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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

REPLY BRIEF IN SUPPORT OF MOTION FOR EXPEDITED DECLARATION AND PRELIMINARY INJUNCTION

The State concedes the ultimate issue: there is a right to a jury trial in unlawful detainer actions. The Court can and must enforce that right here.

STANDING

Idaho Legal Aid is a nonprofit advocacy organization whose mission is to provide access to justice to low income people throughout our state. (Decl. Cook ¶¶ 3–4 (June 8, 2020).) It is the primary legal services provider to low income Idahoans facing eviction. (*Id.* ¶ 10); *see also* IRCP 10.1 (waiving filing fees automatically for

Legal Aid). It has textbook standing to ensure Idahoans facing eviction enjoy their constitutional right to jury trial, under two well established doctrines: organizational standing and third-party standing.

Standing in Idaho's state courts, however, is only "a self-imposed constraint" that follows the doctrine applied in federal court, where standing is constitutionally imposed. *Coeur D'Alene Tribe v. Denney*, 161 Idaho 508, 513, 387 P.3d 761, 766 (2015); *see also Zeyen v. Pocatello/Chubbuck School District*, 165 Idaho 690, 707, 451 P.3d 25, 42 (2019) (Stegner, J., dissenting) ("[T]his Court is not limited by the federal standing requirements, and it has previously recognized as much.") Therefore under both federal doctrine and Idaho's "relaxed" standing alternative, Legal Aid has standing here.

1. Organizational Standing

Nonprofits like Idaho Legal Aid have "organizational standing" whenever the policies they challenge "have perceptibly impaired [their] ability to provide the services [they were] formed to provide." *East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 765 (9th Cir. 2018). Legal Aid easily meets the test. It is already so overburdened that it cannot represent all families who need help defending against eviction actions. (Decl. Cook ¶ 15.) Enforcing the right to jury trial in dozens of separate evictions throughout Idaho's 44 counties substantially diverts Legal Aid's time and resources. (*Id.* ¶¶ 19–20; *cf. id.* ¶¶ 11–12 (reporting that Legal Aid handled 393 eviction matters in 2018, 464 in 2019, and already 319 in 2020.)) That is not just a waste of Legal Aid's resources, frustrating its mission to provide equal

access to justice for low income Idaho families, it's a needless waste of judicial resources as well. (*Id.* ¶¶ 3, 21.) The limitations that COVID-19 currently imposes only exacerbate this diversion of resources. (*Id.* ¶¶ 19–20.)

Because the unconstitutional statutory scheme "perceptibly impair[s]" Legal Aid's "ability to provide counseling and referral services for low-and moderate-income" Idahoans, "there can be no question that the organization has suffered injury in fact." *Havens Realty v. Coleman*, 455 U.S. 363, 379 (1982). And thus because the State's deprivation of the right to jury trial in eviction cases "frustrates the organization's goals and requires the organization 'to expend resources in representing clients they otherwise would spend in other ways,'" Legal Aid has organizational standing here. *East Bay Sanctuary Covenant*, 932 F.3d at 765 (quoting *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 943 (9th Cir. 2011) (en banc)).

2. Third-Party Standing

Third-party standing allows a party to vindicate the constitutional rights of closely aligned third parties. *Sheppard v. Idaho Dept. of Employment*, 103 Idaho 501, 503, 650 P.2d 643, 645 (1982). Under this doctrine, beer vendors have standing to assert the constitutional rights of teenage males to drink beer. *Id.*, 103 Idaho at 503, 650 P.2d at 645 (citing *Craig v. Boren*, 429 U.S. 190 (1976)). Doctors have standing to assert their patients' reproductive rights. *Sheppard*, 103 Idaho at 503, 650 P.2d at 645 (citing *Singleton v. Wulff*, 428 U.S. 106 (1976)); *see also June Medical Services v. Russo*, ___ S.Ct. ___, ___, No. 18-1323, 2020 WL 3492640, at *9–

10 (U.S. June 29, 2020) (plurality opinion) (collecting the many "well-established" precedents for third-party standing across a wide spectrum of contexts).

