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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

DALLEN WORTHINGTON and RACHEL WORTHINGTON,

Plaintiffs/Appellants,

vs.

CARLENE CRAZY THUNDER,

Defendant/Respondent.

SUPREME COURT NO. 49976-2022

RESPONDENT'S BRIEF

Appeal from the District Court of the Seventh Judicial District
of the State of Idaho, in and for the County of Bingham

HON. DARREN B. SIMPSON, DISTRICT JUDGE, PRESIDING.

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Defendant/Respondent, Carlene Crazy Thunder ("TENANT"), submits this brief in response to the appeal filed by Plaintiffs/Appellants ("LANDLORD"), from the final decision of the District Court of the Seventh Judicial District in and for Bingham County, Hon. Darren B. Simpson, presiding.

I. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal by LANDLORD from the Decision and Order on Appeal ("District Court Order") entered by District Judge Darren B. Simpson on June 22, 2022. LANDLORD had filed an expedited unlawful detainer action against TENANT alleging her default in payment of rent following proper notice. Although TENANT demanded a jury trial, the magistrate court denied her demand, and instead, held a bench trial and found TENANT guilty of unlawful detainer. On appeal to the District Court, TENANT argued that she had a statutory right to a jury trial under I.C. § 6-313 because the pleadings presented questions of fact, and by denying her that right, the magistrate court erred. The District Court Order held that I.C. § 6-311A violates Art. I, Sec. 7, of the Idaho Constitution; that I.C. § 6-311A conflicts with I.C. § 6-313, which provides that "Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such jury be waived as in other cases;" and since TENANT raised material issues of fact, the magistrate court erred by denying her a trial by jury. The District Court vacated the magistrate court's amended order of eviction and remanded the action for further consideration. *(R. 100 – 108.)*

B. Course of Proceedings Below

On October 12, 2021, LANDLORD filed a complaint for unlawful detainer against

TENANT alleging default in payment of rent following proper notice. *(R. 8 – 18.)* On October 21, 2021, TENANT filed a motion to dismiss under I.R.C.P. 12(b)(8), on grounds that another action was pending between the same parties for the same cause of action. Also on October 21, 2021, TENANT filed her answer, which included affirmative defenses that presented questions of fact, and a demand for jury trial. *(R. 26 – 36.)* On October 21, 2021, TENANT filed a motion to vacate the bench trial on grounds that since the action presented "questions of fact," she had a right to trial by jury under I.C. § 6-313, the Idaho Constitution Art. I, Sec. 7 and I.R.C.P. Rule 38. On October 25, 2021, Magistrate Scott H. Hansen, conducted a hearing on the pending motions to dismiss the complaint and to vacate the bench trial, both of which he denied. On October 25, 2021, TENANT filed a motion to disqualify Judge Hansen for cause. On October 26, 2021, LANDLORD filed an amended complaint for unlawful detainer. *(R. 42 – 52.)* On October 27, 2021, TENANT filed a motion to dismiss the amended complaint on grounds that it constituted a supplemental pleading under I.R.C.P. 15(d) being improperly used to sustain a defective original complaint. On October 28, 2021, TENANT filed her answer to the amended complaint, including affirmative defenses that presented questions of fact and a demand for jury trial. *(R. 56 – 68.)* On October 29, 2021, TENANT filed an amended motion to vacate the bench trial on grounds that she was entitled to a jury trial under I.C. § 6-313, the Idaho Constitution Art. I, Sec. 7, and I.R.C.P. Rule 38. On November 1, 2021, Judge Hansen, voluntarily disqualified himself under I.R.C.P. 40(c). On November 2, 2021, the trial court administrator assigned the case to Magistrate Cleve B. Colson. On November 5, 2021, Judge Colson set the matter for a bench trial to be held November 8, 2021. On November 8, 2021, Judge Colson held a hearing on the pending motions. He denied TENANT'S demand for a jury trial and proceeded to conduct a bench trial. *(Tr. p. 50.)* On advice of counsel, TENANT refused to participate in the

bench trial on grounds that it exceeded the court's jurisdiction, and was, therefore, a nullity. Upon completion of LANDLORD's presentation of evidence, the magistrate found TENANT guilty of unlawful detainer. On November 10, 2021, the magistrate entered a judgment and order of eviction. *(R. 7.)* On November 16, 2021, TENANT filed a notice of appeal under Rule 83. *(R. 73.)* On November 23, 2021, the magistrate court entered an amended judgment and order of eviction. *(R. 77.)*

C. Statement of Facts

On or about June 1, 2018, TENANT entered into a written residential lease agreement ("Lease Agreement") with LANDLORD whereby she agreed to rent residential real property located at 285 S. 625 W., city of Blackfoot, county of Bingham, state of Idaho, in exchange for payment of monthly rent in the amount of $850.00. *(R. 47 – 52.)* On or about June 25, 2021, TENANT served LANDLORD with a three (3) day notice for repairs listing numerous repairs that required attention, including waterproofing and weather protection, electrical, plumbing, heating, sanitary facilities, and other conditions hazardous to health or safety. *(R. 64 – 66.)* On or about July 15, 2021, LANDLORD's counsel mailed a "Notice to Terminate" to TENANT demanding she vacate the premises by August 15, 2021. *(R. 67 – 68.)* TENANT remained in possession of the premises past the termination date, and on October 12, 2021, LANDLORD filed a complaint for unlawful detainer alleging TENANT'S nonpayment of rent. *(R. 8 – 18.)*

II. ISSUES PRESENTED ON APPEAL

A. Whether Plaintiffs/Appellants waived their argument that unlawful detainer actions are matters of equity, and therefore, not entitled to trial by jury?

B. Whether the District Court erred in holding that I.C. § 6-311A violates Art. I, Sec. 7, of the Idaho Constitution?

C. Whether the District Court erred by vacating the magistrate court's order evicting TENANT?

D. Whether the District Court erred in finding that the pleadings presented questions of fact?

E. Whether attorney fees and costs associated with the appeals should be awarded to TENANT?

III. STANDARD OF REVIEW ON APPEAL

The Idaho Supreme Court exercises "free review over interpreting a statute's meaning and applying the facts to the law." *VFP VC v. Dakota Co.*, 141 Idaho 326, 331, 109 P.3d 714, 719 (2005). *Trotter v. Bank of N.Y. Mellon*, 152 Idaho 842, 846, 275 P.3d 857 (2012). *See also*, *Martel v. Bulotti*, 138 Idaho 451, 453, 65 P.3d 192 (2003) ("This Court exercises free review over matters of law. *Polk v. Larrabee*, 135 Idaho 303, 308, 17 P.3d 247, 252 (2000). Determining the meaning of a statute or applying law to undisputed facts constitute matters of law. *Id.; Melendez v. Hintz.*" 111 Idaho 401, 402, 724 P.2d 137, 138 (Ct. App. 2001)).

IV. ARGUMENT

A. Plaintiffs/Appellants waived their argument that unlawful detainer actions are matters of equity, and therefore, not entitled to trial by jury.

LANDLORD argues, for the first time on this, the second appeal, that "There is no right to a jury trial in an equitable action, and an unlawful detainer action that seeks only possession of the property for non-payment of rent is an equitable action." *(Amended Appellants' Brief, p. 6.)* LANDLORD's argument continues, as follows, "Worthington's suit was for possession only for the reason of non-payment of rent. Therefore, Crazy Thunder was not entitled to a jury trial and the District Court erred in concluding that Idaho Code § 6-311A is unconstitutional." *(Amended*

Appellants' Brief, p. 6.)

Insofar as LANDLORD failed to raise this issue in either the trial court or the intermediate appellate court, but raised it for the first time on this second appeal, it should not now be considered by the Idaho Supreme Court. "This Court will not consider issues raised for the first time on appeal (citation omitted)." *Indian Springs L.L.C. v. Andersen*, 154 Idaho 708, 714, 302 P.3d 333 (2012).

