

No. _____

In the Supreme Court of the United States

*BRADLEY LITTLE, in his official capacity as Governor of
Idaho; LAWRENCE DENNEY, in his official capacity as
Idaho Secretary of State*

Applicants,

v.

RECLAIM IDAHO, an Idaho political action committee; LUKE
MAYVILLE,

Respondent.

On Application to the Honorable Elena Kagan to Stay the Orders
of the U.S. District Court for the District of Idaho

EMERGENCY APPLICATION FOR STAY

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PARTIES TO THE PROCEEDING

Applicants are Bradley Little, in his official capacity as Governor of Idaho, and Lawrence Denney, in his official capacity as the Idaho Secretary of State. Applicants here were defendants in the district court proceedings and are the appellants in the Ninth Circuit appeal. Respondents are Reclaim Idaho, an Idaho-based political action committee, and Luke Mayville, the co-founder of Reclaim Idaho. Respondents were the plaintiffs in the district court proceeding and are the appellees before the Ninth Circuit.

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Emergency Appl. For Stay, *Merrill v. People 1st of Ala.*, No. 19A1063 (U.S. Jun. 29, 2020) 18, 27

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

INTRODUCTION

This Court should stay, pending disposition on the appeal in the Ninth Circuit and any timely filed petition for certiorari, the federal district court’s preliminary injunction orders that seize control of Idaho’s initiative process and delegate the vast majority of the Idaho Legislature’s, Secretary of State’s and county clerk’s constitutional and statutory authorities and duties to the very private entities invested in getting their initiative petition on the ballot.

This Court has repeatedly and recently stayed or upheld stays of orders that fundamentally alter a state’s election laws, threaten the integrity of the electoral process, and undermine voter confidence in the electoral process. *See Merrill v. People 1st of Ala.*, __S. Ct.__, 2020 WL 3604049, at *1 (Mem.) (U.S. Jul. 2, 2020) (No. 19A1063); *Tex. Democratic Party v. Abbott*, 140 S. Ct. 2015 (Jun. 26, 2020); *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (Apr. 6, 2020) (“RNC”). The district court’s orders do just these things.

The district court gave Reclaim Idaho, a political action committee, and its co-founder, Luke Mayville (collectively “Reclaim Idaho”), a 117-day extension of the statutory deadline to collect the signatures on its initiative petition that were due on May 1, 2020. The length of the extension results from the district court’s grant of a 48-day extension for Reclaim Idaho to collect electronic signatures starting July 9, 2020 and the fact that Reclaim Idaho did not file its lawsuit until over a month after the deadline to collect signatures had passed. In addition, the district court ordered

the State to accept electronic signatures that the State is unable to verify, which are being gathered by Reclaim Idaho under a process and protocol created by Reclaim Idaho and the private company, DocuSign, which Reclaim Idaho selected and is compensating.

The district court's orders contravene an almost century-old principle of Idaho law requiring in-person collection of petition signatures. Worse, the district court assumed the State legislature's constitutional authority to set the process by which initiatives are made, as well as the statutory authority of Idaho's election officials, and then delegated almost all of that authority to Reclaim Idaho. The petition circulator now has the authority to make up its own rules on the fly governing its collection of electronic signatures.

No system of checks and balances can support such an arbitrary abandonment of constitutional and statutorily-assigned election responsibilities.

The breadth of the orders is astounding. The district court enjoined an unspecified swath of Idaho's statutory scheme governing initiative petitions; created confusion for non-party county clerks as to whether their statutory duty to verify signatures and registered voter status on initiative petitions has been enjoined; added a heavy layer of additional work for the county clerks while they undertake the difficult task of conducting elections in August and November during a pandemic; created confusion for voters as to how the initiative process works; sowed distrust in the electoral process; and created confusion and distrust for other initiative campaigns. Indeed, just days before this Application was filed, another initiative

campaign that missed the April 30 deadline to get on the ballot for the November election asked the Secretary of State for the same extension to collect signatures and the ability to collect signatures electronically.

Compounding its error, the district court granted this relief to Reclaim Idaho after it (1) voluntarily shortened the time it had to collect signatures to six months instead of using the 18 months allowed by State statute; (2) chose to leave most of its signature gathering efforts for the last two months of that six month period; (3) admitted that the circumstances caused by the COVID-19 pandemic prevented it from collecting signatures in-person by March 18, 2020, but did nothing until June other than make a few token contacts to State officials on one day, March 16, 2020; and (4) allowed the April 30, 2020 deadline to collect signatures to run without seeking any assistance or judicial intervention. Reclaim Idaho did not file its Complaint until June 6, 2020.

Without a stay, the State of Idaho and the public interest will be irreparably injured. The State is currently experiencing irreparable harm as its statutes governing initiatives are enjoined and “electronic signatures,” which are not at all real signatures as required by Idaho law, are currently being collected in contravention of legislative policy judgments regarding fraud prevention. There can be no question that there is a significant risk of fraud in an online system implemented on nine days’ notice without any testing or vetting by the State—all of which threatens the public interest in maintaining the integrity of, and voter confidence in, the election. Indeed, how can the public trust this completely new

process full of unknown issues and problems that may be caused by this hasty and abrupt departure from State law? (App. 50-54.) Moreover, the only competent evidence is that the injunction will be “near impossible” to implement and disrupt Idaho’s election officials’ (most of whom are not parties to this case) ability to prepare and conduct fair, free, and safe elections in August and November during a once-in-a-century pandemic. (App. 87.)

Finally, Reclaim Idaho admits that it was COVID-19 that stopped its initiative efforts, not State action. (App. 15.) In any case, this Court has emphasized the “especially broad” authority of public officials during a pandemic as “[o]ur Constitution principally entrusts ‘[t]he safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect.’” *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613-14 (2020) (quoting *Jacobson v. Massachusetts*, 197 U. S. 11, 38 (1905); *Marshall v. United States*, 414 U. S. 417, 427 (1974)). Public officials “should not be subject to second-guessing by an ‘unelected federal judiciary[.]’” *Id.* at 1613-14 (citing *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U. S. 528, 545 (1985)). It cannot be a constitutional violation for Reclaim Idaho to be subject to the same content-neutral, nondiscriminatory laws governing the initiative process that apply to everyone else.

A stay pending appeal is properly granted and necessary here.

JURISDICTION

This Court has jurisdiction over this Application under 28 U.S.C. §§ 1254(1), 1651(a), and 2101(f). Applicants have unsuccessfully sought stays of the district

court's preliminary injunction orders from both the district court and from the Ninth Circuit.

STATEMENT OF THE CASE

The Idaho Constitution provides that legal voters may access ballot initiatives “under such conditions and in such manner *as may be provided by acts of the legislature*[.]” Idaho Const. art. III, § 1 (emphasis added).

A. Reclaim Idaho gave itself six months, instead of the 18 months Idaho law allows, to collect signatures on its initiative petition.

Reclaim Idaho filed its initiative on August 30, 2019. (App. 91.) After review by the Secretary of State and Attorney General, Reclaim Idaho received the ballot titles and sample petition for its initiative on October 25, 2019. (*Id.*); *see* Idaho Code § 34-1809. Upon receipt of these documents, Reclaim Idaho could begin collecting signatures on the initiative petition. Idaho Code § 34-1802(1).

In circulating the petition, Reclaim Idaho was bound by a statute that has been in effect since 1933 requiring that “[a]ny person who circulates any petition for an initiative ... shall be a resident of the state of Idaho and at least eighteen (18) years of age.” Idaho Code § 34-1807. Each sheet of a petition containing signatures “shall be verified on the face thereof” by the person circulating the petition in a statutorily prescribed form. *Id.* This requirement applies equally to all initiative petitioners.

By April 30, 2020, Reclaim Idaho was required to gather the signatures of legal voters equal to at least six percent of the qualified electors at the time of the last general election in each of at least 18 legislative districts. *See* Idaho Code § 34-1805.

For Reclaim Idaho's initiative petition to appear on the November 2020 ballot, it was required to collect 55,057 or more valid signatures. (App. 21.)

Rather than take advantage of the full 18 months allowed by Idaho Code § 34-1802(1) and (2) to circulate the initiative petition, Reclaim Idaho chose to seek to place the initiative on the ballot in November 2020, leaving it only six months to collect the necessary signatures. (App. 91.) Reclaim Idaho left the vast majority (almost three-quarters) of its efforts for March and April 2020. (App. 111-12.)

B. Reclaim Idaho voluntarily suspended its campaign because of the COVID-19 pandemic after a few token contacts to State officials and then waited for months, until well after the signature-gathering deadline to file suit.

Reclaim Idaho's signatures had to be submitted to the appropriate county clerk for verification by May 1, 2020. Idaho Code § 34-1802(2). County clerks have 60 days to verify the signatures, "but in no event shall the time extend beyond" June 30, 2020. Idaho Code § 34-1802(3). The county clerks typically reject 30 to 40 percent of signatures on initiative petitions during the verification process as a result of checking that the physical signatures are valid, that the signor is a registered voter, and that the correct address was used. (App. 86.)

At the time it suspended its campaign on March 18, 2020, Reclaim Idaho had collected 10,593 signatures that had been verified by county clerks. (App. 119.) Reclaim Idaho has asserted that it had also collected an additional 20,000 signatures that still needed to be verified by the county clerks. (App. 118.) In April, Reclaim Idaho instructed the county clerks not to continue with the process of verifying signatures. (App. 74, 78-79.)

Reclaim Idaho missed its May 1 deadline because it voluntarily suspended its campaign on March 18, 2020 after it felt uncomfortable collecting signatures during the COVID-19 pandemic in light of federal public health guidance. (App. 114-17.)

Reclaim Idaho tried only briefly to figure out a way that it felt comfortable collecting signatures during the COVID-19 pandemic before suspending its campaign. (App. 114-15.) A Reclaim Idaho staffer emailed a member of Governor Little's staff on March 16, 2020 requesting a meeting between Reclaim Idaho's founder and the Governor to discuss "the safest way to move forward with the ballot initiative." (App. 102-03, 107.) Reclaim Idaho made no other communications with the Governor's office. (App. 103.) The Secretary of State's office was emailed once that same date about electronic signature gathering and that office correctly informed Reclaim Idaho that the Secretary did not have jurisdiction to make the change. (App. 97-101.)

Importantly, on March 16, 2020, no state law or action prevented Reclaim Idaho from continuing to collect signatures for its petition.

The Governor is not involved in the initiative process. (App. 107.) His office's only involvement was the March 16th email correspondence with a staff member. (App. 102-08.) On March 25, 2020, Governor Little issued Idaho's first stay-home order. The order required individuals in the State of Idaho to stay at home except for certain essential activities. (App. 24-25.) The order was amended on April 15, 2020 and extended to April 30, 2020. (App. 25.) The stay at home order incorporated federal standards that allowed "[e]lections personnel to include both public and private sector

elections support” to continue to operate during the term of that order. (See App. 55-72, ¶¶ 8.f and 8.k (incorporating the Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response issued by the Cybersecurity Infrastructure Security Agency of the United States Homeland Security (“CISA Guidance”) dated March 28, 2020); CISA Guidance available at https://www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_1.pdf.)

By the time the order was issued on March 25, 2020, Reclaim Idaho had already suspended its campaign for a week. (App. 114-15.) Reclaim Idaho took no action after March 18, 2020 to contact any Idaho official about any concerns about collecting signatures on its initiative petition or about any concerns about its First Amendment rights. Reclaim Idaho has admitted that it would not have collected signatures after March 18, 2020 in any case.¹ (App. 15.)

Having missed the deadline to submit its signatures and sat on its rights for weeks, Reclaim Idaho filed suit on June 6, 2020, alleging that Applicants had violated its First Amendment rights by not suspending Idaho law to allow it to collect signatures electronically during the pandemic.

¹ The Court: All right. One of the comments that were made in the briefing was that the governor did not make an exception for First Amendment activities. I guess I was a little skeptical whether that would have made any difference. . . . Ms. Ferguson: In all candor, no. I don’t think so. (App. 15.)

C. The district court granted Reclaim Idaho’s motion for a preliminary injunction, took control of Idaho’s initiative laws and delegated much of that authority to Reclaim Idaho.

The district court granted Reclaim Idaho’s motion for a preliminary injunction orally at the close of arguments on June 23, 2020 and issued a written decision on June 26, 2020 further explaining its decision. (App. 13-44.) The district court concluded that Reclaim Idaho had standing to bring its claim against Governor Little “because of the extraordinary circumstances caused by the COVID-19 pandemic and the Governor’s authority to issue executive orders in times of declared emergency.” (App. 30.) It concluded that Reclaim Idaho had standing as to its claim against Secretary Denney because a staff member in the Secretary’s office (correctly) informed Reclaim Idaho of the requirements of Idaho’s statutes governing election law. (App. 31.) The district court then concluded that the “inaction of the State resulted in the alleged injury to Reclaim Idaho.” (*Id.*) The district court found Reclaim Idaho’s voluntary inaction to be irrelevant. (App. 32.)

The district court construed Reclaim Idaho’s challenge as an “as applied” challenge to unspecified Idaho statutes governing the initiative process. (App. 33.) The district court then applied the framework set out by the Ninth Circuit in *Angle v. Miller*, 673 F.3d 1122, 1132 (9th Cir. 2012), to determine whether Reclaim Idaho’s First Amendment rights had been violated by “the State’s action to strictly enforce” the law. (App. 38.) The district court found that the State had burdened Reclaim Idaho’s First Amendment rights by “refus[ing] to take executive action to ensure Reclaim Idaho could continue to safely gather signatures” during the period from

March 16, 2020 until the statutory deadline of April 30, 2020. (App. 34.) After discounting Reclaim Idaho’s dilatory behavior and voluntary inaction as irrelevant largely because Reclaim Idaho had succeeded in qualifying a different initiative petition for the ballot the year prior, the district court concluded that Reclaim Idaho had been reasonably diligent. (App. 38-40.) The district court gave the State’s regulatory interests almost no weight because the State had allowed voters to register to vote online for the recent election.² (App. 40-41.) The district court ignored the vital differences between collecting signatures on initiative petitions and registering to vote online.³ The district court concluded Reclaim Idaho was likely to succeed on the merits and then found Reclaim Idaho would likely suffer irreparable harm solely because the initiative would not appear on the 2020 general election ballot, discounting the fact that Reclaim Idaho could seek to get the initiative on the ballot the very next year. (App. 39-40.) The district court then found the equities favored Reclaim Idaho because of “technology.” (App. 40.)

With regard to a remedy, the district court “struggled,” aware of the problems with “tell[ing] the State how to run the initiative process.” (App. 42.) The district court ordered the State to choose between one of two options: (1) certify the signatures that Reclaim Idaho had collected thus far and place the initiative on the November

² Notably, the state system that the district court found justified Reclaim Idaho’s collection of electronic signatures required three non-public factors to authenticate the identity of the requesting party: date of birth, Idaho driver’s license or voter identification number; and the last four digits of a person’s social security number. (App. 81.)

³ The State utilized Idaho’s existing statutory system to allow for absentee voting in its May 2020 primary. *See* Idaho Code title 34, chapter 10.

2020 ballot or (2) provide Reclaim Idaho with 48 more days to “gather signatures through online solicitation and submission.” (App. 26-27.)

Applicants declined to choose either option as both are fundamentally contrary to Idaho law and sought a stay from the district court, which was denied. (App. 9-12.)

The district court then ordered an online signature-gathering system to be created and implemented in just nine days. (App. 8.) On June 30, 2020, the district court ordered Applicants to meet and confer with Reclaim Idaho to “implement the process and protocol for accepting signatures gathered through the DocuSign technology.” (*Id.*) “Should counsel be unable to reach an agreement[,] ... Reclaim Idaho may implement an industry standard process and protocol.” (*Id.*) The district court ordered that Reclaim Idaho could begin collecting electronic signatures on July 9, 2020. (*Id.*)

The 48-day period for Reclaim Idaho to collect electronic signatures began on July 9, 2020. The parties were unable to agree on a process and protocol. The discussions regarding electronic signature collection only reinforced the State’s grave concerns about the collection of signatures on initiative petitions electronically. (App. 50-54.)

On July 10, 2020, Reclaim Idaho filed a notice with the district court describing the process it had unilaterally decided to use to collect electronic signatures. (App. 45-49.) Reclaim Idaho has created a website for the purposes of electronic signature collection. (App. 130-33.) The “landing page” created by Reclaim Idaho and populated

by language generated by Reclaim Idaho asks people to enter their name, voter registration address, city and zip code, last 4 digits of their social security number, and their email address. (*Id.*) Reclaim Idaho has refused to collect driver's license numbers out of concern that this requirement "restrict[s] the pool of registered voters" even though most people register to vote using their driver's license number. (App. 47.) The "landing page" does not include the measure in violation of Idaho Code 34-1804. If a person is interested in signing the initiative petition, they click "next" and are directed to a PDF of the initiative petition approved by the Secretary of State that Reclaim Idaho has modified. (*Id.*) There, the signor must enter the last 4 digits of their social security number and the county where they reside. (*Id.*) The signor does not sign the petition. (*Id.*) Instead, a computer generated generic cursive "signature" is placed on the petition. (*Id.*) DocuSign will capture the person's IP address, GPS location, and the time the person signed the petition. (*Id.* 48.) Reclaim Idaho represents that these factors, combined with the last four digits of the signor's social security number, place the petition "well above industry standards for authentication." (*Id.*) However, Reclaim Idaho will not provide this ostensibly authenticating data to either the county clerks or the Secretary of State. (*Id.*) Further, Reclaim Idaho has provided no indication that either it or DocuSign will actually review this authenticating data to attempt to verify the signatures on its petition are legitimate. Reclaim Idaho will provide the county clerks with only the signor's name, address, and city or zip code for "verification." (*Id.*) However, the county clerks will be unable to verify any signature as Reclaim Idaho will not provide

them with the individual's actual signature, which the county clerks compare against voter registration records in the verification process. (App. 87.) Each voter registration record includes a copy of the voter's actual signature, including those voters registering online.

D. The Ninth Circuit denied Applicants' emergency motion for stay.

On July 9, 2020, the Ninth Circuit denied Applicants' emergency motion to stay the district court's orders. (App. 1-2.) Judge Callahan dissented. (App. 3-4.) Citing *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006), and *RNC*, Judge Callahan concluded that Applicants had "made a substantial showing that the district court exceeded its authority by awarding relief that effectively rewrites Idaho's election laws, particularly its law designed to protect against fraud in the initiative process." (App. 3.) She also concluded that "appellants have made a substantial showing that the appellees failed to act with the necessary diligence to trigger the heightened standard of review applied by the district court." (*Id.*) Finally, quoting *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018), and *Purcell*, Judge Callahan concluded that the remaining factors supported granting a stay as well. (App. 4.)

Reclaim Idaho is currently collecting electronic signatures. (App. 131-33.) Under the district court's orders, Reclaim Idaho has until August 26, 2020 to collect signatures. (App. 8.) This extension will invalidate or gravely impact many other existing deadlines governing Idaho's elections. For example, the deadlines for the submission of arguments and rebuttal arguments regarding initiative petitions that would otherwise appear in voters' pamphlets will pass before it is known whether

Reclaim Idaho has qualified its initiative for the ballot. *See* Idaho Code §§ 34-1812A, 1812B (setting deadlines on July 20 and August 1 to submit proposed arguments and rebuttals to the Secretary of State for inclusion in the voter's pamphlet).

The Secretary of State will have mere days after Reclaim Idaho finishes collecting signatures to determine whether it qualified its initiative for the ballot and to finalize ballots for the November election. Sample ballots from the Secretary of State are due September 7, 2020 to the county clerks, along with certified copies of the names of State office candidates, and a certified copy of the ballot titles and number of measures to be voted upon at the next general election. Idaho Code § 34-909. All absentee ballots must be printed no later than September 14, 2020 and mailed by September 21, 2020. *See* 52 U.S. Code § 20302. This is important and challenging to carry out in any year, and incredibly demanding during a once-in-a-century pandemic.

As stated by Ada County Clerk McGrane (who is in charge of Idaho's largest county), it is already difficult enough to prepare for a presidential general election, which consistently sees the largest turnout. (App. 74-76, 85.) It takes an enormous amount of preparation and work to ensure each election goes smoothly, and even more so due to COVID-19. (*Id.*) There are numerous practical and procedural challenges to the relief the district court has ordered, most notably the time needed to complete all related requirements. (*Id.*) This is compounded by the required tasks of conducting the November election, and at least as Ada County (Idaho's largest county) is concerned, an August election as well, all of which makes this relief near

impossible to complete. (*Id.*) Reclaim Idaho submitted no competent evidence to the contrary.

This Court should grant the requested stay to halt the irreparable harm currently occurring to the State of Idaho as a result of the district court's decision to take over the State's election law.

REASONS FOR GRANTING THE STAY

This Court will stay a district court's order while a case is pending before the court of appeals to allow the applicant to obtain a writ of certiorari from this Court when an applicant shows "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); 28 U.S.C. § 2101(f); *Merrill v. People 1st of Ala.*, ___S. Ct.___, 2020 WL 3604049, at *1 (Mem.) (U.S. Jul. 2, 2020) (No. 19A1063) (staying the preliminary injunction order of the district court pending disposition of the appeal before the Eleventh Circuit and disposition of the petition for writ of certiorari, if sought). "In close cases," this Court "will balance the equities and weigh the relative harms" to the parties. *Hollingsworth*, 558 U.S. at 190 (citations omitted).

The requirements for a stay of the district court's decision pending the Ninth Circuit's decision on appeal and the disposition of a petition for writ of certiorari are met here.

A. There is a reasonable probability that at least four Justices will find certiorari warranted.

The district court's orders both violated this Court's binding precedent and lay bare a circuit split. This Court should grant the requested stay because there is a reasonable probability that at least four Justices will vote in favor of granting certiorari.

1. The district court's orders disregard this Court's binding precedent.

1. The district court's orders violated this Court's precedent. As Judge Callahan correctly identified, the district court "exceeded its authority by awarding relief that effectively rewrites Idaho's election laws" close to an election, creating "by judicial fiat a process for electronic signature gathering that is not otherwise permitted under Idaho's laws." (App. 3) (Callahan, J. dissenting). This Court has repeatedly and clearly instructed district courts that they may not alter state election procedures in a way that could fundamentally alter the nature of the election and cause voter confusion, particularly close to or in the midst of an election. *See Purcell*, 549 U.S. at 4-5; *RNC*, 140 S. Ct. at 1207; *Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018).

Thus, in *Purcell*, this Court vacated a Ninth Circuit Court of Appeals' order that enjoined Arizona election law 33 days before an impending election because court orders that alter elections, particularly those issued close to an election, "can themselves result in voter confusion and consequent incentive to remain away from the polls." 549 U.S. at 4-5. This Court's decision in *Purcell* reflects "a due regard for

the public interest in orderly elections[.]” *Benisek*, 138 S. Ct. at 1944 (citing *Purcell*, 549 U.S. at 4-5).

2. The principle underlying the decision in *Purcell* is so fundamental to this Court’s jurisprudence that this Court’s practice is to step in and stay district court orders that alter state election proceedings close to an election. *See Abbot v. Perez*, 138 S. Ct. 49 (2017) (this Court stayed a lower court order issued 75 days before Election Day); *Gill v. Whitford*, 137 S. Ct. 2289 (2017) (staying order directing that federal court would change election law unless the legislature did so within approximately 5 months); *North Carolina v. League of Women Voters of N.C.*, 574 U.S. 927 (2014) (this Court stayed a lower court order that would have changed election laws about 30 days before Election Day); *Husted v. Ohio State Conference of N.A.A.C.P.*, 573 U.S. 988 (2014) (this Court stayed a lower court order issued 61 days before Election Day changing election laws).

This Court recently applied the *Purcell* principle in *RNC* to stay a district court’s preliminary injunction order issued before a scheduled election that required the State to count absentee ballots mailed after Election Day. 140 S. Ct. at 1206-08. This Court concluded that the district court’s order must be stayed because it “fundamentally alter[ed] the nature of the election.” *Id.* at 1207. The “unusual nature” of the district court’s order emphasized the need for a stay. *Id.* The fact that the district court had to issue a subsequent order enjoining nonparties to effectuate the relief it had ordered “further underscore[ed] the wisdom of the *Purcell* principle, which [sought] to avoid this kind of judicially created confusion.” *Id.*

Less than two weeks ago, this Court again reinforced this vital principle when it ordered a stay of the district court’s preliminary injunction order over a denial of stay by the Eleventh Circuit in *Merrill v. People 1st of Alabama*, __S. Ct.__, 2020 WL 3604049, at *1 (Mem.) (U.S. Jul. 2, 2020) (No. 19A1063). *See also People 1st of Ala. v. Sec’y of State for Ala.*, No. 20-12184, 2020 WL 3478093, at *1 (11th Cir. Jun. 25, 2020). The district court had granted a preliminary injunction enjoining enforcement of Alabama laws that required a notary or witnesses and photo identification for absentee voting and imposed a de facto ban on curbside voting. *People 1st of Ala. v. Merrill*, No. 2:20-cv-00619-AKK, 2020 WL 3207824, at *2 (N.D. Ala. Jun. 15, 2020). The district court concluded that the possibility that those laws could dissuade some voters from voting due to their fears of contracting COVID-19 was not justified by Alabama’s argument that the challenged laws were important “to preserve the legitimacy of upcoming elections by preventing voter fraud and safeguarding voter confidence.” *Id.*, 2020 WL 3207824, at *2, 17-19. Alabama sought a stay from this Court arguing that (1) the federal court rewrote State election law in the middle of an election; (2) federal courts may not change the rules of an ongoing or rapidly approaching election; and (3) the district court’s order, which enjoined enforcement of the State’s anti-fraud provisions, threatened the integrity of the election and undermined voter confidence in the election. Emergency Appl. For Stay, *Merrill v. People 1st of Ala.*, No. 19A1063, at 2-3 (U.S. Jun. 29, 2020).

