director of the Department is "vested with the power and authority to enforce the provisions of this chapter and rules and regulations promulgated pursuant to it." No alteration of any stream channel can be made without the Director's approval under the Act. *Id.*; *I.C. § 42-3803(a)*. The Director is also vested with authority to commence enforcement actions **[*1198]** against any person who is in substantial violation of the Stream Channel Alteration Act, provided the action is brought within two years of the Director's actual or constructive knowledge of the violation:

> When the director of the department of water resources determines that any person is in substantial violation of any provision of this chapter or any rule, permit, certificate, condition of approval or order issued or promulgated pursuant to this chapter, the director may commence an administrative **[**17]** enforcement action by issuing a written notice of violation in accordance with the provisions of *section 42-1701B*, Idaho Code. Provided however, that no civil or administrative proceeding may be brought to recover for a violation of any provision of this chapter or a violation of any rule, permit or order issued or promulgated pursuant to this chapter *more than two (2) years after the director had knowledge or ought reasonably to have had knowledge of the violation*.

I.C. § 42-3809 (emphasis added).

HN4[↑] Importantly, a "statute of limitations does not begin to run until the cause of action has accrued." *Sallaz v. Rice, 161 Idaho 223, 228, 384 P.3d 987, 992 (2016)*. As noted above, under *Idaho Code section 42-3809*, an enforcement action cannot be brought until "the director had knowledge or ought reasonably to have had knowledge of the violation." *I.C. § 42-3809*. The two-year period begins to run at that time. *See Sallaz, 161 Idaho at 228, 384 P.3d at 992*. Also important to our analysis is that the parties entered the Consent Order under *Idaho Code section 42-1701B*. This section provides that a "consent order shall be effective immediately upon signing by both parties and shall preclude a civil enforcement action for the same alleged violation." *I.C. § 42-1701B(4)*. However, "[i]f a party does not comply with the terms of the consent order, the director may seek and obtain in any appropriate district court, **[**18]** specific performance of the consent order and other relief as authorized by law." *Id.*

Here, Hastings has offered two potential dates for when the "the director had knowledge or ought reasonably to have had knowledge of the violation" of his Consent Order. First, Hastings argues that the statute of limitations began to run on March 15, 2019, when he failed to complete construction by the extended deadline. The Consent Order's applicable terms for this date read as follows: "The Department agrees to refund Respondent $7,500 of the civil penalty if the Respondent successfully completes the restoration plan by December 31, 2018 . . . ." The construction deadline was extended by the Department from December 31, 2018, to March 15, 2019, when Golart sent an email to Hastings's former attorney consenting to the extension.

While Hastings is correct that he did not complete construction by either the December 31st or March 15th deadlines, he has misconstrued the plain language of the Consent Order. While the agreement contains a December 31, 2018, deadline for completing construction, this deadline was only for the purpose of receiving a $7,500 refund of his civil penalty. The same logic applies **[**19]** to the extended deadline of March 15th. In other words, while the Consent Order created a financial incentive for Hastings to complete the project within a specified time—a 75% reduction of the civil penalty if the project was completed by either deadline—that provision did not establish a construction completion date. Hastings even conceded this point in his reply brief when he stated that "[t]he parties agree that the Consent Order does not have a specified deadline for completion of construction." Thus, we cannot agree with Hastings's contention that the Director "had knowledge or ought reasonably to have had knowledge" that Hastings was in violation of the Consent Order on December 31, 2018, or March 15, 2019. Indeed, Hastings still lacked a final permit from the Department, which was essential before he could even begin construction. *I.C. § 42-3803(a)*. Hastings cannot argue that the Department should have known

he was in violation of the Consent Order by failing to *finish construction* when he was still actively working with the Department to modify the very permit that would allow him to *begin construction*.

The second potential date offered by Hastings for commencing the statute of limitations **[*1199]** **[**20]** is May 21, 2019, when he filed a petition for a hearing to express his formal disagreement with the terms of the Department's conditional approval for a permit. He argues that the filing of his petition put the Department and its Director on notice of a substantial violation of the Consent Order. We agree with the Department that this argument "ignores the statutory and regulatory framework behind the permit process."

HN5[↑] Under the Department's administrative rules, a permit applicant has a right to seek a hearing on a limited or conditioned permit. *IDAPA 37.03.07.070*. The provision states:

> Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision.

