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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

IDAHO LEGAL AID SERVICES,
INC.,

Plaintiff,

v.

STATE OF IDAHO,

Defendant.

Case No. ^ CV01-20-09078

**COMPLAINT FOR
URGENT INJUNCTION
AND DECLARATORY
JUDGMENT**

Filing fee: waived, IRCP 10.1

The Plaintiff, Idaho Legal Aid Services, Inc., complains as follows and seeks ***urgent and expedited*** declaratory and injunctive relief:

1. The right to jury trial in eviction proceedings in Idaho was in place at the time the Idaho Constitution was adopted. Article I, Section 7, of the Idaho Constitution guarantees that the right of trial by jury remains inviolate.

2. Though the Legislature amended I.C. § 6-311A and repealed I.C. § 6-311B in

1996, purporting to end jury trials in expedited eviction cases under I.C. § 6-310, statutory provisions cannot trump constitutional guarantees.

3. The Plaintiff, Idaho Legal Aid Services, provides legal advice and representation to tenants facing eviction throughout the State. Because I.C. § 6-311A conflicts with right to jury guaranteed by the Idaho Constitution, the statute is unconstitutional.

4. This action seeks a declaration that I.C. § 6-311A is unconstitutional and that trial by jury is available in all unlawful detainer actions.

5. This action also seeks an injunction to ensure that jury trial is available in all unlawful detainer actions, and that the form summons and Court-approved form Complaint and Answer for unlawful detainer actions comport with the right to jury trial and do not cause parties in those actions to inadvertently waive that right.

JURISDICTION

6. This Court has original jurisdiction over this action under I.C. § 1-705.

7. Venue is proper in this Court under I.C. § 5-402 because the State of Idaho is named as a defendant in this action, and Ada County encompasses the capital city of Boise. Additionally, the unconstitutional statutory provision, I.C. § 6-311A, that Plaintiff complains about in this action was passed and enacted in Ada County.

PARTIES

8. Plaintiff Idaho Legal Aid Services, Inc., is an Idaho non-profit corporation. For over fifty (50) years, Idaho Legal Aid Services has provided high quality legal representation, without charge, to low income Idahoans in all seven Idaho judicial

districts. Plaintiff's mission is to provide its clients with equal access to the courts without regard to income or social status.

9. Defendant State of Idaho maintains a statutory provision, I.C. § 6-311A, that violates that Idaho Constitution. The State Capital and center of State government is in Ada County.

FACTS

10. The Idaho Constitution was adopted in Boise, Idaho, on August 6, 1889. It was ratified by vote of those legally qualified as electors in November 1889. It was approved by the United State Congress on July 3, 1890.

11. Throughout the time of the Idaho Constitution's adoption, ratification, and Congressional approval, Section 5103 of the Revised Statutes of Idaho Territory governed summary proceedings for obtaining possession of real property, including evictions and unlawful detainer actions.

12. Section 5103 of the Revised Statutes provided, exactly as I.C. § 6-313 does today, that "[w]henever an issue of fact is presented by the pleadings it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending." See Exhibit 1 to the Brief in Support of Motion for Expedited Declaration and Preliminary Injunction, which is hereby incorporated by this reference.

13. The Idaho Supreme Court confirmed the right to a jury trial in unlawful detainer actions in 1972, in the case of *Loughrey v. Weitzel*, 94 Idaho 833, 836, 498 P.2d 1306, 1309 (1972).

14. In 1996, the State of Idaho, through its Legislature and Governor, enacted amendments to I.C. § 6-311A that purported to prevent jury trial in certain summary proceedings for obtaining possession of real property. 1996 Idaho Session Laws, ch. 169, § 1, codified at I.C. § 6-311A. See Exhibit 2 to the Brief in Support of Motion for Expedited Declaration and Preliminary Injunction, which is hereby incorporated by this reference.

15. In 2019, the office of Idaho's Attorney General issued an opinion letter concluding that a tenant in an unlawful detainer action has a right to a jury trial, and that "the basis of the right is rooted in the constitution." See Exhibit 3 to the Brief in Support of Motion for Expedited Declaration and Preliminary Injunction, which is hereby incorporated by this reference.

16. In particular, asked whether the language in Idaho Code § 6-311A that states that "the action shall be tried to the court without a jury" violates provisions of the Idaho Constitution or the United States Constitution, the Attorney General's office answered: "Yes," because "legislation cannot trump constitutional matters." *Id.* at 5 (citing *Loughery*, 94 Idaho at 836).