3. Based on this Court’s decisions in *Purcell*, *RNC*, and *Merrill*, a stay must be issued here. There can be no doubt that the district court’s orders requiring Idaho to

allow Reclaim Idaho to collect signatures electronically over the legislature's express command have fundamentally altered its election. The district court and Reclaim Idaho are "run[ning] the elections, run[ning] the initiative process for the state. . . ." (App. 16.) Reclaim Idaho is currently collecting electronic signatures on its initiative petition using a protocol it devised, a website it developed, and the assistance of a private out-of-state third party that it selected and that Reclaim Idaho is compensating. (App. 45-49.)

The district court's orders have eviscerated the State's legislatively enacted procedures for ensuring voter integrity and for balancing the voters' voices throughout the state and has fundamentally altered and rewritten the State's initiative and election procedures. The Idaho Legislature enacted the scheme that the district court discarded based on legislative findings of past occurrences of fraudulent and misleading signature-gathering practices, past placement of false signatures on initiative petitions, and difficulties "in determining the identity of petition circulators." Idaho Code § 34-1801.

In order to prevent and deter such behavior, the legislature determines that it is necessary to provide easy identity to the public of those persons who solicit or obtain signatures on initiative . . . petitions . . . , and of those persons for whom they are soliciting and obtaining signatures and to inform the public concerning the solicitation and obtaining of such signatures.

Id.

In direct contravention of the Idaho Legislature's intent and concerns, the district court's orders allow the entire signature collection process to be completed anonymously using the internet. The authenticity of a "signature" (in reality, a

computer-generated approximation of a generic cursive signature), will be determined solely based on a few data points that a person chooses to type into a computer. There is a grave risk that this system, which the district court ordered to be developed hastily over the course of nine days, will be defrauded, either by a good-intentioned person entering data for multiple family members or friends or by a hacker or computer program entering swathes of false data. *See In Re Mayfield*, No. 16-22134-D-7, 2016 WL 3958982, at * 2 (E.D. Cal. Jul. 15, 2016).

Worse, Reclaim Idaho has stated it will collect data that it argues could be used to verify signatures, but it refuses to use that data to verify signatures, to provide that data to the county clerks to perform their statutory duty of verification, or even to provide that data to the Secretary of State's office. Given the testimony of Ada County Clerk Phil McGrane that 30 to 40 percent of signatures collected on an initiative petition are typically rejected as invalid in the verification process, it is clear that the federal district court did not just discard the considered judgments of the State's elected representatives, it put the fox in charge of the henhouse. (App. 86.) There can be no doubt that this will have a grave impact on voter confidence and election integrity.

There is also a grave risk of voter confusion and distrust resulting from the court's orders, which allow Reclaim Idaho to collect "signatures" via a private website. In this day and age, how can voters be sure of the authenticity and trustworthiness of a random private website that is asking them to disclose their personal information (name, voter registration address, city and zip code, last 4 digits of their social

security number, email address, and county of residence) and which will capture their IP address, GPS location, and the time they signed the initiative petition? (App. 45-49, 131-33.) How can they be assured of the security of that data and the uses to which it will be put? What happens if and when this now-privatized system fails or data is leaked? What happens to the confidence of the electorate? The voter confusion and distrust that will inevitably result from the district court's orders mandate a stay under *Purcell*. See *Purcell*, 549 U.S. at 4-5.

Further, the relief the district court ordered allowing Reclaim Idaho to collect electronic signatures until August 26, 2020 bulldozed a multitude of Idaho requirements related to initiative petitions, including:

- The almost 100 year-old requirement for initiative petitions to be physically signed in the circulator's presence, see Idaho Code § 34-1807; and see 1933 Idaho Sess. Laws 435;
- The requirement that petition circulators be a resident of the state of Idaho and at least 18 years old, see Idaho Code § 34-1807, given that the initiative petition now exists as a webpage (App. 131-33) and anyone who forwards the link to the webpage, shares the link on social media, or shares any electronic document containing the link must be considered a petition circulator and once the link exists on the internet, there is no way for Reclaim Idaho to control who may forward or share the link;
- The requirement that petition circulators verify by affidavit that every signature on the initiative petition was signed in the circulator's presence and

the other verifications that petition circulators are required to provide regarding the signatures they collect, *see* Idaho Code § 34-1807;

- The April 30, 2020 deadline to collect signatures on Reclaim Idaho’s initiative petition, *see* Idaho Code § 34-1802(1);
 - The May 1, 2020 deadline for Reclaim Idaho to submit signatures on initiative petitions to the non-party county clerks for verification, *see* Idaho Code § 34-1802(2);
 - The June 30, 2020 deadline for the county clerks to verify signatures, *see* Idaho Code § 34-1802(3) (this is particularly problematic because county clerks still have to verify the physical signatures that Reclaim Idaho told them not to verify back in April, it severely shortens the verification time, and it moves the time when county clerks are verifying signatures from a lull in election season to a period when county clerks are ramping up for August elections and for the November 2020 general election);
 - The ability of the non-party county clerks to verify signatures on initiative petitions, *see* Idaho Code § 34-1807, given that Reclaim Idaho will not collect or disclose data that could allow them to authenticate signatures (App. 45-49);
 - The July 6, 2020 deadline for initiative petitions with sufficient signatures attached to be filed with the Secretary of State, *see* Idaho Code § 34-1802(4);
- and

- The statutory process to allow public argument and rebuttal on the initiative petitions, which by law is required to be completed by August 1, 2020, *see* Idaho Code §§ 34-1812A, 1812B.

The district court's orders also overturn the implicit requirement in the statutory scheme that initiative petitions have either the support of a large number of volunteers statewide or the support in the form of donations sufficient to hire paid signature gatherers. This is because, prior to the district court's orders, initiative campaigns must undertake the notable effort of gathering in-person signatures from at least 18 of Idaho's 35 legislative districts. *See* Idaho Code § 34-1805. However, under the district court's orders, a small group of people with enough social media followers and media attention can obtain the necessary signatures through a few clicks and the power of the internet.

On top of all this, it is unclear how the non-party county clerks can carry out their statutory duty to verify signatures on initiative petitions against the signatures on voter registration cards when Reclaim Idaho is not even collecting those signatures. The district court may have to issue another order clarifying this point. Just as in *RNC*, this court-imposed confusion necessitates a stay. *See RNC*, 140 S. Ct. at 1207. Reclaim Idaho is not even providing the data that it asserts authenticates the signatures to the county clerks. (App. 45-49, 131-33.) As noted above, it is common for 30 to 40 percent of the physical signatures collected on a typical initiative petition to be rejected by the county clerks as invalid. (App. 86.) The district court has mandated that the State outsource signature verification to the very entity that has

a vested interest in getting its initiative on the ballot and is requiring the State to trust the representations of an out-of-state private entity with whom the State has never had any prior relationship. On top of all this, the verification process is completely contrary to existing statute as decided by Idaho's legislature. (*See App.* 50-54.)

4. There can be no argument that the proximity of this stay request to Election Day compels a different conclusion. At the outset, the concern this Court expressed in *Purcell* regarding the disenfranchising effect of voter confusion resulting from court orders that fundamentally alter election procedures was not limited to court orders issued in immediate proximity to an election. This Court warned that all “court orders affecting elections” can negatively affect voters and elections; it is just that “that risk” only “increase[s]” “[a]s an election draws closer.” *Purcell*, 549 U.S. at

5. All interested parties, voters, candidates, political parties, and election officials must be able to know and adhere to the same rules *throughout* the election process. Thus, a stay is warranted regardless of temporal proximity.

However, even if this Court's decisions are interpreted as requiring imminent temporal proximity between the district court's orders and their impact on an election, that requirement is met. We are already in the election process for the November 2020 general election. The urgency is even greater here than it was in *RNC*, where the district court entered its injunction five days before the election, *RNC*, 140 S. Ct. at 1206, and greater than it was in *Merrill*, where the district court entered its injunction 29 days before in-person voting was to take place, *Merrill*, 2020

WL 3207824, at *3. The district court allowed Reclaim Idaho to start circulating its initiative petition electronically on July 9, 2020, almost six weeks after the statutory deadline for submitting signatures. Thus, the preliminary injunction is currently sowing voter confusion, confusion at the county clerk level, undermining the integrity of the election, and fundamentally altering the nature of the State’s election, and has been since July 9, 2020. The State is already deep “into uncharted waters” that may “pose serious security concerns and other, as yet unrealized, problems.” *Thompson v. Dewine*, 959 F.3d 804, 812 (6th Cir. 2020).

2. There is a reasonable probability that at least four Justices will vote for certiorari to resolve a circuit split.

A circuit split exists as to whether state laws regulating the mechanics of the initiative process can violate the Free Speech Clause of the First Amendment. The Tenth Circuit, the Seventh Circuit, and the D.C. Circuit have held that such laws do not implicate the First Amendment. The First, Sixth, and Ninth Circuits disagree. There is a reasonable probability that at least four Justices would vote for certiorari to resolve this circuit split.

1. The *en banc* Tenth Circuit, in *Initiative and Referendum Institute v. Walker*, 450 F.3d 1082, 1099-1103 (10th Cir. 2006), held the First Amendment was inapplicable to a provision in Utah’s Constitution that required certain initiatives to pass with a supermajority. The Tenth Circuit reasoned that such laws are laws that “determine the process by which legislation was enacted,” rather than laws that “regulate or restrict the communicative conduct of persons advocating a position in a referendum.” *Id.* at 1099-1100.

Similarly, in *Jones v. Markiewicz-Qualkinbush*, the Seventh Circuit held an Illinois law that limited to three the number of referenda that could appear on a ballot did not implicate the First Amendment because “it did not distinguish by viewpoint or content.” 892 F.3d 935, 937 (7th Cir.), *cert. denied*, 139 S. Ct. 568 (2018). “[T]he ballot is not a public forum” the Seventh Circuit wrote. *Id.* at 938. The D.C. Circuit reached a similar conclusion in *Marijuana Policy Project v. United States*, 304 F.3d 82 (D.C. Cir. 2002), with regard to a law that prohibited the District of Columbia from enacting any law reducing penalties associated with possession, use or distribution of marijuana. *Id.* at 83, 85-87 (“the legislative act—in contrast to urging or opposing the enactment of legislation—implicates no First Amendment concerns”).

2. In contrast, the Ninth Circuit has concluded that laws that regulate the initiative process can violate First Amendment rights because they “indirectly impact core political speech.” *See Angle*, 673 F.3d at 1133. It can only be assumed the Ninth Circuit will follow its precedents in ruling on this matter in the upcoming appeal. Further, the First Circuit in *Wirzburger v. Galvin*, 412 F.3d 271, 276 (1st Cir. 2005), and the Sixth Circuit in *Thompson v. Dewine*, 959 F.3d 804, 808 (6th Cir. 2020), agree with the Ninth Circuit in the basic proposition that laws governing the initiative process can result in a First Amendment violation.

As discussed below, this circuit split presents recurring issues of national importance and warrants a grant of certiorari and the requested stay.

3. The question that will be presented to this Court involves frequently recurring issues of exceptional national importance.

As Alabama correctly pointed out in its Emergency Application for Stay, the district courts are facing a flood of requests for preliminary injunctions either at the last minute or after important statutory deadlines have passed that would alter state election laws in light of the pandemic. Emergency Appl. For Stay, *Merrill v. People 1st of Ala.*, No. 19A1063, at 18 (U.S. Jun. 29, 2020). The circuit courts of appeals are suffering the repercussions of these lower court decisions. This Court must take action to clarify that States retain their constitutional authority to manage elections even in a pandemic.

Since April 3, 2020, and in addition to the Ninth Circuit's denial of a stay below, the following voter related matters have all been considered by the circuit courts of appeals regarding election laws. See *Thompson v. Dewine*, 959 F.3d 804 (6th Cir. 2020 May 26, 2020) (granting stay in favor of State defendants where plaintiffs alleged that State's stay-at-home orders during the pandemic violated their First Amendment rights for circulating initiative); *Tex. Democratic Party v. Abbott*, 961 F.3d 389 (5th Cir. Jun. 4, 2020) (granting stay in favor of State defendants where plaintiffs challenged constitutionality of State's voting by mail); *Miller v. Thurston*, No. 20-2095, 2020 WL 3240600 (8th Cir. Jun. 15, 2020) (granting stay in favor of State defendants on pre-existing legislation regarding the initiative process during a pandemic); *Morgan v. White*, No. 20-1801, 2020 WL 3818059 (7th Cir. Jul. 8, 2020) (affirming the denial of a motion for preliminary injunction); cf. *Democratic Nat'l Comm. v. Bostelmann*, Nos. 20-1538, 20-1546, 20-1539, 20-1545, 2020 WL 3619499

(7th Cir. Apr. 3, 2020) (denying stay in part when absentee ballots needed to be mailed to be counted); *Esshaki v. Whitmer*, No. 20-1336, 2020 WL 2185553 (6th Cir. May 5, 2020) (denying and granting stay in part in favor of State defendants); *Libertarian Party of Ill. v. Cadigan*, No. 20-1961, 2020 WL 3421662 (7th Cir. Jun. 21, 2020) (denying stay for State defendants on those wishing to run for office and enjoining signature collection requirements in light of the pandemic); *People 1st of Ala. v. Sec’y of State for Ala.*, No. 20-12184, 2020 WL 3478093 (11th Cir. Jun. 25, 2020) (denying stay for State defendants).

Given the impending elections in November and the continuing impact of the pandemic, this Court must take action to clarify the deference that district courts must give the policy judgments of state election officials and to clarify whether regulations governing election procedures implicate First Amendment rights. It is vital that this Court act now to restore voter confidence and the integrity of election systems for the upcoming elections.

B. There is at least a fair chance that the district court’s decision will be overturned.

Given the reasonable probability that four Justices would grant certiorari, it is doubtful that the prospects of reversal even need to be considered. *See In re Roche*, 448 U.S. 1312, 1314 n.1 (1980) (Brennan, J., in chambers) (“[T]he consideration of prospects for reversal dovetails, to a great[] extent, with the prediction that four Justices will vote to hear the case. Thus, it may be that the ‘fair prospect’-of-reversal criterion has less independent significance in a stay determination when review will

be sought by way of certiorari.”). However, even if this factor must be independently considered, it is met.

1. This Court’s instruction in *Purcell* demonstrates that Applicants have a fair chance of success on the merits. Idaho “has a compelling interest in preserving the integrity of its election process. Confidence in the integrity of our electoral processes is essential to the function of our participatory democracy.” *Purcell*, 549 U.S. at 4 (citation omitted). The district court’s remedy undermined this compelling interest. The district court violated this Court’s instruction in *Purcell* by issuing orders in the midst of an election that fundamentally alter the election and will cause voter confusion. The district court’s extreme deviation from *Purcell*’s dictates demonstrates there is at least a fair chance that the district court’s decision will be overturned as violating this principle.

2. In addition, this Court should approve the conclusions of the *en banc* Tenth Circuit in *Initiative and Referendum Institute*, the Seventh Circuit in *Jones*, and the D.C. Circuit in *Marijuana Policy Project* and hold that the First Amendment does not apply to neutral, nondiscriminatory statutes governing the process by which initiatives are conducted.

This Court has held that the First Amendment protects political speech that typically attends an initiative campaign. *Meyer v. Grant*, 486 U.S. 414 (1988) (striking down a Colorado law that made it a felony to pay any person to circulate an initiative petition because the process of requesting signatures necessarily involves interactive communication concerning political change); *Buckley v. Am.*

Constitutional Law Found., Inc., 525 U.S. 182 (1999). However, the effect of the regulations at issue are “completely incidental” to speech and therefore do not implicate the First Amendment’s protections. *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 789 n.5 (1988) (citation omitted) (stressing the difference between a “statute regulating how a speaker may speak” and a statute with a “completely incidental” effect on speech).

There is, at most, an incidental restriction on speech as a result of Idaho’s laws that require that signatures on initiative petitions be collected within a generous 18-month period.⁴ Idaho’s requirement that signatures be collected in-person, rather than anonymously online with no opportunity for “interactive communication concerning political change,” actually protects and facilitates speech. *Meyer*, 486 U.S. at 422. There is at least a fair likelihood this Court will find that the district court erred in finding a First Amendment violation here.

3. If this Court concludes that the First Amendment does apply to content-neutral statutes that regulate the initiative process, the State has the authority to establish the procedures for ballot initiatives—not private companies. *E.g.*, *Thompson*, 959 F.3d at 808. Content-neutral initiative requirements that are reasonable and nondiscriminatory are subjected to rational basis review. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983) (Rehnquist, J., dissenting)). Severe restrictions “such as exclusion or virtual

⁴ This argument was not made before the district court because it was foreclosed by binding Ninth Circuit precedent. *See Angle*, 673 F.3d at 1133-36.

exclusion from the ballot” are judged under strict scrutiny. *Thompson*, 959 F.3d at 809 (citing *Burdick*, 504 U.S. at 434) (remaining citation omitted). Cases in-between weigh the burden imposed by the State against the State’s interests, and take into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Id.* (citation omitted).

There is a reasonable likelihood that this Court will conclude that the State’s interests here outweigh the reasonable and nondiscriminatory requirements that Idaho imposes for initiative procedures. The approximately six-week period that Reclaim Idaho did not collect signatures because of the pandemic has not been shown to be a burden on the 18 months Reclaim Idaho had to collect signatures or on even the six-month period it voluntarily chose. Further, any burden is far outweighed by the State’s interest in the integrity of Idaho’s duly enacted election and ballot initiative laws, the prevention of disruption, uncertainty and loss of public confidence in its impending elections, and in the prevention of fraud.

4. Even if this Court applies the framework from *Angle v. Miller*, 673 F.3d 1122 (9th Cir. 2012), and *Prete v. Bradbury*, 438 F.3d 949 (9th Cir. 2006), there is again a fair likelihood that the district court’s orders will be reversed because Reclaim Idaho failed to show that a reasonably diligent initiative proponent could not have gotten its initiative on the ballot. Under this framework, if a regulation imposes a severe burden on a plaintiff’s rights, it must be narrowly tailored and advance a compelling governing interest. *Angle*, 673 F.3d at 1132 (citations omitted). Regulations imposing lesser burdens are usually justified by the State’s important regulatory interests. *Id.*

(citation omitted). The level of burden is determined by looking at whether “reasonably diligent” initiative proponents can normally gain a place for their proposed initiative on the ballot. *Id.* at 1133 (citations omitted).

Here, Reclaim Idaho did not show that no reasonably diligent initiative proponent could have managed to qualify for the ballot. Reclaim Idaho failed to take reasonable action before the expiration of the deadline to get its initiative on the ballot this year. The district court wrongly concluded this was irrelevant.

Reclaim Idaho’s failure to meet the deadline was the result of its own choices to significantly shorten its timeline for collecting signatures, to employ an approach that left most of the signature-gathering to the end of the statutory period, and to voluntarily cease all signature-gathering activities in response to federal public health guidance. Reclaim Idaho made three token contacts to state officials about its concerns before suspending its campaign: (1) email communications on March 16 with a staffer with the Governor’s office seeking a meeting with the Governor in order to propose an idea that was contrary to statute during an exceptionally busy time when no State law prevented signature gathering; (2) one email with a staffer for the Secretary of State in which Reclaim Idaho was correctly informed of the requirements of statute; and (3) one contact on March 18 with a State Representative about the possibility of legislation.

Reclaim Idaho never inquired whether it could gather signatures under the stay-home order, which incorporated federal standards that allowed “Elections personnel to include both public and private sector elections support” to continue to

operate during the term of that order. (App. 55-72), ¶¶ 8.f and 8.k (incorporating the Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response issued by the Cybersecurity Infrastructure Security Agency of the United States Homeland Security (“CISA Guidance”) dated March 28, 2020); CISA Guidance available at [https://www.cisa.gov/sites/default/files/publications/Version 3.0 CISA Guidance on Essential Critical Infrastructure Workers 1.pdf](https://www.cisa.gov/sites/default/files/publications/Version%203.0%20CISA%20Guidance%20on%20Essential%20Critical%20Infrastructure%20Workers%201.pdf) (last visited July 13, 2020)). Instead, Reclaim Idaho let the deadline for the submission of signatures pass and then, over a month later, filed suit seeking relief from the consequences of its own inaction.

The First Amendment does not protect against the consequences of procrastination. The State’s important regulatory interests described above justify any burden that State law placed on Reclaim Idaho’s ability to circulate its petition.

5. Finally, Reclaim Idaho cannot show a First Amendment violation or any burden from a state action. *Thompson*, 959 F.3d at 810 (citation omitted) (“First Amendment violations require state action.”). Reclaim Idaho has repeatedly acknowledged that it suspended its campaign *due to the COVID-19 pandemic before issuance of the stay-home order* it claims violated its right to collect signatures. (App. 114-15.) Counsel for Reclaim Idaho admitted at oral argument that there was no state action involved in its decision to stop collecting signatures and that it would not have mattered if the Governor had made an exception for their First Amendment activities. (See App. 14-15, 23-24.) As described above, Reclaim Idaho engaged in token contact with state officials to which those officials could not reasonably have

been expected to respond, even despite the State’s demonstrated willingness to work to protect First Amendment rights.

Moreover, the stay-home order cannot be the basis of a First Amendment claim. This Court has been clear that the exercise of “all rights” is subject to “reasonable conditions” deemed “essential to the safety, health, peace, good order, and morals of the community.” *Jacobson v. Massachusetts*, 197 U.S. 11, 26 (1905); *see also S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (Mem.) (May 29, 2020) (citing *Jacobson*, 414 U.S. at 38) (“The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts ‘[t]he safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect.’”). Such a condition must have a substantial relation to public health, and not be “beyond all question, a plain, palpable invasion of rights secured by the fundamental law[.]” *Jacobson*, 197 U.S. at 31 (citations omitted). The at-issue orders were neutral laws of general applicability that had a clear and substantial relation to public health, slowing the spread of a pandemic.

In short, there is at least a fair chance that this Court will reverse the district court’s orders on one or more of the above-described grounds.

C. Applicants will suffer irreparable harm if the requested stay is not granted.

Unless a statute is unconstitutional, enjoining a “State from conducting [its] elections pursuant to a statute enacted by the Legislature . . . would seriously and irreparably harm the State[.]” *Abbott*, 138 S. Ct. at 2324 (footnote and citation omitted). This Court has been clear, “any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301 (2012) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)) (alteration omitted).

The remedy presented by the district court has caused and will continue to cause irreparable harm. It has enjoined Idaho law, will create confusion amongst Idaho voters, and has put at significant risk the State’s ability to prepare for, and thus the integrity of, the upcoming August and November elections. The State is already suffering irreparable injury to the voting system established by the Idaho legislature given that the federal district court has discarded it in favor of a system established by the district court and a private entity.

States have an “undoubtedly important” “interest in preserving the integrity of the electoral process,” including “efforts to ferret out” “mistake[s]” and “promot[e] transparency and accountability in the electoral process,” and a “particularly strong” interest in their efforts to “root out fraud.” *John Doe No. 1 v. Reed*, 561 U.S. 186, 197 (2010). This Court has described the State’s interest in preventing voter fraud as “compelling.” *Purcell*, 549 U.S. at 4 (quoting *Eu v. San Francisco Cty. Democratic*

Central Comm., 489 U.S. 214, 231 (1989)). The consequences of voter fraud include driving “honest citizens out of the democratic process,” “breed[ing] distrust” in government, a sense of disenfranchisement, and, ultimately, denial of the “right of suffrage.” *Id.* (quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964)). The State has a strong interest in ensuring that Idaho’s citizens have an electoral system they can be confident in. Idaho Const., art. III, § 1. By requiring that the initiative process be changed to an electronic signature collection process of Reclaim Idaho’s creation, the district court has eliminated by judicial fiat the processes chosen by the Idaho Legislature to ensure voter integrity and to root out fraud. Idaho Code § 34-1807; *see also* Idaho Code § 34-1802.

Further, by requiring another 48 days to gather signatures, and allowing gathering of signatures electronically, the district court enjoined multiple provisions of Idaho law as described above. The district court also created an extremely burdensome, if not impossible, timeline for the county clerks. The district court’s orders will place an exceptional burden on the county clerks to quickly verify, to the extent they can, signatures submitted during a pandemic and during preparations for the August and November elections, when they are short staffed and when they normally have 60 days to do such verification. *See* Idaho Code § 34-1802(3); (App. 73-77, 84-89.)

Should this Court find it necessary to balance harms and consider equitable principles, the equities weigh heavily in favor of Applicants. Any harm Reclaim Idaho might incur by a stay of the district court’s orders is largely attributable to Reclaim

Idaho. It controlled the timing of its actions throughout the initiative process, just as it chose to suspend its own signature-gathering efforts prior to the stay-home order. Any perceived harm to Reclaim Idaho is due to its own lack of diligence in failing to bring this matter to the courts before the deadline for filing signatures.

And there is no irreparable harm to Reclaim Idaho. It is not prohibited from re-filing its initiative. The district court erred when it equated the purpose and effect of the measure and how it may affect education in Idaho with what is fundamentally at issue in this case—Reclaim Idaho’s circulation of its petition. Reclaim Idaho failed to meet Idaho’s legislatively created procedures and deadlines governing initiatives and this “one-time” exception cannot be condoned, no matter the subject matter of the initiative. The district court further erred when it found irreparable harm based on speculation that Reclaim Idaho’s initiative would pass and have its intended effect and then attributed this theoretical speculative injury to education to Reclaim Idaho.

Reclaim Idaho’s substantial delay has rendered it impossible to grant it an extension without thoroughly interfering with Idaho’s election process. The serious harm that Applicants and the voters of the State of Idaho will suffer far outweigh any injury to Reclaim Idaho.

CONCLUSION

Applicants respectfully request that this Court stay the district court’s preliminary injunction orders during the appeal before the Ninth Circuit and through final disposition of a petition for writ of certiorari, if timely filed.

Respectfully submitted,



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July 14, 2020

No. _____

In the **Supreme Court of the United States**

*BRADLEY LITTLE, in his official capacity as Governor of
Idaho; LAWRENCE DENNEY, in his official capacity as
Idaho Secretary of State*

Applicants,

v.

RECLAIM IDAHO, an Idaho political action committee; LUKE
MAYVILLE,

Respondent.

