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Fourth Judicial District, Ada County
Trent Tripple, Clerk of the Court
By: Deputy Clerk - Pataro, Kathy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY

TRACY TUCKER, *et al*., Plaintiff, vs. STATE OF IDAHO, *et al*., Defendant.	Case No. CV-OC-2015-10240 AMENDED MEMORANDUM DECISION AND ORDER

THIS MATTER comes before the Court on Defendants' Motion to Dismiss Without Prejudice for Lack of Subject Matter Jurisdiction, filed September 8, 2023, Motion to Decertify Future Class Members, filed September 8, 2023, Motion for Summary Judgment, filed September 22, 2023, and Motion to Strike, filed October 23, 2023, and Plaintiffs' Motion for Summary Judgment, filed September 22, 2023, and Motion to Strike Declaration of Mark Lasalle, filed November 11, 2023. A hearing was held on December 1, 2023, wherein the matter was taken under advisement. For the reasons below, Defendant's Motion for Summary Judgment is GRANTED in part, and the case is DISMISSED.

LEGAL STANDARD

Whether a case is a live case and controversy and thus the Court has authority to hear a case is a question of law. *In re Jerome Cnty. Bd. of Comm'rs*, 153 Idaho 298, 308, 281 P.3d 1076, 1086 (2012). Whether to grant equitable relief, including injunctive and declaratory, is discretionary. *Miller v. Ririe Joint School Dist. No. 252*, 132 Idaho 385, 388, 973 P.2d 156, 159 (1999). Under this standard, the relevant inquiry is "[w]hether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

BACKGROUND

The central claim in this case is that the named Plaintiffs, and other indigent criminal defendants similarly situated in the State of Idaho, are continuously being deprived of their state and federal constitutional rights to counsel and Due Process of law, by the named Defendants, who are the State of Idaho, and the members of Idaho Public Defense Commission ("PDC"). Plaintiffs seek remedial measures from this Court.[1]

"From the very beginning, our state and national constitutional laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law." *Gideon v. Wainwright*, 372 U.S.335, 344 (1963). Among them is the fundamental right of those charged with criminal offenses to have assistance of counsel. U.S. Const. art. VI; Idaho Const. art. I, § 13; *Gideon*, 372 U.S. at 334-35.

Historically, Idaho's public defense system was a county-based system. The legislature had delegated the duty of administering and funding public defender services to the each individual county.[2] Each of Idaho's 44 counties were individually responsible for maintaining an office of public defender, joining with another county (or counties) to provide a joint office of public defender, contracting with an existing office of public defender, or contracting with a private defense attorney for public defender services.[3] Each county was required to "annually appropriate enough money to administer" its public defender program.[4] Some would call this an unfunded mandate, as the only source of funding was from county property taxes. The natural result was 44 different systems in the 44 different counties, with different standards, resources, and varying quality of services within the State.

In 2010, the National Legal Aid and Defender Association ("NLADA"), at the State's request,

[1] This Memorandum Decision and Order shall constitute the findings of fact and conclusions of law of the Court.
[2] I.C. §§ 19-859, 19-862. "The board of county commissioners of each county shall provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense." I.C. § 19-859.
[3] I.C. § 19-859.
[4] I.C. § 19-862.

issued a report after studying trial level indigent services offered in seven Idaho counties.[5] The report found that, under the county-based system, there were no constitutionally adequate public defender systems in the sample counties and identified common areas of concern, including:

> the widespread use of fixed-fee contracts; extraordinarily high attorney caseloads[6] and workloads;[7] lack of consistent, effective, and confidential communication with indigent clients; inadequate, and often nonexistent, investigation of cases; lack of structural safeguards to protect the independence of defenders; lack of adequate representation of children in juvenile and criminal court; lack of sufficient supervision; lack of performance-based standards; lack of ongoing training and professional development; and lack of any meaningful funding from the State.[8]

After the NLADA report, with support and encouragement from the Governor and the Chief Justice of the Idaho Supreme Court, the Idaho Legislature passed laws in 2014 to transition to a state-assisted county-based system and created the Public Defense Commission (PDC).[9] The PDC is a self-governing agency comprised of seven members, which includes two representatives from the state legislature, one representative appointed by the chief justice of the Idaho Supreme Court, and four representatives appointed by the governor.[10] The PDC members' powers and duties were expanded over time and they were tasked with overseeing and assisting the delivery of public defender services in all of Idaho. The PDC was responsible for promulgating statewide rules regarding: training and continuing education requirements for public defenders; data reporting, including caseloads and workloads; core contract requirements; indigent defense grants; and indigent defense workload and performance standards, plus the oversight, implementation, enforcement, and modification of those standards.[11] The PDC also had the authority to adopt and enforce performance standards,[12] provide counties with supplemental resources to deliver indigent defense services,[13] and it was responsible for ensuring that the statutory standards were met.[14] As

[5] Second Am. Class Action Compl. For Injunctive and Declaratory Relief, Supp. Pleading, And Second Am. Supp. Pleading ¶ 3 (hereinafter "Second Am. Complaint") (filed Dec. 15, 2022).
[6] "Caseload" refers to the number of cases a given attorney handles. *Id.* at 6, n.6.
[7] "Workload" includes caseload as well as other work responsibilities, including, for instance managerial or administrative work. *Id.*
[8] *Id.*
[9] I.C. § 19-849.
[10] *Id.*
[11] I.C. § 19-850(1)(a).
[12] *Id.*
[13] I.C. § 19-862A.
[14] *Id.*

part of its authority, the PDC could supplement county funding of indigent services with state funding.[15]

On June 17, 2015, Plaintiffs, filed the instant suit on behalf of themselves and all others similarly situated alleging Idaho's public defense system is inadequate under state and federal constitutional standards and sought remedial relief.

