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**RE: Safe and Equitable Participation in the 2021 Legislative Session**

January 11, 2021

Dear Speaker Bedke, President Pro Tempore Winder, Senate Majority Leader Anthon, Senate Minority Leader Stennett, House Majority Leader Moyle, House Minority Leader Rubel, Mr. Chairman Chaney, Mr. Chairman Wood, Mr. Chairman Lakey, and Mr. Chairman Martin:

We, the undersigned, represent not-for-profit organizations in Idaho committed to protecting the public health and civil rights of Idahoans. It is in this capacity that we write to voice our collective concern for the health and safety of legislators, capitol and legislative staff, members of the press, lobbyists, and Idaho residents who wish to equitably participate in the 2021 legislative session.

Noting our concerns, we urge you to defer the 2021 legislative session. Alternatively, we ask you to adopt rules and uniform procedures for meaningful remote public participation. Such measures are necessary to ensure equitable civic participation and to promote public health and safety.

**Idaho and COVID-19: Background**

On March 13, 2020, Governor Brad Little issued a proclamation declaring a state of emergency due to the global coronavirus pandemic.<sup>1</sup> There are currently 147,473 probable and confirmed cases in Idaho.<sup>2</sup> Tragically, over 1,500 Idahoans have died from COVID-related deaths.<sup>3</sup> Indeed, COVID-19 is now the number one cause of death in the state, over cancer and car accidents.<sup>4</sup> Older adults and people who are immunocompromised are particularly vulnerable to the virus,

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<sup>1</sup>Office of the Governor Proclamation. Executive Dep't of State of Idaho (March 13, 2020), [https://coronavirus.idaho.gov/wp-content/uploads/2020/11/proclamation\\_emergency-declaration\\_110420.pdf](https://coronavirus.idaho.gov/wp-content/uploads/2020/11/proclamation_emergency-declaration_110420.pdf).

<sup>2</sup> Idaho Government Website, *Official Website for the Novel Coronavirus*, (last accessed Jan. 7, 2021), <https://coronavirus.idaho.gov/>.

<sup>3</sup> *Id.*

<sup>4</sup> COVID-19 is now the leading cause of death in Idaho, Idaho Dep't of Health and Welfare, (Dec. 10, 2020), <https://healthandwelfare.idaho.gov/news/covid-19-now-leading-cause-death-idaho>.



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and long-standing systemic health and social inequities put Black, Brown, and Indigenous communities at increased risk of getting sick and dying from COVID-19.<sup>5</sup>

The continued spread of the virus has put increased pressure on Idaho's healthcare professionals and systems, with some hospitals nearing capacity and suspending elective surgeries.<sup>6</sup> Just last month, Idaho's State Board of Health and Welfare unanimously approved a temporary rule authorizing the Director of the department to activate crisis standards of care in Idaho. Currently, Idaho has the third-highest seven-day average test positivity rate in the country at 23.3%.<sup>7</sup>

### **Containment Measures Promulgated by Idaho Executive and Judicial Branches**

Idaho remains in modified Stage 2 of the Idaho Rebound Reopening Plan, which prohibits personal and public gatherings of more than ten people, requires face coverings at long-term care facilities, and advises people with increased risk for severe illness to “stay home and limit their movement outside of their place of residence.”<sup>8</sup> Individuals not residing within the same household are required to maintain 6-foot distance whenever possible.

In an effort to contain the virus and to promote public health and safety, the Idaho Supreme Court has issued orders specifying various containment measures. One such measure is that, “[n]o person shall enter courtrooms or other rooms where court is being held, nor approach any court services office if they are not wearing a mask covering their nose and mouth.”<sup>9</sup> All grand jury empanelment and jury trials have been postponed until further notice.<sup>10</sup>

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<sup>5</sup> COVID-19 Hospitalization and Death by Race/Ethnicity, Centers for Disease Control and Prevention (Nov. 30, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

<sup>6</sup> Casey Decker, *Gov. Little defends lack of mask mandate despite hospitals nearing capacity*, KTVB 7, (Dec. 18, 2020), <https://www.ktvb.com/article/news/health/coronavirus/brad-little-idaho-mask-mandate-vaccine/293-c150b243-678b-4268-9488-22dce0630dcf>

<sup>7</sup> *Community Profile Report*. CDC. Assistant Secretary for Preparedness and Response. (Jan. 6, 2020), <https://beta.healthdata.gov/National/COVID-19-Community-Profile-Report/gqxm-d9w9>.

