IN THE SUPREME COURT OF THE STATE OF IDAHO

ASHLEY TIPTON, individually and as guardian for C.W., a minor child under the age of eighteen, Plaintiff/Appellant, v. NEW HORIZON ACADEMY CHILD-CARE IDAHO, INC., dba NEW HORIZON ACADEMY, and TERRA ROBERTSON, individually, Defendants/Respondents	Supreme Court No. 51200-2023 Oral Argument Requested

APPELLANTS' OPENING BRIEF

Appeal from the Fourth Judicial District
Ada County, Idaho

Honorable Samuel A. Hoagland, District Judge, Presiding

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A. Nature of the Case

This is an appeal as of right from the district court's order granting a licensed daycare's motion to dismiss under I.R.C.P. 12(b)(6) with prejudice pursuant to I.A.R. 11 and 14. The case arises from a complaint filed by Appellants, Ashley Tipton and her minor child, C.W. (hereinafter "Tipton" or "C.W."), against Respondents, New Horizon Academy Child Care-Idaho, Inc. dba New Horizon Academy and their director Terra Robertson (hereinafter "New Horizon") seeking a declaratory judgment and injunctive relief on the grounds that New Horizon unlawfully expelled C.W. from a licensed daycare facility solely because Tipton objected on religious or other grounds to Idaho Department of Health and Welfare immunization requirements applicable to children attending licensed daycare facilities pursuant to Idaho Code 39-1118(1)(b) ("Immunizations required…shall be as prescribed by the board….").

The gravamen of this appeal concerns whether the district court properly applied Idaho law exempting children attending licensed daycares from state mandated childhood immunizations to allow licensed Idaho daycares to expel children solely due to the exercise of the statutory exemptions provided in Idaho Code § 39-1118(2).

The court erred in holding that Idaho law does "not prohibit New Horizon from expelling C.W. (and any other children) for failing to submit an immunization record or receive immunizations after submitting an exemption on religious or other grounds…." Order Granting Defendants' Motion to Dismiss, Clerk's Record on Appeal ("R"), R. p. 157.

B. Concise Statement of the Facts

Appellant Ashley Tipton's child, Appellant C.W., was enrolled at New Horizon and thriving. Complaint for Declaratory and Injunctive Relief ("Complaint"), R. p. 7-8 ¶ 1, 8 and 9. C.W. was born in 2021 and was at all relevant times less than three (3) years old. Exhibit A of Complaint, R. p. 16. Upon initial enrollment and at all times prior to submitting an exemption, C.W. met the licensed daycare's eligibility requirements, including filing C.W.'s initial immunization record upon initial enrollment. R. p. 8, ¶ 7. On October 25, 2022, Tipton completed, signed and submitted to New Horizon the Idaho Department of Health and Welfare Idaho Childcare Immunization Requirements Exemption form. R. p. 11; R. pp. 16-17. New Horizon confirmed that it had received the objection on religious/other grounds on October 27, 2022 and told Tipton that "New Horizon does not accept exemptions for immunizations." R. p. 9 ¶ 16; and Exhibit B to the Complaint, R. p. 19. New Horizon gave Tipton until November 30, 2022 to provide a compliant immunization record and until November 11, 2022 to get three specific immunizations, or as New Horizon Director Terra Robertson claimed, the licensed daycare would not be able to operate if "children are not up to date on immunizations." R. p. 9 ¶ 17; R. p. 19. Tipton sent New Horizon a letter through counsel to advise that immunization exemptions are required by law, immunizations are not mandatory and that it was unlawful for New Horizon to categorically deny non-medical exemptions as a condition of continued enrollment. R. p. 9 ¶ 18; Exhibit C to the Complaint, R. p. 20-24. New Horizon's Minnesota attorney responded confirming that New Horizon categorically refuses to accept non-medical immunization exemptions and expelled C.W. R. p. 10 ¶¶ 19-20; Exhibit D to the Complaint, R.

p. 25-26. Appellants Tipton and C.W. filed their Complaint on February 8, 2022. New Horizon was served a copy of the Complaint and Summons, along with a copy of Appellants' First Set of Discovery Requests on March 16, 2023. New Horizon filed a motion to dismiss on April 6, 2023, and a Motion to Stay Discovery on April 12, 2023. On May 5, 2023, Tipton was served with New Horizon's Memorandum of Law in Support of their Motion to Dismiss Tipton's request for a declaration of rights solely under I.R.C.P. 12(b)(6). On July 28, 2023, the district court granted New Horizon's Motion to Dismiss and dismissed Tipton's Complaint with prejudice. Tipton timely filed this Notice of Appeal on September 8, 2023.