17. The United States Supreme Court has also held that modern-day summary eviction proceedings are the descendants of the action at common law for ejection.

18. The ejection action was an action at law in Idaho as well in 1889, and remains so today. Ejection actions in Idaho are triable by a jury as of right.

19. As a matter of statute, common law, and constitutional law, there is a right to a trial by jury in unlawful and forcible detainer actions Idaho.

20. However, the form Complaint¹ and Answer² approved by the Idaho Supreme Court for unlawful detainer actions does not contain a jury demand or an option for parties in those actions to make a jury demand.

21. Similarly, the instructions for both plaintiffs and defendants in such actions contain no reference to a right to request a jury trial and plainly describe the proceedings as being tried by the court.³

22. And unlike the form summons for most civil proceedings (prescribed by IRCP 4(a)(3)(B) and Appendix B), the form summons for eviction proceedings pursuant to I.C. § 6-310 (prescribed by IRCP 4(a)(3)(A) and Appendix B) does not indicate that defendants in eviction proceedings may file a written response.

23. Plaintiff Idaho Legal Aid Services provides legal advice through its Housing Hot Line and direct court representation to hundreds of tenants in eviction cases.

24. Housing is a substantial share of Idaho Legal Aid's attorneys' case load. Since the COVID-19 crisis rose, Legal Aid has dedicated significant staff and financial resources to educate and advocate on behalf of tenants, who through no fault of their own, have found it difficult or impossible to pay their rent on time because of a reduction or loss of income after being laid off or having their work hours reduced at their place of employment.

25. Legal Aid currently has clients throughout the courts in Idaho, including Ada

¹ https://courtselphelp.idaho.gov/docs/forms/CAO_UD_1-1.pdf,

² <https://courtselphelp.idaho.gov/docs/forms/Answer-to-Complaint-for-Eviction-CARES-Act.pdf>

³ https://courtselphelp.idaho.gov/docs/forms/CAO_UD_Instr_1.pdf;
https://courtselphelp.idaho.gov/docs/forms/CAO_UD_Instr_3-1.pdf

County, with scheduled eviction hearings.

26. According to the Idaho Courts online hearing information at <https://mycourts.idaho.gov/>, there appear to be 48 eviction trials set for the week of June 8, 2020, and already 14 eviction trials set for the week of June 15, 2020, in Idaho courts.

27. Having to repeatedly file legal briefs and argue whether I.C. § 6-311A is constitution in expedited eviction cases across the state is a drain on Legal Aid's limited resources, incurring needless time and expense to make the same argument in many different proceedings and courts and therefore frustrating Legal Aid's mission of providing quality legal services to low income and vulnerable Idahoans.

28. Nevertheless, most tenants are not represented during Idaho unlawful detainer proceedings, though a majority of landlords and management companies can afford legal counsel.

CLAIMS FOR RELIEF

29. Plaintiff incorporates all of its allegations and statements throughout this Complaint into all counts of its claims for relief.

30. Plaintiff also incorporates into this Complaint, by this reference, all of its allegations, statements, evidence, and arguments contained in its Brief in Support of Motion for Expedited Declaration and Preliminary Injunction, and the Declaration of James A. Cook filed with this Complaint.

Count 1:
Declaratory Judgment on Constitutionality of I.C. § 6-311A

31. Article I, Section 7, of the Idaho Constitution makes clear that “The right of trial by jury shall remain inviolate.”

32. Article I, Section 7, of the Idaho Constitution preserves the right to a jury trial as it existed at the date of the adoption of the Idaho Constitution.

33. Idaho Code § 6-311A purports to deny the right to jury trial in certain unlawful detainer actions. In particular, it provides that:

In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent or on the grounds that the landlord has reasonable grounds to believe that a person is, or has been, engaged in the unlawful delivery, production, or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, or for forcible detainer, or if the tenant is a tenant at sufferance pursuant to subsection (11) of section 45-1506, Idaho Code, *the action shall be tried by the court without a jury.*

I.C. § 6-311A (emphasis added).

34. At the time of the adoption of the Idaho Constitution, in 1889, summary proceedings for obtaining possession of real property were triable by a jury.

35. Idaho Code § 6-311A therefore violates the Article I, Section 7, of the Idaho Constitution.

36. Idaho Code §§ 10-1201 through 10-1216 provide for declaratory judgments adjudicating rights and other legal relations.