Indeed, the LANDLORD submitted no briefing or argument on appeal to the District Court. The case was submitted to the District Court on TENANT'S brief, alone. (R. 98 – 99.) The Idaho Supreme Court should not now consider *any* issues presented by LANDLORD in this second appeal. *See, Charney v. Charney*, 159 Idaho 62, 68, 356 P.3d 355, 361 (2015) ("On an appeal from the district court sitting as an intermediate appellate court, this Court will not consider issues that were not raised before the district court."); and *Centers v. Yehezkely,* 109 Idaho 216, 217, 706 P.2d 105 (1985), ("It is well settled that when a second appeal is taken, the appellants may not raise issues in the higher court different from those presented in the intermediate court. *(Citations omitted).* This rule is a corollary to the general principle recognized in Idaho, subject to exceptions not applicable here, that an issue presented on appeal must have been properly framed and preserved in the court below.")

Accordingly, insofar as LANDLORD's entire appeal is founded on issues it has raised for the first time on this second appeal, the Idaho Supreme Court should not consider the issues and the decision of the District Court should be affirmed.

B. The District Court Did Not Err in Holding that Idaho Code § 6-311A Violates Art. I, Sec. 7, of the Idaho Constitution.

The Idaho Constitution, Art. I, Sec. 7, provides that "The right of trial by jury shall remain inviolate." "This provision's 'function is to preserve the right [to a jury trial] as it existed at the date of the adoption of the Constitution.'" *Rudd v. Rudd*, 105 Idaho 112, 116, 666 P.2d. 639, 643 (1983) (citing *Anderson v. Whipple*, 71 Idaho 112, 227 P.2d 351 (1951)). The right applies to all actions "so triable under the common law and territorial statutes in force at the date of the adoption of our Constitution." *Comish v. Smith*, 97 Idaho 89, 92, 540 P.2d 274, 277 (1975). The Idaho Rules of Civil Procedure, likewise, mandate that "[t]he right of trial by jury as declared by the Constitution or as provided by statute of the state of Idaho is preserved to the parties inviolate." I.R.C.P. 38(a).

In Idaho, the right to jury trial existed in unlawful detainer actions at the time the state's constitution was adopted in 1889. This is confirmed by reference to Section 5103 of the 1887 Revised Statutes of the Idaho Territory. *(Respondent's Brief, Addendum 1: 1887 Revised Statutes of the Idaho Territory.)* Indeed, the language of Section 5103 is identical to that found in today's modern version of I.C. § 6-313: "Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such jury be waived as in other cases..." In *Loughrey v. Weitzel*, 94 Idaho 833, 836, 498 P.2d 1306, 1309 (1972), the Idaho Supreme Court upheld a tenant's right to a jury trial in an unlawful detainer action ("Appellant had the right to a jury trial in the district court."). But then, in 1996, the Idaho Legislature amended I.C. § 6-311A to eliminate the right to a jury trial. The Legislature took the sentence, "In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent, ***if*** the action is tried by the court without a jury...," deleted the word "if," and replaced it with the words "shall be." As amended, the statute currently reads, in relevant part, as follows: "In an action exclusively for possession of a tract of land of five

(5) acres or less for the nonpayment of rent...the action ***shall be*** tried by the court without a jury." The Legislature also repealed I.C. § 6-311B which allowed for jury trials. *(Respondent's Brief, Addendum 2: 1996 Idaho Session Laws, Ch. 169.)* Years later, on March 4, 2019, the Idaho Attorney General issued an opinion letter wherein it concluded that I.C. § 6-311A, as amended in 1996, is unconstitutional. The Attorney General reasoned that "legislation cannot trump constitutional matters." *(Respondent's Brief, Addendum 3: Attorney General Opinion Re: HB 138.)*

While it can be expected that landlords, in general, will complain that granting jury trials in unlawful detainer actions will unnecessarily delay recovery of possession of their rental properties, the United States Supreme Court noted in *Pernell v. Southall Realty*, 416 U.S. 363, 94 S. Ct. 1723, 40 L.Ed 2d 198 (1974), that with respect to eviction actions "the right to trial by jury was recognized by statute for over a century from 1864 to 1970, and it does not appear to have posed any unmanageable problems during that period." 416 U.S. at 384. In *Pernell*, the U.S. Supreme Court reasoned as follows:

> Some delay, of course, is inherent in any fair minded system of justice. A landlord-tenant dispute, like any other lawsuit, cannot be resolved with due process of law unless both parties have had a fair opportunity to present their cases. Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a [person] is evicted from [their] home.

Ibid., 416 U.S. 363, 385, 94 S. Ct. 1723, 1734, 40 L. Ed. 2d 198 (1974).

In Idaho, the right to trial by jury in unlawful detainer actions has been recognized by statute for over a century. That is, from 1887 until 1996, when the Idaho Legislature eliminated the right in unlawful detainer actions based on nonpayment of rent by amending I.C. § 6-311A and repealing I.C. § 6-311B. However, the Idaho Legislature has left intact I.C. § 6-313, which provides a right to jury trial in unlawful detainer actions where "questions of fact are presented by the pleadings."

By eliminating the right to a jury trial from I.C. § 6-311A, but leaving I.C. § 6-313 wholly

intact, the Legislature created a conflict between the two statutes where none had existed previously. In an effort to resolve the conflict and give direction to practitioners and courts alike, Idaho Legal Aid Services, Inc., filed suit against the State of Idaho for declaratory relief, and on July 20, 2020, in *Idaho Legal Aid Services, Inc. v. State of Idaho*, Ada County Case No. CV01-20-09078, Fourth District Judge, Hon. Michael Reardon, declared *"Idaho Code section 6-311A [is] unconstitutional to the extent that it deprives parties of the right to a jury trial in instances where 'an issue of fact is presented by the pleadings' as provided by Idaho Code section 6-313 and the Idaho Constitution at the time of its enactment…" (Respondent's Brief, Addendum 4: Memorandum Decision, Idaho Legal Aid Services, Inc. v. State of Idaho.)* Then, on February 14, 2022, a similar ruling was handed down by Sixth District Judge, Robert C. Naftz, in *Hill-Vu Mobile Home Park v. Lloyd,* Bannock County Case No. CV03-21-1913. Judge Naftz wrote that, *"However, Idaho Code § 6-313 requires an unlawful detainer action to be tried before a jury when a material factual dispute is presented on the pleadings." (Respondent's Brief, Addendum 5: Decision on Appeal from Magistrate Division, Hill-Vu Mobile Home Park v. Lloyd.)*

In the instant case, LANDLORD acknowledges that "It would seem that Idaho Code § 6-311A and Article 1 Section 7 of the Idaho Constitution are in direct conflict with each other." *(Amended Appellants' Brief, p. 4.)* But then, LANDLORD attempts to show that no such conflict exists because "the longstanding rule in Idaho [is] that the right to a jury trial does not embrace equitable actions" and "an unlawful detainer action that seeks only possession of the property for non-payment of rent is an equitable action…" *(Amended Appellants' Brief, pp. 4 – 6.)*

Contrary to LANDLORD'S unsupported argument, the law is well-settled on whether an action for possession is a matter of law, or of equity. In *Anderson v. Whipple*, 71 Idaho 112, 227 P.2d 351 (1951), the Idaho Supreme Court reasoned that actions such as ejectment, or other actions

where the right to possession is the paramount issue, "have always been regarded as within the province of the courts of law." Additionally, as discussed above, in Idaho, the right to jury trials in unlawful detainer actions has existed since 1887, even before the state's constitution was adopted in 1889. LANDLORD has cited no authority in support of its argument that the right to a jury trial in unlawful detainer actions depends on whether such actions are characterized as matters of equity or of law.

Accordingly, on appeal, the District Court's conclusion of law that "Idaho Code § 6-311A violates Article I, Sec. 7 of the Idaho Constitution where questions of material fact are raised," *(R. 106)* should be affirmed.

C. **<u>The District Court Did Not Err By Vacating the Magistrate Court's Order Evicting TENANT.</u>**

LANDLORD argues that the "decision by the District Court [vacating the magistrate's eviction order] *ignored* Idaho's longstanding rule in Idaho that the right to a jury trial does not embrace equitable actions," and therefore, constituted error. *(Amended Appellants' Brief, p. 6.)* However, as explained in *Anderson v. Whipple*, *supra*, the Idaho Supreme Court has reasoned that actions such as ejectment, or other actions where the right to possession is the paramount issue, "have always been regarded as within the province of the courts of law." Insofar as the paramount issue in unlawful detainer actions is the right to possession, they are within the province of courts of law. And, in courts of law, the right to trial by jury is guaranteed by Art. I, Sec. 7, of the Idaho Constitution.