ISSUE PRESENTED ON APPEAL

Did the district court err in construing I.C. § 39-1118 to grant licensed daycare facilities independent authority to mandate immunizations and ignore statutory immunization exemptions?

ARGUMENT

I. THE DISTRICT COURT ERRED IN ITS INTERPRETATION OF IDAHO CODE § 39-1118.

A. The Court Erred In Its Interpretation That I.C. § 39-1118 Grants Licensed Daycare Facilities With Independent Authority To Mandate Immunizations, And Rendered The Statutory Exemptions a Nullity.

"This Court applies an abuse of discretion standard when it reviews a trial court's decision on a motion to dismiss." *State v. Akins*, 164 Idaho 74, 76, 423 P.3d 1026, 1028 (2018). "On review of a dismissal [pursuant to I.R.C.P. 12(b)(6)], this Court determines whether the non-movant has alleged sufficient facts in support of his claim, which if true, would entitle him to relief. In doing so, the Court draws all reasonable inferences in favor of the non-moving party." *Fulfer v. Sorrento Lactalis, Inc.*, 171 Idaho 296, 300, 520 P.3d 708, 712 (2022) (citing *Hammer v. Ribi*, 162 Idaho 570, 572, 401 P.3d 148, 150 (2017)).

Pursuant to I.R.C.P. 8(a), Appellants' complaint for declaratory and injunctive relief is only required to contain "a short and plain statement of the claim showing that the pleader is entitled to relief...." The purpose of the rule is to ensure that notice is provided to the opposing party of the claims presented. A detailed legal analysis is not required.

> Under the Idaho Rules of Civil Procedure for pleadings, "[e]ach allegation must be simple, concise, and direct. No technical form is required." I.R.C.P. 8(d)(1). These rules comport with Idaho's notice-pleading requirement, which requires a pleading to put the adverse party "on notice of the claims brought against it." *Hodge for & on behalf of Welch v. Waggoner*, 164 Idaho 89, 96, 425 P.3d 1232, 1239 (2018) (citation omitted). Accordingly, notice pleading requires the complaint to provide "some indication" of the basis for relief, but not always an exact statutory basis or formal cause of action. *Brown v. City of Pocatello*, 148 Idaho 802, 807, 229 P.3d 1164, 1169 (2010).

Noell Industries, Inc. v. Idaho State Tax Comm'n, 167 Idaho 367, 371, 470 P.3d 1176, 1180 (2020).

"Title 10, chapter 12 of the Idaho Code is titled the 'Uniform Declaratory Judgment Act' and provides authority for courts of record to declare rights, status and other legal relations." *George Martin & Martin Custom Homes, LLC v. Camas Cnty.*, 150 Idaho 508, 248 P.3d 1243 (Idaho 2011). Idaho Code § 10-1201 provides, inter alia: "Any person...whose rights, status or other legal relations are affected by a statute [or] contract may have determined any question of construction or validity arising under the...statute [or] contract...and obtain a declaration of rights, status or other legal relations thereunder." Declaratory judgment is proper "so long as the case presents an actual or justiciable controversy." *Human Dynamics & Diagnostics, LLC v. Hernandez*, 4:21-cv-483-BLW, Memorandum Decision and Order (D. Idaho Sept. 29, 2022) (quoting *Schneider v. Howe*, 133 P.3d 1232, 1237 (Idaho 2006)).

The Idaho Supreme Court has long held that "the question[ed] 'right' or 'status' may invoke either remedial or preventive relief; it may relate to a right that has either been breached or is only yet in dispute or a status undisturbed but threatened or endangered ...." *Nemeth v. Shoshone Cnty.*, 165 Idaho 851, 453 P.3d 844 (Idaho 2019) (quoting *State ex rel. Miller v. State Bd. of Educ.*, 56 Idaho 210, 217, 52 P.2d 141, 144 (1935)).