37. Plaintiff is entitled to a declaration that I.C. § 6-311A is unconstitutional and that parties in all unlawful detainer actions are entitled to jury trials.

**Count 2:
Violation of Right to Jury Trial Under Idaho Constitution**

38. Because I.C. § 6-311A violates Article I, Section 7, of the Idaho Constitution for the reasons stated in this Complaint, Plaintiff is also entitled to injunctive and other equitable relief requiring the State of Idaho and all of its agents, including its Courts, to allow jury trials in all unlawful detainer actions.

**Counts 3 and 4:
Violations of Due Process Under the
Idaho Constitution and 42 USC § 1983 (United States Constitution)**

39. Article I, Section 13, of the Idaho Constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law.

40. Section 1 of the Fourteenth Amendment to the United States Constitution prohibits the State of Idaho from depriving any person of life, liberty, or property without due process of law.

41. The form Complaint and Answer approved by the Idaho Supreme Court for unlawful detainer actions does not contain a jury demand or an option for parties in those actions to make a jury demand.

42. The instructions approved by the Idaho Supreme Court for unlawful detainer actions do not contain any reference to a right to a jury trial and only describe the proceedings as being tried by the court.

43. The approved instructions and form Complaint and Answer therefore deprive parties in I.C. § 6-310 eviction proceedings of a meaningful opportunity to be heard, because they fail to inform defendants and others using the forms that there is a right to a jury trial and operate to prevent unrepresented parties unable to find or

afford counsel from exercising their constitutional right to jury trial.

44. Similarly, unlike the form summons for most civil proceedings (prescribed by IRCP 4(a)(3)(B) and Appendix B), the form summons for eviction proceedings pursuant to I.C. § 6-310 (prescribed by IRCP 4(a)(3)(A) and Appendix B) does not indicate that defendants in eviction proceedings may file a written response.

45. The summons for I.C. § 6-310 eviction proceedings prescribed by the Idaho Rules of Civil Procedure therefore deprives defendants in I.C. § 6-310 eviction proceedings of a meaningful opportunity to be heard, because it fails to inform defendants of the right to demand a jury and operates to prevent defendants in these actions from demanding a jury trial, which they are constitutionally entitled to in all unlawful detainer actions.

46. Because the approved instructions, form Complaint and Answer, and IRCP 4(a)(3)(A) summons for eviction proceedings deprive parties of a meaningful opportunity to be heard, they violate the Due Process guarantees of Article I, Section 13, of the Idaho Constitution and the Fourteenth Amendment to the United States Constitution.

47. The Idaho Constitution and the common law of this state provide for a cause of action against the government for these constitutional violations.

48. Federal law, under 42 USC § 1983, also provides for a cause of action against the government for these constitutional violations.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court:

- A. Declare that Idaho Code § 6-311A is unconstitutional because it purports to deprive parties in certain unlawful detainer proceedings of their constitutional right to a jury trial.
- B. Declare that a jury trial is constitutionally available in all unlawful detainer actions in Idaho.
- C. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its magistrate courts, from enforcing Idaho Code § 6-311A.
- D. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its Courts, from failing to inform parties of the right to demand a jury trial in unlawful detainer actions by making clear in any summonses issued in those actions that defendants may file a written response or otherwise demand a jury trial.
- E. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its Courts, from failing to inform parties in unlawful detainer actions of the right to demand a jury trial by providing a place on any approved court forms for unlawful detainer actions, including approved complaint and answer forms, for any party to demand a jury trial.
- F. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its Courts, from failing to inform parties of the

right to demand a jury trial in unlawful detainer actions by providing appropriate references to a party's right to demand a jury trial in the approved Court Assistance Office instructions for those actions.

G. Award Plaintiff reasonable attorneys' fees and costs incurred because of or during the course of this litigation pursuant to 42 USC § 1988, I.C. §12-117, I.C. § 12-120, I.C. § 12-121, I.C. § 10-1210, the Private Attorney General doctrine, and any other applicable law.

H. Grant any other relief that the Court determines is just, equitable, necessary, or proper.

Dated: June 8, 2020.

Respectfully submitted,

ACLU OF IDAHO FOUNDATION

IDAHO LEGAL AID SERVICES, INC.

/s/ Richard Eppink
RICHARD EPPINK

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