Plaintiffs' Complaint alleged that Tracy Tucker, Jason Sharp, Naomi Morley, and Billy Chappell (collectively, "Plaintiffs") were arrested and prosecuted, respectively, in Bonner, Shoshone, Ada, and Twin Falls Counties.[16] Plaintiffs were represented by public defenders in their individual cases.[17] They alleged facts to support claims of ineffective assistance of counsel for lack of representation at initial appearances, and attorneys' failure to communicate with them at times, or to file certain motions on their behalf, or to properly investigate their cases.[18]

Plaintiffs alleged that their individual experiences under public defense system at the time were representative of "thousands of indigent defendants across the State, who have been denied their right to effective counsel."[19] Plaintiffs further claimed that the "current, patchwork public-defense arrangement in Idaho remains riddled with constitutional deficiencies and fails, at all stages of the prosecution and adjudication processes, to ensure adequate representation for indigent defendants in both criminal and juvenile proceedings in Idaho."[20]

Plaintiffs' claims regarding the defects in the public defense systems can be summarized as follows: (1) lack of representation at initial appearances, (2) excessive caseloads, (3) lack of sufficient investigation and expert analysis, (4) lack of sufficient access to or communication with the public defenders assigned to their cases, (5) continued use of fixed-fee contracts by some Idaho counties, (6) lack of public defender independence, and (7) lack of sufficient training, oversight,

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[15] *Id.*
[16] Second Am. Complaint ¶¶ 27-30. Over the course of this litigation, Plaintiffs have amended their complaint twice. Applicable here, is the Second Amended Class action Complaint for Injunctive Relief and Supplemental Pleading, filed December 15, 2022.
[17] *Id.*
[18] *Id.*
[19] *Id.* ¶ 31.
[20] *Id.* ¶ 32.

supervision, and evaluation.[21]

The case was appealed twice to the Idaho Supreme Court and remanded back to this Court. *Tucker v. State*, 162 Idaho 11, 394 P.3d 54 (2017) ("*Tucker I*"); *Tucker v. State*, 168 Idaho 570, 484 P.3d 851 (2021) ("*Tucker II*"). While this case was pending over the last eight and a half years, the PDC promulgated rules regarding (1) oversight, implementation, enforcement, and modification of standards,[22] and (2) standards, principles, and administration of a public defense system.[23] The PDC also promulgated rules regarding (1) uniform data reporting,[24] (2) public defender contracts,[25] (3) grants,[26] and (4) definitions related to the administration of Idaho's system.[27]

Following the second remand, the legislature passed House Bill 735,[28] in March 2022, which shifted all financial responsibility for funding public defense in Idaho from the counties to the State to begin in October 2024. That same year, the PDC amended (1) general provisions and definitions,[29] (2) requirements for representing indigent persons, which included caseload limits,[30] (3) records, reporting, and review,[31] and (4) financial assistance and training resources.[32]

As this case progressed, the legislature enacted the State Public Defender Act ("SPDA") in April 2023, which establishes a state-based public defense system operated by the Office of the State Public Defender ("OSPD").[33] The OSPD is an independent state agency responsible for ensuring all indigent defendants in the State of Idaho have adequate representation at all critical stages of their prosecution.[34] The SPDA allocated a starting budget of approximately $48 million.[35] Pursuant to the SPDA, at the end of September 2023, the Governor appointed former State Appellate Public

[21] *Id*. ¶¶ 34-44.
[22] IDAPA 60.01.06.
[23] IDAPA 60.01.07-.08.
[24] IDAPA 60.01.02.
[25] IDAPA 60.01.03.
[26] IDAPA 60.01.04.
[27] IDAPA 60.01.08.
[28] H.B. 735 76th Leg. (Id. 2022).
[29] IDAPA 61.01.01.
[30] IDAPA 61.01.02.
[31] IDAPA 60.01.03.
[32] IDAPA 60.01.04.
[33] I.C. § 19-60008(1)(a).
[34] I.C. §§ 19-6003; -6009.
[35] H.B. 236 76th Leg. (Id. 2023).

Defender, Erick Fredericksen, as the State Public Defender ("SPD") to oversee the new state-based system.[36] The SPD will hire a district public defender in each judicial district to implement and oversee the state-based system within their district.[37]

The State Public Defender (SPD) has the following duties under the law: (1) ensuring compliance with indigent defense standards, including having adequate attorneys, experts, investigators, mitigation specialist, stenographers, paralegals, and other support staff and assistants, which includes ensuring qualified attorneys for capital cases and prohibits fixed fee contracts,[38] (2) providing appropriate facilities, including offices spaces,[39] (3) implementing procedures for the oversight, implementation, enforcement, and improvement of indigent defense standards so that the right to counsel of indigent persons is constitutionally delivered to all indigent persons in this state,[40] (4) implementing current American Bar Association ("ABA") standards for delivering indigent defense, including caseload standards,[41] (5) providing adequate and appropriate training and continuing legal education,[42] (6) requiring appropriate and consistent recording keeping, including caseload, workload, and expenditures,[43] (7) establishing uniform contracts for contract and conflict defending attorneys based on statewide market rate,[44] (8) establishing a uniform system for contracting with qualified attorneys,[45] and (9) collaborating with district public defenders regarding policies and budget.[46]

In addition to these duties, the SPD intends to (1) adopt as internal policies, the PDC IDAPA rules, (2) follow the guidance of the 2023 ABA Ten Principles of Public Defense Delivery System, including tracking defending attorney workloads rather than using caseload standards, (3) require defending attorneys to use new time and workload tracking, (4) implement other changes,