In considering "whether to grant a declaratory judgment, the criteria is whether it will clarify and settle the legal relations at issue, and whether such declaration will afford a leave from uncertainty and controversy giving rise to the proceeding." *Nye v. Katsilometes*, 165 Idaho

455, 447 P.3d 903 (Idaho 2019) (quoting *Sweeney v. Am. Nat'l Bk.*, 62 Idaho 544, 115 P.2d 109 (1941)) (emphasis added).

"The [A]ct does not *create* any new rights, statutes, or legal relations. It applies only where such rights, statuses, or legal relations, *already exist*." *Brooksby v. Geico Gen. Ins. Co.*, 153 Idaho 546, 548 (2012) (emphasis original), abrogated on other grounds by *Tucker v. State*, 162 Idaho 11, 18 (2017).

For purposes of a 12(b)(6) motion to dismiss a request for declaratory judgment, the relief sought consists of expediting and simplifying the ascertainment of uncertain rights. A 12(b)(6) motion to dismiss will rarely, if ever, be properly granted for cases similar to the one at bar because "[t]he Declaratory Judgment Act must be liberally construed to attain its objective, which is to expedite and simplify the ascertainment of uncertain rights." *Sweeney v. Am. Nat. Bank*, 62 Idaho 544, 550 (1941) (quoting *Reliance Life Ins. Co. v. Burgess*, 112 F.2d 234, 238 (8th Cir. 1940)). This is so because:

> [t]he very purpose of the declaratory judgment statutes, as expressed within the uniform act, is to settle and to afford relief for uncertainty and insecurity with respect to rights, status, and other legal relations, and to place a restricted construction upon this language would be to delete from the statute a beneficent provision, inserted therein by virtue of legislative authority. It should be kept constantly in view, lest we lose the benefit of this instrumentality of justice, that it is to be liberally construed and freely applied in cases coming within its terms.

Reliance Life Ins. Co. v. Burgess, 112 F.2d 234, 238 (8th Cir. 1940). Therefore, the fact that a court may construe a statute in a manner adverse to, or differing from, Appellants' interests is not itself grounds under Rule 12(b)(6) to dismiss the request.

For purposes of an analysis under I.R.C.P. 12(b)(6), the relief sought in a request for declaratory judgment may constitute as little as an adverse declaration affording a "leave from uncertainty and controversy giving rise to the proceeding." *Sweeney v. Am. Nat. Bank*, 62 Idaho 544 (1941). In other words, Appellants may ultimately lose or be wrong on the law and still "state a claim upon which relief may be granted."

A resolution of the Defendants' Motion to Dismiss required the application of an unambiguous statute.

"This Court exercises free review over the application and construction of statutes." *State v. Staples*, 548 P.3d 375, 377 (Idaho Ct. App. 2023), *reh'g denied* (Nov. 13, 2023), *review denied* (Jan. 19, 2024).

> The interpretation of a statute "must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003) (citations omitted). "We have consistently held that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature." *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 667, 851 P.2d 961, 963 (1993).

Verska v. Saint Alphonsus Reg'l Med. Ctr., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011).

"When determining the plain meaning of a statute, 'effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.'" *Verska*, 151

Idaho at 897, 265 P.3d at 510 (quoting *In re Winton Lumber Co.*, 57 Idaho 131, 136, 63 P.2d 664, 666 (1936)). "A statute 'is ambiguous where reasonable minds might differ or be uncertain as to its meaning.'" *Stonebrook Const., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 931, 277 P.3d 374, 378 (2012). (citations omitted). "Where statutes are ambiguous, the Court employs relevant rules of statutory construction, beginning with the literal words of statute, giving the language of the statute its plain, obvious, and rational meanings." *Driver v. SI Corp.*, 139 Idaho 423, 429, 80 P.3d 1024, 1030 (2003). "It is incumbent upon a court to give an ambiguous statute an interpretation which will not render it a nullity." *State v. Doe*, 140 Idaho 271, 275, 92 P.3d 521, 525 (2004) (quoting *Hecla Mining Co. v. Idaho State Tax Comm'n,* 108 Idaho 147, 151, 697 P.2d 1161, 1165 (1985)). "Constructions of an ambiguous statute that would lead to an absurd result are disfavored." *State v. Staples*, 548 P.3d 375, 377 (Idaho Ct. App. 2023), reh'g denied (Nov. 13, 2023), review denied (Jan. 19, 2024) (*citing State v. Doe*, 140 Idaho 271, 275, 92 P.3d 521, 525 (2004)).