Id. Hastings's decision to exercise his right to seek a hearing put the Department on notice that he opposed the conditions imposed through the limited approval of *the Conditional Permit*. However, the petition for a hearing did not constitute a violation of *the Consent Order* or put the Department on notice of an anticipatory breach. If anything, **[**21]** the fact that he was trying to amend the terms of the Conditional Permit suggests he was still attempting to comply with it. Further, if we accepted Hastings's argument on this score, then the inverse would also have to be true—if Hastings could be deemed out of compliance by merely filing the petition for reconsideration of the terms of the Conditional Permit, then Hastings could have only remained in compliance by *not* exercising his right to object. This cannot be. Such an application of the rule would essentially allow a consent order to prevent an applicant like Hastings from exhausting his administrative remedies, thereby unlawfully restricting his due process rights under *IDAPA 37.03.07.070*.

Hastings's arguments also fail to account for the surrounding circumstances of his ongoing dealings with the Department. Hastings met with the Department for a compliance conference on October 3, 2017, and then entered into the Consent Order. He later submitted revised restoration plans through Brockway Engineering until the Department issued its conditional approval through the Conditional Permit. He also sought an extension to the Consent Order's deadline for a potential refund. Even when he objected to the **[**22]** conditions imposed by the Department in the Conditional Permit, Hastings stated that he "would be willing to participate in an informal meeting to discuss resolution of this matter" to avoid unnecessary delay or litigation.

It is concerning to this Court that the stipulated facts and missing documents have effectively left a two-year gap in the appellate record following these events. At oral argument, both sides suggested that there were additional documents that would shed light on what was happening during the two years, but they had not been made a part of the record and could not be referenced at this stage of the proceedings. Of course, the silence in the record cuts both ways. Both parties point to it, arguing over whether the silence should be interpreted as the Department failing to recognize that Hastings had breached the terms of the Consent Order or as proof the Department reasonably believed it did not need to do anything because Hastings was still working towards complying with the order. Either way, it is not determinative in this case. Hastings's argument ultimately asks this Court to conclude that the Department should have known Hastings violated, or even intended **[**23]** to violate, the Consent Order despite the fact that the documents we have in the record indicate that he was working with the Department to find solutions outside of litigation and *pursuant to* the Consent Order. That part of the record is clear. Therefore, we decline Hastings's invitation to use the Department's forbearance and cooperation against it, particularly where the record demonstrates no actual breach of the Consent Order.

When examining these facts in the light most favorable to Hastings, the earliest possible date that the Department "ought to have reasonably known" that Hastings did not intend to comply with the Consent Order was when he filed the underlying declaratory judgment action on November 15, 2021. We **[*1200]** agree with the district court's conclusion that, until then, Hastings was in compliance with the Consent Order and had given every indication that he was attempting to remain in compliance. Because Hastings filed a petition for reconsideration of the conditions imposed in the Conditional Permit, the permit was not final and, therefore, did not authorize Hastings to commence alterations on the Big Wood River. Likewise, the Consent Order did not impose a performance **[**24]**

deadline for the restoration work on the streambank. There was more work for both parties to do before obtaining a final permit, and, until filing this action, Hastings had shown himself to be a cooperative party who intended to comply with the Consent Order. Because the Department's enforcement action is not time-barred by the statute of limitations under *Idaho Code section 42-3809*, it was entitled to summary judgment as a matter of law on this issue. Accordingly, we affirm the district court's award of partial summary judgment to the Department.

B. The district court did not abuse its discretion by taking judicial notice of the Conditional Permit.

Hastings next contends that the district court erred in taking judicial notice of the Conditional Permit, arguing that it contained information beyond those facts stipulated by the parties. He argues that the court's consideration of the Conditional Permit created "a lopsided factual record." While the Department agrees that the stipulation was binding on the parties, the Department argues that the stipulation did not preclude the introduction of the Conditional Permit into the record—particularly where the terms of the Conditional Permit are central to the case and **[**25]** it was not admitted for the purpose of contradicting any of the facts presented in the stipulation.

HN6[↑] Whether a district court erred in taking judicial notice is an evidentiary question reviewed under an abuse of discretion standard. *Bass v. Esslinger, 171 Idaho 699, 704, 525 P.3d 737, 742 (2023)*. There is no abuse of discretion where a trial court "(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018)*.