[36] I.C. § 19-6004; Declaration of Eric Fredericksen ¶¶1-2 (filed October 20, 2023) (hereinafter "Fredericksen Decl.").
[37] I.C. § 19-6006.
[38] I.C. § 19-6005(1).
[39] I.C. § 19-6005(2).
[40] I.C. § 19-6005(3).
[41] I.C. § 19-6005(4).
[42] I.C. § 19-6005(5).
[43] I.C. § 19-6005(6)
[44] I.C. § 19-6005(7).
[45] I.C. § 19-6005(8).
[46] I.C. § 19-6005(9).

including uniform training sessions for all defending attorneys similar to annual judge and prosecutor trainings, (5) create a statewide database, and (6) provide access to statewide investigators and experts.[47]

The SPDA establishes a transition board to assist counties in moving from the county-based to the state-based system,[48] sets realistic timeframes for transitioning to the new state-based system,[49] codifies the right to counsel for indigent defendants at all stages of criminal and commitment proceedings,[50] enacts other reforms designed to ensure the constitutional adequacy of Idaho's indigent public defense system,[51] and contemplates the creation of a statewide case management system procured by the SPD to be used by defending attorneys.[52] The SPDA also dissolves the PDC as of July 1, 2024,[53] repeals the PDC rules and standards,[54] and institutes the state-based system on October 1, 2024.[55]

Plaintiffs argue the State has not done enough and the "systemic deficiencies identified in the First Amended Complaint largely still plague the public defense system and threaten indigent criminal defendants' rights to a constitutionally sufficient defense."[56] Pointing to past public statements by both the Governor and the Chief Justice, Plaintiffs claim the many alleged deficiencies in the old system are "directly linked to the State's longstanding and ongoing failure to provide the funding, supervision, and training necessary to meet its legal obligations in the area of indigent defense."[57]

Plaintiffs' Second Amended Complaint alleges the State has failed to provide a constitutionally-sound system of public defense, despite being on notice for over a decade of the deficiencies in the public defender system, because it provides no training, supervision, oversight, statewide

[47] *See* Fredericksen Decl.
[48] I.C. §§ 19-847, -6008(7).
[49] *See, e.g.*, I.C. §§ 19-847, -6019.
[50] I.C. § 19-6009.
[51] I.C. § 19-6005.
[52] I.C. § 19-850A(3)(c).
[53] I.C. § 19-850A(4).
[54] I.C. § 19-850A(4).
[55] I.C. § 19-6008(1).
[56] Second Am. Complaint ¶7.
[57] *Id.* ¶¶137-38.

standards, or funding.[58] However, it is noteworthy that the Second Amended Complaint was filed before the enactment of the SPDA and the creation of the new state-based system.

COURSE OF PROCEEDINGS

On June 17, 2015, Plaintiffs filed this Class Action Complaint for Injunctive and Declaratory Relief against the State of Idaho, Governor C.L. "Butch" Otter, and seven members of the PDC (collectively, "Defendants"). Plaintiffs seek declaratory and injunctive relief to remedy the Defendants' failure "to provide effective legal representation to indigent criminal defendants across the State of Idaho, in violation of the Sixth and Fourteenth Amendments to the United States Constitution, of Article 1, Section 13, of the Idaho Constitution, and Idaho statutes and regulations" under both the old public defense system.[59]

Plaintiffs allege the following claims for relief: (1) violation of the Sixth Amendment of the United States Constitution and 42 U.S.C. § 1983 (right to counsel), (2) violation of Article 1, Section 13 of the Idaho Constitution (right to counsel), (3) violation of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983 (Due Process), and (4) violation of Article 1, Section 13 (Due Process), by the Defendants' failure to ensure that all indigent criminal defendants receive meaningful and effective legal representation at all critical stages of their cases.[60]

In January 2016, this Court dismissed the action, determining the claims were not justiciable based on standing, ripeness, and separation of powers.[61] On appeal, the Idaho Supreme Court affirmed the dismissal of the claims related to the Governor; however, it reversed the dismissal with respect to the other Defendants, holding that the remaining claims could proceed against the State, as it bears ultimate responsibility for the public defense system, and against the members of the PDC, as related to the agency's rulemaking authority. *Tucker I*, 162 Idaho 24, 394 P.3d at 67. The Supreme Court further held the claims did not implicate *Strickland v. Washington*, 466 U.S. 668 (1984), and its case-by-case ineffective assistance of counsel analysis. *Tucker I* 162 Idaho at 19–

[58] *Id*. ¶¶ 62-69.
[59] *Id*. ¶ 80.
[60] *Id*. ¶¶ 204-17.
[61] *See Mem. Decision and Order Granting Mot. to Dismiss* (filed Jan. 20, 2016).

20, 394 P.3d at 62–63. The Supreme Court concluded that Plaintiffs "satisfy the injury in fact standard because the complaint alleged actual and constructive denials of counsel at critical stages of the prosecution." *Id*. at 20, 394 P.3d at 63.

After the case was remanded, on August 15, 2017, the Plaintiffs filed a First Amended Class Action Complaint for Injunctive and Declaratory Relief and Supplemental Pleading ("First Amended Complaint") against the State of Idaho and the then-current seven members of the PDC in their official capacities.[62]

On January 17, 2018, the Court granted Plaintiffs' Motion for Class Certification and certified a class of Plaintiffs defined as follows:

> [A]ll indigent persons who are now or who will be under formal charge before a state court in Idaho of having committed any offense, the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correction facility (regardless of whether actually imposed) and who are unable to provide for the full payment of an attorney and all other necessary expenses of representation in defending against the charge.[63]

Consequently, the four individually-named Plaintiffs – Tucker, Sharp, Morley, and Payne – comprised the class representatives.