Tipton seeks a declaration of statutory and contractual rights and argued that I.C. § 39-1118, *in pari materia* with the Idaho immunization scheme, including I.C. §§ 39-4801 *et seq.* and 39-4501 *et seq.*, prohibits New Horizon from expelling C.W. and similarly situated children based solely upon the exercise of a statutory prerogative, i.e., submitting a religious or other exemption pursuant to I.C. § 39-1118. R. p. 11 ¶ 23; and p. 12 ¶¶ 37, 38.

i. The district court erred by interpreting the unambiguous provisions of I.C. § 39-1118 to provide Idaho licensed daycares with independent authority to mandate immunizations.

The only required immunizations for any child that attends daycare in Idaho before the district court's opinion were those required by the Idaho board of health and welfare. The district court's opinion increases the uncertainty and confusion surrounding the controversy by rendering the exemption a nullity and implicitly creating new powers for licensed daycare facilities to prescribe, regulate and enforce any immunization mandate they desire.

The district court effectively declared Tipton's rights in its Order Granting Defendants' Motion to Dismiss under I.R.C.P. 12(b)(6) by finding that Tipton did not have any underlying substantive right to have her exemption honored by a licensed daycare because "the plain language of Idaho Code §§ 39-1118, 39-4804 and 39-4501 do not prohibit New Horizon from expelling C.W. (and any other children) for failing to submit an immunization record or receive immunizations after submitting an exemption on religious or other grounds…." R. p. 157.

The district court did not analyze "whether [issuing a declaratory judgment] w[ould] clarify and settle the legal relations at issue, and whether such declaration w[ould] afford a leave from uncertainty and controversy giving rise to the proceeding," *Nye,* 165 Idaho at 447 P.3d at 903, or "liberally construed [the declaratory judgment act] to attain its objective, which is to expedite and simplify the ascertainment of uncertain rights." *Sweeney,* 62 Idaho at 550. Instead, it based its dismissal for failure to state a claim for declaratory judgment entirely upon the lack of any underlying substantive right. Tipton is still unclear what her substantive rights are related to exemption. Although the statute provides for an exemption to the requirement to submit an immunization record or to even receive the "required" immunizations, Tipton is left without a remedy related to New Horizon ignoring her exemptions because the exemptions remain

unenforceable and Tipton must search for a daycare that does not expel children for engaging in their statutory prerogative of submitting an objection and foregoing one or all "required" immunizations.

The Idaho Legislature commanded that required immunizations for purposes of attending a regulated, licensed, Idaho daycare shall be exclusively prescribed by the Idaho board of health and welfare, not by anyone or anything else. I.C. § 39-1102(1); R. p. 119-120; and 124.[1] New Horizon cannot create their own immunization mandate because "Immunizations required and the manner and frequency of their administration shall be as prescribed by the board and shall conform to recognized standard medical practices in the state." I.C. § 39-1118(1)(b). Therefore, the only enforceable immunization mandate applicable to Tipton comes from the Idaho department of health and welfare's requirement authorized in subsection (2) of I.C. § 39-1118. And those required immunizations must also conform to recognized, standard medical practices in the state.

At the time the complaint was filed Idaho Code § 39-1118 read as follows:

> (1)(a) Within fourteen (14) days of a child's initial attendance at any licensed daycare facility, the parent or guardian shall provide an immunization record to the operator of the daycare facility regarding the child's immunity to certain childhood diseases. This record, signed by a

[1] In her Response to New Horizon's Motion to Dismiss, Tipton asserted her theories of the case: "Plaintiffs seek a declaration of rights and legal relations as an enrolled daycare student (and parent) who submitted a signed non-medical statement of exemption and was forthwith expelled solely due to submitting the non-medical exemption. In other words, Plaintiffs are persons who "shall be exempt from the provisions of this section." Plaintiffs, as such, seek a declaration of whether, e.g., Idaho Code § 39-1118 prohibits Defendants from expelling C.W. for failing to provide an immunization record to New Horizon; whether Defendants may refuse to enroll or expel Plaintiffs' class solely for submitting a non-medical exemption; whether Defendants may adopt an enforceable policy requiring immunizations as a condition precedent for eligibility to attend daycare despite the child's submission of a non-medical exemption; whether Defendants categorical expulsion or refusal to enroll Plaintiffs' class violates public policy; and whether Idaho Code § 39-4804 applies."