It's true that two criminal defense lawyers who had no presently impacted clients lacked third-party standing based only on "a future attorney-client relationship with as yet unascertained Michigan criminal defendants," but that's not the situation here. *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004); *see also Lambert v. Turner*, 525 F.2d 1101, 1102 (6th Cir. 1975) (holding that juvenile public defenders "had no standing to sue on behalf of 'future juvenile clients, or potential juvenile clients'"); *Reynolds v. Roberts*, 207 F.3d 1288, 1299 (11th Cir. 2000) (denying standing to attorneys who had no affected clients at all). Here, Idaho Legal Aid has ***more than one hundred*** existing clients in eviction matters across the state. (Decl. Cook ¶¶ 12–13; Second Decl. Cook ¶ 2.) The United States Supreme Court in *Kowalski* itself confirmed that third-party standing is appropriate where attorneys have an existing attorney-client relationship. *Kowalski*, 543 U.S. at 131; *see also Caplin & Drysdale v. United States*, 491 U.S. 617, 624 (1989) (noting that "[t]he attorney-client relationship . . . is one of special consequence," favoring third-party standing).

It's also true that third-party standing can be inappropriate where the plaintiff's interests do not coincide with the third parties' interests. That was the case when an employer tried to invoke his employees' Equal Protection rights in a ploy to avoid paying unemployment insurance. *Sheppard*, 103 Idaho at 502–503, 650 P.2d at 644–645. Because the employer had different interests than his

employees, who might be denied unemployment benefits if the employer won his lawsuit, the Idaho Supreme Court denied third-party standing. *Id.* But here, the interests of Legal Aid, its eviction clients, and Idahoans facing eviction actions are all identical: their interests in ensuring eviction litigants' constitutional right to jury trial is vindicated are perfectly aligned. (Decl. Cook ¶ 22.)

The two prerequisites for third-party standing are readily satisfied here: the existing attorney-client relationships Legal Aid has with families facing eviction satisfy the "close relationship" prerequisite, and the undisputed evidence proves those families are hindered in protecting their own interests. Decl. Eppink ex. 1 at 8:3–10, 9:13–16, 12:8–18, ex. 2 (denying unrepresented tenant right to jury trial in eviction action based on "statutory scheme," until lawyer stepped in); Decl. Cook ¶¶ 16–18 (stating that most tenants go unrepresented and have no chance to request a jury trial). Third-party standing is thus another grounds for Legal Aid's standing.

3. Traceability and Redressability

Only by ignoring the doctrines of both third-party and organizational standing could the Court miss the causal connection and redressability establishing Legal Aid's standing to correct Idaho's forms and instructions for eviction cases. If the State continues to issue summonses and Court Assistance Office forms that do not apprise tenants that they can file an answer and demand a jury trial in eviction actions, those tenants will be under the impression that the trial must be a bench trial and unaware that they can demand a jury trial on any disputed fact issue.

The summons and CAO forms directly burden the many unrepresented

litigants who Legal Aid assists and for whom it has third-party standing. They either lose their constitutional right or are delayed and frustrated in exercising them because these forms track I.C. § 6-311A's unconstitutional jury trial ban.

The forms also burden Legal Aid directly in three obvious ways. First, tenants who could otherwise represent themselves in court will need Legal Aid's services and, in particular, will be more likely to need extended representation to mount constitutional arguments, and not just brief advice or legal information. (2d Decl. Cook ¶ 5.) Second, when unrepresented tenants come to Legal Aid after a court already entered an eviction judgment, Legal Aid will have to assess and, when appropriate, mount the constitutional issues on appeal and other post-judgment litigation. (*Id.* at ¶ 6.) Third, Legal Aid cannot represent all the many families who face eviction in Idaho. (Decl. Cook ¶¶ 5, 15–17.) Many who Legal Aid can't represent will still call Legal Aid's advice hotline. Over the hotline, Legal Aid must inform each one of those tenants that the State's forms and instructions are inaccurate and that tenants have a constitutional right to demand a jury trial as to any disputed fact. Explaining that over and over again, hundreds of times each year, is a massive diversion of resources that prevents Legal Aid from providing in-court representation in other cases. (2d Decl. Cook, ¶ 7.) All three diversions, indeed, substantially increase the burden on Legal Aid's staff and decreasing their time available for other priority cases. (*Id.* at ¶ 8.)

The State's eviction summons and CAO forms cause these injuries, and an injunction will redress them by preventing tenants from being misinformed and

eliminating the resulting burden on Legal Aid.