On Application to the Honorable Elena Kagan to Stay the Order
of the U.S. District Court for the District of Idaho

APPENDIX TO EMERGENCY APPLICATION FOR
STAY

LAWRENCE G. WASDEN
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IDAHO
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July 14, 2020

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 9 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RECLAIM IDAHO, an Idaho political
action committee; LUKE MAYVILLE,

Plaintiffs-Appellees,

v.

BRAD LITTLE, in his official capacity as
Governor of Idaho; LAWRENCE
DENNY, in his official capacity as Idaho
Secretary of State,

Defendants-Appellants.

No. 20-35584

D.C. No. 1:20-cv-00268-BLW
District of Idaho,
Boise

ORDER

Before: THOMAS, Chief Judge, SCHROEDER and CALLAHAN, Circuit Judges.

Appellants' motion (Docket Entry No. 2) to stay the district court's June 26, 2020 and June 30, 2020 orders pending appeal is denied. *See Nken v. Holder*, 556 U.S. 418, 425–26 (2009).

The court sua sponte expedites this appeal. The opening brief is due July 17, 2020. The answering brief is due July 29, 2020. The optional reply brief is due August 3, 2020.

No streamlined extensions of time will be approved. *See* 9th Cir. R. 31-2.2(a)(1). No written motions for extensions of time under Ninth Circuit Rule 31-2.2(b) will be granted absent extraordinary and compelling circumstances.

The Clerk shall place this case on the calendar for August 2020. *See* 9th Cir.

Gen. Order 3.3(g).

CALLAHAN, Circuit Judge, dissenting:

I respectfully dissent. The appellants have demonstrated the requisite likelihood of success on the merits and probability of irreparable harm to warrant a stay pending appeal, and the remaining stay factors weigh in their favor. *See Nken v. Holder*, 556 U.S. 418, 425–26 (2009).

The appellants have made a substantial showing that the district court exceeded its authority by awarding relief that effectively rewrites Idaho’s election laws, particularly its law designed to protect against fraud in the initiative process. *See Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (explaining that states have a vital interest in regulating their election processes); *see also Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (reiterating that the Supreme Court “has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election”). The district court cannot create by judicial fiat a process for electronic signature gathering that is not otherwise permitted under Idaho’s laws. That is up to the state’s legislature.

The appellants also have made a substantial showing that the appellees failed to act with the necessary diligence to trigger the heightened standard of review applied by the district court. *See Angle v. Miller*, 673 F.3d 1122, 1133–34 (9th Cir. 2012).

The remaining factors support granting the stay as well. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (explaining that absent a constitutional violation, an injunction that bars a “State from conducting [its] elections pursuant to a statute enacted by the Legislature . . . would seriously and irreparably harm the State”); *Purcell*, 549 U.S. at 4 (“A State indisputably has a compelling interest in preserving the integrity of its election process.”).

Accordingly, I would grant the appellants’ motion to stay.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RECLAIM IDAHO, a political action
committee, and LUKE MAYVILLE,

Plaintiffs,

v.

BRADLEY LITTLE, in his official
capacity as the Governor of Idaho, and
LAWRENCE DENNEY, in his
official capacity as Idaho's Secretary
of State,

Defendants.

Case No. 1:20-cv-00268-BLW

**ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFFS' MOTION TO
ENFORCE THE COURT'S
ORDER**

INTRODUCTION

Pending before the Court is Reclaim Idaho's Expedited Motion to Enforce the Court's Order. Dkt. 18. For the reasons that follow, the Court will grant in part and deny in part Plaintiffs' motion.

BACKGROUND

On June 23, 2020, the Court heard oral argument on Plaintiffs' Expedited Motion for Preliminary Injunction. Dkt. 2. At the close of arguments, the Court orally granted the motion. A written order was subsequently filed to set forth the facts, circumstances, and legal framework the Court considered in conducting its

analysis of the motion and in fashioning relief. Dkt. 14. Thereafter, Defendants filed a motion seeking a stay of the Court’s order pending their appeal to the Court of Appeals for the Ninth Circuit. Dkt. 16. The Court denied the motion for a stay—and its order granting Plaintiff’s motion for injunction stands. Dkt. 17.

The Court’s decision allowed the State to choose between two options available to secure Reclaim Idaho’s constitutional rights in the initiative process. The State could choose between (1) certifying the signatures already gathered are sufficient to have the initiative placed on the 2020 ballot; or (2) allowing Reclaim Idaho an additional 48-days to gather signatures through online solicitation and submission. The State has indicated it will file an appeal, and declined to choose either option. *See* Dkt. 16. Citing the State’s refusal, Reclaim Idaho now asks the Court to order Defendants to certify the initiative for the November ballot. Dkt. 18 at 2.

DISCUSSION

Reclaim Idaho argues the option to gather signatures through an online process would require the State to engage in developing a “process and protocol” with Reclaim Idaho. *Id.* Reclaim Idaho argues that, “Defendants’ clear response shows that they have no intention of cooperating with Reclaim Idaho” and thus the only relief available is an order that Defendants certify the initiative for the November 2020 ballot. *Id.* However, it is not clear that the State is unwilling to

work with Reclaim Idaho in fashioning an online solicitation process if ordered to do so by the Court. And, ordering an online solicitation pays greater respect to the State's right to limit the initiative process in ways which do not violate the Plaintiffs' First Amendment rights. Finally, online solicitation is the specific remedy originally sought by the Plaintiffs. For these reasons, the Court will grant the Plaintiffs' motion in directing the State to comply with the Court's order, but will not require immediate certification of the Plaintiffs initiative for the 2020 ballot.

At this point, no appeal has been filed by the State, and it necessarily follows that no stay has been granted by the Ninth Circuit Court of Appeals. Unless such a stay is granted, the State must fully comply with the Court's orders. Having declined to choose between certifying the initiative for the 2020 ballot and accepting online solicitation of signatures, the Court will direct the State to immediately begin implementation of the remedy originally requested by the Plaintiffs – online solicitation and acceptance of signature.

According to Reclaim Idaho's motion for injunction, "it has developed a plan to contract with DocuSign, a company trusted by financial institutions with an impeccable tradition for reliability in gathering electronic signatures." Dkt. 2-1 at 2. Reclaim Idaho stated that DocuSign, "stands ready to provide its service immediately." *Id.* at 10. Counsel will be ordered to meet and confer by Thursday,

July 2, to implement the process and protocol for accepting signatures gathered through the DocuSign technology. Absent an agreement of counsel to the contrary, that process and protocol shall be completed by Thursday, July 9, and Plaintiffs may thereafter resume the solicitation of signatures for a period of 48 days. Should counsel be unable to reach an agreement as to the process and protocol, Reclaim Idaho may implement an industry standard process and protocol. Such process and protocol must ensure the highest available standards are used to verify a signer's identity, legislative district, and the authenticity of the signature.

ORDER

IT IS ORDERED that:

1. Plaintiff's Expedited Motion to Enforce the Court's Order (Dkt. 18) is **GRANTED IN PART** and **DENIED IN PART** as explained in this decision.
2. The 48-day period provided for Reclaim Idaho to resume its petition gathering activities begins July 9, 2020.



DATED: June 30, 2020

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
U.S. District Court Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RECLAIM IDAHO, a political action
committee, and LUKE MAYVILLE,

Plaintiffs,

v.

BRADLEY LITTLE, in his official
capacity as the Governor of Idaho, and
LAWRENCE DENNEY, in his
official capacity as Idaho's Secretary
of State,

Defendants.

Case No. 1:20-cv-00268-BLW

**ORDER DENYING MOTION TO
STAY**

On June 23, 2020, the Court heard oral argument on Plaintiffs' Expedited Motion for Preliminary Injunction. Dkt. 2. At the close of arguments, the Court orally granted the motion. A written order was subsequently filed to set forth the facts, circumstances, and legal framework the Court considered in conducting its analysis of the motion and in fashioning relief. Dkt. 14.

In its oral pronouncement and written order, the Court applied the test set out by the Ninth Circuit in *Angle v. Miller*, to conclude that the State's refusal, in the face of a global pandemic, to extend the statutory deadline and permit online

solicitation and gathering of signatures to have a citizen's initiative placed on the 2020 ballot amounts to an unconstitutional burden on the Plaintiffs' First Amendment rights. *See* 673 F.3d 1122, 1132 (9th Cir. 2012). Based on that determination, the Court concluded that Plaintiff had established it is likely to succeed on the merits, it will suffer irreparable harm in the absence of preliminary relief, the balance of the equities tips in its favor, and an injunction is in the interests of the public.

The Court acknowledged in its decision that the issue of an appropriate remedy was challenging. Ultimately, however, the Court concluded that the State could either certify the signatures already gathered are sufficient to have the initiative placed on the 2020 ballot, or could allow Reclaim Idaho an additional 48-days to gather signatures through online solicitation and submission. The Court's order gave the State until Friday, June 26, 2020 to choose between the two alternative remedies.

The State declined the Court's invitation and, instead, filed a Notice and Motion to Stay Pursuant to F.R.C.P. 62(d) and F.R.A.P. 8. Dkt. 16. The State's motion challenges the Court's decision, and requests that the Court stay the effect of its decision pending an appeal.

Unless the Court orders otherwise, "an interlocutory or final judgment in an action for an injunction" is not stayed after being entered, even if an appeal is

taken. Fed. R. Civ. P. 62(c)(1). Federal Rule of Civil Procedure 62(d) governs injunctions pending an appeal. The rule provides that, “[w]hile an appeal is pending from an interlocutory order or final judgment that grants or refuses to modify an injunction” the Court may “suspend, modify, restore, or grant an injunction” on “terms that secure the opposing party’s rights.” Fed. R. Civ. P. 62(d). Thus, Rule 62(d) affords the Court discretion when a party requests a stay of an injunction pending appeal.

A stay pending appeal overlaps with the function of a preliminary injunction—each prevents “some action before the legality of that action has been conclusively determined.” *Nken v. Holder*, 556 U.S. 418, 428-29 (2009). “A stay is an ‘intrusion into the ordinary processes of administration and judicial review.’” *Id.* at 427 (citing *Virginia Petroleum Jobbers Assn. v. FPC*, 259 F.2d 921, 925 (C.A.D.C.1958) (per curiam)). Accordingly, a stay pending resolution on appeal “is not a matter of right, even if irreparable injury might otherwise result to the appellant.” *Virginian R. Co. v. United States*, 272 U.S. 658 (1926).

Here, the Court will exercise its discretion to deny the State’s motion. Simply put, staying the effect of the Court’s decision will deny the Plaintiffs an effective remedy. There is a narrow window of opportunity to provide Reclaim Idaho and the State the time necessary to establish the process and protocol for gathering signatures on-line and then provide Recall Idaho with the requested 48-

days to complete the on-line solicitation and gathering of signatures. Granting a stay of the Court's decision would effectively prevent Reclaim Idaho from having its initiative placed on the 2020 general ballot, and thereby deny it the remedy required by the First Amendment.

ORDER

IT IS ORDERED that:

1. Defendants' Notice And Motion To Stay Pursuant To F.R.C.P. 62(D) and F.R.A.P. 8 (Dkt. 16) is **DENIED**.



DATED: June 29, 2020

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
U.S. District Court Judge

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF IDAHO

3 RECLAIM IDAHO, an Idaho) Case No. 1:20-cv-00268-BLW
 4 political action committee,)
 and LUKE MAYVILLE,) **MOTION HEARING**
)
 5 Plaintiffs,)
)
 6 vs.)
)
 7 BRADLEY LITTLE, in his official)
 capacity as Governor of Idaho,)
 8 and LAWERENCE DENNEY his)
 official capacity as Idaho)
 9 Secretary of State,)
)
 10 Defendants.)
 _____)

11
 12 **TRANSCRIPT OF VIDEO CONFERENCE PROCEEDINGS**
 13 **BEFORE THE HONORABLE B. LYNN WINMILL**
 14 **TUESDAY, JUNE 23, 2020; 2:00 P.M.**
BOISE, IDAHO

15 **FOR PLAINTIFFS**

16 Deborah Ferguson
 17 Craig H. Durham
 FERGUSON DURHAM, PLLC
 223 N. 6th Street, Suite 325
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18 **FOR DEFENDANTS**

19 Robert A. Berry, Deputy Attorney General
 Civil Litigation Division
 20 OFFICE OF THE ATTORNEY GENERAL
 P.O. Box 83720
 21 Boise, ID 83720-0010

22 Proceedings recorded by mechanical stenography, transcript
 23 produced by computer.

24 **TAMARA I. HOHENLEITNER, CSR 619, CRR**
 FEDERAL OFFICIAL COURT REPORTER
 25 550 WEST FORT STREET, BOISE, IDAHO 83724

1 They realized, at some point then, the danger to the
2 public to continue to circulate among it and collect signatures
3 was just far too great. It was also too great for the
4 volunteers, that army of volunteers, primarily senior citizens,
5 who are -- you know, have extra exposure and risk of death from
6 COVID.

7 So once that became clear, it really forced a
8 suspension. This occurred after the governor had
9 initiated -- declared a state of emergency and then extreme
10 emergency. And then there was the shelter in place, and that
11 became a misdemeanor to try to -- to attempt to collect
12 signatures or to leave our homes during those many weeks.

13 And so that brings us to: What's Reclaim doing now?
14 And there was a real tone of criticism from the state in its
15 brief that Reclaim should have brought this lawsuit sooner.

16 And I would -- I would say this can't be viewed in
17 some bubble or isolation. This is being brought during the
18 middle of the pandemic and the shutdown.

19 Like the courts, our law office here was closed, and
20 Mr. Durham and I worked from our respective homes at makeshift
21 offices.

22 I was contacted by Mr. Mayville on a weekend as he
23 described the situation of the initiative, and there was a big
24 ask: In the middle of this pandemic, while you're working from
25 home, already trying to just patch through our clients and

1 reading these -- these cases, reading *Angle* and other cases
2 about initiatives when they arise in the context of the
3 government, state legislatures making it more difficult and then
4 the courts grasping -- you know, looking at, you know, how
5 severe is this burden.

6 Well, we have got a totally different paradigm here.
7 I mean, the burden with the stay-at-home order subject to
8 criminal misdemeanor penalties is -- is absolute.
9 It's -- it's -- it's severe. So I don't think there is
10 any -- any doubt that this has inflicted just an incredible
11 burden and really made it impossible for Reclaim Idaho to
12 continue to get this important initiative on the ballot.

13 THE COURT: All right. One of the comments that were
14 made in the briefing was that the governor did not make an
15 exception for First Amendment activities.

16 I guess I was a little skeptical whether that would
17 have made any difference because just people -- well, I mean,
18 maybe it's belied by the fact that people were willing to go out
19 and protest, obviously, after the Black Lives Matter issue
20 arose. But it's a little bit different to collect signatures
21 than to take to the streets to protest something as dramatic as
22 what occurred in Minneapolis.

23 (Inaudible) had exempted First Amendment activity from
24 his stay-at-home order?

25 MS. FERGUSON: In all candor, no. I don't think so.

1 something on the ballot and do nothing more than that.

2 The other alternative is to permit online solicitation
3 for another -- I think it was 48 days -- whatever the number of
4 days were between the cutoff and the date in which they stopped
5 soliciting and allow online solicitation, collection, and
6 certification of signatures similar to the manner suggested by
7 the plaintiffs.

8 But frankly, I find that more problematic because I
9 think it does force the court to run the elections, run the
10 initiative process for the state, which I'm reluctant to do.

11 But I also understand that the state may have
12 reasons -- perhaps the relationship between the governor and
13 secretary of state and the legislature may be such a compelling
14 reason -- that they would -- that they would prefer to undertake
15 that substantial effort as opposed to simply allow
16 certification.

17 So what I'm going to order is that the state will be
18 given the choice, which they must exercise by week's end, to
19 either simply certify the initiative or inclusion on the general
20 election ballot or extend by the same number of days that we
21 discussed earlier -- I want to say 48 days -- and then allow
22 online solicitation, collection, and certification of signatures
23 similar to the manner suggested by the plaintiffs.

24 I wish it were possible to just extend the date and
25 still require in-person certification. But as I noted, I don't

REPORTER'S CERTIFICATE

I, TAMARA I. HOHENLEITNER, CSR, RPR, CRR, certify that the foregoing is a correct transcript of proceedings in the above-entitled matter.

/s/ Tamara I. Hohenleitner

06/26/2020

TAMARA I. HOHENLEITNER, CSR, RPR, CRR

Date

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RECLAIM IDAHO, a political action
committee, and LUKE MAYVILLE,

Plaintiffs,

v.

BRADLEY LITTLE, in his official
capacity as the Governor of Idaho, and
LAWRENCE DENNEY, in his
official capacity as Idaho's Secretary
of State,

Defendants.

Case No. 1:20-cv-00268-BLW

**MEMORANDUM DECISION
AND ORDER**

INTRODUCTION

On June 23, 2020 the Court heard oral argument on Plaintiffs' Expedited Motion for Preliminary Injunction. Dkt. 2. At the close of arguments, the Court orally granted the motion. As stated during the hearing, oral decision was warranted given the expedited nature of the situation and the rights at issue. This written order further details the facts, circumstances, and legal framework the Court considered in conducting its analysis of the motion and in fashioning relief.

BACKGROUND

Reclaim Idaho is a volunteer-run political action committee that is seeking to place a citizen initiative on the November 2020 general election ballot. Dkt. 2-1 at 1. Luke Mayville is the committee's co-founder. *Id.* The Court will refer to the Plaintiffs collectively as "Reclaim Idaho." Reclaim Idaho filed suit against the Governor of Idaho, Bradley Little, and Idaho's Secretary of State, Lawrence Denny. The Court will refer to the Defendants collectively as "the State." Reclaim Idaho sued the State for alleged violations of federal constitutional rights within Idaho's citizen initiative process. *See Compl.*, Dkt. 1. The complaint was accompanied by Reclaim Idaho's expedited motion for preliminary injunction seeking redress for the alleged constitutional violations.

Reclaim asks the Court to: (1) declare the State's application of I.C. § 34-1802 in the unprecedented COVID-19 pandemic scenario violates the U.S. Constitution by unfairly burdening the initiative process; (2) declare that the State's application of I.C. § 34-1807 on the facts and circumstances violates the U.S. Constitution by unduly the burdening signature gathering efforts in support of the Invest in Idaho initiative; (3) issue a preliminary injunction enjoining the State's enforcement of I.C. § 34-1802 and I.C. § 34-1807 for as long as necessary to remove the undue burden; (4) issue a preliminary injunction extending the deadline to submit petition signatures to county clerks for verification; (5) issue a

preliminary injunction extending the deadline to submit petition signatures to the Secretary of State; (6) issue a preliminary injunction to permit the electronic circulation of the initiative and to the State to accept electronic signatures. Dkt. 1 at 11.

The State filed a response in opposition, asserting Reclaim Idaho lacks standing to bring this matter due to its own dilatory conduct and, relatedly, is barred by the doctrine of laches due to its delay in bringing the suit and motion more than a month after the applicable deadline. Dkt. 8 at 1-2. In addition, the State argues Reclaim Idaho asks the “Court to aggressively invade the Idaho Legislature’s constitutionally-created authority and create a signature-gathering alternative that is nowhere contemplated by the Idaho Constitution or Code.” *Id.* at 2. The State argues also that, the Court should decline the request for preliminary relief because Reclaim Idaho will not be successful on the merits of its claim and the burdens the relief would impose on the State are substantial. *Id.* at 3.

The following facts and circumstances form the backdrop of this dispute.

A. Idaho’s Ballot Initiative Process

Idaho citizens may enjoy the right reserved by Idaho’s Constitution to propose and enact laws independent of any act of the state legislature. *See* Idaho Const. Art. III, sec. 1. Since the 1890 approval of Idaho’s Constitution, the state legislature has enacted a statutory scheme to define the citizen initiative process.

See Idaho Code §§ 35-1801 *et. seq.* The laws set forth conditions that a petitioner must meet before an initiative will be placed on a general election ballot by the Secretary of State. *Id.*

A petitioner begins the process by filing a proposed ballot initiative with the Secretary of State's office. Idaho Code § 34-1801(a). After review and approval of the initiative's form, the Secretary of State provides the petitioner with a ballot title. *Id.* at § 34-1809(2)(b). With the ballot title and approval in hand, the petitioner may begin to collect signatures in support of the initiative. The statute allows petitioners up to 18 months to collect signatures—with a final submission deadline of April 30 in the election year the initiative will be held. Idaho Code § 34-1802.

Idaho law requires petitioners to gather the signatures of legal voters equal to 6 percent of the qualified electors from the last election in 18 of Idaho's legislative districts. Idaho Code § 34-1805. In this case, the last election was the November 2018 general election. Considering the number of qualified electors from 2018, a petitioner seeking to place an initiative on the November 2020 ballot must have collected 55,057 or more valid signatures. Dkt. 1 at 4. The law requires also that, any person working to gather signatures be a citizen of Idaho. Idaho Code § 34-1807. The signature gatherer must verify that they personally witnessed

each person sign the petition—in other words, Idaho has an in-person signature requirement. *Id.*

All signatures must be submitted to the appropriate county clerk for verification no later than the close of business on May 1 in the year of the election, (or 18 months from the date the petitioner receives the official ballot title from the SOS, whichever is earlier). Idaho Code § 34-1802(2). County clerks must verify the signatures by June 30 of the election year. *Id.* at § 34-1802(3). The verified signatures are submitted to the Secretary of State’s office, which makes the final count to determine if enough signatures have been collected to meet the statutory requirement. *Id.* If so, the initiative is included on the general election ballot for citizen consideration and vote.

B. Reclaim Idaho’s Initiative Actions

In 2019, Reclaim Idaho started “Invest in Idaho,” an initiative drive aimed at getting an initiative on the 2020 general election ballot which would allow voters to approve an increase in funding for kindergarten through 12th grade education in Idaho. Dkt. 2-1 at 2. Reclaim Idaho was formed in 2017 and successfully petitioned to place an initiative to expand Medicaid on the November 2018 ballot. *Id.* at 4. Idaho citizen voters passed the initiative into law. *Id.*

Reclaim Idaho used the successful model it developed for the Medicaid petition to organize its Invest in Idaho initiative drive. *Id.* The model included

“early stage” volunteer recruitment events, where the group worked to build teams in Idaho’s legislative districts. *Id.* at 4–5. The model also included a plan to gradually scale up signature collection efforts in the final months before the May 1, 2020 submission deadline. *Id.* at 5. According to declarations submitted in support of the motion, the gradual scaling of Reclaim Idaho’s efforts reached “critical mass” in early March 2020—the surge in volunteers and favorable springtime weather and daylight hours was anticipated to boost its organizing efforts in the final stages of its drive. *Silver Decl.*, Dkt. 2-4 at 4.

According to its model, Reclaim Idaho began its initiative drive in September 2019. *Schroeder Decl.*, Dkt. 2-3 at 3. Reclaim Idaho held twenty-five volunteer organizing meetings and signature gathering events between September 14, 2019 and December 15, 2019. *Id.* at 2–3. Reclaim Idaho held five more events between the first of the year and January 3, 2020. *Id.* at 4. Thereafter, Reclaim Idaho’s organizing leaders held signature gathering events in their own districts throughout the month of February and into early March. *Id.* In some districts, such as District 4, Reclaim Idaho held a signature gathering event each week. *Id.*; *see also Prince Decl.*, Dkt. 2-5 at 2.

These efforts slowed with the news of the COVID-19 pandemic. Dkt. 2-3 at 4–5. During the week of March 8, 2020, Reclaim Idaho’s leadership began to communicate with its local volunteer leaders regarding a set of guidelines it

developed for safer signature collection. *Id.* Around that time, the Centers for Disease Control (CDC) issued guidance to curb the spread of the novel coronavirus. *Id.* at 5. Maintaining a distance between oneself and others of at least six feet was – and still is – one of the CDC’s main recommendations to prevent the spread of the virus. *See id.* Provided this guidance and rising health concerns voiced by its volunteers, Reclaim Idaho cancelled all door-to-door canvassing events and signature gathering efforts at larger public events on or around March 18, 2020. *Id.* at 8.

C. Executive COVID-19 Response

Meanwhile the State of Idaho was also responding to the threat of the virus. As news of Idaho’s first confirmed case broke, Idaho Governor Bradley Little quickly took executive action to curb the spread of COVID-19 in the state. *See* Dkt. 8 at 5–6. On March 13, 2020, he declared a state of emergency by proclamation due to “the occurrence and imminent threat to public health and safety arising from the effects of the 2019 novel coronavirus (COVID-19).” Dkt. 2-1 at 7. On March 25, 2020, the Governor issued an extreme emergency proclamation which contained a broad stay-at-home order for most Idahoans. *Id.* at 9. The stay-at-home order was in effect until April 15, 2020. The order required “all individuals anywhere in the State of Idaho to self-isolate – that is, stay at home – except for certain essential activities and work to provide essential business and

government services or perform essential public infrastructure construction, including housing.” The order stated that failure to comply with its provisions could constitute a misdemeanor. It included exceptions for certain people or activities, but did not include an exception for First Amendment activities.¹ The stay at home order was amended on April 15, 2020 and extended to April 30, 2020. The amended order also did not include an exception for First Amendment activities. When the amended order expired, it was replaced with Idaho’s first “Stay Healthy Order,” which was part of the State’s staged reopening plan set forth in the broader “Idaho Rebounds” action. Idaho began to reopen according to the staged plan on May 1, 2020.

D. State Response to Reclaim Idaho’s Inquiries

On March 16, 2020, Reclaim Idaho contacted the offices of the Governor and Secretary of State. Dkt. 2-1 at 12; Dkt. 8 at 5. Because the parties dispute the express intent of the communications, the Court will briefly detail their content.