> physician or his representative or another licensed health care professional, shall verify that the child has received or is in the process of receiving immunizations as specified by the board; or can effectively demonstrate, through verification in a form approved by the department, immunity gained through prior contraction of the disease.
> (b) Immunizations required and the manner and frequency of their administration shall be as prescribed by the board and shall conform to recognized standard medical practices in the state. The board shall promulgate appropriate rules for the enforcement of the required immunization program and specify reporting requirements of daycare facilities, pursuant to the provisions of chapter 52, title 67, Idaho Code.
> (2) Any minor child whose parent or guardian has submitted to officials of a licensed daycare facility a certificate signed by a physician licensed by the state board of medicine stating that the physical condition of the child is such that all or any of the required immunizations would endanger the life or health of the child shall be exempt from the provisions of this section. Any minor child whose parent or guardian has submitted a signed statement to officials of the daycare facility stating their objections on religious or other grounds shall be exempt from the provisions of this section.

(emphasis added).

In 2023, a new section was added by the Idaho Legislature:

> (3) Licensed daycare facilities shall describe the exemptions provided in subsection (2) of this section and shall provide a citation to this code section in any communication to parents or guardians regarding immunization.

The phrase "shall be exempt from the provisions of this section" refers to all of I.C.§ 39-1118, including the phrase "immunizations required…shall be as prescribed by the board…."

The exemption contained in subparagraph (2) applies to any minor child whose parents submits an exemption, not to the licensed daycare. In other words, licensed daycares are still subject to the Legislature's command that "immunizations required and the manner and frequency of their administration shall be as prescribed by the board and shall conform to

recognized standard medical practices in this state", but the child is not otherwise required to receive the required immunizations in order to attend the licensed daycare facility. IDAPA 16.02.11.105.

It is the daycare-attending-minor-child that benefits from the Legislatively mandated exemption from state mandated immunizations. New Horizon's argument would have the court read in to the statute words that would allow New Horizon to claim exemption from state immunization regulations and create its own private, unpublished, discretionary immunization requirement separate and apart from the Idaho board of health and welfare and any standard, recognized medical practice. Providing an exemption to a state mandated immunization does not authorize a licensed daycare to create their own private immunization schedule and apply it regardless of the exercise of a statutory exemption. By holding such, the district court's interpretation of the statute creates an otherwise absent ambiguity, renders the exemption a nullity, and implicitly creates new powers for licensed daycare facilities to prescribe, regulate and enforce any immunization mandate they desire. *Verska,* 151 Idaho at 897, 265 P.3d at 510 (quoting *In re Winton Lumber Co.*, 57 Idaho 131, 136, 63 P.2d 664, 666 (1936).

The statute states that the parent is exempt from the requirements in I.C. § 39-1118, not the licensed daycare facility. The Legislature refers to the entirety of section 1118 as "this section". Likewise, subsection (3) refers to subsection (2) as a subsection. New Horizon cannot be permitted glom on to the operation of the statute as to Tipton and claim exemption to the immunization regulations. The entire body of I.C. § 39-1118 containing the mandate that immunizations required shall be as prescribed by the board, exclusive to any other authority

including New Horizon, is the section referred to in subsection (2) ("…shall be exempt from the provisions of this section.") and does not exempt New Horizon from section 1118 when Tipton submits an objection.

In dismissing Appellants' complaint, the district court held that the language in the statute was plain and unambiguous and reasoned as follows:

> Under the plain language of the statute, subsection (1) imposes a statutory duty on parents or guardians to provide a daycare facility with their child's immunization record, and subsection (2) exempts parents and guardians from the statutory duty in subsection (1) if they submit a statement setting forth their objections on religious or other grounds. Nothing in Idaho Code § 39-1118 prohibits the daycare from refusing to admit, or expelling, children who are unimmunized even for religious grounds.