4. Relaxed Standing

Because standing is only "a self-imposed constraint" on Idaho courts, a plaintiff does not always have to show it. *Regan v. Denney*, 165 Idaho 15, 21, 437 P.3d 15, 21 (2019) (quoting *Coeur D'Alene Tribe*, 161 Idaho at 513, 387 P.3d at 766). Though Legal Aid easily demonstrates both third-party and organizational standing here, this is also an appropriate case to relax the standing requirement. The Idaho Supreme Court often does that, especially where there's an urgent reason to remedy constitutional violations. *Regan*, 165 Idaho at 21, 437 P.3d at 21.

This case definitely qualifies. The State does not and could not dispute that an alarming number of Idaho families are facing eviction. (*See* Decl. Cook ¶¶ 12, 14.) This upward trend during an airborne pandemic and public health crisis makes it urgent to ensure these the constitutional rights of these families, whose only shelter hangs in the balance. Though Legal Aid has third-party and organizational standing, the Court should also hold that Legal Aid has relaxed standing as well.

DECLARATORY JUDGMENT

The State offers no defense to a declaratory judgment on the merits. It instead merely argues that a declaratory judgment would amount to an advisory opinion and that Legal Aid filed its motion too soon.

The motion is not premature. Declaratory judgments may be expedited under IRCP 57(a), which expressly provides that "[t]he court may order a speedy hearing of a declaratory judgment." That's precisely what Plaintiff asked for in its Motion

for Expedited Declaration and Preliminary Injunction. There is no reason at all to delay a decision in this case. There is no need for discovery or further legal argument. The Court can enter declaratory judgment now.

And for the same reasons that Legal Aid easily has standing here, a declaratory judgment to aid disposition in scores of very real and not hypothetical currently pending eviction cases across Idaho will not be an advisory opinion. To urge otherwise, the State cites an unpublished Tennessee case where (1) third-party standing couldn't apply because the lawyer-plaintiff had no current client and (2) there was no constitutional right for anyone to enforce in the first place. *Johnston v. Swing*, No. M2012-01760-COA-R3CV, 2013 WL 3941026, at *1 (Tenn. Ct. App. July 26, 2013) (noting that lawyer-plaintiff was "no longer representing his former clients," was instead asserting only "his own interests," and had "failed to establish that he is 'seeking to vindicate an existing right'" of any kind); *see also Kinney v. State Bar of California*, 676 F. App'x 661, 663 (9th Cir. 2017) (cited by State) (declining to address generalized claims where lawyer-plaintiff "did not specify exactly which 'improper custom, policy, and/or practice' he finds objectionable").

In contrast, the Court's decision here will resolve the very real, not hypothetical conflict between I.C. § 6-311A and the constitutional right to jury trial that the State concedes, as to scores of very real, not hypothetical eviction matters pending across Idaho, in which Legal Aid has dozens of very real, not hypothetical clients whose homes are at stake. (*See* Decl. Cook ¶¶ 11–14.)

PRELIMINARY INJUNCTION

1. Standards

The Court can grant an injunction here under either IRCP 65(e)(1) or 65(e)(2), or both. An IRCP 65(e)(1) injunction is appropriate when the movant is "likely to prevail at trial." *Gordon v. U.S. Bank*, 166 Idaho 105, 455 P.3d 374, 384 (2019). A 65(e)(2) injunction halts acts that would produce either great or irreparable harm. *See Planned Parenthood of Idaho v. Kurtz*, No. CVOC0103909D, 2001 WL 34157539, at *4 (Idaho 4th Dist. Aug. 17, 2001); *WGI Heavy Minerals v. Gorrill*, No. CV 2006 384, 2006 WL 637030, at *7 (Idaho 1st Dist. Mar. 1, 2006). The Court may issue a preliminary injunction either if Legal Aid is likely to prevail or if unconstitutionally denying jury trials in eviction cases would produce great or irreparable harm. The standards are lenient. A. Dean Bennett & Brian C. Wonderlich, *Idaho's Rule 65(e) – Lenient Standard for an Extraordinary Remedy*, 57 Advocate 27, 28 (2014).