Here, the District Court did not *"ignore"* Idaho's longstanding rule that the right to a jury trial does not embrace equitable actions. Rather, the LANDLORD failed to raise the issue in any of

the proceedings below, and so, neither the magistrate court, nor the District Court, had any reason to address the matter. It was not the courts, but the LANDLORD that ignored the issue.

Accordingly, on appeal, the District Court's order vacating the magistrate court's amended eviction order should be affirmed.

D. The District Court Did Not Err By Finding That The Pleadings Presented Questions of Fact.

LANDLORD argues that, "Because Crazy Thunder did not allege she paid the rent that was due, there was no material dispute of fact and therefore the District Court erred in making such a finding…" *(Amended Appellants' Brief, p. 8.)*

Apparently, LANDLORD is asking the Idaho Supreme Court to construe the language contained in I.C. § 6-313 regarding "issues of fact" to mean that the *only* issue that a party may legitimately raise in an unlawful action is whether rent was paid, or not. Any other fact issue, such as those raised in TENANT'S answer, could not be considered. *(R. 56 - 68.)* Such a narrow reading of I.C. § 6-313 finds no support in the law, and LANDLORD has offered none.

Accordingly, on appeal, the District Court's finding that "Crazy Thunder raised issues of fact by asserting that the Worthington's committed retaliatory lease termination, failed to provide statutory notice to pay rent or vacate, and waived acceptance of rent," *(R. 105)* should be affirmed.

E. Attorney Fees And Costs Should Be Awarded To TENANT On Appeal.

The District Court determined that TENANT was the prevailing party on appeal, and pursuant to Idaho Appellate Rule 41(d) and Idaho Code § 6-324, awarded attorney fees and costs to her. *(R. 106 – 107.)*

If the Idaho Supreme Court finds that TENANT is the prevailing party in this appeal, then she respectfully requests an award of her reasonable attorney fees pursuant to Idaho Appellate Rule 41(d), Idaho Code § 6-324, and I.R.C.P. 54(e)(1). Costs should be awarded to TENANT under Idaho Appellate Rule 40 and I.R.C.P. 54(d).

Additionally, TENANT requests an award of attorney fees pursuant to Idaho Appellate Rule 41, I.R.C.P. 54(e)(2) and Idaho Code § 12-121, on grounds that LANDLORD's appeal was brought, pursued or defended frivolously, unreasonably or without foundation.

Specifically, LANDLORD's entire appeal is founded on the argument that "There is no right to a jury trial in an equitable action, and an unlawful detainer action that seeks only possession of the property for non-payment of rent is an equitable action" *(Amended Appellants' Brief, p. 6.)*

LANDLORD's argument is frivolous, unreasonable and without foundation because it is contrary to well-settled law that actions such as ejectment, or other actions where the right to possession is the paramount issue, "have always been regarded as within the province of the courts of law." *See, Anderson v. Whipple, supra.* Not only did LANDLORD fail to offer any support for its argument, it ignored existing law on the issue.

When a pro se litigant raised issues on appeal that were not presented below, and asserted errors by the trial court without any reasoned argument or authority supporting such assertions, this Court, reasoned as follows:

> "As we stated in *KEB Enterprises, L.P. v. Smedley*, 140 Idaho 746, 754-55, 101 P.3d 690, 698-99 (2004), when awarding attorney fees on appeal against Jenkins, a pro se appellant, pursuant to Idaho Code section 12-121, 'Jenkins's appeal consists simply of raising issues on appeal that were not presented to the trial court and asserting errors by the trial court without any reasoned argument or authority supporting such assertions.'"

Indian Springs L.L.C. v. Andersen, 154 Idaho 708, 716, 302 P.3d 333 (2012).

Accordingly, the Idaho Supreme Court should award attorney fees to TENANT because LANDLORD'S appeal consists of raising issues on appeal that were not presented to either the trial court or the intermediate appellate court and asserting errors by the District Court without any reasoned argument or authority supporting such assertions.

V. **CONCLUSION**

The Idaho Supreme Court should *affirm* the District Court's Decision and Order on Appeal. Attorney fees should be awarded to TENANT under I.C. § 6-324, I.R.C.P. 54(e)(1) and I.A.R. 41. Attorney fees should also be awarded to TENANT under I.C. § 12-121, I.R.C.P. 54(e)(2) and I.A.R. 41. Costs should be awarded to TENANT under I.R.C.P. 54(d) and I.A.R. 40.

Submitted this 4th day of March, 2023.

IDAHO LEGAL AID SERVICES, INC.

By:

Karl H. Lewies, Esq.
Attorney for Defendant/Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing RESPONDENT'S BRIEF have this 4th day of March, 2023, been served upon the individuals listed below, as follows:

Hon. Darren B. Simpson BINGHAM COUNTY COURT HOUSE 501 N. Maple Blackfoot, ID 83221	[X] U.S. Mail
Jeromy W. Pharis, Esq. BLASER, OLESON & LLOYD, CHTD. P.O. Box 1047 Blackfoot, ID 83221 justin@bollaw.net	[X] iCourt eFile&Serve

DATED this day of March 2023.

Karl H. Lewies, Esq.

VI. ADDENDA

1. 1887 Revised Statutes of the Idaho Territory
2. 1996 Idaho Session Laws, Ch. 169
3. Attorney General Opinion Re: HB 138
4. Memorandum Decision, *Idaho Legal Aid Services, Inc. v. State of Idaho*, Ada County Case No. CV01-20-09078
5. Decision on Appeal from Magistrate Division, *Hill-Vu Mobile Home Park v. Lloyd*, Bannock County Case No. CV03-21-1913.

ADDENDUM 1
1887 Revised Statutes

REVISED STATUTES

OF

IDAHO TERRITORY.

HENRY Z. JOHNSON

ENACTED AT THE

FOURTEENTH SESSION OF THE LEGISLATIVE ASSEMBLY.

IN FORCE JUNE 1, 1887.

BOISE CITY, IDAHO:
PRINTED FOR THE TERRITORY.
1887.

2155 10

have not any other estate now conveyed or conce[illegible] any way disposed of, with design to secure the sam[illegible] use, or to hinder, delay, or defraud my creditor[illegible] me God."

Order of discharge.

SEC. 5081. After administering the oath [illegible] must issue a order that the prisoner be discharged [illegible] tody, and the officer upon the service of such o[illegible] discharge the prisoner forthwith, if he be impriso[illegible] other cause.

If not discharged, prisoner may again apply, when.

SEC. 5082. If such Judge does not discharge [illegible] er, he may apply for his discharge at the end of [illegible] ceeding thirty days, in the same manner as above [illegible] and the same proceedings must thereupon be had.

Discharge final.

SEC. 5083. The prisoner after being so disch[illegible] forever exempted from arrest or imprisonment for [illegible] debt, unless he be convicted of having willfully swo[illegible] ly upon his examination before the Judge, or in ta[illegible] oath before prescribed.

Judgment remains in force.

SEC. 5084. The judgment against any prisone[illegible] discharged, remains in full force against any esta[illegible] may then or at any time afterward during the li[illegible] judgment belong to him, and the plaintiff may ta[illegible] new execution against the goods and estate of the [illegible] in like manner as if he had never been committed.

Plaintiff may order discharge of prisoner, who shall not thereafter be liable, etc.

SEC. 5085. The plaintiff in the action may at a[illegible] order the prisoner to be discharged, and he is not th[illegible] liable to imprisonment for the same cause of action.

Plaintiff to advance funds for support of prisoner.

SEC. 5086. Whenever a person is committed to [illegible] an execution issued on a judgment recovered in a [illegible] tion, the creditor, his agent or attorney must advan[illegible] jailer on such commitment, sufficient money for th[illegible] of the prisoner at the rate provided by law, for on[illegible] and must make the like advance for every successi[illegible] of his imprisonment; and in case of failure to do so, th[illegible] must forthwith discharge such prisoner from custo[illegible] such discharge has the same effect as if made by [illegible] the creditor.