According to the record before the Court, the public relations director for Reclaim Idaho, Rebecca Schroeder, emailed Andrew Mitzel, Senior Advisor to Governor Little, the morning of March 16, 2020. Dkt. 2-3 at 5. Ms. Schroeder’s

¹ The Court takes judicial notice pursuant to the authority granted in Federal Rule of Evidence 201(b) and (c)(1) of the full text of the Governor’s emergency proclamations and stay-at-home orders to the extent they have not been fully referenced and included in the briefing on this matter.

email voiced Reclaim Idaho's concerns about the potential negative health effects involved in in-person signature collection efforts. She indicated that continuing to gather petitions face-to-face would put volunteers and the general public at risk and was contrary to the guidelines from public health officials. *Id.* at 6. Ms. Schroeder noted that, as a result of health risk posed by in-person signature gathering, "Idahoans are no longer able to exercise their constitutional right to bring forward a ballot initiative." *Id.* She asked for the opportunity for Reclaim Idaho to meet with the Governor to discuss the safest way to move forward and stated the "extraordinary situation requires action by the Governor to ensure the public safety is maintained" while Reclaim Idaho exercised its Constitutional rights. *Id.*

Mr. Mitzel's response to the email was as follows: "Thanks for reaching out. I would encourage you to reach out to the Secretary of State's office with your concerns regarding ballot initiatives as they oversee the process." *Id.* Ms. Schroeder sent a reply that she had simultaneously reached out to the Secretary of State's office, and had been advised that it would take Legislative or Executive action to extend the signature deadline. *Id.* The email exchange included a final response from Mr. Mitzel where he indicated "the Governor's Office has no intention of taking executive action on this matter." *Id.* at 7.

Ms. Schroeder also contacted the Secretary of State's office on March 16, 2020. Her email to Secretary Denny included in part:

Dear Mr. Denney:

We are faced with a global pandemic. Idahoans are responding by cancelling public events and dramatically reducing face-to-face interactions. This reality creates extraordinary obstacles for Idaho's ballot initiative process and the constitutional right of every Idahoan to participate in that process. Idaho's initiative qualification laws, which are among the strictest in the country, require tens of thousands of face-to-face interactions. In the interest of safeguarding the health of the public and protecting the constitutional rights of Idahoans, we are asking to authorize temporary online petitioning for Idaho ballot initiatives. The state of Idaho conducts much of our public business online, from voter registration to campaign finance documentation to the registration of new corporations. It is well within our capacity as a state to process petition signatures online. During these extraordinary times, online petitioning is the most effective way to protect public safety while maintaining the constitutional right of Idahoans to participate in the ballot initiative process.

Please advise if this is within the realm of the SOS, or whether it would require Legislative or Executive action.

Dkt. 2-3 at 7-8.

In response to the inquiry, a member of the Secretary of State's staff replied as follows:

Thank you and your fellow supporters for sharing your concern with us via email. While we understand the current situation we are in is unprecedented and can appreciate how the further efforts in attaining the remaining signatures for your petition will be complicated logistically, we are sorry to say that there is no statute allowing electronic signatures for petitions in Idaho Statutes 34 Chapter 18.

Dkt. 2-3 at 8.

According to the record before the Court, the exchanges detailed above represent the entirety of communications between the parties regarding the issue of signature collection during the pandemic.

The Court considered Reclaim Idaho's motion for temporary restraining order with these facts and circumstances in mind. Next, the Court will set forth the standard of law and applicable legal framework for its analysis of the motion and the State's opposition.

STANDARD OF LAW

Motions for preliminary injunctions are governed by Federal Rule of Civil Procedure 65. A plaintiff seeking a preliminary injunction must establish that: 1) it is likely to succeed on the merits; 2) it is likely to suffer irreparable harm in the absence of preliminary relief; 3) the balance of equities tips in its favor; and 4) an injunction is in the public interest. *See Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). A preliminary injunction is “an extraordinary remedy never awarded as of right.” *Id.* at 24. “In each case, courts ‘must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.’ *Id.* (citation omitted).

ANALYSIS

In addition to arguing Reclaim Idaho is unlikely to succeed on the basis of its First Amendment-based claim, the State argues Reclaim Idaho lacks Article III

standing. Prior to addressing the *Winter* factors, the Court will provide greater detail regarding its finding that Reclaim Idaho has standing to bring this action and seek a preliminary injunction.

A. Standing

To establish standing under Article III, Reclaim Idaho had the burden of establishing three elements: (1) it has “suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical”; (2) the injury is “fairly traceable to the challenged action”; and (3) “it [is] likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (internal citations and footnote omitted).

When the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred [...] to establish standing depends considerably upon whether the plaintiff is [...] an object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.

Id. at 561–62.

As I noted during the motion hearing, the first and third elements of the standing inquiry are easily recognized and established under these facts and circumstances. Indeed, the State focused its standing argument on the second element, arguing the alleged First Amendment violation was not fairly traceable to the actions or inaction of the State. *See* Dkt. 8 at 7.

Reclaim Idaho is challenging the legality of the State’s refusal to make reasonable accommodations for the continuation of its signature gathering and petition circulation activities during the pandemic, which resulted in the stay-at-home order discussed above. *See* Dkt. 1 at 11. As primary support for the contention that the State’s refusal to act resulted in injury to its First Amendment rights, Reclaim Idaho cites the declaration of Ms. Schroeder. Dkt. 2-3. In the declaration, Ms. Schroeder details her communications with the offices of Governor Little and Secretary Denny. *Id.* In her communication with the Governor’s office, Ms. Schroeder was clear that the impact of health concerns and the guidance of public health officials made it impossible for Idahoans to continue to exercise their constitutional rights to bring forth a ballot initiative. *Id.* at 6. She noted also that, the “extraordinary situation requires action by the Governor to ensure the public safety is maintained” while also preserving the constitutional rights within the initiative process. *Id.*

In response, the State argues that because the Governor is not involved in the oversight, management, or legislation of the initiative process, his inaction does not give Reclaim Idaho standing to sue. Dkt. 8 at 5. The Court finds the State’s argument unpersuasive in light of the extraordinary situation imposed on all parties

by the COVID-19 pandemic and the Governor's authority to issue executive orders in times of declared emergency.²

Using similar reasoning, the State argues that the Secretary of State did not act and could not act to provide a remedy. The email correspondence between Ms. Schroeder and a staff member of the Secretary's offices shows the Secretary's only response to Reclaim Idaho's inquiry was to refer back to the limitations of the statute—in other words, to interpret the statutory conditions narrowly, even in the face of the pandemic. *See* Dkt. 8 at 7. This was the Secretary's response and a choice that arguably impacted the ability of Reclaim Idaho to continue to exercise its constitutional rights within the petition process. Provided the foregoing, the Court finds that the inaction of the State resulted in the alleged injury to Reclaim Idaho.

The Court must also address the State's arguments that it was Reclaim Idaho's own decisions that resulted in its failure to collect the requisite number of signatures. Dkt. 8 at 7. The State argues that by deciding to begin its signature collection campaign in September 2019, Reclaim Idaho failed to take advantage of the entire 18-month signature collection window permitted within the statute. *Id.*

² As an example of such authority, during the hearing on the motion, the undersigned noted actions taken by the Governor and the State to extend the deadline for submission of absentee ballots, revise primary election deadlines, and to all but eliminate in-person primary voting due to the pandemic and stay-at-home order.

However, reason dictates that there is no way Reclaim Idaho could have predicted the global COVID-19 pandemic when it began to plan its initiative drive— planning which necessarily must have occurred in advance of August 2019 when its petition was first submitted to the Secretary of State’s office. *See* Dkt. 8 at 7.

Further, Reclaim Idaho’s constitutional rights in the petition process are not forfeitable based on a timeline. The rights exist throughout the duration of the petition circulation process, whether on the first day or in the last months. The Court properly addresses these concerns by determining the severity of the burden within the context of the level of scrutiny that should be applied to evaluate the effect of the State’s actions. *See infra* at pp. 17–22.

In sum, the Court finds the evidence shows Reclaim Idaho was reasonably diligent in collecting signatures until the news of COVID-19 in Idaho and the subsequent stay-at-home order made it impossible to do so. The Court finds the evidence shows also, absent a preliminary injunction, Reclaim Idaho will be unable to get the initiative on the ballot in November 2020. If the State had been willing to extend the submission deadline or accept electronic signatures as urged by Reclaim Idaho, the State could have redressed the alleged injury. As such, the Court finds Reclaim Idaho has standing to proceed in this matter.

B. Likelihood of Success on the Merits

Reclaim Idaho asserts an as-applied challenge to Idaho's initiative process laws. As detailed above, Reclaim Idaho argues the decisions by the Governor and Secretary of State to strictly enforce the conditions of Idaho's ballot initiative laws without reasonable accommodation has violated their First and Fourteenth Amendment rights by making it impossible for the initiative to appear on the November 2020 ballot. *See* Dkt. 1; Dkt. 2-1.

In response, the State argues Reclaim Idaho did not act with diligence in collecting signatures before the 2020 general election given the 18-month timeframe allowed by statute, and that Reclaim Idaho suspended its own campaign in advance of the issuance of Idaho's stay-at-home order. *See* Dkt. 8. To the merits of the motion for preliminary injunction, the State argues Reclaim Idaho cannot show the burden to their First Amendment rights was severe, due to the alleged delay and action cited immediately above, and that the State's regulatory interest outweighs any harm to Reclaim Idaho—especially because they can begin the initiative process anew for the 2022 election—and will have the entire 18-month period to do so. Dkt. 8 at 2.

1. Constitutional Framework

Courts generally apply the framework established in *Anderson v. Celebrezze*, as later refined in *Burdick v. Takushi* (the *Anderson-Burdick* framework) when

considering the constitutionality of ballot access restrictions. 460 U.S. 780 (1983); 504 U.S. 428 (1992). However, because Reclaim Idaho is not challenging the base constitutionality of Idaho's ballot access conditions, but rather their application, this Court finds, as did the U.S. District Court for the District of Nevada in *Fair Maps Nevada*, that the test set out by the Ninth Circuit in *Angle v. Miller* is the framework the Court should apply to determine whether the State's inaction amounts to an unconstitutional burden in this case. *See* 673 F.3d 1122, 1132 (9th Cir. 2012). Notably, neither party contests the law on this issue.

In *Angle*, the Ninth Circuit explained the Supreme Court of the United States has found there are two ways in which restrictions on the initiative process can burden core political speech. 673 F.3d 1122, 1132 (9th Cir. 2012). First, when regulations that restrict one-on-one communication between petition circulators and voters. *Id.* Second, when regulations make it less likely proponents will be able to get enough signatures to place an initiative on the ballot. *Id.*

The first type of restriction is largely not at issue in this case. The management of the spread of COVID-19 has foreclosed in-person one-on-one communication between Reclaim Idaho's petition circulator volunteers and voters. However, the second type of restriction is at issue because the question before the Court is whether the State's strict application of the statutory initiative conditions

make or made it less likely for Reclaim Idaho to get enough signatures to place the Invest in Idaho initiative on the ballot.

Reclaim Idaho has shown that the State refused to take executive action to ensure Reclaim Idaho could continue to safely gather signatures from March 16, 2020, when the request was made to both the Governor and the Secretary of State, through the end of the amended stay-at-home order, or April 30, 2020.

Coincidentally, April 30th was also the last day permitted by statute to gather signatures. Therefore, the Court finds the State's refusal to make reasonable accommodations during this time period made it less likely for Reclaim Idaho to get enough signatures to place the Invest in Idaho initiative on the November 2020 ballot. In reality, the State's refusal to act made it impossible for Reclaim Idaho to get the initiative on the ballot absent an order of relief from this Court.

Having found a burden on Reclaim Idaho's core political speech, the Court must determine whether strict scrutiny or some lesser form of review applies to the State's conduct. *See Arizonans for Fair Elections v. Hobbs*, 2020 WL 1905747, at *8 (D. Ariz. Apr. 17, 2020); *see also Ariz. Green Party v. Reagan*, 838 F.3d 983, 985 (9th Cir. 2016). Courts apply strict scrutiny when: (1) the proponents of the initiative have been "reasonably diligent" as compared to other initiative proponents; and (2) when the restrictions significantly inhibit the proponents'

ability to place an initiative on the ballot. *Fair Maps Nevada v. Cegavske*, 2020 WL 2798018, at *11 (D. Nev. May 29, 2020).

a. Reasonable Diligence

As detailed above, by the start of 2020, Reclaim Idaho had held 25 volunteer organizing and signature gathering events since receiving their ballot title a few months prior. By the middle of February 2020, Reclaim Idaho had collected approximately 15,000 signatures. By mid-March, they had collected approximately 30,000 signatures. At that time, they had qualified in 5 out of Idaho's 18 legislative districts. Dkt. 2-1 at 6. "[S]even additional districts [were] within a few hundred signatures of qualification." *Id.*

According to the committee's records, their signature collection numbers for the Invest in Idaho drive exceeded those for their successful Medicaid initiative drive in the last general election cycle. In other words, by mid-March they were on track, according to their data, to collect the necessary number of signatures, in all legislative districts, by the May 1, 2020 submission deadline.

In presenting their argument to the Court, Reclaim Idaho stressed that, in volunteer-led signature gathering campaigns, the momentum of the final months prior to submission results in a significant increase in the number of signatures gathered per week or even per day. Thus, the time Reclaim Idaho lost due to the

pandemic and the subsequent stay-at-home order, was key to reaching their goal and was anticipated in their organizing plan.

The State argues, however, that Reclaim Idaho's decision to voluntarily suspend its own signature collection efforts on or around March 16, 2020 and prior to the March 25, 2020 state-at-home order, forecloses their ability to bring this claim. The State's logic being that it was Reclaim Idaho's act, not any act of the State, that suspended their signature collection efforts. This argument ignores the elephant in the room, which is COVID-19. In reality, it was the impact of the virus that resulted in the suspension of Reclaim Idaho's in-person signature collection activities. As the record shows, Reclaim Idaho immediately sought to work with the State's officials to come up with a State-sanctioned solution so its volunteer members could continue the petition drive. Reclaim Idaho sought that relief on March 16, 2020.

The State argues also that Reclaim Idaho simply should have begun its petition drive sooner—as it had an entire 18 months to conduct the drive under law. However, under the reasonable diligence standard applicable here, the Court finds the argument unpersuasive. Reclaim Idaho began collecting signatures as soon as their data from a previous successful campaign suggested they do so. Once the group started its drive, there is no real argument to diligence in effort.

Considering the foregoing, the Court finds that Reclaim Idaho was reasonably diligent in collecting signatures.

b. Ability to Place Initiative on the Ballot

This case is about Reclaim Idaho’s First Amendment rights pertaining to the 2020 election cycle. The State argues Reclaim Idaho’s ability to place the initiative on the ballot is not inhibited because they may simply try again in 2022. This argument is connected to the State’s laches argument—where the State argues Reclaim Idaho lost its opportunity for relief by failing to file this lawsuit before May 1, 2020, the signature submission deadline. The State’s argument asks the Court to set aside the right Reclaim Idaho had to carry its initiative process through its final stages during this election cycle.

As the Supreme Court has recognized, “when an initiative fails to qualify for the ballot, it does not become ‘the focus of statewide discussion.’” *Angle v. Miller*, 673 F.3d 1122, 1133 (9th Cir. 2012) (citing *Meyer*, 486 U.S. at 423). In this case, the State’s action to strictly enforce Idaho’s ballot access conditions, i.e. to refuse to make reasonable accommodation, during the unprecedented time of the pandemic, reduced “the total quantum of speech” on the public issue of education funding. *See id.* The State’s purported remedy belies the reason Reclaim Idaho staged its initiative campaign during this cycle—which was to give Idaho voters a chance, on the November 2020 ballot, to make a change to tax law to provide

additional funding to public school students in the coming years. Delay in the process until 2022 could result in impact to tens of thousands of public students over that time—which strikes to the heart of Reclaim Idaho’s First Amendment activity.

In its inquiry, the Court recognizes that the State has a significant regulatory interest in its own processes—including mandating adherence to the ballot access conditions set in statute. *See Angle*, 673 F.3d at 1135. However, that interest must be weighed against the effects of strict enforcement when an extraordinary situation arises that prevents its citizens from exercising a constitutional right. *See Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 191–92 (1999) (states have “considerable leeway” in regulating the electoral process, provided their choices do not produce “undue hindrances to political conversations and the exchange of ideas.”).

As acknowledged by the State during oral argument on the motion, the State recently recognized the limits to its regulatory authority when it came to the need to provide electronic avenues for online voter registration and absentee ballot requests. *See also* Dkt. 9 at 7. The Governor provided for all-absentee voting in the 2020 primary elections due to COVID-19. *Id.* To do so, the Governor worked with the Secretary of State to suspend certain statutory requirements. *Id.* Notably, Idaho’s online voter-registration processes requires the individual to attest to their

identity by way of a digital signature—which, presumably, state election officials must verify.

Ultimately, even if the State decides to include the Invest in Idaho initiative on the ballot by deeming the signatures gathered thus far sufficient, the State retains the ultimate opportunity to verify each and every vote cast for or against the initiative through the ballot review process.

For these reasons, the Court finds the State’s refusal to make reasonable accommodations inhibited Reclaim Idaho’s ability to place the Invest in Idaho initiative on the November 2020 general election ballot. As such, the Court finds Reclaim Idaho is likely to succeed on the merits of its claims.

C. Irreparable Harm

Absent a preliminary injunction, there is no chance their Invest in Idaho initiative will appear on the Idaho ballot. Indeed, the deadline for signature submission has expired. As such, without Court order, the initiative will not appear on the 2020 general election ballot. Therefore, the Court finds Reclaim Idaho is likely to suffer irreparable harm in the absence of preliminary relief.

D. Balance of Equities

The Court must also balance the relative hardships on the parties should it provide preliminary relief or decline the request. *Winter v. Natural Res. Def.*

Council, Inc., 555 U.S. 7, 20 (2008); *University of Hawaii Prof. Asm. v. Cayetano*, 183 F.3d 1096, 1108 (9th Cir. 1999).

The State cites the significant burden that will be placed on its employees and offices due to the delay in signature gathering and submission as it will take considerable resources to verify the additional signatures that will be submitted. The Court is sympathetic to the plight of the State and its officers and employees. During the course of the pandemic, the courts have likewise experienced the strain placed on employees and departments due to the need to manage new situations and scenarios. However, this Court in particular is aware of the great resource provided by technology to solve problems. The use of new technologically based processes has allowed the Court to hold hearings without exposing litigants, attorneys, or the public to the risk of COVID-19 all the while, preserving constitutional rights and liberties.

Considering the foregoing, when balancing the harm of a severe burden on core political speech and the not insignificant burden reasonable accommodation may place on the State, the Court must find in favor of preserving constitutional rights. This finding acknowledges the faith the Court has in the State's abilities to devise reasonable accommodations to preserve the rights at issue—as it has successfully done in other contexts during this trying time.

E. Public Interest

Finally, the Court must consider whether issuing preliminary relief is in the public interest. As the Court's discussion of the other *Winter* factors makes clear, it is in the public's interest to issue relief that would provide a remedy to preserve Reclaim Idaho's right to have the ability to place the Invest in Idaho initiative on the November 2020 ballot. Because the public itself would be the final arbiter of whether the initiative is passed into law, the Court finds issuing a preliminary injunction requiring the State to make reasonable accommodation to protect Reclaim Idaho's core political speech rights in the initiative process is in the public's interest.

In sum, the Court finds Reclaim Idaho has established it is likely to succeed on the merits, it will suffer irreparable harm in the absence of preliminary relief, the balance of the equities tips in its favor, and an injunction is in the interests of the public. Having so found, the Court will now discuss the issue of a remedy.

F. Remedy

The Court struggled in determining what would be an appropriate remedy. The Court is disinclined to tell the State how to run the initiative process. However, as the analysis herein explains, the First and Fourteenth Amendments do place some restrictions on the State's authority through the preservation of constitutional rights. *See supra* at pp. 20–22.

The Court considered the following facts when fashioning its remedy and order of accommodations. First, Reclaim Idaho and its volunteers were well on their way in obtaining the signatures necessary for inclusion of the initiative on the November 2020 ballot. Due to Reclaim Idaho's projected chance of success in obtaining the necessary signatures absent the extraordinary event of the COVID-19 pandemic, the first remedy the State can choose to provide is to certify the signatures that have been collected and place the initiative on the November 2020 ballot for voter consideration. In fashioning this remedy, the Court also considered, as argued by Reclaim Idaho during the hearing, that Idaho's ballot conditions are more stringent than those found in other states. As such, the State providing some leeway in its requirements in this extraordinary moment is a viable option.

However, recognizing the State's interest in upholding its conditions, specifically the numerical and geographical requirements, the Court provided that the State may instead choose to allow Reclaim Idaho an additional 48-days to gather signatures through online solicitation and submission. The Court declined to issue relief simply allowing the additional time for in-person signature collection. There is ongoing uncertainty surrounding the current and future spread of COVID-19. Close personal encounters still pose an ongoing and substantial risks to health of Idaho's citizens and Reclaim Idaho's volunteers who would be contacting and communicating with them. Finally, the State has demonstrated it is comfortable

relying on digital signature collection in both the voter registration and online ballot collection processes. Neither of these processes is different from the initiative process in that all require the verification and certification of the digital signature. The Court's order permits the State until 5:00 p.m. M.S.T. on June 26, 2020 to choose between the two alternative remedies.

ORDER

IT IS ORDERED that:

1. Plaintiffs' Expedited Motion for Preliminary Injunction (Dkt. 2) is **GRANTED**.
2. On or before June 26, 2020 at 5:00 p.m. M.S.T., Defendants must file with the Court a notice detailing the reasonable accommodation they have chosen to make to preserve Plaintiffs' core political speech rights as detailed in this Memorandum Decision and Order.



DATED: June 26, 2020

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
U.S. District Court Judge

Exhibit A to Status Report

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July 8, 2020

Via email

Robert Berry
Deputy Attorney General
Civil Litigation Division

Re: *Reclaim Idaho v. Gov. Bradley Little and Secretary of State Lawrence Denney*,
Case No. 20-cv-00268- BLW

Dear Robert:

Today will be our fourth meet and confer meeting to address the State's concerns over Reclaim Idaho's plan for collection and submission of authentic e-signatures as set forth in the Court's orders dated June 30th (Dkt. 19), and June 26th, (Dkt. 14). We have already addressed these points with you at our numerous meet and confer meetings, but wanted to provide the written summary as well as we have discussed a lot of detailed information.

- Collection of signatures
 - Reclaim Idaho will establish a dedicated website for on-line signature collection. **Note: As you requested, we have confirmed the website will be secure, with encryption built into it. It will be connected through https:// as opposed to http://.**
 - The landing page will ask for support to place the issue on the ballot to increase funding for K-12 education. The page will provide a link for the person to read the full text at this initial juncture. The potential signers will see the full screen and the long and short titles. They will have the option of clicking a "start" button that will take them to the bottom of the page , or they can scroll to the bottom manually. **Note: As you requested, at any point they can scroll up and down to see the full text of the entire initiative. In sum, the first page, with the short and long titles ballot titles will be easily viewable to all signers. Moreover,**

Reclaim can commit to sharing a link on the landing page where potential signers can review the full petition before entering their information, in response to your request for this feature.

- Before a person can proceed, they will be required to check a box verifying that they are a registered voter and that they have not previously signed this petition. **Note: In response to your concerns about informing potential signers that they are leaving Reclaim Idaho's landing page, we modified the language above the form to specifically indicate Docusign's involvement in the process as follows, with the following message: "Please fill out the form below. After you fill out the form, you will be redirected to a DocuSign form where you will sign the official petition."**
- If the person elects to proceed, they will enter their name, voter registration address, city and zip code, last 4 digits of their social security number, and their email address. **Note: The person will not be asked to enter their driver's license number. Docusign has informed Reclaim that a driver's license is not essential for meeting industry standards. In light of that, and the fact that such a requirement would overly restrict the pool of registered voters who are eligible to sign, there appears no need for this requirement.**
- They will hit 'next' and be directed to a PDF of the petition that looks exactly like the paper version except that: 1. It will have only one signature line, 2. It will have fields for the last 4 digits of their SSN and the county where the elector resides, and 3. The circulator statement will have additional wording due to the on-line nature. **Note: This PDF document will contain the Short and Long Ballot titles, which the person can read in full before signing the initiative as you have requested.**
- All of the fields in the PDF document will populate from the information provided by the person on the landing page and they will be asked to confirm the information and authorize the placing of their signature on the petition. If they elect to proceed, a cursive version of their signature will be affixed to the signature field. **Note: You have also expressed concerns about the ability to cancel the transaction, should someone chose to do so. There is also a separate button to cancel the transaction in the event a person declines to sign.**
- If a transaction is cancelled no information is retained. **Note: In response to your concern over the data entered by individuals who chose not to sign, no signer data will be retained, or even accessed by Docusign.**
- A few notes on authentication:

- The DocuSign form will capture the person's IP address and GPS location. The form will also capture the person's *intent to sign* by requiring that they check a box confirming their intention to provide an electronic signature. These three factors (IP address, GPS location, and intent to sign) all provide additional authentication. **Note: Taken together with the requirement to provide the last 4 digits of a social security number, these measures will place Reclaim Idaho's petition well above industry standards for authentication.**
- For every signature Reclaim Idaho collects, it will have on file a certificate of completion. This certificate is a legally binding document that provides an audit trail in case the authenticity of a signature needs to be reviewed. The audit trail includes a time stamp for when the person signed along with their GPS location and IP address. **Note: As set forth above, Reclaim Idaho will provide the Secretary of State with a certificate for each e-signature collected if requested, once a protective order is in place. Should the Secretary of State decide to review the authenticity of any signature, he can do so by reviewing the audit trail.**
- Submission and verification of signatures
 - Each signer's name, address, and city or zip code will be collected in CSV file format. This is the same information the county clerks currently are provided in connection with initiative petitions (absent a wet signature). It will be formatted as a spread sheet and be organized as follows:
First name/Last name/ street address/ city/ zip code

Note: You requested that the county clerks also be provided with the last four digits of the social security number of each signer. Reclaim declines this request for several reasons. First, the clerks have never been provided this information on petitions and have no practical use for it. Second, you have indicated that the State may have a duty to release this information in response to a Public Records Act request. According to our research the petition becomes an official public record pursuant to IC § 34-1806, as we have previously discussed with you. As such, we do not want to include these public identifiers beyond the information required by statute and inadvertently expose it to disclosure.

However, to address your concerns and make the process as transparent as possible, we will provide this information to the State once a protective order is in place, if requested. This simple measure should protect the State from an obligation to disclose the last four digits of the social security numbers as a public record, as currently it is our understanding that the current exemptions upon which the Secretary of State relies -IC § 106 (25) and (34) - would not protect this information from disclosure.