The State complains that Legal Aid seeks a "mandatory injunction" that requires the State "to take action," State's Opp. 16, and therefore Legal Aid must show that the jury trial right is "very clear." *Harris v. Cassia County*, 106 Idaho 513, 518, 681 P.2d 988, 993 (1984). The right to jury trial in eviction actions is so very clear that the States concedes it, State's Opp. 13, and so the Court could enter a mandatory injunction if Legal Aid asked for one.

But the injunction Legal Aid requests is not a mandatory injunction. The State need not take any action, but only stop taking action to comply: stop applying

I.C. § 6-311A to deny jury trials in eviction actions and stop issuing summonses and court forms that do not sufficiently inform defendants of their rights.[1] An injunction that prohibits the government from employing an unconstitutional law is not a mandatory injunction; although such an injunction can "require the [government] to change its practices, that type of change does not convert the injunction into a mandatory injunction." *Morris v. U.S. Army Corps of Engineers*, 990 F. Supp. 2d 1082, 1088 (D. Idaho 2014). If the State chooses to hold eviction proceedings before correcting its statutes, it simply must comply with the Idaho Constitution by providing both due process and jury trials when properly demanded.

There's no dispute about the right to jury trial here. An injunction should issue, exercising the Court's equitable powers to enforce that right, both because Legal Aid is likely to prevail at trial and because denying the right causes irreparable harm to both Legal Aid and the families facing eviction it assists.

2. Right to Jury Trial

The State concedes there is a right to a jury trial in unlawful detainer cases. State's Opp. 13 ("Plaintiff correctly argues that, at the time of adoption of the Idaho Constitution, the right to a jury trial in unlawful and forcible detainer proceedings was set out by Section 5103 of the Revised Statutes of Idaho Territory."). For that

[1] The State could, for example, suspend eviction actions—just as it did from March 26 through April 30 this year—until it has a constitutional statutory scheme in place. Order, *In re: Emergency Reduction in Court Service and Limitation of Access to Court Facilities* ¶ 1 (Mar. 26, 2020), http://isc.idaho.gov/EO/Emergency-Reduction-Order.pdf; *see also* Decl. Eppink ex. 1 at 4:16–18 (noting, after evictions resumed in May 2020, that "these cases had been scheduled without, I don't know, a whole lot of thought about how best to handle them").

reason alone, the Court must enter a declaratory judgment, to make clear that I.C. § 6-311A's instruction that certain unlawful detainer actions "shall be tried by the court without a jury" is unconstitutional. I.C. § 10-1202 (providing that any person "whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute.")

The State, instead, urges this Court to leave an unconstitutional statute in place because (get this): It doesn't come up that much! The State says that "Defendants infrequently file answers in forcible and unlawful detainer proceedings" and so, despite I.C. § 6-311A's categorical bar on jury trials in expedited evictions, this Court should just let the unconstitutional statute slide.

First of all, it's no surprise that defendants infrequently file answers in their expedited eviction cases, because (1) the form summons for expedited evictions (which Legal Aid seeks to remedy here) does not even inform defendants that they can file an answer, and (2) Legal Aid, the only place for most Idahoans facing eviction to turn for legal help, is too overloaded to help all of them. (Decl. Cook ¶ 15.) Most eviction defendants are indigent, unable to afford an attorney, and go unrepresented. (*Id.* ¶¶ 16–17.) Especially because the summons does not inform defendants that they can file any pleading at all, and because the CAO forms and instructions do not inform them they need to file an answer to demand a jury trial, the State's argument merely begs the root question presented here: whether the State's unconstitutional statute and practices deprive tenants of their rights.

Second, even if no defendant had filed an answer or demanded a jury trial in

any unlawful detainer action ever, I.C. § 6-311A is still unconstitutional. The statute commands, unequivocally, that ***all*** expedited evictions "shall be tried by the court without a jury." I.C. § 6-311A. The statute is not ambiguous. Even if it were, its legislative history makes clear that it unconstitutionally abrogates the jury trial right in all circumstances. The same enactment that amended I.C. § 6-311A to require that all expedited evictions "shall be tried by the court without a jury" also repealed I.C. § 6-311B. 1996 Idaho Session Laws ch. 169. Section 6-311B set out the procedure for jury trials in eviction actions. Decl. Eppink ex. 3. That means that I.C. § 6-311B's repeal, coupled with the amendment to I.C. § 6-311A allowing only for bench trials, leaves no path to judgment in any unlawful detainer case tried to a jury. Therefore the statutory scheme is always unconstitutional, because—as the State concedes—jury trial is available at least whenever the pleadings present an issue of fact. State's Opp. at 13–14; *cf.* I.C. § 6-313.