CHAPTER IV.

SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION [illegible] PROPERTY.

SECTION		SECTION	
5091.	Forcible entry defined.	5102.	Judgment by default.
5092.	Forcible detainer defined.	5103.	Trial by jury.
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5099.	Parties generally.		
5100.	Complaint and summons.		
5101.	Arrest.		

Forcible entry defined.

SECTION 5091. Every person is guilty of a forcib[illegible] who either:

1169.

1. By breaking open doors, windows, or other pa[illegible] house, or by any kind of violence or circumstance o[illegible] enters upon or into any real property; or,

2. Who, after entering peaceably upon real pr[illegible] turns out by force, threats, or menacing conduct, th[illegible] in possession.

"Forcible Entry & Detainer & Unlawful Detainer." 29 Cent. L. J. 124

Forcible detainer defined.

[illegible]5092. Every person is guilty of a forcible detainer [illegible]:

[illegible] force, or by menaces and threats of violence, un[illegible] holds and keeps possession of any real property, [illegible] the same was acquired peacefully or otherwise; or, [illegible]o, in the night time, or during the absence of the [illegible] of any lands, unlawfully enters upon real property, [illegible], after demand made for the surrender thereof, [illegible] period of five days, refuses to surrender the same to [illegible]mer occupant. 56 Pac. 227.

[illegible] occupant of real property, within the meaning of this [illegible]tion, is one who, within five days preceding such [illegible] entry, was in the peaceable and undisturbed pos[illegible] of such lands. 85 Pac. 49.

Unlawful detainer defined, amended.

[illegible]5093. A tenant of real property, for a term less [illegible], is guilty of an unlawful detainer:

[illegible]hen he continues in possession, in person or by sub[illegible] of the property, or any part thereof, after the expir[illegible] of the term for which it is let to him, without the per[illegible] of his landlord, or the successor in estate of his [illegible], if any there be; but in case of a tenancy at will, [illegible] first be terminated by notice, as prescribed in the [illegible]ode; ante 2857 77 Pac. 435. 1161. 82 Pac. 700. 58 Pac. 204.

Amended.

[illegible]here he continues in possession, in person or by sub[illegible], without permission of his landlord, or the successor [illegible] of his landlord, if any there be, after default in the [illegible]ent of rent, pursuant to the lease or agreement under [illegible] the property is held, and three days' notice, in writ[illegible] requiring its payment, stating the amount which is due, [illegible]session of the property, shall have been served upon [illegible] and if there be a sub-tenant in actual occupation of [illegible] premises, also upon such sub-tenant. Such notice may [illegible]ved at any time within one year after the rent be[illegible] due. In all cases of tenancy upon agricultural lands, [illegible] the tenant has held over and retained possession for [illegible]than sixty days after the expiration of his term with[illegible] demand of possession or notice to quit by the land[illegible] the successor in estate of his landlord, if any there [illegible] shall be deemed to be holding by permission of the [illegible]ord, or the successor in estate of his landlord, if any [illegible], and shall be entitled to hold under the terms of the [illegible] for another full year, and shall not be guilty of an [illegible]ful detainer during said year, and such holding over [illegible] period aforesaid shall be taken and construed as a [illegible] on the part of a tenant to hold for another year; 77 Pac. 436. Tenancy from month to month 3 days notice sufficient. 54 Pac. 394.

[illegible]here he continues in possession in person, or by sub[illegible], after a neglect or failure to perform other condi[illegible] or covenants of the lease or agreement under which [illegible]operty is held, including any covenant not to assign [illegible] let, than the one for payment of rent, and three [illegible] notice, in writing, requiring the performance of such [illegible]ions or covenants, or the possession of the property, [illegible] have been served upon him, and if there be a sub[illegible] in actual occupation of the premises, also upon such [illegible]nant. Within three days after the service of the [illegible], the tenant, or any sub-tenant in actual occupation of [illegible] premises, or any mortgagee of the term, or other person [illegible]sted in its continuance, may perform the conditions

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or covenants of the lease, or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided if the covenants and conditions of the lease, violated by the lessee, cannot afterward be performed, then no notice, at last prescribed herein, need be given to said lessee or his sub-tenant demanding the performance of the violated covenant or conditions of the lease. A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of premises let to an undertenant, in case of his unlawful detention of the premises underlet to him.

4. A tenant or sub-tenant, assigning or sub-letting, or committing waste upon the demised premises, contrary to the covenants of his lease, thereby terminates the lease, and the landlord, or his successor in estate, shall, upon service of three days' notice to quit, upon the person or persons in possession, be entitled to restitution of possession of such demised premises under the provisions of this chapter.

Service of notice. "Proof of" 75 Pac. 185.

SEC. 5094. The notices required by the preceding section may be served, either:

1. By delivering a copy to the tenant personally; or,
2. If he be absent from his place of residence and from his usual place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the mail addressed to the tenant at his place of residence; or, if such place of residence and business cannot be ascertained, or a person of suitable age or discretion cannot be found there, then by affixing a copy in a conspicuous place on the property, and also delivering a copy to a person there residing, if such person can be found, and also sending a copy through the mail addressed to the tenant at the place where the property is situated. Service upon a sub-tenant may be made in the same manner.

Courts have jurisdiction.

SEC. 5095. The District Court of the county in which the property or some part of it, is situated, has jurisdiction of proceedings under this chapter.

Jurisdiction of probate court under this chapter.

SEC. 5096. The Probate Court of the county in which the property, or some part of it, is situated, has jurisdiction of proceedings under this chapter when the whole amount of rent and damages claimed does not exceed five hundred dollars.

Jurisdiction of justices' courts under this chapter. Amended.

SEC. 5097. Justices' Courts have jurisdiction of proceedings under this chapter where the whole amount of rent and damages claimed does not exceed three hundred dollars.

Parties defendant. Amended.

SEC. 5098. No person other than the tenant of the premises, and sub-tenant, if there be one, in the actual occupation of the premises when the notice herein provided for was served, need be made parties defendant in the proceeding, nor shall any proceeding abate nor the plaintiff be nonsuited for the non-joinder of any persons who might have been made parties defendant; but when it appears that any of the parties served with process or appearing in the proceeding are guilty of the offense charged, judgment must be rendered against him. Any person who shall become a sub-tenant of the premises or any part thereof after the service of notice as provided in this chapter shall be bound by the judgment. In case a married woman be a

tenant or a sub-tenant, her coverture shall constitute no defense; but in case her husband be not joined, or unless she be doing business as a sole trader; and execution issued upon a personal judgment against her, can only be enforced against property on the premises at the commencement of the action.

Parties generally.

SEC. 5099. Except as provided in the preceding section the provisions of this Code, relating to parties to civil actions, are applicable to this proceeding.

The complaint. 107 Cal. 112. 8 Ency. of Pl. & Pr. 150. Must allege service of notice. 75 Pac. 185.

SEC. 5100. The plaintiff in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. Upon filing the complaint, a summons must be issued thereon returnable as in other cases. 4143.

Summons to issue.

Arrest.

SEC. 5101. If the complaint presented establishes, to the satisfaction of the Judge or Justice, fraud, force, or violence in the entry or detainer, and that the possession held is unlawful, he may make an order for the arrest of the defendant.

Judgment by default. 77 Pac. 437.

SEC. 5102. If, at the time appointed, the defendant do not appear and defend, the court must enter his default and render judgment in favor of the plaintiff as prayed for in the complaint.

Trial by jury.

SEC. 5103. Whenever an issue of fact is presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending.

Showing required of plaintiff, forcible entry on detainer of defendant.

SEC. 5104. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein, is not then ended or determined; and such showing is a bar to the proceedings.

Complaint must be amended in certain cases.