- Reclaim Idaho will submit CSV files to each county via email, containing only the signatures collected in that county. County clerks will then verify whether each signer is a registered voter at the provided address. Clerks will also match a Legislative District to each signer, as they have always done. If this information cannot be confirmed the clerk will strike the signature, just as they have done in the past. **Note: Because the information will be provided in a typewritten spread sheet, this should facilitate an easier and faster review than the handwritten entries usually provided.**
- In order to further lighten the burden on county clerks, Reclaim Idaho will submit signatures periodically throughout the 48-day drive. At the close of each week during the signature drive, Reclaim Idaho intends to email to each county a CSV file containing all signatures collected from signers in that county during the previous seven days.
- Reclaim Idaho will take the following measures to meet the highest industry standards for verifying the identity and authenticity of each signature.
 - Reclaim Idaho's DocuSign form will confirm each signer's intent to sign and their consent to do business electronically (these are the essential measures that must be taken to ensure that signatures are authentic and legally binding under the E-SIGN Act).
 - For every signature Reclaim Idaho collects, it will store a certificate of completion. This certificate is a legally binding document that provides an audit trail. The audit trail includes a time stamp for when the person signed along with their GPS location and IP address.

Thank you for working with us on compliance with the Court's orders.

Very truly yours,

/s/

Deborah A. Ferguson

process and protocol shall be completed by Thursday, July 9.” (*Id.* at p. 4.) “Should counsel be unable to reach an agreement as to the process and protocol, Reclaim Idaho may implement an industry standard process and protocol. Such process and protocol must ensure the highest available standards are used to verify a signer’s identity, legislative district, and the authenticity of the signature.” (*Id.*)

Counsel met and conferred on Wednesday, July 1, 2020; Friday (a holiday), July 3, 2020; and Tuesday, July 7, 2020. Counsel for the Defendants also reviewed written proposals provided by Reclaim Idaho. An agreement is unable to be reached.

While Defendants understand the Court ordered that Reclaim Idaho be allowed to collect electronic signatures on its initiative petition, the Court’s order must be interpreted in the narrowest fashion possible. Reclaim Idaho’s proposal would sweep aside a myriad of Idaho statutes, would disrespect the Idaho Legislature’s policy judgments, and would undermine public confidence in the election process.

Based on the most recent communication from Reclaim Idaho outlining its proposal, Defendants see the following fundamental problems:

(1) Regarding authentication of signatures, Reclaim Idaho’s proposal provides no indication that DocuSign or Reclaim Idaho will, or even can, use the data that Reclaim Idaho proposes to collect during the electronic signature process to verify the authenticity of the “signatures” collected. Yet, Reclaim Idaho states in its proposal that it will withhold this information from the county clerks whose statutory role it is to verify the authenticity of signatures on initiative petitions, as well as from the Secretary of State. That is neither workable nor acceptable.

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(2) Reclaim Idaho's proposal places non-party county clerks in a Catch-22 situation whereby they are prevented from exercising their statutory duties yet at the same time are still bound by Idaho statute, not by the Court's order. Under Reclaim Idaho's proposal, the clerks would still be required by statute to verify signatures but would no longer have the information necessary to do so. Again, this is neither workable nor acceptable.

(3) The process Reclaim Idaho proposes invites opportunities for fraud and abuse. For example, the system proposed by Reclaim Idaho would allow a single person using one or different computers to sign the petition for themselves and on behalf of others. In addition, an individual could mask their IP address, GPS location, and time of signing to evade the detection of fraudulent "signatures." This is deeply troubling, particularly where the website facilitating the process was developed in a matter of days without any testing as far as Defendants are aware.

(4) Reclaim Idaho's proposal would collect Idaho citizens' highly personal information, e.g. their IP address and GPS location, and the last four digits of their social security number, which are not required to be disclosed when physical signatures are gathered. There are multiple privacy, data-use, and data-security concerns surrounding private parties collecting personal data for a political purpose. There is nothing in Reclaim Idaho's proposal that would prevent DocuSign or Reclaim Idaho from using any of the data collected for purposes other than verification of "signatures" on this particular initiative campaign, including from selling this data. Even more concerning, as stated above, the website collecting this information would have been developed in just a few days and would not undergo any security testing to Defendants' knowledge.

(5) Defendants have grave concerns about the protection of Idahoan's personal information. There is a possibility the information collected by Reclaim Idaho and DocuSign could be subject to a public records request. A protective order would not remedy this concern,

nor would it be appropriate. The State cannot enter into a protective order against itself. Moreover, a protective order could not protect against loss of the data collected via a data breach.

(6) Defendants are also concerned that the online form of the initiative petition and the language that Reclaim Idaho proposes to use to describe the initiative petition would not comply with Idaho law.

(7) The compressed schedule for creating an entirely new electronic “signature” collection system in a matter of days for initiative petitions has prevented the State from evaluating a number of other issues. These unresolved issues illustrate the fundamental inability of the State to be forced to partner with a private company that it did not select to provide these type of services on a compressed timeframe. For example, Defendants do not know how DocuSign is being compensated for its software and services; whether DocuSign has ever accepted signatures for a ballot initiative; or whether DocuSign has ever accepted signatures from persons it has no prior information about.

Ultimately, while Defendants engaged in good faith communications with Reclaim Idaho regarding a protocol that could be used for the collection of electronic signatures, Defendants’ grave concerns regarding electronic signature collection on initiative petitions were confirmed. Defendants cannot agree to Reclaim Idaho’s proposal for collecting electronic signatures on their initiative petition. To do so would undermine public faith in elections and disregard the will of Idaho’s elected representatives.

DATED this 9th day of July, 2020.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Megan A. Larrondo
MEGAN A. LARRONDO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2020, I electronically filed the foregoing with the Clerk of the Court using the CMF/ECF system which sent a Notice of Electronic Filing to the following persons:

Deborah A. Ferguson
daf@fergusondurham.com

Craig H. Durham
chd@fergusondurham.com

 /s/ Megan A. Larrondo
MEGAN A. LARRONDO
Deputy Attorney General

Statewide Stay-Home Order

- View a PDF of the order [here](https://coronavirus.idaho.gov/wp-content/uploads/sites/127/2020/04/amended-statewide-stay-home-order_041520.pdf) (https://coronavirus.idaho.gov/wp-content/uploads/sites/127/2020/04/amended-statewide-stay-home-order_041520.pdf).
- View Frequently Asked Questions on the order [here](https://coronavirus.idaho.gov/frequently-asked-questions-on-statewide-stay-home-order/) (<https://coronavirus.idaho.gov/frequently-asked-questions-on-statewide-stay-home-order/>).
- View list of Essential Services and Businesses [here](https://coronavirus.idaho.gov/essential-services/) (<https://coronavirus.idaho.gov/essential-services/>).
- View Additional Guidance on the order [here](https://coronavirus.idaho.gov/additional-guidance-statewide-stay-home-order/) (<https://coronavirus.idaho.gov/additional-guidance-statewide-stay-home-order/>).

IDAHO DEPARTMENT OF HEALTH AND WELFARE ORDER OF THE DIRECTOR

ORDER TO SELF-ISOLATE

DATE OF ORDER: March 25, 2020

DATE OF AMENDMENT: April 15, 2020***

THIS ORDER DIRECTS ALL INDIVIDUALS LIVING IN THE STATE OF IDAHO TO SELF-ISOLATE AT THEIR PLACE OF RESIDENCE.

- EXCEPT THAT THEY MAY LEAVE TO PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR ESSENTIAL BUSINESS AND GOVERNMENT SERVICES
- EXEMPTING INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE SELF-ISOLATION ORDER BUT URGING THEM TO FIND SHELTER AND GOVERNMENT AGENCIES TO PROVIDE IT;
- DIRECTING ALL BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NONESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE STATE OF IDAHO;
- PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF ANY NUMBER OF INDIVIDUALS; AND
- ORDERING CESSATION OF ALL NON-ESSENTIAL TRAVEL.

On March 25, 2020, pursuant to the Constitution of the state of Idaho and Sections 46-601 and 46-1008, Idaho Code, the Governor ordered the Director of the Idaho Department of Health and Welfare (“the Director”) to issue this Order to Self-Isolate.

The Director of the Idaho Department of Health and Welfare (“the Director”) is authorized by Idaho Code § 56-1003(7) “to impose and enforce orders of isolation and quarantine to protect the public from the spread of infectious or communicable diseases.”

This Order originally became effective at 1:30 p.m. on March 25, 2020 and will continue to be in effect until 11:59 p.m. on April 30, 2020 or until it is extended, rescinded, superseded, or amended in writing by the Director ().

*****The amendments to this Order contained herein are made to Section 1, Section 7 regarding travel into Idaho, Section 8.f.xxv regarding certain businesses, and Section 8.g.iii regarding Minimum Basic Operations. This amendment is effective as of April 15, 2020 and will continue to be in effect until 11:59 p.m. on April 30, 2020 or until it is extended rescinded, superseded, or amended in writing by the Director.**

Please read this Order carefully. Violation of or failure to comply with this Order could constitute a misdemeanor punishable by fine, imprisonment, or both. Idaho Code § 56- 1003(7)(C).

SUMMARY

The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety.

Because of the risk of the rapid spread of the virus, and the need to protect all citizens of the State of Idaho especially individuals most vulnerable to the virus and health care providers, this Order requires all individuals anywhere in the State of Idaho to self-isolate – that is, stay at home – except for certain essential activities as

NOTICE AND MOTION TO STAY PURSUANT TO F.R.C.P. 62(d) AND F.R.A.P. 8

EXHIBIT A

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work to provide essential business and government services or perform essential public infrastructure construction, including housing.

This order begins at 1:30 p.m. on March 25, 2020 and will continue to be in effect until 11:59 p.m. on April 30, 2020 or until it is extended, rescinded, superseded, or amended in writing by the Director, subject to the limited exceptions and under the terms and conditions more particularly set forth below.

Gatherings of individuals outside the home are prohibited, with certain exceptions for essential activities or essential travel or to perform work for essential businesses and government agencies or perform essential infrastructure work.

This Order requires during the effective period of the Order that all bars and nightclubs are ordered closed. Restaurants and cafes, regardless of their seating capacity, that serve food are ordered closed except solely for takeout and delivery service.

Additionally, all indoor gyms and recreation facilities are ordered closed. Homeless individuals are not subject to this Order to Self-Isolate but are strongly urged to find shelter and government agencies are urged to take steps needed to provide shelter for those individuals.

Under any of the limited circumstances in which individuals are allowed to interact in person outside their residence, the Director orders individuals to abide by the following requirements:

(i) Maintain at least six feet from other individuals, wash hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes, and not shake hands;

(ii) For people with medical conditions, regardless of age, that put them at higher risk of serious complications should they contract COVID-19, and other than health care workers and other essential providers, avoid leaving their homes to the extent possible; and

(iii) For employers in the State of Idaho that do not provide essential businesses or government services, take all steps necessary for employees to work remotely from home to the extent possible.

These requirements build on the United States Centers for Disease Control and Prevention guidelines issued March 11, 2020, extended as necessary to address the health emergency affecting the State of Idaho.

No individual who is sick may go to the workplace or be outside the home except as necessary to seek or receive medical care in accordance with guidance from public health officials.

The Director may revise this Order as the situation evolves. Check the Governor's coronavirus website (coronavirus.idaho.gov) regularly.

UNDER THE AUTHORITY OF IDAHO CODE § 56-1003(7) THE IDAHO DEPARTMENT OF HEALTH AND WELFARE DIRECTOR ORDERS:

1. This Order is issued based on evidence of increasing occurrence of COVID-19 within the State of Idaho, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the state places its citizens at risk for serious health complications, including death, from COVID-19.

Due to the outbreak of the COVID-19 virus, which the Centers for Disease Control and Prevention ("CDC") considers a serious public health threat, there is a public health emergency throughout the State of Idaho. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in transmission of the virus. At present, travel is a common known source of COVID-19 infections in Idaho. All fifty states and the District of Columbia have reported cases and declared states of emergency. Now, COVID-19 clusters with substantial community spread have developed across the United States, including in Idaho and neighboring states. Blaine County has the highest per-capita number of cases in the state and COVID-19 is believed to have been introduced into the county by a traveler or travelers visiting Idaho from out of state.

The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the State of Idaho.

2. This Order is necessary to slow the rate of spread and will be re-evaluated as further data becomes available.

3. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 8.j. below. All provisions of this Order should be interpreted to effectuate this intent.

4. All individuals currently living within the State of Idaho are ordered to self-isolate at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 8. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable and to use COVID-19 risk mitigation practices in their operation.

5. All businesses with a facility in the State of Idaho, except Essential Businesses as defined below in Section 8, are required to cease all activities at facilities located within the state except Minimum Basic Operations, as defined in Section 8.g. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 8.j. below, including by maintaining six-foot social distancing for both employees and members of the public, including, but not limited to, when any customers are standing in line.

6. All people in Idaho shall immediately cease hosting or participating in all public and private gatherings and multi-person activities for social, spiritual and recreational purposes, regardless of the number of people involved, except as specifically identified in Section 8. Such activity includes, but is not limited to, community, civic, public, leisure, faith-based, or sporting events; parades; concerts; festivals; conventions; fundraisers; and similar activities. This prohibition also applies to planned wedding and funeral events, with the exception that funerals are permitted so long as they occur outside and comply with the Social Distancing Requirements as defined in Section 8.j.

7. Travel Restrictions

a. Intrastate travel is prohibited, including but not limited to, travel on scooter, motorcycle, automobile, or public transit, except for those purposes defined in Section 8. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. All travel must comply with Social Distancing Requirements as defined in Section 8.j. below, to the greatest extent feasible.

b. Statewide directive for individuals arriving in Idaho from another state or country to self-quarantine.

(i). Persons entering the state of Idaho are required to self-quarantine for 14 days. If an individual will be present in Idaho for fewer than 14 days, that individual must self-quarantine for the duration of their visit. For purposes of clarity, this directive does not apply to persons performing an Essential Purpose or persons who as part of their normal life live in one state and work or gain Essential Services in another state.

(ii). **“Essential Purpose”** is interpreted broadly and includes travel required for personal safety; food, beverage or medicine; medical care; pursuant to a lawful permit, license, court order, or rule; care of others; and to perform work, services or functions deemed critical to public health and safety, as well as economic and national security. Travel into the state of Idaho for recreation is not an Essential Purpose.

(iii). Any individual required by this directive to self-quarantine shall be responsible for any and all costs associated with the requirement to self-quarantine, including transportation, lodging, food, and medical care.

(iv.) Persons who have tested positive for COVID-19, are presumptively diagnosed with COVID-19, or are exhibiting symptoms identified in the CDC’s screening guidance shall not enter the state of Idaho unless doing so under medical orders for the purposes of medical care, are being transported by emergency personnel, are being driven directly to a medical provider for purposes of medical care, or are a resident of the state of Idaho.

8. Definitions and Exemptions

a. For purposes of this Order, individuals may leave their residence only to perform any of the following **“Essential Activities.”** But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.

(i). To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets) or livestock, such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.

(ii). To obtain necessary services or supplies for themselves and their family or household members, or to deliver, including by truck or rail, those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supplies, livestock feed and supplies, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.

(iii). To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in Section 8.j., such as, by way of example and without limitation, walking, hiking, bicycling, or running.

(iv). To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.

(v). To care for a family member or pet in another household.

b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any **“Healthcare Operations”** including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.

c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of **“Essential Infrastructure,”** including, but not limited to, public works construction, commercial construction and the transfer and selling thereof, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness) and the transfer and selling thereof, airport operations, water, sewer, gas, electrical, oil refining, mining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, telecommunications relay service, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible. As explained in Section 8.k. below, this Order incorporates by reference the guidance in the Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response issued by the Cybersecurity and Infrastructure Security Agency of the United States Homeland Security on March 19, 2020 (“CISA Guidance”).

d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others working for or to support Essential Businesses are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions.” **Essential Governmental Functions** means all services needed to ensure the continuing operation of local, state, federal, or tribal government agencies and provide for the health, safety and welfare of the public. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined by Section 8.j., to the extent possible. As explained in Section 8.k. below, if any provisions in this Order conflict with any of the guidance in the CISA Guidance then the provisions of this Order shall control.

e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.

f. For the purposes of this Order, **“Essential Businesses”** means:

(i). Healthcare Operations and Essential Infrastructure;

(ii). Grocery stores, farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, liquor, beer, and wine and any other household consumer products (such

as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;

- (iii). Food cultivation and production, including farming, livestock, fishing, and food processing;
- (iv). Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
- (v). Newspapers, television, radio, and other media services;
- (vi). Gas stations and auto-supply, auto-repair, and related facilities;
- (vii). Banks, credit unions, and financial institutions, including processing and maintaining systems for processing financial transactions and services (e.g., payment clearing, and settlement; wholesale funding; insurance services; and capital markets activities);
- (viii). Hardware stores and firearms businesses as provided for in Idaho Code section 46-601(3);
- (ix). Plumbers, electricians, exterminators, landscapers, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
- (x). Businesses providing mailing and shipping services, including post office boxes;
- (xi). Educational institutions-including public and private K-12 schools, colleges, and universities-for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
- (xii). Laundromats, dry cleaners, and laundry service providers;
- (xiii). Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
- (xiv). Hotels, motels, shared rental units, and similar facilities for purposes of housing, or to quarantine, those individuals exempted under Section 8.
- (xv). Businesses that supply products needed for people to work from home;
- (xvi). Businesses that supply other Essential Businesses or Essential Government Functions with the support or supplies necessary to operate;
- (xvii). Businesses that ship or deliver groceries, food, goods or services directly to residences;
- (xviii). Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;
- (xix). Home-based care for seniors, adults, or children;
- (xx). Residential facilities and shelters for seniors, adults, and children;
- (xxi). Essential tribal operations;
- (xxii). All operations at or related to the Idaho National Laboratory or needed to support or provide supplies to the Idaho National Laboratory;
- (xxiii). Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
- (xxiv). Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following condition: childcare must be carried out in as small and stable groups as possible.

(xxv.) Businesses that are able to operate via curbside services, drive in, drive through pick up, mailed services or delivery services. Businesses must continue to maintain Social Distancing Requirements as defined in 8.j for both customers and employees, including prohibiting any congregation of customers or employees in or around the place of business.

As explained in Section 8.k. below, this Order incorporates by reference CISA Guidance issued by the Cybersecurity and Infrastructure Security Agency of the United States Homeland Security on March 19, 2020.

g. For the purposes of this Order, **“Minimum Basic Operations”** include the following, provided that employees comply with Social Distancing Requirements as defined this Section, to the extent possible, while carrying out such operations:

- (i). The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.
- (ii). The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
- (iii). The minimum necessary activities to prepare the business to reopen at such time as deemed appropriate, including but not limited to, sanitization, obtaining personal protective equipment, and setting up procedures to ensure compliance with Social Distancing Requirements.

h. For the purposes of this Order, **“Essential Travel”** includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in Section 8.j.

- (i). Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
- (ii). Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
- (iii). Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
- (iv). Travel to return to a place of residence from outside the jurisdiction.
- (v). Travel required by law enforcement or court order.
- (vi). Travel required for non-residents to return to their place of residence outside the State of Idaho. Individuals are strongly encouraged to verify that their transportation out of the State of Idaho remains available and functional prior to commencing such travel.

i. For purposes of this order, residences include hotels, motels, shared rental units, and similar facilities.

j. For purposes of this order **“Social Distancing Requirements”** includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

k. This Order incorporates by reference the Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response issued by the Cybersecurity and Infrastructure Security Agency of the United States Homeland Security on March 28, 2020. That guidance is located at <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

(<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>). This order also incorporates federal guidance from the Department of the Treasury and the Department of defense that are located at <https://home.treasury.gov/news/press-releases/sm956> and <https://media.defense.gov/2020/Mar/22/2002268024/-1/-1/1/DEFENSE-INDUSTRIAL-BASE-ESSENTIAL-CRITICAL-INFRASTRUCTURE-WORKFORCE-MEMO.PDF>

9. The Director requests that the Sheriff and the Chiefs of Police in the State of Idaho, and the Idaho State Police ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat to public health.

10. This Order shall become effective as of April 15, 2020 and will continue to be in effect until 11:59 p.m. on April 30, 2020 or until it is extended, rescinded, superseded, or amended in writing by the Director.

11. To decrease the spread of COVID-19, the cities, counties, and public health districts of the State of Idaho may enact more stringent public health orders than those set out in this Order.

12. This Self-Isolation Order supersedes and replaces the prior Self-Isolation Order I issued for Blaine County, Idaho on March 20, 2020.

13. Each county and each city must promptly provide copies of the Order as follows: (1) by posting the Order on its website, (2) by posting the Order at each county courthouse and each city hall, and (3) by providing a copy to any member of the public requesting it. The Order will also be posted on the website of the Department of Health and Welfare.

14. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED.

Signed by Dave Jeppesen, Director, Idaho Department of Health and Welfare

Dated: March 25, 2020

Amended: April 15, 2020

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR**

**ORDER TO SELF-ISOLATE
DATE OF ORDER: March 25, 2020
DATE OF AMENDMENT: April 15, 2020**

THIS ORDER DIRECTS ALL INDIVIDUALS LIVING IN THE STATE OF IDAHO TO SELF-ISOLATE AT THEIR PLACE OF RESIDENCE.

1. EXCEPT THAT THEY MAY LEAVE TO PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR ESSENTIAL BUSINESS AND GOVERNMENT SERVICES;
2. EXEMPTING INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THE SELF-ISOLATION ORDER BUT URGING THEM TO FIND SHELTER AND GOVERNMENT AGENCIES TO PROVIDE IT;
3. DIRECTING ALL BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NONESSENTIAL OPERATIONS AT PHYSICAL LOCATIONS IN THE STATE OF IDAHO;
4. PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF ANY NUMBER OF INDIVIDUALS; AND
5. ORDERING CESSATION OF ALL NON-ESSENTIAL TRAVEL.

On March 25, 2020, pursuant to the Constitution of the state of Idaho and Sections 46-601 and 46-1008, Idaho Code, the Governor ordered the Director of the Idaho Department of Health and Welfare (“the Director”) to issue this Order to Self-Isolate.

The Director of the Idaho Department of Health and Welfare is authorized by Idaho Code § 56-1003(7) “to impose and enforce orders of isolation and quarantine to protect the public from the spread of infectious or communicable diseases.”

This Order originally became effective at 1:30 p.m. on March 25, 2020 and will continue to be in effect until 11:59 p.m. on April 30, 2020 or until it is extended, rescinded, superseded, or amended in writing by the Director.

***The amendments to this Order contained herein are made to Section 1, Section 7 regarding travel into Idaho, Section 8.f.xxv regarding certain businesses, and Section 8.g.iii regarding Minimum Basic Operations. This amendment is effective as of April 15, 2020 and will continue to be in effect until 11:59 p.m. on April 30, 2020 or until it is extended, rescinded, superseded, or amended in writing by the Director.

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR – 1**

Please read this Order carefully. Violation of or failure to comply with this Order could constitute a misdemeanor punishable by fine, imprisonment, or both. Idaho Code § 56-1003(7)(c).

SUMMARY

The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety.

Because of the risk of the rapid spread of the virus, and the need to protect all citizens of the State of Idaho, especially individuals most vulnerable to the virus and health care providers, this Order requires all individuals anywhere in the State of Idaho to self-isolate – that is, stay at home – except for certain essential activities and work to provide essential business and government services or perform essential public infrastructure construction, including housing.

This order begins at 1:30 p.m. on March 25, 2020 and will continue to be in effect until 11:59 p.m. on April 30, 2020 or until it is extended, rescinded, superseded, or amended in writing by the Director, subject to the limited exceptions and under the terms and conditions more particularly set forth below.

Gatherings of individuals outside the home are prohibited, with certain exceptions for essential activities or essential travel or to perform work for essential businesses and government agencies or perform essential infrastructure work.

This Order requires during the effective period of the Order that all bars and nightclubs are ordered closed. Restaurants and cafes, regardless of their seating capacity, that serve food are ordered closed except solely for takeout and delivery service.

Additionally, all indoor gyms and recreation facilities are ordered closed. Homeless individuals are not subject to this Order to Self-Isolate but are strongly urged to find shelter and government agencies are urged to take steps needed to provide shelter for those individuals.

Under any of the limited circumstances in which individuals are allowed to interact in person outside their residence, the Director orders individuals to abide by the following requirements:

- (i) Maintain at least six feet from other individuals, wash hands with soap and water for at least 20 seconds as frequently as possible or using hand sanitizer, cover coughs or sneezes, and not shake hands;
- (ii) For people with medical conditions, regardless of age, that put them at higher risk of serious complications should they contract COVID-19, and other than health care workers and other essential providers, avoid leaving their homes to the extent possible; and

IDAHO DEPARTMENT OF HEALTH AND WELFARE ORDER OF THE DIRECTOR – 2

- (iii) For employers in the State of Idaho that do not provide essential businesses or government services, take all steps necessary for employees to work remotely from home to the extent possible.

These requirements build on the United States Centers for Disease Control and Prevention guidelines issued March 11, 2020, extended as necessary to address the health emergency affecting the State of Idaho.

No individual who is sick may go to the workplace or be outside the home except as necessary to seek or receive medical care in accordance with guidance from public health officials.

The Director may revise this Order as the situation evolves. Check the Governor's coronavirus website (coronavirus.idaho.gov) regularly.

UNDER THE AUTHORITY OF IDAHO CODE § 56-1003(7) THE IDAHO DEPARTMENT OF HEALTH AND WELFARE DIRECTOR ORDERS:

1. This Order is issued based on evidence of increasing occurrence of COVID-19 within the State of Idaho, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the state places its citizens at risk for serious health complications, including death, from COVID-19.

Due to the outbreak of the COVID-19 virus, which the Centers for Disease Control and Prevention ("CDC") considers a serious public health threat, there is a public health emergency throughout the State of Idaho. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, gatherings can result in transmission of the virus. At present, travel is a common known source of COVID-19 infections in Idaho. All fifty states and the District of Columbia have reported cases and declared states of emergency. Now, COVID-19 clusters with substantial community spread have developed across the United States, including in Idaho and neighboring states. Blaine County has the highest per-capita number of cases in the state and COVID-19 is believed to have been introduced into the county by a traveler or travelers visiting Idaho from out of state.