HN7[↑] Pursuant to *Idaho Rule of Evidence 201*, a court "may take judicial notice on its own" initiative or it "must take judicial notice if a party requests it and the court is supplied with the necessary information." *I.R.E. 201(c)*. This rule governs judicial notice of adjudicative facts that are "not subject to reasonable dispute." *I.R.E. 201(a)* and *(b)*. "An 'adjudicative fact' is . . . '[a] controlling or operative fact, rather than a background fact; a fact that concerns the parties to a judicial or administrative proceeding and that helps the court or agency determine how the law applies to those parties.'" *Bass, 171 Idaho at 704-05, 525 P.3d at 742-43* (brackets in original) (quoting *State v. Lemmons, 158 Idaho 971, 974, 354 P.3d 1186, 1189 (2015)*). In the case of stipulations, stipulated facts admitted **[**26]** by the parties "are the facts" and this Court has previously held that the consideration of additional evidence that "could be introduced for the purpose of changing or altering said facts" is improper. *Andrews v. Moore, 14 Idaho 465, 470, 94 P. 579, 580-81 (1908)*.

Here, nothing in the stipulation barred consideration of the Conditional Permit, particularly where its existence and authenticity are acknowledged in the stipulation.[2] The Department maintains that the Conditional Permit was not introduced "for the purpose of changing or altering" the stipulated facts, but to help establish a timeline for calculating the accrual date of the statute of limitations. *See id.* at 470, 94 P. at 580-81. Importantly, Hastings has failed to establish which facts, if any, were changed or altered by admitting the Conditional Permit.

For these reasons, we conclude that the district court correctly determined that the Conditional Permit was an official **[*1201]** document evidencing an official act of the Department under *Idaho Code section 9-101(3)*. Thus, it was proper for judicial notice under *Idaho Rule of Evidence 201* since it is "not subject to reasonable dispute" that this is the Conditional Permit referenced by the parties. Additionally, we conclude that by referring to the Conditional Permit only to (1) establish the **[**27]** date of the Conditional Permit's expiration and (2) confirm the notice given to Hastings of his right to request a hearing, the district court did not consider facts outside the scope of the bifurcated proceeding. The district court only referenced the Conditional Permit for a limited and permissible purpose. The district court's consideration of the document resulted in no alteration of the stipulated facts, nor did its submission create a "lopsided" record, as Hastings contends. Thus, judicial notice was appropriate here and well within the district court's reasoned discretion.

C. The district court did not abuse its discretion in denying Hastings's motion for a continuance to conduct discovery.

Hastings next argues that the district court erred in

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[2] The joint stipulation, signed by counsel for both parties, states: "On May 17, 2019, the Department issued its Conditional Approval of Joint Application for Permits (S37-20565) . . . ."

denying his motion to continue the summary judgment hearing for the purposes of conducting "meaningful discovery." He contends that he was precluded from conducting further discovery so that he could introduce new evidence after the Department failed to adhere to the parties' stipulation, thereby giving the Department "the unilateral ability to augment the stipulated record . . . ." We agree with the Department that Hastings has failed to **[**28]** establish a need for additional discovery or show how it would have aided him in addressing the statute of limitations issue.

HN8[] A court has discretion to grant or deny a motion for a continuance to conduct further discovery. *Bass, 171 Idaho at 704, 525 P.3d at 742*. Thus, this Court reviews the denial of a motion to continue for an abuse of discretion. *Id.; Est. of Ekic v. Geico Indem. Co., 163 Idaho 895, 899, 422 P.3d 1101, 1105 (2018)*. For summary judgment purposes, a court may continue the hearing "for good cause shown," *I.R.C.P. 56(b)(3)*, or grant a nonmoving party relief from summary judgment where the nonmovant shows "it cannot present facts essential to justify its opposition," *I.R.C.P. 56(d)*. For additional discovery, the party seeking a continuance bears the burden of establishing "'what further discovery would reveal that is essential to justify their opposition,' making clear 'what information is sought and how it would preclude summary judgment.'" *Fagen, Inc. v. Lava Beds Wind Park, LLC, 159 Idaho 628, 632, 364 P.3d 1193, 1197 (2016)* (quoting *Jenkins v. Boise Cascade Corp., 141 Idaho 233, 239, 108 P.3d 380, 386 (2005)*). In ruling on the motion, the court may consider "the moving party's prior lack of diligence in pursuing discovery." *Id.* (citation omitted).