R. p. 156-157.

The court erred in holding that "nothing in Idaho Code § 39-1118 prohibits the daycare from refusing to admit, or expelling, the children who are unimmunized even for religious grounds" because subsection (2) does precisely that and the fact that a parent submits an objection on religious or other grounds does not exempt licensed daycare facilities from the requirement that immunizations required and the manner and frequency of their administration shall be as prescribed by the board and shall conform to recognized standard medical practices in the state. New Horizon lacks authority to deviate from the Idaho board of health and welfare's regulations or to regulate childhood immunizations or the frequency and manner of their administration itself. Only the Idaho board of health and welfare has been granted that power by

the Legislature and the Legislature has abstained from expressly granting that authority to licensed daycare facilities.

Furthermore, the board of health and welfare's implementing regulations prohibit licensed daycare facilities from requiring immunizations for an exempted child. The district court cited Idaho Admin. Code § 16.02.15.110 in support of its Order Granting Defendants' Motion to Dismiss. IDAPA 16.02.15.110 states that "a child who [submits] a signed statement of the parent…on a standard Department form…[with] the name of the child and the child's date of birth; and a statement indicating that the child is exempt from immunizations as provided in Section 110 of [IDAPA 16.02.11] for religious or other objections…will be exempt from the required immunizations." IDAPA 16.02.15.110.02 (emphasis added).

The licensed daycare facility administrative rule prohibits licensed daycare facilities from supplanting the exemption and mandating immunizations regardless of religious or other objections:

> EXCEPTIONS TO IMMUNIZATION REQUIREMENT. A child who meets one (1) or more of the following conditions, when supporting documentation is in the possession of the licensed daycare facility operator, will not be required to receive the required immunizations in order to attend the licensed daycare facility.
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> IDAPA 16.02.11.105.[2]

[2] "Agency policy statements and guidance documents shall not have the force and effect of law." I.C.§ 67-5207A. "[W]hen an agency construction clearly ignores the statute which it professes to interpret, then the Court need not pay heed to the statutory construction. *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 860, 820 P.2d 1206, 1217 (1991).

In the recent United States Supreme Court case, *Loper Bright Enterprises v. Raimondo*, No. 22-1219, 2024 WL 3208360, at *9 (U.S. June 28, 2024), the Court stated that: The Framers also envisioned that the final "interpretation of the laws" would be "the proper and peculiar province of the courts." *Id.*, No. 78, at 525 (A. Hamilton). Unlike the political branches, the courts would by design exercise "neither Force nor Will, but merely judgment." *Id.*, at 523. To ensure the "steady, upright and impartial administration of the laws," the Framers

Idaho Code § 39-1118(2) and its implementing regulations unambiguously and explicitly restrict all Idaho licensed daycare facilities from mandating immunizations in the face of a compliant religious or philosophical objection. Idaho licensed daycare facilities cannot create and impose their own "rules for enforcement of the required immunization program and [] reporting requirements of daycare facilities." R. p. 120.

ii. The district court's interpretation of I.C. § 39-1118 leads to an absurd result and renders the exemption a nullity such that the statute must be interpreted to mean that when a child becomes exempt, the licensed daycare cannot expel the child solely for receiving an exemption.

Language of a statute must be given "its plain, obvious, and rational meanings." *See Driver*, 139 Idaho at 429, 80 P.3d at 1030. "It is incumbent upon a court to give an ambiguous statute an interpretation which will not render it a nullity." *Doe*, 140 Idaho at 275, 92 P.3d at 525.

The district court's construction raises more questions than it answers because it renders the statute ambiguous, creates uncertainty, and does not anticipate children who are actively attending daycare facilities and have already submitted an exemption upon initial attendance. The law provides that "[w]ithin fourteen (14) days of a child's initial attendance at any licensed daycare facility, the parent or guardian shall provide an immunization record to the

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structured the Constitution to allow judges to exercise that judgment independent of influence from the political branches. *Id.*, at 522; *see id.*, at 522–524; *Stern v. Marshall*, 564 U.S. 462, 484, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011).

This Court should, likewise, not give deference to any agency interpretation and should instead "exercise [its] judgment independent of influence from the political branches." Tr. At p. 9 LL. 20-11 L. 8; *Loper Bright Enterprises v. Raimondo*, No. 22-1219, 2024 WL 3208360, at *9 (U.S. June 28, 2024).

operator of the daycare facility regarding the child's immunity to certain childhood diseases." I.C. § 39-1118(1)(a).