The scientific evidence shows that at this stage of the emergency, it is essential to slow virus transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow transmission is to limit interactions among people to the greatest extent practicable. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the State of Idaho.

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR – 3**

2. This Order is necessary to slow the rate of spread and will be re-evaluated as further data becomes available.
3. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible. When people need to leave their places of residence, whether to obtain or perform vital services, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times reasonably possible comply with Social Distancing Requirements as defined in Section 8.j. below. All provisions of this Order should be interpreted to effectuate this intent.
4. All individuals currently living within the State of Idaho are ordered to self-isolate at their place of residence. To the extent individuals are using shared or outdoor spaces, they must at all times as reasonably possible maintain social distancing of at least six feet from any other person when they are outside their residence. All persons may leave their residences only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses, all as defined in Section 8. Individuals experiencing homelessness are exempt from this Section, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable and to use COVID-19 risk mitigation practices in their operation.
5. All businesses with a facility in the State of Idaho, except Essential Businesses as defined below in Section 8, are required to cease all activities at facilities located within the state except Minimum Basic Operations, as defined in Section 8.g. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). All Essential Businesses are strongly encouraged to remain open. To the greatest extent feasible, Essential Businesses shall comply with Social Distancing Requirements as defined in Section 8.j. below, including by maintaining six-foot social distancing for both employees and members of the public, including, but not limited to, when any customers are standing in line.
6. All people in Idaho shall immediately cease hosting or participating in all public and private gatherings and multi-person activities for social, spiritual and recreational purposes, regardless of the number of people involved, except as specifically identified in Section 8. Such activity includes, but is not limited to, community, civic, public, leisure, faith-based, or sporting events; parades; concerts; festivals; conventions; fundraisers; and similar activities. This prohibition also applies to planned wedding and funeral events, with the exception that funerals are permitted so long as they occur outside and comply with the Social Distancing Requirements as defined in Section 8.j.
7. Travel Restrictions

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR – 4**

- a. Intrastate travel is prohibited, including but not limited to, travel on scooter, motorcycle, automobile, or public transit, except for those purposes defined in Section 8. People must use public transit only for purposes of performing Essential Activities or to travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions. All travel must comply with Social Distancing Requirements as defined in Section 8.j. below, to the greatest extent feasible.
- b. Statewide directive for individuals arriving in Idaho from another state or country to self-quarantine.
 - i. Persons entering the state of Idaho are required to self-quarantine for 14 days. If an individual will be present in Idaho for fewer than 14 days, that individual must self-quarantine for the duration of their visit. For purposes of clarity, this directive does not apply to persons performing an Essential Purpose or persons who as part of their normal life live in one state and work or gain Essential Services in another state.
 - ii. **“Essential Purpose”** is interpreted broadly and includes travel required for personal safety; food, beverage or medicine; medical care; pursuant to a lawful permit, license, court order, or rule; care of others; and to perform work, services or functions deemed critical to public health and safety, as well as economic and national security. Travel into the state of Idaho for recreation is not an Essential Purpose.
 - iii. Any individual required by this directive to self-quarantine shall be responsible for any and all costs associated with the requirement to self-quarantine, including transportation, lodging, food, and medical care.
 - iv. Persons who have tested positive for COVID-19, are presumptively diagnosed with COVID-19, or are exhibiting symptoms identified in the CDC’s screening guidance shall not enter the state of Idaho unless doing so under medical orders for the purposes of medical care, are being transported by emergency personnel, are being driven directly to a medical provider for purposes of medical care, or are a resident of the state of Idaho.

8. Definitions and Exemptions

- a. For purposes of this Order, individuals may leave their residence only to perform any of the following **“Essential Activities.”** But people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care.
 - i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets) or livestock, such as, by way of example only and without

IDAHO DEPARTMENT OF HEALTH AND WELFARE ORDER OF THE DIRECTOR – 5

- limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
- ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver, including by truck or rail, those services or supplies to others, such as, by way of example only and without limitation, canned food, dry goods, fresh fruits and vegetables, pet supplies, livestock feed and supplies, fresh meats, fish, and poultry, and any other household consumer products, and products necessary to maintain the safety, sanitation, and essential operation of residences.
 - iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in Section 8.j., such as, by way of example and without limitation, walking, hiking, bicycling, or running.
 - iv. To perform work providing essential products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations.
 - v. To care for a family member or pet in another household.
- b. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “**Healthcare Operations**” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.
 - c. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “**Essential Infrastructure**,” including, but not limited to, public works construction, commercial construction and the transfer and selling thereof, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness) and the transfer and selling thereof, airport operations, water, sewer, gas, electrical, oil refining, mining, roads and highways, public transportation, solid waste collection and removal, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, telecommunications relay service, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Section, to the extent possible.

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR – 6**

As explained in Section 8.k. below, this Order incorporates by reference the guidance in the Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response issued by the Cybersecurity and Infrastructure Security Agency of the United States Homeland Security on March , 2020 (“CISA Guidance”).

- d. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, and law enforcement personnel, and others working for or to support Essential Businesses are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing “Essential Governmental Functions.” **Essential Governmental Functions** means all services needed to ensure the continuing operation of local, state, federal, or tribal government agencies and provide for the health, safety and welfare of the public. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined by Section 8.j., to the extent possible.

As explained in Section 8.k. below, if any provisions in this Order conflict with any of the guidance in the CISA Guidance then the provisions of this Order shall control.

- e. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function they perform, or its corporate or entity structure.
- f. For the purposes of this Order, “**Essential Businesses**” means:
- i. Healthcare Operations and Essential Infrastructure;
 - ii. Grocery stores, farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, liquor, beer, and wine and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences;
 - iii. Food cultivation and production, including farming, livestock, fishing, and food processing;
 - iv. Businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
 - v. Newspapers, television, radio, and other media services;
 - vi. Gas stations and auto-supply, auto-repair, and related facilities;

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR – 7**

- vii. Banks, credit unions, and financial institutions, including processing and maintaining systems for processing financial transactions and services (e.g., payment clearing, and settlement; wholesale funding; insurance services; and capital markets activities);
- viii. Hardware stores and firearms businesses as provided for in Idaho Code section 46-601(3);
- ix. Plumbers, electricians, exterminators, landscapers, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses;
- x. Businesses providing mailing and shipping services, including post office boxes;
- xi. Educational institutions—including public and private K-12 schools, colleges, and universities—for purposes of facilitating distance learning or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible;
- xii. Laundromats, dry cleaners, and laundry service providers;
- xiii. Restaurants and other facilities that prepare and serve food, but only for delivery or carry out. Schools and other entities that typically provide free food services to students or members of the public may continue to do so under this Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;
- xiv. Hotels, motels, shared rental units, and similar facilities for purposes of housing, or to quarantine, those individuals exempted under Section 8.
- xv. Businesses that supply products needed for people to work from home;
- xvi. Businesses that supply other Essential Businesses or Essential Government Functions with the support or supplies necessary to operate;
- xvii. Businesses that ship or deliver groceries, food, goods or services directly to residences;
- xviii. Airlines, taxis, and other private transportation providers providing transportation services necessary for Essential Activities and other purposes expressly authorized in this Order;

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR – 8**

- xix. Home-based care for seniors, adults, or children;
- xx. Residential facilities and shelters for seniors, adults, and children;
- xxi. Essential tribal operations;
- xxii. All operations at or related to the Idaho National Laboratory or needed to support or provide supplies to the Idaho National Laboratory;
- xxiii. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
- xxiv. Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities must operate under the following condition: childcare must be carried out in as small and stable groups as possible.
- xxv. Businesses that are able to operate via curbside services, drive in, drive through pick up, mailed services or delivery services. Businesses must continue to maintain Social Distancing Requirements as defined in 8.j for both customers and employees, including prohibiting any congregation of customers or employees in or around the place of business.

As explained in Section 8.k. below, this Order incorporates by reference CISA Guidance issued by the Cybersecurity and Infrastructure Security Agency of the United States Homeland Security on March 28, 2020.

- g. For the purposes of this Order, “**Minimum Basic Operations**” include the following, provided that employees comply with Social Distancing Requirements as defined in this Section, to the extent possible, while carrying out such operations:
 - i. The minimum necessary activities to maintain the value of the business’s inventory, ensure security, process payroll and employee benefits, or for related functions.
 - ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
 - iii. The minimum necessary activities to prepare the business to reopen at such time as deemed appropriate, including but not limited to, sanitization, obtaining personal protective equipment, and setting up procedures to ensure compliance with Social Distancing Requirements.

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR – 9**

- h. For the purposes of this Order, “**Essential Travel**” includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in Section 8.j.
 - i. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations.
 - ii. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.
 - iii. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.
 - iv. Travel to return to a place of residence from outside the jurisdiction.
 - v. Travel required by law enforcement or court order.
 - vi. Travel required for non-residents to return to their place of residence outside the State of Idaho. Individuals are strongly encouraged to verify that their transportation out of the State of Idaho remains available and functional prior to commencing such travel.
 - i. For purposes of this order, residences include hotels, motels, shared rental units, and similar facilities.
 - j. For purposes of this order “**Social Distancing Requirements**” includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.
 - k. This Order incorporates by reference the Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response issued by the Cybersecurity and Infrastructure Security Agency of the United States Department of Homeland Security on March 28, 2020. That guidance is located at <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>. This order also incorporates federal guidance from the Department of the Treasury and the Department of defense that are located at <https://home.treasury.gov/news/press-releases/sm956> and <https://media.defense.gov/2020/Mar/22/2002268024/-1/-1/1/DEFENSE-INDUSTRIAL-BASE-ESSENTIAL-CRITICAL-INFRASTRUCTURE-WORKFORCE-MEMO.PDF>
9. The Director requests that the Sheriff and the Chiefs of Police in the State of Idaho, and the Idaho State Police ensure compliance with and enforce this Order. The violation of any provision of this Order constitutes an imminent threat to public health.

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR – 10**

10. This Order shall become effective as of April 15, 2020 and will continue to be in effect until 11:59 p.m. on April 30, 2020 or until it is extended, rescinded, superseded, or amended in writing by the Director.
11. To decrease the spread of COVID-19, the cities, counties, and public health districts of the State of Idaho may enact more stringent public health orders than those set out in this Order.
12. This Self-Isolation Order supersedes and replaces the prior Self-Isolation Order I issued for Blaine County, Idaho on March 20, 2020, and for the entire State of Idaho on March 25, 2020.
13. Each county and each city must promptly provide copies of the Order as follows: (1) by posting the Order on its website, (2) by posting the Order at each county courthouse and each city hall, and (3) by providing a copy to any member of the public requesting it. The Order will also be posted on the website of the Department of Health and Welfare.
14. If any provision of this Order or its application to any person or circumstance is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:



DAVE JEPSEN, DIRECTOR
IDAHO DEPARTMENT OF HEALTH
AND WELFARE

Dated: April 15, 2020

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR – 11**

**NOTICE AND MOTION TO STAY PURSUANT TO F.R.C.P. 62(d) AND F.R.A.P. 8
EXHIBIT A
Page 18 of 18**

administration of elections in Ada County. This includes the verification of petition signatures.

3. The Elections division of my office strives to maintain open and cooperative communication with all parties involved the circulation of petitions. This includes the Plaintiff, Reclaim Idaho.

4. During all petition cycles, we work with circulators to balance the demands and deadlines related to verifying petitions with the demands and deadlines of conducting elections.

5. Ada County Elections has received approximately 940 petitions from Reclaim Idaho for the petition in question. Each of these petitions contain anywhere from one to twelve signatures needing review.

6. On April 6th, having seen media reports that Reclaim Idaho was ceasing its efforts to collect signatures, our Elections Director, Saul Seyler, contacted Reclaim Idaho to determine if signature verification was still being requested. Attached to this declaration are e-mails confirming this conversation from April 8th and 9th between Mr. Seyler and Ashley Prince, Field Director for Reclaim Idaho. As the e-mails indicate, Reclaim Idaho was aware of the extraordinary challenges our office is facing and confirmed that they were not asking us to validate the signatures we had received from their campaign.

7. Ada County relied in good faith on the phone conversation and e-mail exchange with Ms. Prince and has not validated the signatures on the petitions from Reclaim Idaho in advance of the June 30th deadline.

8. Conducting a fair, free, safe and accessible election is challenging anytime. Doing so during the current COVID-19 pandemic, has proven, and will continue to be extremely difficult. These challenges and risks have recently been highlighted by other states, specifically Georgia and Wisconsin, as they have recently struggled to conduct their primary elections.

9. In Idaho, the demand for mail ballots and the corresponding work has significantly increased because of the pandemic. Leading up to the State's recent May Primary election, I increased the elections staff from ten to forty in order to keep up with the demand. Recruiting poll workers and securing polling locations has also proven to be significantly more difficult because of the associated health risks related to the pandemic. Every indication is that all of these challenges will continue to exist through the August and November elections. I anticipate that our overall workload will nearly double for each of these elections due to the necessary changes caused by the pandemic. This is due to the requirement to maintain traditional polling places, while simultaneously conducting significant mail out voting and the addition of safety measures needed to protect public health in each.

10. The Plaintiffs' recent proposal to shorten the time for my office to verify petition signatures from sixty (60) days to twenty-one (21) days would be extremely difficult to achieve, particularly in the populous areas like Ada County. This burden is significantly increased by our reliance on the communication from Reclaim Idaho that we did not need to increase resources and personnel in order to verify the signatures they had previously provided us.

11. As mentioned in my initial declaration, we often struggle to meet the sixty day timeframe due to the sheer volume of signatures requiring review. Individually reviewing and comparing tens of thousands of anything takes considerable time and resources. This is true of reviewing signatures and looking up individuals to confirm they are actively registered to vote. The proposed alternatives for signature gathering will not significantly alter the time needed for review.

12. As stated previously, both the upcoming August and November elections are going to be extremely difficult to conduct without adding in the task of verifying initiative signatures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 23, 2020, I electronically filed the foregoing with the Clerk of the Court using the CMF/ECF system which sent a Notice of Electronic Filing to the following persons:

Deborah A. Ferguson
daf@fergusondurham.com

Craig H. Durham
chd@fergusondurham.com

/s/ Robert A. Berry

ROBERT A. BERRY
Deputy Attorney General

Phil McGrane

From: Saul Seyler
Sent: Monday, June 22, 2020 4:30 PM
To: Phil McGrane
Subject: FW: [EXTERNAL] Re: Hello There!

FYI



Saul H. Seyler, JD
Director
Ada County Elections
400 N. Benjamin Lane, #100
Boise, ID 83704
(208) 287-6851

From: Ashley Prince [mailto:ashlex.prince@gmail.com]
Sent: Thursday, April 9, 2020 9:16 AM
To: Saul Seyler
Subject: [EXTERNAL] Re: Hello There!

CAUTION: This email originated from outside Ada County email servers. Do not click on links or open attachments unless you recognize the sender and know the content is safe. Verify the sender by mouse-hovering over their display name in order to see the sender's full email address and confirm it is not suspicious. If you are unsure an email is safe, please report the email by using the 'Phish Alert' button in Outlook.

Hi Saul,

Thank you so much for following up! It looks like I had a typo in your email address when I sent my message. As we discussed, Reclaim Idaho has suspended its signature drive due to COVID-19. Due to the remaining time available to us per Idaho Election Code we will not be able to meet the deadline to qualify this petition for the 2020 ballot. Under the circumstances we are not asking the Ada County elections office to validate signatures you have received from our campaign.

Please let me know if you have any questions or need anything further

Ashley Prince
Reclaim Idaho Field Director
(208) 971-3000
reclaimidaho.org [reclaimidaho.org]

On Apr 8, 2020, at 5:21 PM, Saul Seyler <sseyler@adacounty.id.gov> wrote:

Hi Ashley,

Just circling back on our previous conversation about a letter saying that we here at Ada County do not need to complete finalization of verifying your petition signatures. Based on the conversation we had and your groups intent to no longer pursue this effort during this year, I would greatly appreciate this. As we discussed, we are up against some very unique circumstances that require a lot of internal resources and it would be great to take this off of our plate given the current environment. We obviously would continue to hold your paper copies of the petitions for pickup in the future either by you or another member of Reclaim.

Thanks so much and please let me know if I can provide you with anything to help this process along.

<image001.png> **Saul H. Seyler, JD**
Director
Ada County Elections
400 N. Benjamin Lane, #100
Boise, ID 83704
(208) 287-6851
Fax: (208) 287-6939

LAWRENCE G. WASDEN
ATTORNEY GENERAL

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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

RECLAIM IDAHO, an Idaho political action
committee, and LUKE MAYVILLE,

Plaintiff,

vs.

BRADLEY LITTLE, in his official capacity as
Governor of Idaho, and LAWRENCE DENNEY
his official capacity as Idaho Secretary of State,

Defendants.

)
) Case No. 1:20-cv-00268-BLW
)
)

**) SUPPLEMENTAL DECLARATION
) OF JASON HANCOCK IN SUPPORT
) OF DEFENDANTS
)**

I, JASON HANCOCK, declare as follows:

1. I am over the age of 18 years and competent to testify on the matters herein. I make this declaration based upon my own personal knowledge.

2. Plaintiffs' reference the ability over the last primary to request an absentee ballot electronically, but the reference does not identify the factors used to authenticate the identity of the requesting party.

3. The Secretary of State's Office used three non-public factors to authenticate the identity of the requesting party: date of birth; Idaho driver's license or identification number; and the last four digits of a person's social security number.

4. When individuals register to vote today, they are required to list their Idaho driver's license or identification number, or the last four digits of their social security number, but that has not always been the case.

5. In the past, individuals could register to vote simply by signing the voter registration form.

6. Voters with an older, signature-only voter registration form on file were unable to request their absentee ballot for the May 2020 primary election electronically, and had to use a signed, paper request form instead.

7. Notably, the electronic request for an absentee ballot did not alter the requirement that the outer envelope of the absentee ballot be signed by the voter and returned to the applicable county clerk.

8. Upon receipt of the absentee ballot, the county clerk would compare the signature with the signature on file, to ensure that they matched, and would also check to ensure that the voter was a registered voter.

9. The signature, therefore, was a required authenticating factor, regardless of how the absentee ballot was requested.

10. Using DocuSign in the way the Plaintiffs suggest would also raise issues for

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 23, 2020, I electronically filed the foregoing with the Clerk of the Court using the CMF/ECF system which sent a Notice of Electronic Filing to the following persons:

Deborah A. Ferguson
daf@fergusondurham.com

Craig H. Durham
chd@fergusondurham.com

/s/ Robert A. Berry

ROBERT A. BERRY
Deputy Attorney General

2. I am the Ada County Clerk and assumed office in 2019. Before becoming Ada County Clerk I served as the Chief Deputy Clerk from 2010 to 2019 and an Elections Deputy from 2005 - 2007. I hold a B.A. in philosophy from the University of Washington; a juris doctorate degree from the University of Denver; and a master of public administration degree from Boise State University.

3. I am charged with the supervision and administration of elections pursuant to I.C. §34-206.

4. Ada County elections is currently preparing for two upcoming elections. The first election is in August and the second election is the November General Election, which also is a presidential election.

5. Presidential general elections consistently see the largest turnout and as a result are difficult elections to prepare for. It takes an enormous amount of preparation and work to ensure the each election goes smoothly, and even more so due to Covid-19.

6. I understand that a request has been made to extend the deadline for a voter initiative sponsored by Reclaim Idaho.

7. The requested relief would be near impossible to achieve due to the limited time available between now and when ballots must be prepared and mailed for the November election.

8. As I understand the request, Reclaim Idaho is requesting an additional forty-eight days of relief in which it could continue to obtain signatures. If so, and assuming the Court rules on June 23, 2020, that would make the deadline to submit signatures August 10, 2020.

9. By statute, clerks have sixty days to verify the signatures following the submission of petitions. This time is essential to allow clerks adequate time to review and verify each signature. Under normal circumstances, I have to hire additional staff to complete the signature review

process within the sixty day timeframe. By statute the second half of the sixty day timeframe occurs during a period when our office is not conducting an election, which allows for the capacity to complete this task. Based on the requested relief, this would not occur during one of the most intensive preparation periods for our largest election in November.

10. It is a laborious process to verify the signatures submitted in support of an initiative. As part of the process, my staff looks to ensure that each signature is valid; that the signer is a registered voter; and that if a registered voter, the correct address was used. Based upon these three bases, approximately 30 to 40 percent of the signatures are typically rejected. This is a known fact to ballot initiative proponents and because of this, the volume of signatures submitted to meet the signature threshold will be much higher. This is also why all the time is needed to review the signatures submitted.

11. If the requested relief was granted on June 23rd and the deadline became August 10th, the statutory sixty days needed for clerks to review signatures would end on October 9, 2020, well after the deadlines to finalize, print and mail ballots for the November Election.

12. Under state and federal law, namely, the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), and in particular 52 U.S. Code § 20302, absentee ballots, if requested, must be mailed to those who requested them forty-five days in advance of the November Election in order to allow adequate time for ballots to travel to and from voters. The deadline for this November is September 21, 2020.

13. Due to current health concerns by voters, Ada County will see a record number of absentee ballot requests for this year’s November 3, 2020 general election. Ada County has already received approximately 100,000 requests for the November Election to date. These ballots will

need to be prepared, printed, and assembled for mailing prior to the September 21st deadline, which will take ten to fourteen days.

14. I would also note that the last day for any county clerk to print ballots is September 18, 2020 per Idaho Code § 34-1003.

15. I understand that as part of the relief requested is to use electronic signature gathering by DocuSign.

16. I have concerns regarding the use of DocuSign in this context as most my staff do not have experience using DocuSign. I imagine it would take time and training to learn and understand how DocuSign operates, but given preparations for the upcoming two elections that would be an undue burden. It also appears that the process may take additional time to review each signature.

17. When reviewing petition signatures, in addition to confirming registration, we also compare the signature on the petition to the signature on the voter's original registration card. The DocuSign example provided by the petitioner shows a signature being submitted that is not a signature that would match for a voter, but a signature that is computer generated and would not possibly match the signer's original signature on their registration card. Under our existing procedures, these signatures would then be rejected.

18. There are numerous practical and procedural challenges to the relief requested, most notably the time needed to complete all related requirements. The combination of the required tasks along with the requirements of conducting the August and November Elections makes this relief near impossible to complete.

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///

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 18, 2020, I electronically filed the foregoing with the Clerk of the Court using the CMF/ECF system which sent a Notice of Electronic Filing to the following persons:

Deborah A. Ferguson
daf@fergusondurham.com

Craig H. Durham
chd@fergusondurham.com

/s/ Robert A. Berry

ROBERT A. BERRY
Deputy Attorney General

2. I am currently employed with the Idaho Secretary of State as a Deputy Secretary of State.

3. As part of my work in the Idaho Secretary of State's office, I oversee and assist in the oversight of the elections division. I began this role on April 7, 2020.

4. Given my role in the Idaho Secretary of State's office, I have access to all of the documents that are filed with the Secretary of State, including initiative related documents.

5. Reclaim Idaho filed the initiative at issue here, "An initiative augmenting funding for K-12 education by increasing the individual and corporate income tax rates", referred to herein as "Invest in Idaho," with the Secretary of State by petition on August 30, 2019. After verification of the signatures on the petition, the Secretary of State transmitted the proposal to the Attorney General's office for review on September 4, 2019. The advisory review was completed and transmitted to the Secretary of State's office on September 24, 2019. The Secretary of State's office transmitted the same by email to Reclaim Idaho on the same day. On October 15, 2019, two copies of the Initiative were sent to the Attorney General's office for preparation of short and long ballot titles. The Attorney General's office transmitted short and long ballot titles to the Secretary on October 25, 2019, which were then transmitted along with a sample petition to Reclaim Idaho on the same date. At that time, Reclaim Idaho was legally able to start circulating the petition.

6. Rather than giving itself the full 18 months allowed by statute, Reclaim Idaho chose to seek to place the "Invest in Idaho" initiative on the ballot in November 2020, leaving itself only six and a half months between October 15, 2019 and April 30, 2020 to collect the necessary signatures.

7. All absentee ballots must be printed no later than September 14, 2020 and this deadline is driven by the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"),

and in particular 52 U.S. Code § 20302 and Directive 2015-1 issued by Secretary of State Lawrence Denney, a true and correct copy of which is attached hereto as Exhibit A. The reason for this requirement is so that ballots can be sent to those Idahoans living or serving overseas, to ensure their ability to vote. Further, pursuant to the UOCAVA and Directive 2015-1, absentee ballots, if requested, must be mailed by September 21, 2020 to those who request it.

8. In reviewing the requested extension by Reclaim Idaho, it would have severe repercussions to all of the deadlines leading up to the general election, upending the statutory scheme that governs initiative petitions. There would not be enough time for the county clerks to verify signatures by their deadline to print ballots, which is September 14, 2020 under Directive 2015-1. The Secretary of State also must provide sample ballots by September 7, 2020. These ballots contain, among other things, office titles, order of office, candidate names, ballot questions, and ballot layout. In order to provide these sample ballots to the county clerks, the Secretary of State usually begins preparing these in July and then would create pdf files for delivery by September 7, 2020.

9. In a normal election year, there is a period of approximately four and a half months from the time that signatures are turned in until ballots are printed. If the relief asked for by Reclaim Idaho is granted it would compress all of the steps necessary to ready the State for election into five weeks until ballots are printed. It would be unreasonable, unduly burdensome, and unachievable with the resources the state and county clerks have in place.

10. I also note that Reclaim Idaho wants to replace Idaho Code § 34-1807's in-person signature requirement and instead use a private out-of-state vendor with little to no ties to the electoral process in Idaho. There are a multitude of reasons why this is problematic.

11. The main issue is that the request to collect signatures electronically by a private

entity is a fundamental departure from Idaho law and its Constitution. The running of and integrity of government elections is the responsibility of the state and its counties.