In late 2018, both parties filed cross-motions for summary judgment. On March 19, 2019, this Court denied both motions and *sua sponte* authorized a permissive appeal to the Idaho Supreme Court to determine the appropriate legal standard the Plaintiffs must meet to prevail on their systemic challenge to Idaho's indigent public defense system.[64]

The Supreme Court granted permission to appeal on April 11, 2019, and ultimately held that to prevail "Plaintiffs must prove by a preponderance of the evidence that Idaho's public defense system suffers from widespread, persistent structural deficiencies that likely will result in indigent defendants suffering actual or constructive denials of counsel at critical states of criminal

[62] The most recent filings name the now-current members of the PDC.
[63] *See Order Granting Mot. for Class Certification* (filed Jan. 17, 2018).
[64] *See Order Denying Mot. For Summ. J., Recommending Permission To Appeal Pursuant To I.A.R. 12(C)(2), and Staying Proceedings* (filed March 19, 2019).

proceedings." *Tucker II*, 168 Idaho at 583-85, 484 P.3d at 865-66. The case was then remanded again. *Id.*

Plaintiffs subsequently moved to add Billy Chappell as an additional class representative, which this Court granted on November 18, 2022.[65] Pursuant to the Court's order, Plaintiffs filed a Second Amended Class Action Complaint for Injunctive Relief, Supplemental Pleading, and Second Amended Supplemental Pleading, on December 15, 2022.[66]

The relief requested by Plaintiff in this case now includes, in relevant part, the following:

> A) Declare that the State of Idaho is obligated to provide constitutionally adequate representation to indigent criminal defendants, including at their initial appearances;
>
> B) Declare that the constitutional rights of Idaho's indigent criminal defendants are being violated by the State on an ongoing basis, and provide a deadline for the State to move this Court for approval of specific modifications to the structure and operation of the State's indigent defense system and to the oversight, implementation, and enforcement of its statutory, regulatory, and other oversight and funding of that system;
>
> * * *
>
> D) Enter an injunction requiring the State to propose, for this Court's approval and monitoring, an implementation and internal monitoring plan for delivering public defense that is consistent with the U.S. Constitution and the Constitution and laws of the State of Idaho statewide, together with a schedule of explicit deadlines;
>
> E) Appoint an independent, external monitor to supervise and evaluate the State's public defense system, to determine, among other things:
>
> a. Whether public defenders are present to meaningfully assist and represent indigent criminal and juvenile defendants at their initial appearances;
>
> b. Whether public defenders are actually absent at any other court appearances after appointment;
>
> c. Whether public defenders have the time and resources needed to meaningfully seek pre-trial release of their clients, including by investigating their clients circumstances to prepare for bond setting and bond reduction hearings;
>
> d. Whether public defenders' caseloads and workloads are reasonable and

[65] *Order Granting Pls' Mot. to Add Class Representative* (filed Nov. 18, 2022).
[66] In the Second Amended Complaint, Jeremy Payne was removed as a named Plaintiff.

within national and local standards;

e. Whether public defenders are able to promptly and meaningfully respond to all client contacts and complaints, using interpreters and translators when appropriate;

f. Whether public defenders are fully explaining plea offers, treatment services, possible dispositions, conditions that may be imposed at sentencing, and applicable immigration consequences to their clients, and fully advising clients about the risks and benefits of their options;

g. Whether public defenders are able to adequately fulfill their role as advocate before the court on their clients' behalf;

h. Whether investigative, expert, and testing support is meaningfully available to public defenders and being routinely used in all cases where appropriate;

i. Whether public defenders experience any undue pressure from county commissioners, judicial officers, PDC members or staff, or others to limit the time or resources they commit to individual cases or their indigent caseload generally;

j. Whether the State's public defenders are operating under an inherent and actual conflict of interest, given their caseloads and workloads; and

k. Whether the State's public defense system poses a significant risk that indigent 0defendants will be prejudiced, that their appointed attorneys will be unable to meet their professional responsibilities, or that their attorneys' representation of them will be materially limited by those attorneys' responsibilities to other clients;

G) Enter an injunction barring the use of fixed-fee contracts and their functional equivalents in the delivery of indigent-defense services in the State of Idaho;

* * *

I) Grant any other relief the Court deems necessary and proper to protect Plaintiffs and the Class from further harm.[67]

On September 8, 2023, Defendants filed a Motion to Decertify Future Class Members along with a Memorandum in Support and the Declaration of Joseph Aldridge. Defendants also filed a Motion to Dismiss Without Prejudice for Lack of Subject Matter Jurisdiction along with a Memorandum in Support. On September 22, 2023, the parties filed cross-motions for summary judgment along

[67] Second Am. Complaint, pp. 63-64.

with supporting memoranda and declarations.

On October 20, 2023, Plaintiffs filed an omnibus response. That same day, Defendants filed an opposition to Plaintiffs' summary judgment motion and a Motion to Strike Declaration of Jason Sharp.[68] On November 10, 2023, Plaintiffs filed a reply in support of their Motion for Summary Judgment, and Defendants filed a reply in support of their motions.

On November 21, 2023, Defendants filed an opposition to Plaintiffs' Motion to Strike. On November 22, 2023, Plaintiffs filed a reply to Defendants' Motion to Strike. Defendants filed a reply in support of their Motion to Strike on November 28, 2023. A hearing was held on December 1, 2023, and the matter was taken under advisement.

After the matter was "taken under advisement," Plaintiffs filed a Supplemental Declaration of Joe Cavanaugh in support of their summary judgement motion on January 10, 2024. On January 26, 2024, Defendants filed their Answer to Second Amended Class Action Complaint for Injunctive and Declaratory Relief, Supplemental Pleading, and Second Amended Supplemental Pleading. A 40-day court trial is scheduled to begin on February 23, 2024.

ANALYSIS

At issue in this case is whether Idaho provides an adequate public defense system as required by the state and federal constitutions. The Idaho Supreme Court explained, an adequate system is one that does not have "widespread, persistent structural deficiencies that likely will result in indigent defendants suffering actual or constructive denials of counsel at critical states of criminal proceedings." *Tucker II,* 168 Idaho at 583-85, 484 P.3d at 865-66 (2021).