SEC. 5105. When upon the trial of any proceeding under this chapter, it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, and other than the offense charged in the complaint, the Judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance shall be permitted upon account of such amendment, unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

Verdict and judgment. 91 Cal. 598. § 4407 [illegible]

SEC. 5106. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judg-

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ment shall be entered for the restitution of the premises; and if the proceeding be for an unlawful detainer after neglect or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint, and proved on the trial and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent, and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for three times the amount of the damages thus assessed, and of the rent found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any sub-tenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the proceeding, and thereupon the judgment shall be satisfied and the tenant be restored to his estate; but, if payment, as here provided, be not made within the five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

Verification of complaint and answer.

SEC. 5107. The complaint and answer must be verified.

Effect of an appeal upon judgment.

SEC. 5108. An appeal taken by the defendant does not stay proceedings upon the judgment unless the court so directs.

Provisions applicable to proceedings under this chapter.

SEC. 5109. The provisions of this Code, relative to civil actions, appeals, and new trials, so far as they are not inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter.

TITLE IV.

OF THE ENFORCEMENT OF LIENS.

SECTION		SECTION	
5125.	Liens of mechanics and others.	5133.	Time of continuance.
5126.	Sub-contractors and others.	5134.	Sub-contractors.
5127.	Liens for grading and filling lots.	5135.	Recovery by contractor.
5128.	Interest in the land.	5136.	Court to declare rank of liens.
5129.	Effect of liens.	5137.	Actions for separate liens.
5130.	Claim of lien.	5138.	Lien does not impair right to action.
5131.	Liens upon two or more places of property, each to be designated.	5139.	Rules of practice. New trials and appeals.
5132.	Claim to be recorded.		

What laborers, contractors, etc., may have liens upon.

SECTION 5125. Every person performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct, to create hydraulic power, or any other structure, or who performs labor in any mining claim, has a lien upon the same for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of the building or other improvement, or his agent, but the aggregate amount of such liens must not exceed the amount which the owner would be otherwise liable to pay.

Notice by sub-contractor, etc., and lien for amount due contractor.

SEC. 5126. Any sub-contractor, material man, laborer, or other person, performing labor or furnishing materials for a contractor who is entitled to a lien under the provisions of the last section, may, at any time, serve upon the owner, or his agent, or the person employing the contractor, written notice of the amount due him for such labor or materials, and such sub-contractor, material man, laborer, or other person, may have a lien for such amount, but not exceeding the amount then or thereafter due such contractor from such owner, or person employing him, under the contract. And any person furnishing materials, or performing labor for a sub-contractor, may by like notice to the contractor, be subrogated to the rights of such sub-contractor.

Liens for grading and filling lots and streets.

SEC. 5127. Any person who, at the request of the owner of any lot in any incorporated city or town, grades, fills in, or otherwise improves the same, or the street in front of or adjoining the same, has a lien upon such lot for his work done and materials furnished.

What interest in the land subject to the lien, amended.

SEC. 5128. The land upon which any building, improvement, or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, is also subject to the liens, if, at the time of the commencement of the work or of the furnishing of the materials for the same, the land belonged to the person who caused said building, improvement, or structure to be constructed; altered, or repaired; but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

Effect of liens.

SEC. 5129. The liens provided for in this chapter are preferred to any lien, mortgage, or other incumbrance which may have attached subsequent to the time when the building, improvement, structure or work was commenced

ADDENDUM 2
1996 Session Laws Ch. 169

1996 Idaho Laws Ch. 169 (S.B. 1340)

IDAHO 1996 SESSION LAWS

SECOND REGULAR SESSION OF THE 53RD LEGISLATURE

Additions are indicated by <<+ Text +>>. Deletions by

<<- Text ->>. Changes in tables are made but not highlighted.

Vetoed provisions within tabular material are not displayed.

Ch. 169

S.B. No. 1340
COURTS—FORCIBLE ENTRY AND UNLAWFUL DETAINER ACTION—TRIAL WITHOUT JURY

AN ACT RELATING TO FORCIBLE ENTRY AND UNLAWFUL DETAINER; AMENDING SECTION 6–311A, IDAHO CODE, TO PROVIDE THAT IN AN ACTION EXCLUSIVELY FOR THE POSSESSION OF LAND OF FIVE ACRES OR LESS FOR THE NONPAYMENT OF RENT THE ACTION SHALL BE TRIED BY THE COURT WITHOUT A JURY; AND REPEALING SECTION 6–311B, IDAHO CODE.

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

SECTION 1. That Section 6–311A, Idaho Code, be, and the same is hereby amended to read as follows:

<< ID ST 6–311A >>

6–311A. JUDGMENT ON TRIAL BY COURT. In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent, <<- if->> the action <<-is->> <<+shall be+>> tried by the court without a jury<<+. If+>>, <<-and->> after hearing the evidence <<- it->> <<+the court+>> concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable. No provision of this law shall be construed to prevent the bringing of an action for damages.

<< Repealed: ID ST 6–311B >>

SECTION 2. That Section 6–311B, Idaho Code, be, and the same is hereby repealed.

Approved on the 12th day of March, 1996, at 3:45 p.m. o'clock.

Effective: July 1, 1996

STATEMENT OF PURPOSE

RS 05598

This bill is one of a series of bills that the Justices of the Supreme Court transmitted to the Governor in their annual "defects in the laws" report under Art. 5, Sec. 25 of the Idaho Constitution.

In a court action to repossess a tract of land five acres or less solely because a tenant has not paid the rent, I.C. § 6–310(5) requires the court to schedule a trial within 12 days from the date the suit is filed and served upon the defendant. However, a related provision, I.C. § 6–311B, creates a dilemma because it provides that the parties can have a jury trial (as opposed to a court trial) to decide this right to possession issue. A jury trial cannot be scheduled in this short amount of time.

Since providing an expedited eviction procedure to restore the property to the owner in the shortest amount of time seems to be the most important policy consideration of this particular remedy, this bill eliminates the jury trial option of hearing the matter by amending I.C. § 6–311A, and repealing I.C. § 6–311B.

The parties still have the availability of a judge to decide the eviction issue and continue to have the right to a jury trial as to other actions relating to the amount and payment of past due rent, damage to the property, etc.

FISCAL NOTE

This bill will have no impact on state or local government funds.

ID LEGIS 169 (1996)

End of Document

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ADDENDUM 3
Attorney General Opinion Re: HB 138

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

March 4, 2019

VIA HAND DELIVERY AND EMAIL

The Honorable John Gannon
House of Representatives
Idaho Statehouse
jgannon@house.idaho.gov

Re: *HB 138*

Dear Representative Gannon:

You requested legal analysis from the Attorney General's Office about the constitutionality of various portions of HB 138 and sections of Idaho's Forcible Entry and Unlawful Detainer Act. Specifically, you asked us to review six provisions either in HB 138 or existing law. The six provisions are set forth below

QUESTIONS PRESENTED

1. Do the notice provisions of Idaho Code § 6-303(3) violate provisions of the Idaho Constitution or the United States Constitution?

2. Does the language in HB 138, page 3, ll. 25-33, amending Idaho Code § 6-310(1)(c), change the meaning or application of the subparagraph?

3. Does the time limit in Idaho Code § 6-310(2) requiring the court to schedule a trial within twelve (12) days from the filing of the complaint and service of the summons violate provisions of the Idaho Constitution or the United States Constitution?

4. Does limiting the time allowed for a trial continuance to two days, as provided in Idaho Code § 6-311, violate provisions of the Idaho Constitution or the United States Constitution?

Consumer Protection Division
P.O. Box 83720, Boise, Idaho 83720-0010
Located at 954 W. Jefferson 2nd Floor
Telephone: (208) 334-2424, FAX: (208) 334-4151

5. Does the language in Idaho Code § 6-311A ". . . the action shall be tried by the court without a jury . . ." violate provisions of the Idaho Constitution or the United States Constitution?

6. Does the language in HB 138, p.5, l. 9-16, proposing to add provisions for damages in an expedited action violate provisions of the Idaho Constitution or the United States Constitution?

CONCLUSIONS

1. No. Idaho Code § 6-303 defines the situations where a landlord may bring an unlawful detainer action against a tenant or subtenant. This includes when a tenant violates the lease as outlined in subpart 3 of Idaho Code § 6-303, which reads, in part:

> A tenant of real property, for a term less than life, is guilty of an unlawful detainer:
>
> 3. Where he continues in possession in person, or by subtenants, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for payment of rent, and three (3) days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him, and if there be a subtenant in actual occupation of the premises, also upon such subtenant.