Third, for now, the pleadings in eviction cases always present issues of fact. That's because the Idaho Supreme Court's orders *In re: Eviction Moratorium Under the CARES Act* require the petitioner in every eviction proceeding to file a "Statement of Landlord Regarding CARES Act Eviction Moratorium." Amended Order, *In re: Eviction Moratorium Under the CARES Act* ¶ 3 (May 4, 2020), https://isc.idaho.gov/EO/eviction-order.pdf. The Statement of Landlord[2] contains

[2] The form Statement of Landlord is attached to the Order Amending Statement of Landlord Form, *In re: Eviction Moratorium Under the CARES Act* (May 5, 2020), https://isc.idaho.gov/EO/Order-Amending-Landlord-Form.pdf.

hearsay assertions that lack foundation, and landlords carry the burden to prove them to make out their prima facie case.[3] Because landlords must prove they are entitled to proceed under the federal CARES Act, "an issue of fact is presented by the pleadings" in every unlawful detainer action so long as the CARES Act and the Idaho Supreme Court's order remain in place. *See* I.C. § 6-313.

Fourth, the State relies on bad law regarding facial challenges. It applies a "no set of circumstances" test for those challenges, relying on *American Falls Reservoir District v. IDWR.*, 143 Idaho 862, 870, 154 P.3d 433, 441 (2007), and *State v. Korsen*, 138 Idaho 706, 712, 69 P.3d 126, 132 (2003). Those cases anchor the test in the "no set of circumstances" language that the United States Supreme Court used in *United States v. Salerno*, 481 U.S. 739, 745 (1987). But the *Salerno* test is not the test, and never has been. *State v. Sherman*, 156 Idaho 435, 439, 327 P.3d 993, 997 (Ct. App. 2014) (noting that "the Supreme Court had never actually applied the strict *Salerno* standard" but instead applies lesser standards for facial challenges); *see also City of Chicago v. Morales*, 527 U.S. 41, 55 (1999) (plurality

[3] To proceed in an eviction under the CARES Act's sweeping federal eviction moratorium a landlord must prove that the property does not involve a federally backed mortgage loan and also does not participate in any of a whole panoply of federal subsidy and tax credit programs. P.L. 116-136 § 4024, *available at* https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf [PDF pp. 212–214]. The statements on Idaho's Statement of Landlord form are therefore inadmissible without further foundation and evidence because they (1) are hearsay without an exception (IRE 802) (2) are unsupported by original documents that establish the property's current financing and other assistance (IRE 1002), and (3) lack foundation because the form does not establish the declarant's personal knowledge of what programs the property participates in and how the property is currently financed (IRE 602).

opinion) ("To the extent we have consistently articulated a clear standard for facial challenges, it is not the *Salerno* formulation, which has never been the decisive factor in any decision of this Court, including *Salerno* itself.")

Rather, in assessing a facial challenge, the "proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant." *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015) (internal quotation marks and citations omitted). Specifically, when assessing whether a statute meets the "no set of circumstances" test, "the Court has considered only applications of the statute in which it actually authorizes or prohibits conduct." *Id.* Thus, here, the question is whether I.C. § 6-311A prohibits jury trials in eviction cases where the pleadings present issues of fact. And it explicitly does. I.C. § 6-311A (mandating that expedited evictions "shall be tried by the court without a jury.")

Even if this Court strictly applied the *Salerno* test, because I.C. § 6-311A provides ***only*** for bench trials in ***all*** expedited evictions, and because I.C. § 6-311B (setting out the procedure for jury trial in those cases) was repealed, there is no set of circumstances in which the statute is consistent with the constitutional right to a jury trial that the State concedes. This is especially so because, as the Idaho Supreme Court made clear in *State v. Clarke* last summer, courts looks to the common law to discern the meaning of the Idaho Constitution at adoption. *State v. Clarke*, 165 Idaho 393, 397, 446 P.3d 451, 455 (2019). And no less than the United States Supreme Court has held that a jury was available at common law in ***all*** actions to recover possession of real property. *Pernell v. Southall Realty*, 416 U.S.