Defendants argue the entire case should be dismissed because the Court lacks subject matter jurisdiction to order relief. Defendants argue the case is moot based on policy changes made by the State and PDC. Plaintiffs counter that nothing the PDC has done during the pendency of this

[68] Mr. Sharp's Declaration was submitted within the Declaration of Joe Cavanaugh in Support of Plaintiffs' Motion for Summary Judgment.

case has stopped the systematic deprivation of adequate representation. Plaintiffs also maintain the new state-based system will not remedy the systematic deficiencies in Idaho's public defense system.

Subject matter jurisdiction is the power to hear and determine cases. *Boughton v. Price,* 70 Idaho 243, 249, 215 P.2d 286, 289 (1950). Ordinarily, once acquired, jurisdiction remains until extinguished by some event. *McHugh v. McHugh,* 115 Idaho 198, 199, 766 P.2d 133, 134 (1988). Thus, a courts power to hear a case depends on whether there is a justiciable controversy. *Tucker I,* 162 Idaho at 19, 394 P.3d at 62. A justiciable controversy is "[d]istinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot." *State v. Phillip Morris, Inc.*, 158 Idaho 874, 881, 354 P.3d 187, 194 (2015). "The controversy must be definite or concrete, touching on the legal relations of the parties having adverse legal interest." *Id.* "It must be a real or substantial controversy admitting of a specific relief through a decree or conclusive nature, as distinguished from an opinion advising on what the law would be upon a hypothetical state of fact." *Id.* "Justiciability is generally divided into subcategories—advisory opinions, feigned and collusive cases, standing, ripeness, mootness, political questions, and administrative questions." *Miles v. Idaho Power Co.*, 116 Idaho 635, 639, 778 P.2d 757, 761 (1989).

Mootness is essentially "the doctrine of standing set in a time frame: the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *United States Parole Commission v. Geraghty*, 445 U.S. 388, 397 (1980) (quoting Monaghan, Constitutional Adjudication: The Who and When, 82 Yale L.J. 1363, 1384 (1973). However, unlike standing, mootness has both a constitutional component and a prudential component. *United States v. W.T. Grant Co.*, 345 U.S. 629, 632-33 (1953).

The constitutional component is strictly jurisdictional and considers whether there is a live case or controversy. *Idaho Schs. For Equal Ed. Opportunity v. Idaho State Bd. Of Educ.*, 128 Idaho 276, 281, 912 P.2d 644, 649 (1996) ("*ISEEO II*") ("a case becomes moot when 'the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.'"); *Freeman v. Idaho Dep't of Corr.*, 138 Idaho 872, 875, 71 P.3d 471, 474 (Ct. App. 2003) ("A party lacks a

legally cognizable interest in the outcome when even a favorable judicial decision would not result in relief.") If there is no longer a live case or controversy, the court lacks subject matter jurisdiction to consider the case, and it must be dismissed. I.R.C.P. (12)(h)(3); *Tucker I,* 162 Idaho at 19, 394 P.3d at 62.

In contrast, the prudential component applies in cases such as this, where the relief sought is one in equity, and speaks to the remedial discretion of the Court. *O'Boskey v. First Federal Sav. & Loan Ass'n of Boise*, 112 Idaho 1002, 1007, 739 P.2d 301, 306 (1987). "An action for declaratory judgment is moot where the judgment, if granted, would have no effect either directly or collaterally on the plaintiff, the plaintiff would be unable to obtain further relief based on the judgment and no other relief is sought in the action." *ISEEO II*, 128 Idaho at 282, 912 P.2d at 650. "The existence of the required elements for declaratory relief, including the existence of a 'controversy,' should be determined as of the time of the court's trial or hearing, rather than at the commencement of the action." *Id.*

While the repeal, amendment, or revision of a statute or regulation could moot a case, it is "not mooted by an amendment or replacement if the controversy is not removed or the amendment or replacement does not otherwise resolve the parties' claims." *Id.*

Similarly, the "court's power to grant injunctive relief survives discontinuance of the [alleged] illegal conduct." *W.T. Grant*, 345 U.S. at 633. The purpose of an injunction is to prevent future harm; however, "the moving party must satisfy the court that relief is needed." *Id.* "The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." *Id.* at 634. This "decision is based on all the circumstances" and the court's "discretion is necessarily broad and a strong showing of abuse must be made to reverse it." *Id.*

On the one hand, while a case may be constitutionally moot, and thus jurisdictionally barred, the Court may still decide that policy reasons compel it to decide the case on its merits. *Great Beginnings Child Care, Inc. v. Off. Of Governor of State of Idaho*, 128 Idaho 158, 160, 911 P.2d 751, 753 (1996). Of those raised by Plaintiffs in this case are issues capable of repetition but

evading review and issues of substantial public interest that present an inherent need for guidance or direction in the future. *ISSEO II*, 128 Idaho at 283-84, 912 P.2d at 651-52.

On the other hand, a case may not be moot in the jurisdictional sense, but when the defendant has discontinued the conduct causing injury or is in the process of changing its policies or where it appears there is no reasonable expectation that the wrong will be repeated, the case may be dismissed as moot for prudential reasons. *Id.*; *Great Beginnings Child Care*, 128 Idaho 158, 160, 911 P.2d 751, 753 (1996). In such cases, the defendant bears the heavy burden of proving the efficacy of its remedial promise. *United States v. Concentrated Phosphate Export Assoc., Inc.,* 393 U.S. 199, 203 (1968); *Tucker II*, 168 Idaho at 864, 484 P.3d at 853.