When giving the language of the statute its "plain, obvious, and rational meanings", the sole reason for requiring parents and guardians to provide the immunization record of the child to a daycare verifying that they have received or will receive the required immunizations is that the child is and will be attending that particular daycare. *See Driver*, 139 Idaho at 429, 80 P.3d at 1030. A daycare facility has no need for the immunization record of nonattending children. Similarly, nonattending children have no need for an exemption from the statutory obligation to provide an immunization record. Both the requirement to provide an immunization record and the exemption from the requirement only logically apply to children who are and will continue to attend the particular licensed daycare facility. New Horizon attempts to skirt exemption regulations by characterizing their denial of exemptions simply as a private business refusing to accept children who exercise the exemptions.

If this Court adopts the district court's reading, then it must accept that the policy of the Legislature, when enacting I.C. § 39-1118, was to create a meaningless and unenforceable exemption and to condone the practice of licensed daycares of engaging in religious discrimination and expelling children solely for submitting a religious/other objection. The parents can think they are exempt but the daycares don't have to care. When New Horizon applied for licensure and starting serving more than seven (7) unrelated children in Idaho, it abandoned the ability to discriminate against Idaho children based upon their religion or

immunization status. I.C. § 39-1102(5) ("'Daycare facility' means a place or facility providing daycare services for compensation to seven (7) or more children not related to the provider.").

Under the district court's interpretation, whether one simply chooses not to provide an immunization record or receives an exemption makes no difference. In both scenarios, the consequence is expulsion from the daycare such that the exemption is rendered a nullity and the exemption carries no effect. Indeed, it is illogical that the statute compels licensed daycares to exempt attending children from the immunization requirements while simultaneously allowing the same licensed daycare facilities who have exempted the child to expel the child for being exempt. Such an interpretation gives no meaning to the exemption.

For example, New Horizon replied to Tipton's exemption, not by saying it was not a qualified exemption, but by declaring, "New Horizon does not accept exemptions for immunizations." R. p. 9, ¶ 16, p. 19. New Horizon would have this Court affirm that the statutory regime providing an exemption to childhood immunization requirements does not require licensed daycare facilities to treat an exempt child attendee any different than a non-exempt child attendee who simply fails or refuses to provide the immunization record or receive the required immunizations. Indeed, under New Horizon's interpretation, saying that it grants exemptions means exactly the same thing as saying that they do not accept exemptions because the end result is the same: they do not accept children whose parents or guardians have submitted an objection to the immunization requirement. *See* p. 10 ¶ 19, p. 26 (stating in part to Appellants that "these exemptions do not mean that New Horizon Academy ***must*** accept non-immunized children into our program.").

The exemption must have meaning and be enforceable against New Horizon because "effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.'" *Verska,* 151 Idaho at 897, 265 P.3d at 510; *see also Doe*, 140 Idaho at 275, 92 P.3d at 525 ("It is incumbent upon a court to give an ambiguous statute an interpretation which will not render it a nullity."). It is even more incumbent upon a court to give an unambiguous statute an interpretation which will not render it a nullity.

It is possible to give effect to all of the statutory language while refraining from rendering any, including the exemptions, a nullity. If New Horizon has their reading, licensed daycares will be empowered to disregard medical exemptions.

iii. The district court's interpretation of I.C. § 39-1118 ignores the compulsory education requirement in I.C. § 33-202.

The district court noted that the statutes governing "'school age' children do allow for an unimmunized child to attend school if a religious exemption is submitted." R. at p. 157 n. 8; *see also* I.C. § 39-4801(1); I.C. § 39-4802. While the district court did not fully explain its reasoning, it appears that the court found it significant that I.C. § 39-1118 did not contain "may attend" in the context of licensed daycare facilities like in I.C. § 39-4801(1), and the absence of that language in the daycare statutes worked to revoke the practical effect of the exemption (i.e., entitlement of a child to attend who otherwise meets licensed daycare eligibility requirements), not the power to expel (like that which is granted to the school). *See* R. at p. 157, n. 8 quoting I.C.§ 39-4801(1).[3] But the district court ignored the "otherwise eligible" language and created a