<sup>8</sup> Stay Healthy Order, Idaho Dep't of Health & Welfare (Nov. 14, 2020), <https://coronavirus.idaho.gov/wpcontent/uploads/2020/11/stage-2-modified-order.pdf>.

<sup>9</sup> IN RE: Limitations on Access to Court Facilities, Idaho Supreme Court Order, (Nov. 23, 2020), <https://isc.idaho.gov/EO/FINAL-Order-In-Re-Limitations-on-Access-to-Court-Facilities.pdf>

<sup>10</sup> IN RE: Commencement of Jury Trials and Grand Jury Empanelment. Idaho Supreme Court Order, (Dec. 14, 2020), <https://isc.idaho.gov/EO/FINAL-Order-Re-Commencement-of-Jury-Trials-and-Grand-Jury-Impanelment.pdf>



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## **Legislative Action for Safe and Equitable Participation**

Legislative bodies throughout the country have adopted rules and procedures to help contain the spread of the virus. A majority of states are requiring masks, delaying session, or introducing a hybrid model for public participation.<sup>11</sup> Legislative chambers in at least 36 states, the U.S. Virgin Islands, Guam and Puerto Rico have introduced or enacted bills or adopted resolutions that relate to legislative operations, including providing for remote meetings and voting or changes in bill deadlines, recess periods or other changes.<sup>12</sup>

At this time, the Idaho Legislature has offered no guidance as to how it intends to ensure equitable civic participation at the Statehouse during the pandemic. The legislature has not provided any formal guidance to the public concerning what containment measures will be in place during the legislative session, nor has either chamber offered guidance to the public concerning access to remote testimony and virtual participation.

We, the undersigned, hereby request the following:

- The Idaho legislature should convene for an abbreviated convention on January 11th and defer the remainder of the session to the first or second quarter of 2021, or until a time at which gathering in large groups is deemed safe by public health professionals. Deferring the session later into the year would best address public health and equitable access concerns-- as it would increase the ability to safely and responsibly gather during the legislative session once the vaccine is more widely distributed and Idaho case numbers decrease.
- Alternatively, the Idaho legislature should move to a virtual session by adopting special rules for remote participation in legislative proceedings during a declared public health emergency. The Idaho State Legislature should further act to ensure equitable public participation in the legislative process by adopting uniform rules and procedures for

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<sup>11</sup> *Corona Virus and State Legislature in the News*. National Conference of State Legislators, (Dec 24, 2020), <https://www.ncsl.org/research/about-state-legislatures/coronavirus-and-state-legislatures-in-the-news.aspx>

<sup>12</sup> *COVID-19: State Actions Related to Legislative Operations*. (November 30, 2020). National Conference of State Legislators. Retrieved December 4, 2020, from <https://www.ncsl.org/research/about-state-legislatures/covid-19-state-actions-related-to-legislative-operations.aspx>.



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remote participation. Clear and transparent guidelines for remote participation must be posted on the legislative website, including guidance to the public on how to

electronically sign-in for committee hearings and where to submit written testimony. The public's ability to participate remotely is critical and must not be left solely to the discretion of each respective committee chair.

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In sum, legislative actors should be greatly concerned about the public's ability to safely engage in the legislative process during an ongoing public health crisis. Without deferring the session or providing uniform rules for remote participation, the public—particularly people who are elderly and/or disabled—will be effectively disenfranchised from meaningful engagement in the 2021 legislative session.

We urge legislators to act swiftly in shared acknowledgement of and concern for Idahoans' public health and safety. We appreciate your attention and concern on this matter and patiently await your response.

Respectfully,

ACLU of Idaho

Planned Parenthood Votes Northwest and Hawai'i

Idaho Coalition Against Sexual & Domestic Violence

Legal Voice

Add the Words

Unrestricted Idaho

Idaho Chapter Sierra Club