Indeed, courts are highly cautious of "efforts to defeat injunctive relief by protestations of repentence and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption." *O'Boskey*, 112 Idaho at 1007, 739 P.2d at 306 (quoting *United States v. Oregon State Medical Society,* 343 U.S. 326, 333 (1952)). To accept such protestation and cessation "on face value would leave the defendant 'free to return to his [or her] old ways'" once the ligation is over. *Id.* (quoting *W.T. Grant*, 345 U.S. at 632).

However, the one who makes the remedial promise, and the reliability of their past promises, determines the attendant weight given. As now-Justice Gorsuch explained:

> The remedial commitment of the coordinate branches of the government bear special gravity. Governmental promises are not taken seriously solely because they are generally trustworthy. Also because providing a judicial remedy on top of one already promised by another branch of the government risks needless inter-branch disputes over the execution of the remedial process and the duplicative expenditure of finite public resources. In addition, it risks the entirely unwanted consequence of discouraging other branches from seeking to resolve disputes pending in court.

Winzler v. Toyota Motor Sales U.S.A., Inc., 681 F.3d 1208, 1209 (10th Cir. 2012).

This is not to say courts should blindly accept governmental promises of reform. The Court must consider the genuineness of the promise to reform, the effectiveness of the remedial promise, and in some cases, the character of the past violations. *W.T. Grant Co.*, 345 U.S. at 898; *O'Boskey*, 112 Idaho at 1007, 739 P.2d at 306.

Defendants maintain the case is moot based on policy changes enacted by the State and PDC, relying on *Tucker I & II*. However, merely changing course does not moot a case in the constitutional sense, but it may in the prudential sense if defendants can show "there is no reasonable expectation that the [alleged] wrong will be repeated," i.e., "that future harm is unlikely." *Tucker II*, 168 Idaho at 864, 484 P.3d at 853.

While the PDC will cease to exist in 5 months and its rules will expire in 8 months,[69] that has not yet occurred. *Cf. Great Beginnings Child Care*, 128 Idaho at 160, 911 P.2d at 753 (the possibility of reoccurrence of a similar lawsuit became speculative when the office and its rules ceased to exist). Thus, technically, a ruling at this point on the PDC's obligations and alleged failures attendant to those obligations are still at issue and therefore are still live controversies. In addition, the SPD intends to adopt the PDC's IDAPA rules as internal policies for the state-based system.[70] Therefore, a determination of whether those rules are sufficient to remedy the systemic deficiencies alleged to exist in Idaho's public defense system and whether public defenders will comply with those rules, with adequate oversight, training, and funding still remains a live controversy. *See ISSEO II*, 128 Idaho at 283, 912 P.2d at 651.

Moreover, although the PDC and State made remedial promises at the time the cross-motions for summary judgment were heard, there remains, and always will, the constitutional requirement for adequate representation for indigent defendants at all critical stages of prosecution in their criminal case, to which the State is responsible. U.S. Const. art. VI; Idaho Const. art. I, § 13; *Gideon*, 372 U.S. at 334-35. As such, policy changes and remedial promises made by the State and the PDC do not moot this case, in the jurisdictional sense, and a justiciable issue still exists.[71] However, the Court must decide if that is the prudent choice, given the enactment of the new state-based system.

Regarding the PDC, it will cease to exist in 5 months and its members will no longer be tasked with overseeing public defense in Idaho. Plaintiffs have provided no evidence that the PDC's

[69] I.C. 19-850A(4).
[70] Fredericksen Decl. ¶ 6.
[71] Because the Court finds there remains a live case or controversy, the exceptions argued by Plaintiffs are inapplicable. *ISSEO II*, 128 Idaho at 284, 912 P.2d at 652 (recognizing that the exceptions to the mootness doctrine only apply where no live case or controversy exists).

elimination is temporary or that it will be reinstated once this litigation ceases. Thus, there is no reasonable expectation of the possibility of future harm at their hands, and any possibility of a similar suit against the members of the PDC is merely speculative. *Great Beginnings Child Care*, 128 Idaho at 160, 911 P.2d at 753. Moreover, by the end of this summer, the old systems will be completely eliminated and the PDC, and its members, will no longer have any authority to act even if ordered to do so by this Court. Thus, declaratory or injunctive relief at this point would have no practical effect as to the PDC and its members. Therefore, dismissal is appropriate as to them.

Regarding the State, Plaintiffs argue the new state-based system is an "empty promise" and was enacted in an effort to defeat injunctive relief, but point to no evidence or reason for this Court to believe the changes are merely protestations of repentance and reform, or that there is any intent to return to the old county-based system if injunctive relief is denied.

Here, the State has done more than express mere statements of repentance, it has eliminated the county-based system, and Plaintiffs have not pointed this Court to any evidence that the State intends to return to the old systems or reason to doubt the sincerity of the State's adoption of the state-based system as a means to satisfy its constitutional obligation. This is not a case where the Defendants have waited until the 11th hour to make reforms. *Cf. O'Boskey*, 112 Idaho at 1007, 739 P.2d at 306 (past and continued violations demonstrated policy changes were not genuine). Nor are these reforms minor.

The State has been in the process of implementing changes to indigent defense for over a decade. Indeed, in 2010, when the NLADA report showed that Idaho's county-based system was ineffective, it created a state-assisted system. In 2014, when fixed-fee contracts became illegal, the PDC phased out any such contracts. After *Tucker I*, the PDC enacted new regulations, including attorney training. Over the last two years, the legislature has created a state-based system, that fundamentally changed the structure and system of public defense, addressing each area Plaintiffs allege are deficient. Through the concerted efforts of the legislature and the SPD it is still evolving. The SPD is an experienced public defense attorney who appears to have the intent and capabilities to protect the constitutional rights of Idaho's indigent defendants.[72] Plaintiffs' have not raised a

[72] *See* Fredericksen Decl.

genuine issue of material fact that his statements were untrustworthy and have given this Court no reason to doubt them. The "empty promise" argument is mere speculation.