This issue stems from the district court's taking judicial notice of the Conditional Permit, which we discussed above. After the court admitted the Conditional Permit, Hastings filed a motion to continue the hearing and conduct **[**29]** limited discovery "about matters in the thirty-two pages of documents attached to the Department's statements of facts (the [Conditional] Permit) as they relate to the applicability of the statute of limitations . . . ." The court granted Hastings's motion to continue in part and denied it in part. The court did not permit Hastings to pursue additional discovery, but it continued the summary judgment hearing for supplemental briefing from the parties on whether the court could take judicial notice of the Conditional Permit, ultimately finding that judicial notice was appropriate.

On appeal, Hastings contends that he would have pursued discovery on several matters had the district court granted his motion for a continuance. Hastings asserts that he would have sought discovery on (1) the Department Director's knowledge of the Conditional Permit, referring to it as the "alleged amendment," and (2) whether there was consideration for this "alleged modification of the [Consent] Order . . . ." Yet the parties had stipulated that there was no amendment or modification to the Consent Order. Hastings also maintains that he would have pursued discovery on Golart's "credibility and bias" for "authentication **[**30]** of a document which he apparently prepared." Again, **[*1202]** Hastings has provided no reason to doubt the authenticity of the Consent Order. Indeed, he conceded its authenticity before the district court. Additionally, Hastings claims he needed time to discover whether the Department "wrongfully induced [him] to sign the Consent Order" through false representations. However, these lines of discovery would not only contradict the parties' stipulated facts that acknowledge the Conditional Permit existed and was issued by the Department, but also Hastings's admission before the district court that the Conditional Permit was accurate and authentic.

The additional reasons for discovery raised by Hastings are too vague to ascertain what information would be sought and how it would preclude summary judgment. Importantly, Hastings has failed to specify how any of the desired evidence, if pursued and discovered, would have changed the statute of limitations analysis; thus, he failed to meet his burden to show "'what further discovery would reveal that is essential to justify [his] opposition,' making clear 'what information is sought and how it would preclude summary judgment.'" *Fagen, 159 Idaho at 632, 364 P.3d at 1197* (citing *Jenkins v. Boise Cascade Corp., 141 Idaho 233, 239, 108 P.3d 380, 386 (2005)*). Accordingly, **[**31]** we can only view these requests, as the district court concluded, to be a "fishing expedition" for evidence that might somehow help his case in an unknown way. Hastings's answers at oral argument did little to persuade us otherwise. Therefore, we conclude that the district court did not abuse its discretion in denying Hastings's motion to continue summary judgment for the purpose of conducting discovery.

D. The Department is not entitled to attorney fees on appeal.

The Department requests an award of attorney fees under *Idaho Code section 12-117*, arguing that Hastings "ignore[s] the plain reading of the Consent Order and

Stipulation, advances nonsensical arguments which are not relevant to the statute of limitations issue, and misrepresents the relevant law in two instances." ***HN9***[ ] *Idaho Code section 12-117(1)* mandates that a court "shall award" fees to the prevailing party "in any proceeding involving as adverse parties a state agency or a political subdivision and a person," where the court determines that "the nonprevailing party acted without a reasonable basis in fact or law." This statute is "the exclusive basis" for awarding attorney fees in a case between a person and a governmental entity as adverse parties. *Idahoans for Open Primaries v. Labrador, 172 Idaho 466, , 533 P.3d 1262, 1287 (2023)*.

While Hastings has lost **[**32]** this appeal, his arguments concerning the commencement date for the statute of limitations raised some important factual and legal questions that merited further review. Thus, although the Department is the prevailing party, we do not agree that Hastings acted without a reasonable basis in fact or law. Accordingly, we conclude that the Department is not entitled to an award of attorney fees.

IV. CONCLUSION

For the foregoing reasons, we affirm the district court's award of summary judgment to the Department and hold that the enforcement action filed against Hastings in the Department's counterclaim was timely under *Idaho Code section 42-3809*. Likewise, we conclude that the district court committed no error when it took judicial notice of the Conditional Permit and denied Hastings's motion for a continuance. While the Department is not awarded attorney fees, it is entitled to costs as a matter of right as the prevailing party. *I.A.R. 40(a)*.

Chief Justice BEVAN, Justices BRODY, ZAHN and MEYER concur.

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