[3] "Except as provided in section 39-4802, Idaho Code, any child in Idaho of school age ***may attend*** preschool and kindergarten through grade twelve (12) of any public, private, or parochial school operating in this state if otherwise

new power to expel for daycares that conflicts with a rational reading of both I.C. § 39-1118 and I.C. § 39-4801 *et seq.*

Additionally, it is unavailing to import from I.C. § 39-4801(1) the public-school-expulsion-authority from the absence of "may attend" and "otherwise eligible" into I.C. § 39-1118 because that reading creates a conflict between immunization requirements that does not currently exist for students attending both public school and licensed daycare facilities. The daycare statute applies to age groups with different requirements including "school age" children subject to compulsory school attendance, and children C.W.'s age at the time (under 3) who are not subject to compulsory attendance requirements. The district court's interpretation would lead to the illogical conclusion that a school-aged-child attending public school under a valid immunization exemption (who is otherwise eligible to attend New Horizon) either get immunized to attend New Horizon which would vitiate the benefit of the I.C. § 39-4804 exemption (despite submitting an objection to New Horizon), or forego attendance at New Horizon altogether.

However, the omission of the phrase "may attend" and "otherwise eligible" from I.C.§ 39-1118 makes sense and supports Tipton's reading considering that daycare attendance is not mandatory *and* a school and a daycare both have the authority to bar attendance if a child is not compliant with the respective immunization requirements. *See* I.C. § 33-202.

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eligible, provided that, upon admission, the parent or guardian shall provide an immunization record to the school authorities regarding the child's immunity to certain childhood diseases.") (emphasis in original).

The inclusion of "may attend" works as a grant, or reinforcement, of the very narrow public school expulsion authority for failure to immunize without exemption commensurate with the compulsory attendance requirement, not as an unqualified grant of attendance entitlement for the student. The district court treats the object of the directive wrong and shows undue concern for what it condones as private conduct in the context of a public accommodation and regulated daycare. Although the statute states that "any child of Idaho school age may attend" the Legislature is really addressing the school. If a child is not immunized the school shall not allow the child to attend public school. If a child submits an objection, the school shall not prohibit the child from attending upon that basis. The daycare statute in the context of non-compulsion, works the same. Licensed daycare facilities cannot prohibit any child from attending solely upon that basis, and they must both ensure that all children are compliant by either receiving a record of immunization or a record of objection from the parent.

Stated another way, the Legislature made clear that "school age" children who receive an exemption from the immunization requirement may continue to attend school and the school may not expel the student solely for that reason. Including "may attend" in the school statute resolves the conflict between the immunization requirement, compulsory attendance and the available immunization exemption. If parents could exempt their children from the immunization requirement but immunizations were still required for all attending children, then parents could not follow I.C. § 33-202 and I.C. § 39-4801 *et seq.* which requires school attendance. Therefore, the inclusion of the "may attend" language in I.C. 39-4801(1) eliminated possible confusion

regarding whether an exempt school age child continues to have an obligation to attend by resolving that conflict in the affirmative.

In the case of I.C. § 39-1118, there is no corresponding requirement that children attend daycare. Therefore, as there is no question as to whether parents must send their children to daycare, the legislature had no apparent conflict to resolve. The absence of "may attend" in the context of non-compulsory attendance at daycare does not convert the Legislature's prohibition into a license to expel every exempt child solely on the basis of submitting an exemption.

II. CONCLUSION

Idaho law does not grant authority to any licensed daycare facility in this state to require an exempt child receive immunizations or provide an immunization record. Nor may a licensed daycare facility expel a child based solely upon the basis that a parent submits an objection to immunization(s) on religious or other grounds. The Court should find that the district court erred in declaring that nothing in Idaho Code §§ 39-1118, 39-4804 and 39-4501 prohibits New Horizon from expelling C.W. (and any other children) for failing to submit an immunization record or receive immunizations after submitting an exemption on religious or other grounds. This Court should also forever enjoin all licensed daycare facilities in Idaho from categorically refusing to accept immunization exemptions on religious or other grounds and from expelling any child for failing to submit an immunization record or receive immunizations after submitting an exemption on religious or other grounds.

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2023, I electronically filed the foregoing Appellant's Opening Brief with the Clerk and the following parties if listed as a service contact in iCourt:

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