Based on the above, the Court finds the policy changes constitute a sincere and genuine promise by the State to create and implement permanent structural changes to provide constitutionally adequate indigent services throughout criminal cases and gives this factor great weight.

Regarding the effectiveness of those reforms, Plaintiffs argue the state-based system will not fix the alleged widespread deficiencies in its public defense system, including (1) excessive caseloads, shortages of investigative and other support resources, (2) lack of independence from political and judicial influence, (3) lack of initial and consistent representation, (4) insufficient confidential time and space to confer, and (5) inconsistent and inadequate public defender contracts. Plaintiff also argue the state-based system "*strip*[s] *away* a number of important elements."[73] Specifically, Plaintiffs argue that (1) the state-based system is overseen by only one person who is appointed by the governor, (2) the requirements to implement and enforce rules and collect and report data are now discretionary, (3) and the amount allocated for fiscal year 2024 is less than that allocated in 2022.

As an initial matter, it is undisputed that Idaho's public defense system will no longer be a patchwork of 44 different systems, but one unified system. Idaho Code § 19-850(a)(vii) codifies the ABA Ten Principles of a Public Defense Delivery System and the OSPD will follow the guidance of those principles including tracking defending attorney's workloads instead of using caseload standards.[74] Plaintiffs have not pointed this Court to any evidence to dispute this. Defending attorneys will use software to track their hours and show their workloads, which the SPD believes will provide a more accurate representation of how defending attorneys spend their time and portrayal of attorney workloads.[75] Plaintiffs failed to point this Court to any evidence refuting this.

[73] Plaintiffs' Omnibus Opp. to Ds' Mot. to Dismiss, Mot. for Summ. J., and Mot. to Decertify, p. 3 (emphasis in original).
[74] Fredericksen Decl. ¶¶ 6-7.
[75] *Id.* ¶¶ 7-8.

All defending attorneys will attend uniform trainings.[76] Defending attorneys will use a statewide database, which provides legal briefing, memoranda, and practice guides.[77] There will be statewide investigators and experts, accessible to public defending attorneys throughout the state.[78] All defending attorneys will be State employees, which the SPD believes will boost hiring and retention of qualified attorneys.[79] These economies of scale will improve efficiencies and overall quality of services, not reduce efficiencies and quality.[80] Plaintiffs have not pointed this Court to any evidence controverting any of these points.

Regarding independence, the SPD maintained independence in his former role as State Appellate Public Defender, as did the attorneys working under him.[81] Plaintiffs' have not raised an issue of material fact that his statements were untrustworthy. As to defending attorney contracts, there can be no doubt that the contracts will be uniform, as all contracts will be with the OSPD and cannot be fixed rate.[82] Regarding confidential meetings, including time and space, the new laws address this through a mix of oversight, hiring/retaining attorneys, and funding, which covers October 2024 through June 2025. Plaintiffs have not pointed this Court to any evidence specifically refuting this.

This leaves the claim that changing the language from "mandatory" to "discretionary" somehow demonstrates that the State will shirk its duties and responsibilities. The mere fact that discretion exists does not presume that such discretion will be abused or otherwise ignored. Moreover, Plaintiffs have not pointed this Court to any evidence to doubt the sincerity that the SPD and the OSPD will ignore the guidance of the ABA principles, which includes all areas Plaintiffs complain are deficient, to ensure constitutionally adequate public defense.

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[76] *Id.* ¶ 9.
[77] *Id.* ¶ 12.
[78] *Id.* ¶¶ 10, 12.
[79] *Id.* ¶ 12.
[80] In the Court's personal observation and experience after more than 41 years of service as a lawyer and judge (including 25 years as a federal public defender), most public defenders are dedicated legal professionals; dedicated to preserving and protecting their clients' constitutional rights to the best of their abilities and would likely earn more financially in most any other field of law practice.
[81] *Id.* ¶¶ 2-5.
[82] I.C. § 19-6005(1).

Based on the above, the Court finds that Defendants have shown that the state-based will likely be effective and there is no genuine issue of material fact to the contrary.

Regarding the last factor, more weight is given when there is an actual or admitted violation. Here, while the NLADA study found Idaho's county-based system in 2010 was inadequate, Plaintiffs have not yet actually proven the county-based system, or the state-assisted system, truly had "widespread, persistent structural deficiencies" and was therefore unconstitutional. That is not to say the Court does not recognize the gravity of the alleged constitutional deprivations. Indeed, as the United States Supreme Court stated, "lawyers in criminal courts are necessities, not luxuries." *Gideon*, 372 U.S. at 344. Thus, this factor does have great weight.

Based on the evidence before it, the Court has serious concerns over the adequacy of Idaho's old county-based system. One might even say the State's impending elimination of the current system could suggest the same; however, mere cessation of a challenged activity is not an admission or recognition of its illegality. *See United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 202-03 (1968). Nonetheless, the Court recognizes that while equity may not require it to duplicate the effort of coordinate branches, it also does not require the Court to potentially leave Plaintiffs without the relief they are entitled to. *See W.T. Grant*¸ 345 U.S. at 633.

Inherent in the Court's remedial discretion to grant equitable relief is the power to "mould each decree to the necessities of the case." *Hetch Co. v. Bowles*, 321 U.S. 321, 329 (1944). Injunctions are "designed to deter, not punish." *Id.* Where a case will be tried before a trial court without a jury, the Court may rule on cross-motions for summary judgment, and draw reasonable inferences supported by the record, and "arising from undisputed evidentiary facts." *Nettleton v. Canyon Outdoor Media, LLC*, 163 Idaho 70, 73, 408 P, 3d 68, 71 (2017).

As noted above, a case is moot if even a favorable outcome will not provide any relief. As the Supreme Court in *Tucker I* explained, "were the requested relief ordered, the State would be obligated to create a plan to ensure public defense is constitutionally adequate. That plan would cover training standards and workload limits. . . . Entities tasked with providing and overseeing public defense would be bound by the State's plan." *Tucker I*, at 162 Idaho at 25, 394 P.3d at 68.