It is our understanding you question whether the three-day-notice requirement of subpart 3 of Idaho Code § 6-303 comports with procedural due process protections under state and federal constitutions. As with other notice requirements and time limits within title 6, chapter 3, Idaho Code, the three-day-notice provision of subpart 3 is constitutional.

The right to procedural due process is guaranteed under article I, § 13, of the Idaho Constitution, as well as the Fourteenth Amendment to the United States Constitution, and requires the state, before it may deprive a person of life, liberty, or property, to provide that person with meaningful notice and a meaningful opportunity to be heard. *State v. Blair*, 149 Idaho 720, 722, 239 P.3d 825, 827 (Ct. App. 2010); *Roos v. Belcher*, 79 Idaho 473, 479, 321 P.2d 210, 212 (1958) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) for the principle that the fundamental requisite of due process of law is the opportunity to be heard). "Procedural due process is not a rigid concept but, rather, it 'is flexible and calls for such procedural protections as the particular situation

demands.'" *State v. Blair*, 149 Idaho at 722, 239 P.3d at 827 (*quoting Aeschliman v. State*, 132 Idaho 397, 402, 973 P.2d 749, 754 (Ct. App. 1999)).[1]

In *Lindsey v. Normet*, 405 U.S. 56 (1971), the United States Supreme Court considered the constitutionality of Oregon's Forcible Entry and Wrongful Detainer Statute under the Due Process and Equal Protection clauses of the Fourteenth Amendment. Portland, Oregon tenants, facing eviction for unpaid rent, filed a declaratory action against their landlord, arguing Oregon's law was unconstitutional on its face. *Id.* at 59-61. The tenants contended the early trial provision of six days, the statute's limitation on litigable issues, and certain deposit requirements violated the Fourteenth Amendment. *Id.* at 64. The United States Supreme Court found the law, excluding a double-bond prerequisite to appeal, constitutional. *Id.* at 64-65.

In upholding Oregon's law, the court noted it protects "tenants as well as landlords" by providing "a speedy, judicially supervised proceeding" to peaceably resolve "possessory issue[s]." *Id.* at 71-72. The court continued:

> There are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants. The tenant is, by definition, in possession of the property of the landlord; unless a judicially supervised mechanism is provided for what would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights of income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else. Many expenses of the landlord continue to accrue whether a tenant pays his rent or not. Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss and the tenant to unmerited harassment and dispossession when his lease or rental agreement gives him the right to peaceful and undisturbed possession of the property. Holding over by the tenant beyond the term of his agreement or holding without payment of rent has proved a virulent source of friction and dispute. We think Oregon was well within its constitutional powers in providing for rapid and peaceful settlement of these disputes.
>
> . . . .
>
> We do not denigrate the importance of decent, safe, and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of . . . or any recognition of the right of a tenant to occupy the

---

[1] We have used "the same analysis" here in judging due process claims under the Fourteenth Amendment of the United States Constitution and the Idaho Constitution. *Compare Maresh v. State, Dept. of Health and Welfare*, 132 Idaho 221, 227, 970 P.2d 14, 20 (1998).

> real property of his landlord beyond the term of his lease without the payment of rent or otherwise contrary to the terms of the relevant agreement. Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions. Nor should we forget that the Constitution expressly protects against confiscation of private property or the income therefrom.

Id. at 72-74.

Other courts have ruled similarly to how the United States Supreme Court did in *Lindsey*. The Washington Appellate Court in *Carlstrom v. Hanline*, 990 P.2d 986 (Wash. Ct. App. 2000) reviewed Seattle's unlawful detainer process in a tenant's appeal of his eviction from a rooming house after his lease expired. The tenant argued, among other things, the city's eviction procedure violated his due process rights because he had only six-days-notice before his hearing. *Id.* at 790. The Washington court concluded the six days gave the tenant enough time to prepare for the hearing. *Id. See also Butler v. Farner*, 704 P.2d 853, 857-858 (Colo. 1985) (holding the accelerated trial provisions of the state's forcible entry and detainer statute did not violate the due process rights of vendors) *Deal v. Municipal Court*, 157 Cal.3d 991, 994 (1984) (holding the five-day limit to answer an unlawful detainer complaint did not violate the due process or equal protection clauses of state or federal constitutions); *Brown v. Peters*, 360 A.2d 131, 133 (Conn. Ct. App. 1976) (agreeing with the United States Supreme Court's opinion in *Lindsey* that that the unique landlord-tenant relationship justifies "special statutory treatment.")

Forcible entry and unlawful detainer statutes are intended to provide an orderly, peaceful, and expeditious eviction process. The timing and notice requirements of Idaho's law, as presently codified, are similar to those of other states and localities, and, based on available case law, meet the basic elements of procedural due process.[2]

2. No. The proposed amendment of Idaho Code § 6-310(1)(c), does not change the meaning or application of the subparagraph. It appears the purpose of the amendment is simply to condense the extraneous language into the term "unlawful detainer," which is defined in Idaho Code § 6-303.

---

[2] The Department of Housing and Urban Development completed a legal determination of whether title 6, chapter 3, Idaho Code, complied with state and federal due process protections. *See* HUD Legal Op. GCH-0022 (Dec. 3, 1991). It reviewed the three-day notice provision in Idaho Code § 6-303 and the time limits in Idaho Code § 6-310. In all cases, the Department found the statutes provide the basic elements of due process under Article I, §§ 1 and 13, of the Idaho Constitution and the Fourteenth Amendment. It is important to note, however, that federal law gives Section 8 tenants, except in certain cases, the right to an administrative hearing, thereby making title 6, chapter 3, Idaho Code, inapplicable.

3. No. Based on the cases discussed in response to Question 1, the 12-day time limit in Idaho Code § 6-310(2) does not violate state or federal procedural due process protections.

4. Not necessarily. As noted above, procedural due process requires that a party be "provided with notice and an opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 91, 982 P.2d 917, 926 (1999) (internal citations omitted). While we do not perceive the language cited herein as facially in violation of due process, given the new types of issues HB 138 seeks to include within the ambit of unlawful detainer actions, such as damages, see page 5, Ll. 3-16, we certainly could envision instances where a tenant under the Forcible Entry and Unlawful Detainer Act's short time frames—five days to prepare for and appear at trial—would claim that, as applied, his or her due process rights are violated in forcing the tenant to address such potentially factually complex claims in such a shortened manner.

5. Yes. In 1972, the Idaho Supreme Court held in *Loughery v. Weitzel*, 94 Idaho 833, 836, 498 P.2d 1306, 1309 (1972) that a tenant in an unlawful detainer action "had the right to a jury trial in the district court." The Court did not cite to Article I § 7 of the Idaho Constitution in making this declaration, but its footnote 7 does reference "the constitutional right to a jury in civil cases," indicating to us that the basis of the right is rooted in our Constitution. We note that Idaho Code § 6-311A was enacted in 1974, two years after *Loughery*, but legislation cannot trump constitutional matters.

6. Not necessarily. Our analysis for Question 4 applies here too.

If you have any questions or concerns about this letter or if you need further information about a particular issue, please feel free to call me at 334-4114 or Brian Kane at 334-4523.

Sincerely,

BRETT DELANGE
Deputy Attorney General
Consumer Protection Division

BTD/SNG/tt

ADDENDUM 4

Memorandum Decision

Idaho Legal Aid Services, Inc. v. State of Idaho

Filed: 07/20/2020 11:02:54
Fourth Judicial District, Ada County
Phil McGrane, Clerk of the Court
By: Deputy Clerk - Masters, Beth

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,

vs.

STATE OF IDAHO,

Defendant.