363, 376, 94 S. Ct. 1723, 1730, 40 L. Ed. 2d 198 (1974).

Idaho Code § 6-311A is unconstitutional on its face.

3. Forms and Instructions

The right to jury trial and the right to due process are, indeed, analytically distinct. Because I.C. § 6-311A violates the right to jury trial, this Court must declare it unconstitutional and enjoin its application, as already explained. Separately, the Court must also analyze whether the State's forms and instructions for eviction actions afford defendants adequate opportunity to present their objections, addressing the unique circumstances of eviction proceedings. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Jones v. Flowers*, 547 U.S. 220, 230 (2006); *State v. Doe*, 147 Idaho 542, 545–546, 211 P.3d 787, 790–791 (Ct. App. 2009).

To perform that analysis, the Court must weigh the "interest of the individual, the risk of an erroneous deprivation of the individual's interest, and the interest of the government . . . ." *Lowder v. Minidoka County Joint Sch. Dist. No. 331*, 132 Idaho 834, 840, 979 P.2d 1192, 1198 (1999). The State does not dispute the grave tenant interest at stake here. And it fails to identify ***any government interest at all*** either for issuing summonses that do not inform tenants they may file a responsive pleading in eviction cases or for supplying CAO forms and instructions that include no place for eviction litigants to demand a jury trial.

The risk of erroneous deprivation is high. Most families facing eviction go unrepresented, and Legal Aid is unable to help them all. (Decl. Cook ¶¶ 15–17.) The

State's own submissions show that tenants seldom file responsive pleadings without help from a lawyer. (Decl. Olsen exs. 1–5 (June 26, 2020).) The State's argument that a disclaimer encouraging tenants to seek legal advice must be rejected, because due process cannot "turn on the willingness of outside agencies to step in and protect the tenant from harm" caused by the State's inaccurate notice. *Blatch ex rel. Clay v. Hernandez*, 360 F. Supp. 2d 595, 622 (S.D.N.Y. 2005).

The *Lowder* balancing, therefore, tips entirely in favor of an injunction. The due process challenge is likely to succeed.

4. Irreparable Harm

Setting aside the State's callous disregard for the constitutional rights of Idaho families, both tenants and Legal Aid are suffering great or irreparable harm every day. The harm to Idaho families facing eviction is patent. (2d Decl. Cook ¶¶ 9, 11–13.) The State does not dispute that depriving them of their constitutional right to jury trial is a great or irreparable harm. Because Legal Aid has third party standing to assert those families' rights, their great or irreparable harm satisfies IRCP 65(e)(2). Legal Aid itself also suffers great and irreparable harm while I.C. § 6-311A deprives these families of their constitutional rights, as well. Denying the right to a jury trial, as well as the State's inaccurate forms and instructions, significantly depletes Legal Aid's operations and legal services. The drain on Legal Aid's limited resources is ongoing and suffices as a "great or irreparable injury."

5. Bond

The State offers no evidence that it will incur any fees or costs if an

injunction issues here but is later dissolved. The State, after all, is represented by the Attorney General, who has a statutory duty to represent the State. I.C. § 67-1401(1). "[W]here the government attorney works on salary the amount of time expended by the attorney should not lead to the presumption that a security bond is necessary for the recovery of attorney fees." *Planned Parenthood of Idaho*, No. CVOC0103909D, 2001 WL 34157539, at *17 (citing *Unity Light & Power Co. v. Burley*, 92 Idaho 499, 502, 445 P.,2d 720, 723 (1968)).

The interests at stake in this case are hardly amorphous or commercial. The homes and lives of low income families across Idaho are at stake, while a public health crisis threatens the entire state's population. Because the State concedes a constitutional right to jury trial, the State's argument that this Court should hold a fundamental civil right for ransom is egregious. "[J]ustice shall be administered without sale" in the State of Idaho. Idaho Const. art. I, § 18.

CONCLUSION

For all of these reasons, the Court should grant Legal Aid's motion for expedited declaration and preliminary injunction.

Dated: July 1, 2020

Respectfully submitted,

ACLU OF IDAHO FOUNDATION

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RICHARD EPPINK

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 2020, a true and correct copy of the foregoing document was filed with the Clerk of the Court using the iCourt E-File system which sent a Notice of Electronic Filing to the following persons:

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