Thus, to the extent Plaintiffs seek a decree that the state-based system cannot revert to the county-based system or even the state-assisted county-based system as it existed when summary judgment was sought, the Court will oblige. This means that Idaho's public defense system cannot be revived in any of its previous states. If in the future, Idaho's public defense system were to revert back to a county-based system (even if state-assisted), this decree may act as a means to relief for future plaintiffs. To that extent, Plaintiffs' Motion for Summary Judgment is GRANTED.

Considering all this, and giving appropriate weight to each factor, the Court finds Defendants have met their burden of showing future harm is not likely with the state-based system. At this point, it is unnecessary to have a 40-day trial regarding the county-based and state-assisted systems and the claimed deficiencies of each, based on the changes made by the State since the Second Amended Complaint was filed, because "the *risk* of future harm takes on greater importance than proof of past or present actual harm." *Tucker II*, 168 Idaho at 583, 484 P.3d at 864.

Currently, there are no criminal defendants or cases under the new state-based system. It will take at least a few years before sufficient cases move through the judicial process before any determination could be made whether there are any "widespread, persistent, structural deficiencies" in existence.

Transitioning from the county-based system to the state-based system is a massive administrative undertaking. All public defenders in Idaho, their staff, offices, and equipment need to transition from county-based management and funding to state-based management and funding. The state-based system provides a realistic timeline for the changeover from the old way of doing things to the new way.

In the relief sought, Plaintiffs do not seek to overturn any convictions of any class members for any alleged violations of their constitutional rights. Neither do Plaintiffs see any monetary damages for any class members for any alleged violations of their constitutional rights. They only seek a declaration that the old county-based system was unconstitutional and that the Court oversee

the creation of a plan to fix the deficiencies. Through the legislature, the State has created a plan and the SPD has committed to ensure the relief Plaintiffs seek through the new state-based system.

The Court's intervention now, at best, might duplicate the State's efforts and waste finite public resources in the process. [83] At worst, it might invite inter-governmental confusion and conflict over the details of carrying out an agreed objective. Moreover, it could further delay the efforts already underway, all while not offering an inkling of additional relief for Plaintiffs and the class members they represent. Perhaps the lawyers would benefit, but it is difficult to see how anyone else would. Thus, there is not enough value remaining for the Court to add to this case to warrant deciding it on its merits. "[P]rudence and comity for coordinate branches of government counsel this Court to stay its hand and withhold the relief that it has the power to grant." *Chamber of Commerce of U.S. of America v. U.S. Dept. of Energy*, 627 F.2d 289, 291 (1980). For these reasons, in the opinion of this Court, this case is moot.

Because prudential mootness is the narrowest of the many bases Defendants move for dismissal, and because it is sufficient to that end, the Court has no need to discuss any of Defendants' other arguments for the same result. As the Court believes prudence and comity counsel against deciding the case on the merits, the Court has no reason to decide the parties' other motions, ranging from summary judgment to striking portions of the record.

In summary, Plaintiffs filed this case in 2015 claiming that Idaho's county-based system of public defense violated the constitutional rights of all criminal defendants. They sought declarations from this Court to that effect and injunctive relief in the form of court orders requiring the State to create a new constitutionally-sound system. Throughout more than 8 years of this litigation, the State has in fact studied, analyzed, and created a new state-based system that has dramatically changed the entire system and addressed the deficiencies complained of, without the desired declarations, injunctive relief, and orders from this Court. The new state-based system is now in its infancy, not yet fully implemented, and the trial is imminent. Plaintiffs claim that a 40-day trial will demonstrate that the state-based system has changed nothing and that the new law is just an empty promise. It is, however, undeniable that the state-based system in law is completely different in

[83] If this Court were to devise and create its own plan, it would likely resemble the legislative plan already in place.

every aspect previously complained of. Therefore, prudence and due respect and regard for the substantial efforts of the other branches of government to create and implement a new, constitutionally-sound system of public defense guide this Court's discretion and decision that further litigation has become moot by the actions taken, that the trial is now unwarranted, that the additional relief sought, beyond what is granted in this order, is now unnecessary, if not harmful, and time will tell if the State will live up to the promises made or if those are mere empty promises.

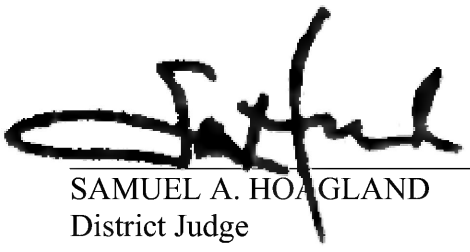
If the state-based system works as promised, then every Idahoan wins. If not, then a new action may be filed challenging that system if there is evidence that "widespread, persistent structural deficiencies" exist that are "likely to result in indigent defendants suffering actual or constructive denials of counsel at critical states of criminal proceedings." For now, it is time for this case to rest in peace.

CONCLUSION

Therefore, Plaintiffs' Motion for Summary Judgment is GRANTED in part to the extent that Idaho's public defense system cannot revive the old county-based system in any materially similar form. Otherwise, Defendants' Motion to Dismiss is GRANTED, and the case is DISMISSED against the members of the PDC with prejudice, and DISMISSED without prejudice against the State.

Based on the above, the Court finds each party has prevailed in part and therefore, no costs or attorney fees will be awarded to either party.

IT IS SO ORDERED.



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SAMUEL A. HOAGLAND
District Judge

Date

CERTIFICATE OF MAILING

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By _____
Deputy Court Clerk

CLERK OF THE DISTRICT COURT FOURTH JUDICIAL DISTRICT ADA COUNTY, IDAHO