Case No. CV01-20-09078

MEMORANDUM DECISION ON MOTION FOR EXPEDITED DECLARATION AND PRELIMINARY INJUNCTION, AND MOTION TO DISMISS

INTRODUCTION

On June 8, 2020, Idaho Legal Aid Services, Inc. ("Legal Aid") filed a Complaint for Urgent Injunction and Declaratory Judgment and a Motion for Expedited Declaration and Preliminary Injunction against the State of Idaho ("State"). Legal Aid is seeking a declaration that Idaho Code section 6-311A is unconstitutional and that trial by jury is available in all unlawful detainer actions. Legal Aid is also seeking an injunction to ensure that a jury trial is available in all unlawful detainer actions, and that the form summons and Idaho Supreme Court-approved form Complaint and Answer for unlawful detainer actions comport with the right to jury trial. Specifically, Legal Aid request relief in the form of:

> 2. Declare that Idaho Code § 6-311A is unconstitutional because it purports to deprive parties in certain unlawful detainer proceedings of their constitutional right to a jury trial.
>
> 3. Declare that a jury trial is constitutionally available in all unlawful detainer actions in Idaho.
>
> 4. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its magistrate courts, from enforcing Idaho Code §

6-311A.

> 5. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its Courts, from failing to inform parties of the right to demand a jury trial in unlawful detainer actions by making clear in any summonses issued in those actions that defendants may file a written response or otherwise demand a jury trial.
>
> 6. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its Courts, from failing to inform parties in unlawful detainer actions of the right to demand a jury trial by providing a place on any approved court forms for unlawful detainer actions, including approved complaint and answer forms, for any party to demand a jury trial.
>
> 7. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its Courts, from failing to inform parties of the right to demand a jury trial in unlawful detainer actions by providing appropriate references to a party's right to demand a jury trial in the approved Court Assistance Office instructions for those actions.

On June 30, 2020, the State filed a Motion to Dismiss. On July 2, 2020, the Court held a hearing on the motions, and the Court ordered further briefing on the motion to dismiss. Having reviewed the motions, the record, arguments of the parties, and all briefing, the Court grants the Legal Aid's motion in part and denies it in part. Further, the Court grants the State's motion in part and denies it in part.

STANDARD OF REVIEW

In reviewing a motion to dismiss pursuant to IRCP 12(b), a court must make every reasonable intendment to sustain the complaint. *Idaho Comm'n on Human Rights v. Cambpell*, 95 Idaho 215, 217, 506 P. 2d 112, 114 (1973). A court will dismiss pursuant to Rule 12(b)(6) only "when it appears beyond a doubt that the plaintiff can prove no set of facts in support of [the] claim which would entitle [plaintiff] to relief." *Wackerli v. Martindale*, 82 Idaho 400, 405, 353 P. 2d 782, 787 (1960). The only facts a court may consider on a Rule 12(b)(6) motion are those appearing in the complaint, supplemented by those facts of which the court may properly take judicial notice. *Hellickson v. Jenkins*, 118 Idaho 273, 796 P. 2d 150 (1990). The standard for reviewing a dismissal for failure to state a claim for relief is the same as the standard upon which to grant a motion for summary judgment. The nonmoving party is entitled to have all inferences from the records and pleadings viewed in his or her favor. *Idaho Schs. For Equal Education v. Evans*, 123 Idaho 573, 850 P. 2d 724 (1993). Generally, motions to dismiss have been viewed with disfavor because the primary objective of the law is to obtain a determination of the merits

of a claim. *Wackerli*, 82 Idaho at 787, 353 P. 2d at 787."[J]usticiability challenges are subject to Idaho Rule of Civil Procedure 12(b)(1) since they implicate jurisdiction." *Tucker v. State,* 162 Idaho 11, 18, 394 P.3d 54, 61 (2017).

ANALYSIS

In its opposition to Legal Aid's motion, as well as in support of its own motion to dismiss, the State argues that: Legal Aid lacks standing; Legal Aid seeks an advisory opinion in the form of a declaratory judgment; Legal Aid's issue is not ripe; that Idaho Code section 6-311A is not facially unconstitutional; and, that Legal Aid seeks improper preliminary injunctions.

1. Justiciability

"The doctrine of justiciability can be divided into several subcategories, including that of standing and ripeness." *Davidson v. Wright*, 143 Idaho 616, 620, 151 P.3d 812, 816 (2006).

> Concepts of justiciability, including standing, identify appropriate or suitable occasions for adjudication by a court. The origin of Idaho's standing is a self-imposed constraint adopted from federal practice, as there is no case or controversy clause or an analogous provision in the Idaho Constitution as there is in the United States Constitution. In order to satisfy the requirement of standing, a party must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury. However, generally, a citizen and taxpayer may not challenge a governmental enactment where the injury is one suffered alike by all citizens and taxpayers of the jurisdiction.

Regan v. Denney, 165 Idaho 15, 21, 437 P.3d 15, 21 (2019) (internal citations and quotations omitted). "Ripeness is that part of justiciability that asks whether there is any need for court action at the present time." *Davidson*, 143 Idaho at 620, 151 P.3d at 816.

a. Standing

Legal Aid argues that it has standing under the theories of: relaxed standing; third-party standing; and/or organizational standing.

i. Relaxed Standing

Legal Aid argues that it has relaxed standing in this case as an alarming number of Idaho families are facing eviction, and that this upward trend during the Covid-19 pandemic and public health crisis makes it urgent to ensure that the constitutional rights of these families, whose only shelter hangs in the balance. The Court agrees.

> [I]n certain cases we will relax traditional standing requirements. In *Coeur D'Alene Tribe*, we relaxed the traditional standing requirements "where the

> petition allege[d] sufficient facts concerning a possible constitutional violation of an urgent nature." 161 Idaho at 513, 387 P.3d at 766; *see also Keenan*, 68 Idaho at 429, 195 P.2d at 664 (this Court accepted jurisdiction "because of the importance of the questions presented and the urgent necessity for immediate determination."). This Court also recognized the "willingness to relax ordinary standing requirements ... where: (1) the matter concerns a significant and distinct constitutional violation, and (2) no party could otherwise have standing to bring a claim." *Coeur D'Alene Tribe*, 161 Idaho at 514, 387 P.3d at 767 (citing *Koch v. Canyon Cty.*, 145 Idaho 158, 162, 177 P.3d 372, 376 (2008)). We have stated that allegations "concern a significant and distinct constitutional violation" when a petitioner alleged violations in enacting laws and exercising veto power. *Id.*

Regan, 165 Idaho at 21, 437 P.3d at 21. The State argues that Legal Aid does not have standing under the two part analysis in *Coeur D'Alene Tribe* as Legal Aid cannot show that "no party could otherwise have standing to bring a claim." The Court agrees. However, under *Regan*, the Court may find relaxed standing "where the petition alleged sufficient facts concerning a possible constitutional violation of an urgent nature." *Id.* at 21, 437 P.3d at 21. In this case, Legal Aid has alleged sufficient facts concerning a possible constitutional violation, and the question becomes whether that constitutional violation is of an "urgent nature." The term "urgent" is undefined in this context. The Court in *Regan* reasoned that the existence of a statutorily proscribed time limit was sufficiently urgent to invoke relaxed standing:

> As determined above, section 34-1809(4) is unconstitutional and therefore cannot confer standing to Regan. However, even though Regan cannot demonstrate a distinct palpable injury sufficient to confer standing, due to the urgent nature of the alleged constitutional violations, we will relax the traditional standing requirements and consider Regan's petition. In so doing, we note the need for resolution of the constitutionality of this issue due to the 90-day requirement in section 56-267 for the Department to submit the necessary plan amendments, as well as the need for resolution during the 2019 legislative session.

Regan, 165 Idaho at 21, 437 P.3d at 21. The State argues that the constitutionality of Idaho Code section 6-311A cannot be found to be of an urgent nature under *Regan*, as the statute has been in force since 1996. The Court disagrees. The Court in *Regan* did not limit the application of relaxed standing to those instances with a prescribed statutory time limit.

It cannot be reasonably disputed that, at present, the State of Idaho and its citizens are particularly beset by the worldwide Covid-19 pandemic. Idahoans, along with millions of Americans have lost jobs due to the closure of businesses and rising unemployment has become a nationwide concern. The Idaho Supreme Court has expressly addressed and attempted to lessen that impact specifically on Eviction cases in Idaho by ordering a 160 day Eviction Moratorium

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under the CARES Act. Even with that protection, Legal Aid has submitted the Declaration of James Cook, which declares:

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> 11. In calendar year 2018, ILAS provided legal services to 393 families in eviction matters. In calendar year 2019, ILAS provided legal services to 464 families facing eviction.