12. There are serious transparency concerns in removing the signature verification role from the county clerks (as per I.C. 1802(3)) and giving it to an out-of-state, private vendor selected by plaintiffs, which would abrogate the statutory duties of the clerks in the verification process.

13. The suggestion to use DocuSign also overlooks the necessary component of in-person verification and changes the geographic scope of the initiative process from physical to virtual.

14. Volunteers would no longer be necessary in legislative districts and instead virtual contact from one central location could be used.

15. There no longer would be a “grass roots” component to any such campaign and there would be no opportunity for face-to-face interactions in legislative districts throughout the state. Instead it would be replaced with an impersonal, electronic process with minimal opportunity for questions, education, or explanation, resulting in a less informed petition-signer and electorate.

16. Idaho’s in person signature requirement is a part of Idaho’s statutory scheme to allow citizens to exercise their legislative powers in an effective, valid, and informed manner.

17. The circulator is an integral part of the scheme and the attesting affidavit helps verify that the person signing the petition indeed is the person signing, and in this way, helps to prevent fraud.

18. An important aspect of fraud prevention is that a circulator in Idaho, who is an Idaho resident aged 18 or over, would be subject to Idaho’s subpoena power, whereas DocuSign appears to be based in San Francisco, California, not Idaho.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 18, 2020, I electronically filed the foregoing with the Clerk of the Court using the CMF/ECF system which sent a Notice of Electronic Filing to the following persons:

Deborah A. Ferguson
daf@fergusondurham.com

Craig H. Durham
chd@fergusondurham.com

/s/ Robert A. Berry

ROBERT A. BERRY
Deputy Attorney General



STATE OF IDAHO
OFFICE OF THE SECRETARY OF STATE
LAWRENCE DENNEY

SECRETARY OF STATE DIRECTIVE
(Directive 2015-1)

In order to maintain uniformity in the application, operation and interpretation of the election laws of the State of Idaho, and to facilitate the absentee ballot process, pursuant to Section 34-202, Idaho Code, the Secretary of State, does hereby issue the following directive:

For a Primary and General Election held in an even numbered year, all absentee ballots shall be printed no later than fifty (50) days prior to the election. This directive is necessary to comply with the mailing requirement of section 34-1003(3), Idaho Code, which provides for a forty-five (45) day ballot transit time for absentee ballots where the absentee request was received at least forty-five (45) days before an election.

For all other elections, including special district elections held in odd numbered years, all absentee ballots shall be printed no later than forty (40) days prior to the election. This is necessary to allow for at least 30 days transit time of the absentee ballot to the voter and transit back from the voter. However, it is recommended that the County Clerk continue to strive to have absentee ballots mailed by the 45th day before any election to allow for transit to all voters requesting absentee ballots at least forty-five (45) days before an election.

LAWRENCE DENNEY
Secretary of State

Directive: 2015-1
Issued: October 2, 2015

P.O. Box 83720, Boise, Idaho 83720-0080
Elections Telephone: (208) 334-2852, FAX: (208) 334-2282
Located at 700 W Jefferson, Ste. E-205

DECLARATION OF HANCOCK

EXHIBIT A 7/17

Page 1 of 1

2. I am an Elections Compliance Specialist in the Office of the Idaho Secretary State of Idaho. I have been with the Office since November 2019.

3. On March 16, 2020, the Secretary of State's Office received an email at the general elections address, elections@sos.idaho.gov. The email was sent at 11:17 a.m. I responded to the email that same day at 2:12 p.m. A true and correct copy of email correspondence is attached as Exhibit A.

4. I had no further communications with Ms. Schroeder.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 17th day of June, 2020.

/s/ Sheryl Millard
SHERYL MILLARD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 18, 2020, I electronically filed the foregoing with the Clerk of the Court using the CMF/ECF system which sent a Notice of Electronic Filing to the following persons:

Deborah A. Ferguson
daf@fergusondurham.com

Craig H. Durham
chd@fergusondurham.com

/s/ Robert A. Berry

ROBERT A. BERRY
Deputy Attorney General

From: [Elections](#)
To: [Rebecca Schroeder](#)
Subject: RE: ***CoVid-19 and Idaho ballot initiative rights
Date: Monday, March 16, 2020 2:11:50 PM
Attachments: [image001.png](#)

Dear Rebecca,

Thank you and your fellow supporters for sharing your concern with us via email. While we understand the current situation we are in is unprecedented and can appreciate how the further efforts in attaining the remaining signatures for your petition will be complicated logistically, we are sorry to say that there is no statute allowing electronic signatures for petitions in Idaho Statutes 34 Chapter 18.

Sincerely,
Sheryl



Sheryl Millard
Elections Compliance Specialist
Office of the Secretary of State
Office: (208) 334-2852
Direct: (208) 332-2832
<https://sos.idaho.gov/>

From: Rebecca Schroeder <rebeccaschroeder4idaho@gmail.com>
Sent: Monday, March 16, 2020 11:17 AM
To: Elections <elections@sos.idaho.gov>
Subject: ***CoVid-19 and Idaho ballot initiative rights

Dear Mr. Denney,

We are faced with a global pandemic. Idahoans are responding by cancelling public events and dramatically reducing face-to-face interactions. This reality creates extraordinary obstacles for Idaho's ballot initiative process and the constitutional right of every Idahoan to participate in that process. Idaho's initiative qualification laws, which are among the strictest in the country, require tens of thousands of face-to-face interactions. In the interest of safeguarding the health of the public and protecting the constitutional rights of Idahoans, we are asking to authorize temporary online petitioning for Idaho ballot initiatives. The state of Idaho conducts much of our public business online, from voter registration to campaign finance documentation to the registration of new corporations. It is well within our capacity as a state to process petition signatures online. During these extraordinary times, online petitioning is the most effective way to protect public safety while maintaining the constitutional right of Idahoans to participate in the ballot initiative process. Please advise if this is within the realm of the SOS, or whether it would require Legislative or Executive action.

As the executive director of Reclaim Idaho, I have hundreds of volunteers (many retirees and "at risk" individuals) reaching out to me for guidance. At this point, electronic signature gathering is truly

DECLARATION OF MILLARD
EXHIBIT A
Page 1 of 2

the only safe path forward. Over 30K signatures have already been collected, and several districts have qualified with their 6% of voters. I understand that this is an extraordinary request--but we are obviously facing extraordinary times.

Sincerely,
Rebecca Schroeder
Reclaim Idaho executive director
208-660-9038

**DECLARATION OF MILLARD
EXHIBIT A
Page 2 of 2**

2. I am a Senior Advisor, Intergovernmental Affairs for the Office of the Governor. I have held this position since January 2019. I hold Bachelor of Arts and a Masters of Community and Regional Planning degrees from Boise State University.

3. I was contacted on March 16, 2020 by Rebecca Schroeder at 9:08 in the morning by email. I have attached a true and correct copy of this email, along with the rest of the emails I exchanged that morning with Ms. Schroeder as Exhibit A.

4. I had never spoken with Ms. Schroeder regarding Reclaim Idaho's "Invest in Idaho" initiative before this email correspondence. I have not been contacted by or communicated with Ms. Schroeder since March 16, 2020 regarding that initiative.

5. On March 16, 2020, the legislature was still in session. The 2020 legislative adjourned sine die on March 20, 2020.

6. The time leading up to the end of the 2020 legislative session was extraordinarily busy in the Governor's Office due to the demands of finishing the session and the need to ensure a thorough and effective response to the COVID-19 pandemic that was arising in Idaho at the time.

7. So far as I am aware, Ms. Schroeder did not contact anyone else within the Governor's staff.

8. Had she contacted the Governor's Office after the legislature finished its session, I believe her concerns would have been considered and she would have received a response.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 18, 2020, I electronically filed the foregoing with the Clerk of the Court using the CMF/ECF system which sent a Notice of Electronic Filing to the following persons:

Deborah A. Ferguson
daf@fergusondurham.com

Craig H. Durham
chd@fergusondurham.com

/s/ Robert A. Berry

ROBERT A. BERRY
Deputy Attorney General

From: [Andrew Mitzel](#)
To: [Brian Wonderlich](#)

Rebecca,

Given our intense focus on spending as much time and resources on protecting the health and safety of the broader population, the Governor's Office has no intention of taking executive action on this matter.

Andrew

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From: Rebecca Schroeder <rebeccaschroeder4idaho@gmail.com>
Sent: Monday, March 16, 2020 12:08:34 PM
To: Andrew Mitzel <Andrew.Mitzel@gov.idaho.gov>
Subject: Re: Ballot initiatives with CoVid-19

Dear Andrew,

The SOS has just informed us that a change to electronic signature gathering would require Executive or Legislative action. I understand that the Governor's office is very busy dealing with this crisis--but the SOS does not have jurisdiction to resolve this--and it absolutely falls under the realm of protecting wider public safety. We request a meeting or phone call about this urgent matter please.

Rebecca

On Mon, Mar 16, 2020 at 10:58 AM Andrew Mitzel <Andrew.Mitzel@gov.idaho.gov> wrote:

Rebecca,

We understand your concerns about the limitations that the current situation presents. The Secretary of State's office is actively working on ways to make the election process move forward in light of the concerns about spreading coronavirus, and your organization may benefit from using some of their ideas. The Governor's Office is intently focused on the health and safety of the broader population right now, and we are referring you to the Secretary of State's office to resolve these concerns.

Andrew

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From: Rebecca Schroeder <rebeccaschroeder4idaho@gmail.com>
Sent: Monday, March 16, 2020 11:24:00 AM
To: Andrew Mitzel <Andrew.Mitzel@gov.idaho.gov>
Subject: Re: Ballot initiatives with CoVid-19

Hey Andrew,

**DECLARATION OF MITZEL
EXHIBIT A
Page 1 of 3**

We have been simultaneously consulting with the SOS office. They advised us that it would take a Legislative or Executive action to extend the signature deadline. We have communicated with them about **electronic signature gathering (the only safe method at this point)** also, and await their response. I hope that if Executive action is required--that Governor Little would consider a meeting with one of us. I know you all are bombarded with trying to deal with this crisis...we are doing the same. Hundreds of volunteers have put their hearts into this effort. We understand that this is an extraordinary request--but we are certainly in extraordinary times.

Thanks Andrew,
Rebecca

On Mon, Mar 16, 2020 at 9:04 AM Andrew Mitzel <Andrew.Mitzel@gov.idaho.gov> wrote:

Rebecca,

Thanks for reaching out. I would encourage you to reach out to the Secretary of States office with your concerns regarding ballot initiatives as they oversee that process.

Andrew

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From: Rebecca Schroeder <rebeccaschroeder4idaho@gmail.com>

Sent: Monday, March 16, 2020 9:02:08 AM

To: Andrew Mitzel <Andrew.Mitzel@gov.idaho.gov>

Subject: Ballot initiatives with CoVid-19

Dear Andrew,

As you know, we are facing the unprecedented circumstances of a public health crisis. Volunteers around the state have been working for months collecting signatures for the citizen ballot initiative to increase funds to Idaho K-12 schools. Collecting signatures face-to-face puts both volunteers and the general public at risk, and goes against the guidelines that we are hearing from public health officials.

The result is that **Idahoans are no longer able to exercise their constitutional right to bring forward a ballot initiative.** Please give Reclaim Idaho co-founder Luke Mayville the opportunity to meet with the Governor about the safest way to move forward with our ballot initiative. We have already collected over 30K signatures, and were well on our way to qualifying the initiative. Hundreds of volunteers have already put in hundreds of hours. Along with the Governor, our priority is the health and safety of our Idaho communities. This extraordinary situation requires action by the Governor to ensure the public safety is maintained while we exercise our Constitutional rights.

Sincerest thanks,
Rebecca Schroeder
208-660-9038

Andrew Mitzel

Senior Advisor, Intergovernmental Affairs | Office of the Governor
phone: 208-854-3025

**DECLARATION OF MITZEL
EXHIBIT A
Page 2 of 3**

mobile: 208-695-5440

email: Andrew.mitzel@gov.idaho.gov

Deborah A. Ferguson
Craig H. Durham
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chd@fergusondurham.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RECLAIM IDAHO, an Idaho Political
Action Committee; **LUKE MAYVILLE**

Plaintiffs,

v.

BRADLEY LITTLE, in his official
capacity as Governor of Idaho;
LAWRENCE DENNEY, in his official
capacity as Idaho Secretary of State;
Defendants.

Case No. 1:20-cv-00268-BLW

**DECLARATION OF LUKE
MAYVILLE IN SUPPORT
OF MOTION FOR
PRELIMINARY
INJUNCTION**

I, Luke Mayville, having first been duly sworn upon oath, declare as follows:

1. My name is Luke Mayville, and I am a Co-founder of Reclaim Idaho, the other plaintiff in this case.
2. I have served as a volunteer leader and organizer for Reclaim Idaho since spring 2017, when I co-founded the organization in my hometown of Sandpoint. My role with Reclaim Idaho

includes setting strategic priorities for the organization, fundraising, communicating with media, writing opinion columns, drafting initiative proposals, and traveling the state to recruit volunteers and leaders. I am an academic by training and was most recently employed by Columbia University as a postdoctoral fellow and lecturer in the fields of History and American Studies. I have also held teaching and research positions at Yale University and American University. In 2016, I published a book on the political thought of President John Adams.

3. Reclaim Idaho is a grassroots movement designed to protect and improve the quality of life of working Idahoans. Reclaim organizes to pass citizens' initiatives and to elect candidates who believe in strengthening public schools, protecting public lands, and extending healthcare to working families.

4. Reclaim filed an "Invest in Idaho" K-12 educational funding initiative with the Secretary of State in the fall of 2019. If put on the ballot and passed, this initiative would invest \$170 million in education in Idaho.

5. Reclaim was operating on the model of organizing that it had successfully used during the Medicaid expansion drive, a model of organizing we had begun to develop in 2017.

6. That year, we filed a Medicaid Expansion initiative—a proposal that eventually qualified for the ballot with well over the 56,000 signatures required. Several additional advocacy groups contributed to signature collection in the final months of petitioning, but the vast majority of required signatures were collected by Reclaim Idaho volunteers.

7. Moreover, Reclaim Idaho volunteers easily surpassed Idaho's requirements for geographic distribution by collecting signatures from more than 6% of registered voters in well over 18 of Idaho's 35 legislative districts.

8. We attribute the success of our Medicaid signature drive to a highly effective and labor intensive model of organizing.

9. In the early stages of the effort, members of our statewide team visited over 20 counties and worked to recruit volunteers and organize those volunteers into county-based teams. This method of organizing didn't yield large numbers of signatures during the early months of the drive, but it did build strong, well-trained teams capable of scaling up the operation exponentially during the final few months before the deadline.

10. By mid-March, with just six weeks left before the deadline, we had collected fewer than half of the required signatures. But we were able to accelerate the rate of signature collection rapidly in the final weeks.

11. One factor in particular contributed to our ability to ramp up signature collection in the final stretch: the sense of urgency brought about by the impending deadline. With the deadline looming, our most active volunteers grew more committed and more efficient in their work, and hundreds of new volunteers joined the effort for the first time. (The motivating effects of the looming deadline was compounded by changing weather. In the final stretch, just as volunteers were growing more motivated, the weather warmed up and enabled them to collect signatures much more effectively.)

12. In my own observations and studies of different signature-drive models, I have found that the motivating effect of a looming deadline is especially important for grassroots drives that rely mainly on volunteers. When signature drives rely mainly on paid-signature gatherers, the final stretch of a signature drive is not much different than the early months. Throughout the drive, petitioners are motivated by the wages they earn. In contrast, grassroots campaigns stand to

benefit enormously from the highly motivating sense of urgency that kicks in during the final stretch of time before a deadline.

13. The model of organizing we developed during our Medicaid drive prepared us well to capitalize on the sense of urgency during the final weeks of the effort. By investing time and resources during the early months in volunteer-recruitment and team-building, we were well-poised in the final stretch to absorb hundreds of new volunteers and scale up our work dramatically.

14. When we began the signature drive for our “Invest in Idaho” K-12 funding initiative, we made every effort to replicate the success of our Medicaid drive. Beginning in September 2019—over one month before our petition was approved for circulation by the Idaho Secretary of State, organizers visited counties in every region. They recruited volunteers, organized them into county-based teams, and trained them with effective signature-gathering tactics.

15. Our rate of signature collection was low during the first several months, comparable to what it had been during our Medicaid signature drive. By February 15th, we had collected an estimated 15,000 signatures—roughly one quarter of the signatures needed to qualify the initiative.

16. But in the weeks that followed, as the deadline began to loom on the horizon, our rate of signature collection accelerated dramatically. Our most active volunteers grew even more committed and efficient in their work. Hundreds of new volunteers were motivated by the impending deadline to join the effort.

17. During the four weeks between mid-February and March 12th, we more than doubled our total number of signatures from 15,000 to over 30,000. We progressed from zero legislative

districts qualified to 5 districts qualified and 7 additional districts within a few hundred signatures of qualification.

18. On March 12th, the day before the first case of COVID-19 was confirmed in Idaho, we were significantly ahead of where we had been by that same date during our Medicaid drive two years earlier.

19. On March 13th, the first case of COVID-19 was confirmed in Idaho and Governor Little declared a state of emergency in order to prevent the spread of the coronavirus. It was on that date that it became apparent to our team that we would need to take significant steps to adapt to changing circumstances.

20. On that same day, we sent an email newsletter to all supporters with the following guidelines:

- *Stay home if you are exhibiting any symptoms of illness.*
- *Avoid approaching anyone that is symptomatic of illness for a signature.*
- *Practice excellent hand hygiene before and after collecting signatures. Carry a small bottle of hand sanitizer if possible.*
- *Wipe down clipboards before and after a signature gathering shift.*
- *Avoid shaking hands or direct physical contact when collecting signatures.*
- *We recommend adopting a “KEEP THE PEN” policy. In an effort to reduce transmission of germs, volunteers should carry packages of “disposable” pens. If the signer doesn’t have a pen of their own, simply allow them to keep the pen. Our campaign is committed to providing pens and/or reimbursing volunteers for the cost of pens.*

21. We also notified volunteers that we would be transitioning toward more outdoor signature-collection activities, considering that staying outdoors would reduce the risk of the airborne spread of germs.

22. That week, the CDC issued guidelines for individual and community organizations operating under conditions of “minimal to moderate” spread of COVID-19. Those guidelines included:

- Reduction of in-person activities, especially for organizations with individuals at increased risk of severe illness
- Cancellation of large gatherings of 250 or more people
- Implementation of personal protection measures such as staying home when sick, handwashing respiratory etiquette, and cleaning frequently touched surfaces daily

23. Over the next five days, between March 13th and March 18th, we observed a dramatic escalation of the public health risk. Relevant developments during those days included:

24. On the evening of Friday, March 13th, we received an email from retired Idaho appellate Judge Karen Lansing—one of our most active and committed volunteers—notifying us that she was suspending her efforts to gather signatures. She wrote:

I feel that my commitment and desire to gather signatures for this critical initiative directly conflicts with my obligation as a citizen to practice social distancing to protect my fellow Idahoans. I appreciate the suggestion that use of disposable pens and frequent cleaning of clipboards would reduce the risk of disease transmission. Those measures undoubtedly would help, but it is not possible for anyone to sign the petition without touching the page as they write, so it seems to me that the risk substantially remains. As important as the initiative is, I reluctantly conclude that it is outweighed by my responsibility to avoid possibly putting others at risk.

Judge Lansing’s email was the first of many similar messages sent to us from volunteers from all around the state.

25. Guidelines from the CDC and other public health authorities made clear that the health risk posed by the coronavirus was especially severe for older adults. This fact weighed heavily on our decision-making, considering that the majority of Reclaim Idaho’s most active volunteers are retirees over the age of 60.

26. On Saturday, March 14th, Meridian Library District announced that all libraries were closing operations due to the coronavirus. Likewise, the City of Boise closed all libraries on Monday, March 16th, and in subsequent weeks libraries would close across the state. On Tuesday, March 17th, DMV offices closed in Ada and Canyon counties. This was highly significant because libraries and DMVs had proven to be the most promising public locations for volunteers to collect signatures.

27. On Sunday, March 15th, the CDC recommended cancellation or postponement of all gatherings of 50 or more. Most dramatically, the CDC also began recommending a six-foot “social distancing” rule which quickly became a widespread norm of behavior.

28. As I would later explain in an April 9th interview with *CityLab*¹, our organization struggled over those five days to adapt to rapidly changing circumstances. As a last resort, we considered setting up “drive-through” signature collection stations. (We had recently learned that the Save Our Schools Arizona initiative—an initiative that would eventually suspend operations due to the pandemic—was experimenting with drive-through signature-gathering). But it quickly became clear that in-person signature gathering of any kind was simply too hazardous in the midst of a deadly pandemic. The announcement of the six-foot rule made this especially clear.

29. As I would later explain in my interview with *CityLab* :

We were trying to adapt with the guidelines as they grew more and more stringent...But once the six-foot rule settled in, it just became impractical. It also became clear at that

¹ CityLab describes itself on its web site as “a partnership between Bloomberg Philanthropies, the Aspen Institute and The Atlantic, CityLab is the preeminent meeting of city leaders and the top minds in urbanism and city planning, economics, education, art, architecture, public sector innovation, community development, and business — convened with the goal of creating scalable solutions to major challenges faced by cities everywhere.”

point that any continuation of a signature drive would put volunteers and the wider public at risk.

30. On Monday, March 16th, having concluded that in-person signature gathering would be too great a public health risk, we decided to appeal to Governor Brad Little with a request for the authorization of electronic signature gathering. We sent an email newsletter inviting supporters to sign our online petition to the Governor.

31. The text of the newsletter included the following:

This pandemic is obstructing the ability of every Idahoan to participate in the ballot initiative process...In the interest of safeguarding the health of the public and protecting the constitutional rights of Idahoans, we're calling on Governor Brad Little to exercise his executive powers to authorize temporary online petitioning for Idaho ballot initiatives.

32. As soon as supporters signed the petition online, they were then prompted with an opportunity to email the Governor's office and ask the Governor to authorize electronic signature collection.

33. That same day, Reclaim Idaho Executive Director Rebecca Schroeder corresponded via email with Andrew Mitzel, a member of the Governor's staff. When Mitzel directed Schroeder and Reclaim Idaho to bring our request for electronic signature capabilities to the Idaho Secretary of State, Schroeder immediately made contact via email with the Secretary of State's office. The Secretary of State's office then claimed, in reply, that "there is no statute allowing electronic signatures for petitions in Idaho Statutes 34 Chapter 18," and that they were therefore unable to take action. When Schroeder then brought this information to Mitzel and the Governor's office, Mitzel replied as follow:

Given our intense focus on spending as much time and resources on protecting the health and safety of the broader population, the Governor's Office has no intention of taking executive action on this matter.

34. Later that day, in a public statement given to BSU Public Radio, the Governor's Press Secretary Marissa Morrison Hyer said "Idaho statute does not allow for the suspension of rules regarding the physical collection of signatures, even in times of emergency."

35. Upon learning that the Governor did not intend to take action, we made one last attempt to save the signature drive. I contacted Representative John Gannon and asked him to propose legislation in the Idaho House of Representatives that would temporarily adjust Idaho's ballot initiative rules. The following day, Rep. Gannon reported to me that he shared a legislative proposal with at least one member of majority leadership, but that he was unable to find support for the bill. In his judgment, there was no legislative path forward for the proposal.

36. By Wednesday, March 18th, we determined that we had exhausted all avenues of action. Neither the Governor, the Secretary of State, nor the Legislature were willing to take action, and there were no available tactics for collecting in-person signatures while also preserving the safety of our volunteers and the wider public.

37. That morning, we sent the following message to our supporters via email newsletter and social media:

After carefully reviewing the latest recommendations of public health authorities, we have concluded that it is no longer safe for volunteers to engage in the face-to-face interactions that are necessary for effective signature gathering. In order to protect the health of our volunteers and the wider public, we are calling on all Reclaim Idaho volunteers to suspend signature collection until further notice.

We do not make this decision lightly. Tragically, the coronavirus pandemic brought our signature drive to a standstill at the exact moment when we'd built our strongest momentum. Thanks to the hard work of volunteers across the state during the past month, our campaign cleared 30,000 signatures—more than we'd collected at this stage of the Medicaid Expansion campaign.

But health and safety must come first. There is simply too much at risk to take chances.

38. Governor Little's proclamation of a stay-at-home order was issued on March 25th. That order remains in partial effect today and remained in full effect through April 30th, which coincidentally was the final day before the official signature-gathering deadline on May 1st.

39. Our decision to suspend operations was based on our assessment of the risks of signature gathering in the midst of a pandemic.

40. The stay-at-home order exacerbated the risk and made signature-gathering impossible.

41. Reclaim Idaho has invested time in developing a model for an online signature-collection plan that will allow the initiative campaign to obtain sufficient and verifiable signatures of Idaho electors. Our plan will enable the county clerk offices to verify electronic signatures in a process that closely resembles the normal verification process. In order to reduce the burden on county clerks, we plan to submit all signatures currently in our possession that have not yet been verified in order to give county clerks time to process these signatures prior to the time period when electronic signatures will need to be processed. We estimate this total amount to be approximately 20,000 signatures.

42. Moreover, our plan will not impose significant additional burdens on the Idaho Secretary of State. The following email, sent to me by Deputy Secretary of State Jason Hancock on Wednesday, June 3rd, clarifies that the Secretary of State is not involved in verifying the validity of signatures, but only in counting them in order to determine whether the petition includes the requisite number of signatures statewide and the requisite number of signatures in 18 districts:

Since the county clerks, individually, are not in a position to know whether or not the petition includes the requisite number of valid signatures statewide, or the requisite number of valid signatures in at least 18 legislative districts, these tasks are performed by the Secretary of State after the various county clerks submit their reports showing the signatures that were submitted to them that they were able to verify.

43. Furthermore, we are prepared to reduce the additional burden on the Secretary of State by immediately providing them with 10,593 signatures that have been verified already by county clerks.

44. Attached to this affidavit are slides that show how the electronic signature process would work. It will be under a contract with DocuSign, the country's leading company for execution of electronic signatures on legal documents.

45. Regarding the reliability of DocuSign as a system for collecting authentic signatures, the following information has been published by DocuSign, Inc.:

- In 2017, DocuSign was officially certified by the Federal Risk and Authorization Management Program (FedRAMP), a government-wide service that vets technology providers for security and risk. DocuSign is now used by 800 federal, state, and local government agencies, including the Federal Communications Commission (FCC), the state of North Carolina, the Nevada Department of Transportation, and 400 California cities.
- DocuSign is used by Fortune 500 companies and global financial institutions including T-Mobile, Apple, Aetna, VISA, and Prudential Financial.
- More than 775,000 documents are signed using DocuSign each day, yet only in 2-3 instances have DocuSign documents been challenged in court. DocuSign maintains a court admissible certificate of completion that provides proof of the signing process – including who signed what, when and where – for all parties in the transaction. A DocuSign electronic signature is more enforceable than a wet signature because of the court-admissible evidence it contains.
- Unlike wet signatures, e-signatures also come with an electronic record that serves as an audit trail and proof of the transaction. The audit trail includes the history of actions taken with the document, including the details of when it was opened, viewed and signed. Depending on the provider, and if the signer agreed to allow access to their location, the record will also show the geolocation where it was signed. If one of the signers disputes their signature, or if there's any question about the transaction, this audit trail is available to all participants in the transaction and can resolve such objections.
- As an additional layer of authentication, DocuSign signatures include certificates of completion, which can include specific details about each signer on the document, including the consumer disclosure indicating the signer agreed to use e-signature, the signature image, key event timestamps and the signer's IP address and other identifying information.

- Once the signing process is complete, all documents are digitally sealed using Public Key Infrastructure (PKI), an industry-standard technology. This seal indicates the electronic signature is valid and that the document hasn't been tampered with or altered since the date of signing.

46. Working with DocuSign, Reclaim Idaho has developed a plan to comply with Idaho's requirements for state initiative petitions, with additional safeguards to ensure that signatures are those of the persons whom they purport to be. The model will work as follows:

- Reclaim Idaho will establish a dedicated website for on-line signature collection.
- The landing page will ask for support to place the issue on the ballot to increase funding for K-12 education. The page will provide a link for the person to read the full text. It will notify persons that only Idaho registered voters are permitted to sign.
- If the person elects to proceed, they will enter their name, voter registration address, city or zip code, the last 4 digits of their social security number, and their email address.
- They will hit 'next' and be directed to a PDF of the petition that looks exactly like the paper version except that: 1. It will have only one signature line, 2. It will have fields for the last 4 digits of their SSN and the county where the elector resides, and 3. The circulator statement will have additional wording due to the on-line nature. All of the fields will populate from the information provided by the person on the prior page and they will be asked to confirm the information and authorize the placing of their signature on the petition. If they do, a cursive version of their signature will be affixed to the signature field or they can choose to draw their own signature electronically. Either way, the signature is legally binding, complying with the ESIGN Act. The document will be a self-contained single signature complete part-petition.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON this 5th day of June 2020.

/s/Luke Mayville

SIGN OUR OFFICIAL PETITION TO INCREASE FUNDING FOR K-12 EDUCATION. IT ONLY TAKES A COUPLE OF MINUTES.

DUE TO COVID-19, WE ARE COLLECTING SIGNATURES ELECTRONICALLY TO QUALIFY OUR K-12 INITIATIVE FOR THE BALLOT, AND WE NEED YOUR HELP!

PLEASE FILL OUT THE FORM BELOW. AFTER YOU FILL OUT THE FORM, YOU WILL BE REDIRECTED TO A SITE WHERE YOU WILL SIGN THE OFFICIAL PETITION.

Name *

First Name Last Name

Street Address *
Where you're registered to vote

City or Zip Code *

Date *

County *

Last 4 Digits of SSN
This helps the county confirm your identity to verify your signature.

Email *

I AM A REGISTERED IDAHO VOTER AND I WANT TO SIGN THE PETITION TO INCREASE FUNDING FOR K-12 EDUCATION

Please read the Electronic Record and Signature Disclosure. I agree to use electronic records and signatures. **CONTINUE** **OTHER ACTIONS**

To the Honorable Lawrence Denney, Secretary of State of the State of Idaho:

"We the undersigned citizens and qualified electors of the State of Idaho, respectfully demand the following proposed law, effective January 1, 2021 to wit:

AN INITIATIVE AUGMENTING FUNDING FOR K-12 EDUCATION BY INCREASING THE INDIVIDUAL AND CORPORATE INCOME TAX RATES.

AN INITIATIVE RELATING TO EDUCATION AND TAXATION; AMENDING TITLE 33, CHAPTER 9, IDAHO CODE WITH THE ADDITION OF A NEW SECTION CREATING A SUPPLEMENTAL FUND TITLED THE QUALITY EDUCATION FUND TO BE UTILIZED BY THE STATE BOARD OF EDUCATION FOR THE BETTERMENT OF K-12 PUBLIC SCHOOLS, PROVIDING THAT FUNDS BE DISTRIBUTED EACH YEAR BY AUGUST 31 TO SCHOOL DISTRICTS AND PUBLIC CHARTER SCHOOLS, AND DIRECTING THE STATE BOARD OF EDUCATION TO PROMULGATE IMPLEMENTING RULES; AMENDING TITLE 63, CHAPTER 30, IDAHO CODE BY MODIFYING THE SEVENTH INDIVIDUAL INCOME TAX BRACKET, CREATING AN EIGHTH BRACKET FOR TAXABLE INCOME IN EXCESS OF \$250,000, TAXING INCOME IN THE EIGHTH BRACKET AT THE TAX RATE OF 9.925%, INCREASING THE CORPORATE INCOME TAX RATE TO 8%, AND DISTRIBUTING REVENUE COLLECTED AS A RESULT OF THE INCREASED RATES TO THE NEWLY CREATED QUALITY EDUCATION FUND; DECLARING THE ACT EFFECTIVE JANUARY 1, 2021; AND PROVIDING FOR SEVERABILITY.

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Be It Enacted by the people of the State of Idaho:

SECTION 1. That Section 63-3024, Idaho Code, be and the same is hereby amended to read as follows:

63-3024. INDIVIDUALS' TAX AND TAX ON ESTATES AND TRUSTS. For taxable year 2001, and each taxable year thereafter, a tax measured by Idaho taxable income as defined in this chapter is hereby imposed upon every individual, trust, or estate required by this chapter to file a return.

(a) The tax imposed upon individuals, trusts and estates shall be computed at the following rates:

When Idaho taxable income is: The rate is:

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WARNING

It is a felony for anyone to sign any initiative or referendum petition with any name other than his own, or to knowingly sign his name more than once for the measure, or to sign such petition when he is not a qualified elector.

INITIATIVE PETITION

To the Honorable Lawrence Denney, Secretary of State of the State of Idaho:

"We the undersigned citizens and qualified electors of the State of Idaho, respectfully demand the following proposed law, effective January 1, 2021 to wit:

AN INITIATIVE AUGMENTING FUNDING FOR K-12 EDUCATION BY INCREASING THE INDIVIDUAL AND CORPORATE INCOME TAX RATES.

AN INITIATIVE RELATING TO EDUCATION AND TAXATION; AMENDING TITLE 33, CHAPTER 9, IDAHO CODE WITH THE ADDITION OF A NEW SECTION CREATING A SUPPLEMENTAL FUND TITLED THE QUALITY EDUCATION FUND TO BE UTILIZED BY THE STATE BOARD OF EDUCATION FOR THE BETTERMENT OF K-12 PUBLIC SCHOOLS, PROVIDING THAT FUNDS BE DISTRIBUTED EACH YEAR BY AUGUST 31 TO SCHOOL DISTRICTS AND PUBLIC CHARTER SCHOOLS, AND DIRECTING THE STATE BOARD OF EDUCATION TO PROMULGATE IMPLEMENTING RULES; AMENDING TITLE 63, CHAPTER 30, IDAHO CODE BY MODIFYING THE SEVENTH INDIVIDUAL INCOME TAX BRACKET, CREATING AN EIGHTH BRACKET FOR TAXABLE INCOME IN EXCESS OF \$250,000, TAXING INCOME IN THE EIGHTH BRACKET AT THE TAX RATE OF 9.925%, INCREASING THE CORPORATE INCOME TAX RATE TO 8%, AND DISTRIBUTING REVENUE COLLECTED AS A RESULT OF THE INCREASED RATES TO THE NEWLY CREATED QUALITY EDUCATION FUND; DECLARING THE ACT EFFECTIVE JANUARY 1, 2021; AND PROVIDING FOR SEVERABILITY.

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Be It Enacted by the people of the State of Idaho:

SECTION 1. That Section 63-3024, Idaho Code, be and the same is hereby amended to read as follows:

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in the brackets above to arrive at that year's Idaho taxable income for tax bracket purposes. For the \$250,000 and over bracket contained in subsection (a) of this section, the state tax commission shall provide an adjustment factor for the bracket amount by multiplying the bracket amount by the percentage (the consumer price index for the calendar year immediately preceding the calendar year to which the adjusted bracket will apply divided by the consumer price index for calendar year 2022).

(b) In case a joint return is filed by husband and wife pursuant to the provisions of section 63-3031, Idaho Code, the tax imposed by this section shall be twice the tax which would be imposed on one-half (1/2) of the aggregate Idaho taxable income. For the purposes of this section, a return of a surviving spouse, as defined in section 2(a) of the Internal Revenue Code, and a head of household, as defined in section 2(b) of the Internal Revenue Code, shall be treated as a joint return and the tax imposed shall be twice the tax which would be imposed on one-half (1/2) of the Idaho taxable income.

(c) In the case of a trust that is an electing small business trust as defined in section 1361 of the Internal Revenue Code, the special rules for taxation of such trusts contained in section 641 of the Internal Revenue Code shall apply except that the maximum individual rate provided in this section shall apply in computing tax due under this chapter.

(d) The state tax commission shall compute and publish Idaho income tax liability for taxpayers at the midpoint of each bracket of Idaho taxable income in fifty dollar (\$50.00) steps to fifty thousand dollars (\$50,000), rounding such calculations to the nearest dollar. Taxpayers having income within such brackets shall file returns based upon and pay taxes according to the schedule thus established. The state tax commission shall promulgate rules defining the conditions upon which such returns shall be filed.

SECTION 2. That Section 63-3025, Idaho Code, be and the same is hereby amended to read as follows:

63-3025. TAX ON CORPORATE INCOME. (1) For taxable years commencing on and after January 1, 2001, a tax is hereby imposed on the Idaho taxable income of a corporation, other than an S corporation, which is authorized or authorized to transact business in this state or which has income attributable to this state. The tax shall be equal to eight percent (8%) of Idaho taxable income.

(2) In the case of an S corporation that is required to file a return under section 63-3030, Idaho Code, a tax is hereby imposed at the rate provided in subsection (1) of this section upon both:

(a) Net recognized built-in gain attributable to this state. The amount of net recognized built-in gain attributable to this state shall be computed in accordance with section 1374 of the Internal Revenue Code subject to the apportionment and allocation provisions of section 63-3027, Idaho Code.

(b) Excess net passive income attributable to this state. The amount of excess net passive income attributable to this state shall be computed in accordance with section 1375 of the Internal Revenue Code subject to the apportionment and allocation provisions of section 63-3027, Idaho Code.

(3) The tax imposed by subsection (1) or (2) of this section shall not be less than twenty dollars (\$20.00); provided further that the twenty dollar (\$20.00) minimum payment shall not be collected from nonproductive mining corporations.

(4) The tax imposed by this section shall not apply to corporations taxed pursuant to the provisions of section 63-3025a, Idaho Code.

SECTION 3. That Section 63-3067, Idaho Code, be and the same is hereby amended to read as follows:

63-3067. REVENUE RECEIVED - STATE REFUND ACCOUNT. (1) A sum equal to the amount withheld under section 63-3035a, Idaho Code, shall be distributed fifty percent (50%) to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system, and fifty percent (50%) shall be distributed to the counties to be utilized for county juvenile probation services. These funds shall be distributed

quarterly to the counties based upon the percentage the population of the county

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quarterly to the counties based upon the percentage the population of the county

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quarterly to the counties based upon the percentage the population of the county

as a whole.

(2) All moneys except as provided in subsection (1) of this section, and except as hereinafter provided, received by the state of Idaho under this act shall be deposited by the state tax commission, as received by it, with the state treasurer and shall be placed in and become a part of the general account under the custody of the state treasurer. Providing however, that certain amounts collected under chapter 30, title 63, Idaho Code, will be distributed to the quality education fund created in section 33-911, Idaho Code, as follows: from each single individual or married individual filing separately reporting Idaho taxable income that equals or exceeds the highest tax bracket starting figure, including any inflation adjustment provided in section 63-3024(a), Idaho Code, thirty percent (30%) of the amounts collected; and from corporations reporting Idaho taxable income or income attributable to this state, thirteen percent (13%) of the amounts collected. For purposes of the preceding sentence, "amounts collected" means the tax imposed by section 63-3024, 63-3025, or 63-3025a, Idaho Code, as adjusted for tax credits against such tax, plus any interest, penalty, and other additions to such tax, except for the section 63-3082, Idaho Code, additional tax; provided that, such other additions are interest, tax, or recapture of a tax imposed by chapter 30, title 63, Idaho Code. For individuals, the "amounts collected" determination is reduced, but not below zero (0), by the tax adjustment base amount for the highest tax bracket contained in section 63-3024(a), Idaho Code, and for individuals treated as filing a joint return, two (2) times the tax adjustment base amount for the highest tax bracket. Providing however, that an amount equal to twenty percent (20%) of the amount deposited with the state treasurer shall be placed in the "state refund account" which is hereby created for the purpose of repaying overpayments and for the purpose of paying any other erroneous receipts illegally assessed or collected, penalties collected without authority and taxes and licenses unjustly assessed, collected or which are excessive in amount. Whenever necessary for the purpose of making prompt payment of refunds, the board of examiners, upon request from the state tax commission, and after review, may authorize the state tax commission to transfer any additional specific amount from income tax collections to the "state refund account." There is appropriated out of the state refund account so much thereof as may be necessary for the payment of the refunds herein provided. Claims for, and payment of refunds under the provisions of this section shall be made in the same manner as other claims against the state of Idaho.

(3) Any unencumbered balance remaining in the state refund account on June 30 of each and every year in excess of the sum of one million five hundred thousand dollars (\$1,500,000) shall be transferred to the general fund and the state controller is hereby authorized and directed on such dates to make such transfers unless the board of examiners, which is hereby authorized to do so, changes the date of transfer or sum to be transferred.

SECTION 4. That Chapter 9, title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION to be known and designated as Section 33-911, Idaho Code, and to read as follows:

33-911. QUALITY EDUCATION FUND—RULEMAKING-DEFINITIONS. (1) There is hereby created in the state treasury a fund to be known as the quality education fund. The fund shall consist of moneys made available through legislative transfers or appropriations, from the sales tax account, from the state income tax, the state franchise tax, and from any other governmental or private sources. Interest earned from investment of idle moneys in the fund shall be returned to the fund. Moneys in the fund are continuously appropriated and shall be expended by the state board of education to invest in betterment of public schools in Idaho to achieve the following goals: Reducing class sizes and preventing class size increases; attracting and retaining highly qualified teachers and support staff, including but not limited to, providing competitive salaries; offering continuing education opportunities; and providing support for new educators; providing current and adequate classroom materials, such as textbooks and supplies for students; providing full day kindergarten; providing career technical education; providing art, music and drama programs; and providing special education services.

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(2) By not later than August 31, moneys in the fund pursuant to the distribution provided in subsection (1) of this section, and interest earned thereon, shall be distributed to each of the several school districts and public

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(2) By not later than August 31, moneys in the fund pursuant to the distribution of moneys provided in subsection (1) of this section, and interest earned thereon, shall be distributed to each of the several school districts and public charter schools, in the proportion that the average daily attendance of that district or public charter school for the previous school year bears to the total average daily attendance of the state during the previous school year. For the purposes of this subsection (2) only, the Idaho school for the deaf and the blind shall be considered a school district and shall receive a distribution based upon the average daily attendance of the school. Average daily attendance shall be calculated as provided in section 33-1002(3), Idaho Code. For the purposes of this subsection (2) only, any school for the deaf and the blind operated by the Idaho bureau of educational services for the deaf and the blind shall be considered a school district, and shall receive a distribution based upon the average daily attendance of the school. Moneys from the fund shall not be used to pay superintendents', principals', or other administrators' salaries or other compensation.

(3) In order to augment and not replace K-12 public school support, the revenues in the fund are to be provided in addition to the state's general account appropriation to K-12 public schools and not in place of any part of that appropriation.

(4) The state board of education shall promulgate rules to implement the provisions of this section.

SECTION 5. SEVERABILITY. The provisions of this initiative are hereby declared to be severable and if any provision of this initiative or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this initiative.

SECTION 6. This initiative shall be in full force and effect on and after January 1, 2021. END.

shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular General Election, to be held on the third (3rd) day of November, A.D., 2020, and each for himself says: I have personally signed this petition; I am a qualified elector of the State of Idaho; my residence and post office are correctly written after my name.

Signature	Printed Name	Residence Street and Number	City or Zip Code	Date	Official Use Only Legislative District
Sign ↓	John Smith	123 Main St	Boise	6/4/2020	
County		Last 4 Digits of SSN			
Ada County ▾		****			

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Select the sign field to create and add your signature.

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Adopt Your Signature

Confirm your name, initials, and signature.

* Required

Full Name* Initials*

SELECT STYLE DRAW

PREVIEW Change Style

DocuSigned by:

28D8665861F6403...

DS

By selecting Adopt and Sign, I agree that the signature and initials will be the electronic representation of my signature and initials for all purposes when I (or my agent) use them on documents, including legally binding contracts - just the same as a pen-and-paper signature or initial.

ADOPT AND SIGN CANCEL

Signature	Printed Name	Residence Street and Number	City or Zip Code	Date	Official Use Only Legislative District
Sign ↓	John Smith	123 Main St	Boise	6/4/2020	
County		Last 4 Digits of SSN			
Ada County ▾		****			

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Done! Select Finish to send the completed document. **FINISH** OTHER ACTIONS ▾

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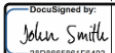
(2) By not later than August 31, moneys in the fund pursuant to the distribution provided in subsection (1) of this section, and interest earned thereon, shall be distributed to each of the several school districts and public charter schools, in the proportion that the average daily attendance of that district or public charter school for the previous school year bears to the total average daily attendance of the state during the previous school year. For the purposes of this subsection (2) only, the Idaho school for the deaf and the blind shall be considered a school district and shall receive a distribution based upon the average daily attendance of the school. Average daily attendance shall be calculated as provided in section 33-1002(3), Idaho Code. For the purposes of this subsection (2) only, any school for the deaf and the blind operated by the Idaho bureau of educational services for the deaf and the blind shall be considered a school district, and shall receive a distribution based upon the average daily attendance of the school. Moneys from the fund shall not be used to pay superintendents', principals', or other administrators' salaries or other compensation.

(3) In order to augment and not replace K-12 public school support, the revenues in the fund are to be provided in addition to the state's general account appropriation to K-12 public schools and not in place of any part of that appropriation.

(4) The state board of education shall promulgate rules to implement the provisions of this section.

SECTION 5. SEVERABILITY. The provisions of this initiative are hereby declared to be severable and if any provision of this initiative or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this initiative.

SECTION 6. This initiative shall be in full force and effect on and after January 1, 2021. END.
shall be submitted to the qualified electors of the State of Idaho, for their approval or rejection at the regular General Election, to be held on the third (3rd) day of November, A.D., 2020, and each for himself says: I have personally signed this petition; I am a qualified elector of the State of Idaho; my residence and post office are correctly written after my name.

Signature <small>Required - Signature Applied</small>	Printed Name	Residence Street and Number	City or Zip Code	Date	<small>Official Use Only Legislative District</small>
<small>DocuSigned by:</small>  <small>2020658861F5493</small>	John Smith	123 Main St	Boise	6/4/2020	
County		Last 4 Digits of SSN			
Ada County ▾		****			

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FINISH

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

RECLAIM IDAHO, an Idaho Political
Action Committee, and **LUKE
MAYVILLE**,

Plaintiffs,

v.

BRADLEY LITTLE, in his official
capacity as Governor of Idaho, and
LAWRENCE DENNEY, in his official
capacity as Idaho Secretary of State,

Defendants.

Case No. 1:20-cv-00268-BLW

**DECLARATION OF LINDA
LARSON IN SUPPORT OF
MOTION FOR
PRELIMINARY
INJUNCTION**

I, Linda Larson, having first been duly sworn upon oath, declare as follows:

1. My name is Linda Larson, and I am the Volunteer Leader for Bonner County of Reclaim Idaho, a Plaintiff in this case.
2. The Reclaim Idaho “Invest In Idaho” campaign was abruptly halted on March 18, 2020 due to the coronavirus pandemic, after Reclaim’s requests to state officials to allow electronic

signature gathering were denied. Our volunteer team in Sandpoint--working alongside a team of volunteers in Bonners Ferry--had already qualified District 1 and was ready to help add signatures to the statewide totals.

3. Had Reclaim Idaho been able to continue, there is no doubt in my mind that we would have successfully met the state requirements needed to see this put on the November ballot. I have provided a summary here of the events as they happened in Sandpoint, Idaho, Bonner County, District 1.

4. I served as a volunteer for Reclaim Idaho in the capacity of co-Leader for Bonner County during the 2017/2018 Medicaid Expansion campaign where our team collected over 4000 signatures. We easily qualified District 1 and helped collect additional signatures that went to the statewide totals needed to put Medicaid Expansion on the ballot. Our team consisted of over 100 dedicated volunteers.

5. The Invest in Idaho campaign started in November of 2019 and I accepted the volunteer position of Bonner County Leader.

6. Our team assembled quickly and collected over 300 signatures during our first one day event.

7. We began with the goal of collecting 100 signatures per week and easily exceeded that during most weeks.

8. On February 1, we held an event in Sandpoint to tell people more about the initiative and 65 people attended. We were able to recruit 55 new volunteers who committed to collect signatures at events or from friends and family.

9. The momentum from that event continued to build and we collected over 800 signatures during the month of February.

10. By early March, my team was beginning to become concerned about how the virus might affect our campaign.

11. We decided to set a new goal of qualifying no later than March 30 in case the virus disrupted our collection activities.

12. The majority of our team in Sandpoint is over 60 years old, and many had high risk family members as well, so we were on high alert for potential risks.

13. Starting in early March, we began purchasing masks, gloves, hand sanitizers and disinfectant wipes.

14. We started requiring that all volunteers use the extra hygiene precautions and provided pocketed aprons and supplies to everyone collecting at public events.

15. As the CDC guidelines began to be released, our team decided that the last public event that we would collect signatures at would be March 13 as we no longer believed that we could assure the safety of our volunteers and the public.

16. Specifically, volunteers Nancy Gerth, Jill Trick, Carol Holmes, Rebecca Holland, and Linda Byars, voiced concerns about safety for themselves and for the public.

17. We all brainstormed about different possible methods for collecting in a safe manner, but in the end Reclaim Idaho suspended the campaign on March 18 after the leadership of Reclaim Idaho were informed we could not collect signatures electronically or get an extension to the original signature deadline.

18. In the absence of a solution to collect signatures during the pandemic, we were all very discouraged, frustrated and disappointed. Reclaim Idaho's volunteers called and emailed the Governor and asked for an extension of the deadline or permission to collect signatures electronically. Governor Little denied our requests which left us feeling demoralized.

19. I believe the state of Idaho has a responsibility to protect our rights during these unprecedented times.
20. In an interview with National Public Radio that aired on March 31st, I spoke of the importance of the initiative process for addressing the underfunding of Idaho schools: “If our legislators aren't willing to solve it, then, OK, fine, we'll do this, but give us the tools to be able to do this. That's all we're asking.”
21. We immediately stopped all collection activities and turned in our last petitions to the elections office on March 27.
22. Because we had increased our collection efforts in early March, we were easily able to qualify our district, five weeks before the April 30 deadline.
23. From my experience with the Medicaid Expansion efforts, the last six weeks were by far the most productive weeks during the collection window.
24. This campaign was no different except that I feel we had a stronger, more experienced team this time around.
25. I have no doubt that our team would have continued to work hard right up to the deadline to ensure that the statewide totals were met. We even had a dedicated team who was ready to travel to other districts that needed assistance. One volunteer, Rebecca Holland, offered to lead this venture and offered to fund the travel expenses as an in-kind donation to Reclaim Idaho.
26. My team of volunteers understood that the current level of funding for education in Idaho is a crisis. They recognized that this effort was critical and were ready to do the work necessary to help this initiative succeed. They were every bit as dedicated to getting this initiative onto the ballot as were my volunteers for the Medicaid Expansion effort.

27. Based on my personal experience, I believe that had we been able to continue collecting signatures our statewide team would have met the state requirements to put our initiative onto the November 3, 2020 ballot.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. EXECUTED ON this 6th day of June 2020.

/s/ Linda Larson



SIGN THE PETITION TO INCREASE FUNDING FOR K-12 EDUCATION. IT ONLY TAKES A FEW MINUTES.

DUE TO COVID-19, WE ARE COLLECTING SIGNATURES ELECTRONICALLY TO QUALIFY THE "INVEST IN IDAHO" K-12 INITIATIVE FOR THE BALLOT. PLEASE FILL OUT THE FORM BELOW. AFTER YOU FILL OUT THE FORM, YOU WILL BE REDIRECTED TO A DOCUSIGN FORM WHERE YOU WILL SIGN THE OFFICIAL PETITION.

(If you'd like to view a PDF of the full petition before proceeding, [click here](#). If you have questions about the "Invest in Idaho" K-12 Initiative, [read our FAQ page](#))

Full Name *



Residence Street and Number *

Address should match what was provided on your voter registration form.

City or Zip Code *

County *

Please ensure that your stated county matches the county in which you are registered to vote.

Last 4 Digits of SSN *

I confirm that I am registered to vote in Idaho and I have not previously signed this petition.

Next

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UNDER CONSTRUCTION

Paid for by: Reclaim Idaho, Deborah Silver Treasurer