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> 12. So far in calendar year 2020, [as of date of affidavit] ILAS has already provided legal advice or representation in at least 319 eviction matters. Approximately 115 of those matters are open or pending. I believe this represents a troubling upward trend in the number of low-income Idahoans facing eviction in Idaho.

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Based on those numbers, it appears as if Legal Aid is poised to almost double the amount of eviction matters it provides legal advice or services for in the 2020 calendar year. The State attempts to temper those numbers with the Declaration of Steven Olsen, which provides:

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> I asked my legal staff to locate all unlawful detainer actions filed under Idaho Code § 6-310 during March, April, May, and June, 2020, before Magistrate Judges Christopher M. Bieter and Lynette McHenry in the Fourth Judicial District of the State of Idaho, Ada County.

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13
> They located a total of 65 unlawful detainer complaints which are attached along with the case information for each of those complaints. These documents reflect the following facts:

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> a. Of the 65 cases filed:

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> i. There were no responsive pleadings filed in 51 cases. See exhibits 1 and 2.

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> ii. There were answers or motions to dismiss (or both) filed in 7 cases. See exhibit 3.

> iii. 7 were filed but not served. See exhibit 4.

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Given the Court's analysis below as to the constitutionality of Idaho Code section 6-311A, the State's argument as to the number of responsive pleadings filed in eviction matters is unpersuasive. Further, the numbers presented by Legal Aid only pertain to parties who contacted Legal Aid for services. Those numbers do not include the unknown number of eviction cases in which Legal Aid may not have been contacted.

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It could be said that the scope and duration of the current pandemic is uncertain and that generally, courts do not act upon uncertainty. However, it also cannot be reasonably disputed that a palpable degree of certainty is present in this case in the devastating effect that Covid-19 has already had on the people of Idaho. The Court notes Justice Stegner's concurring opinion in *Regan*, in which he responded to the dissenting opinions on the basis of their justiciability

objections.

> In *Sweeney v. Otter*, 119 Idaho 135, 138, 804 P.2d 308, 311 (1990), the question presented was: "Does the Lieutenant Governor violate the separation of powers clause of the Idaho Constitution by voting during the Senate's organization session when the vote is equally divided?" To my mind, whether tens of thousands of Idahoans should have access to health care is a much more urgent question than who should chair the germane committees in the Idaho Senate.

Regan, 165 Idaho at 28, 437 P.3d at 28 (J. Stegner concurring). In this case, the question as to whether hundreds, or an unknown number larger than hundreds, of Idahoans should be denied their constitutional right to a jury trial is also much more urgent in the face of a Covid-19 pandemic than the procedural question to which Justice Stegner responded. Justice Stegner continued:

> In sum, rather than taking the quick off-ramp and letting this case languish through the trial court, only to work its way back to this Court, I opt to address the question head-on. The constitutionality of Idaho Code section 56-267 is not a difficult question. We deal with much more challenging and closer questions on a daily basis. The statute is constitutional. Rather than make this pronouncement at some point in the distant future, we have the jurisdiction and the "urgent need" to make it today. The electorate and the other branches of government need and deserve an answer. We have given them one.

Regan v. Denney, 165 Idaho 15, 29, 437 P.3d 15, 29 (2019) (J. Stegner concurring).

In this case the Court elects to address the question head on. The constitutionality of Idaho Code section 6-311A is not a difficult question. Given the urgent need to declare it so, rather than continue to deprive the right by delay through dismissal of the case on the basis of justiciability, the Court will find an urgent need to answer that question now.

ii. Third-party Standing

Legal Aid also argues that it has third-party standing to assert its claim based upon the close relationship it has with existing clients dealing with certain unlawful detainer actions. Legal Aid contends that in this case the interests of Legal Aid, its eviction clients, and Idahoans facing eviction action are all identical in that their interest in ensuring those litigants' constitutional right to a jury trial is vindicated; thus, third-party standing is appropriate. The Court disagrees.

> Courts must hesitate before resolving the rights of those not parties to litigation. Even though a potentially illegal action may affect the litigant as well as a third party, the litigant may not rest his claims on the rights or legal interests of the third party. A party challenging the constitutionality of a statute must not only demonstrate some injury from the unconstitutional aspect of the statute, but also

> that he is in the class of persons protected by that constitutional interest. This requirement is based on the presumption that the third parties themselves are the best proponents of their own rights.

State v. Doe, 148 Idaho 919, 936, 231 P.3d 1016, 1033 (2010) (internal quotation and citations omitted). To that end, the U.S. Supreme Court requires a litigant who seeks to assert the rights of another party to demonstrate three interrelated criteria: (1) he must have suffered injury in fact, providing a significantly concrete interest in the outcome of the matter in dispute; (2) he must have a sufficiently close relationship to the party whose rights he is asserting; and (3) there must be a demonstrated bar to the third parties' ability to protect their interests. *Powers v. Ohio*, 499 U.S. 400, 411, 111 S.Ct. 1364, 1370–71, 113 L.Ed.2d 411, 425–26 (1991).

The Court has already determined that Legal Aid has standing under the relaxed standing analysis; however, with respect to its third-party standing argument, most importantly, the Court cannot find that Legal Aid satisfies the third criteria set forth in *Powers*. Legal Aid has failed to show a demonstrated bar or hindrance to those third-parties protecting their interests. Legal Aid cites *Kowalski v. Tesmer*, 543 U.S. 125, 125 S. Ct. 564, 160 L. Ed. 2d 519 (2004), a case in which the United States Supreme Court found that *pro se* litigants' ability to protect their rights was not hindered simply because they lacked legal representation; however, Legal Aid argues that the *pro se* litigants in this context are not able to protect their rights without an attorney's legal advice and representation. Legal Aid's argument as to the differences between self-represented litigants is unpersuasive.

iii. Organizational Standing

Finally, Legal Aid argues that it has organizational standing because the challenged polices have perceptibly impaired its ability to provide the services they were formed to provide. Legal Aid cites extensively to *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742 (9th Cir. 2018), arguing in its briefing that:

> For example, a nonprofit legal services organization that spends additional time making additional filings because of a government policy has standing to challenge that policy. *East Bay Sanctuary Covenant v. Barr*, No. 19-16487, 2020 WL 3637585, at *8 (9th Cir. July 6, 2020) (finding nonprofit legal services organizations had standing to challenge immigration rule because they "must divert resources to filing a greater number of applications for each family-unit client"). Increasing services to eviction clients to the detriment of others also establishes organizational standing. *See East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 766 (9th Cir. 2018). So does providing education and outreach to

1 inform tenants about the State's unconstitutional statute, sapping resources to provide other legal services. *See id.*

2 Legal Aid's reliance on *E. Bay Sanctuary Covenant* appears to be misplaced. A review of *E. Bay* 3 *Sanctuary Covenant* shows that Legal Aid has taken individual aspects of a total circumstance 4 analysis and portrayed each of them as individually providing a basis for organizational standing 5 under *E. Bay Sanctuary Covenant*. Legal Aid is mistaken.

The cited portion of *E. Bay Sanctuary Covenant* provides:

6 Under *Havens Realty* and our cases applying it, the Organizations have 7 met their burden to establish organizational standing. The Organizations' declarations state that enforcement of the Rule has frustrated their mission of 8 providing legal aid "to affirmative asylum applicants who have entered" the United States between ports of entry, because the Rule significantly discourages a 9 large number of those individuals from seeking asylum given their ineligibility. The Organizations have also offered uncontradicted evidence that enforcement of 10 the Rule has required, and will continue to require, a diversion of resources, independent of expenses for this litigation, from their other initiatives. For 11 example, an official from East Bay affirmed that the Rule will require East Bay to partially convert their affirmative asylum practice into a removal defense 12 program, an overhaul that would require "developing new training materials" and "significant training of existing staff." He also stated that East Bay would be 13 forced at the client intake stage to "conduct detailed screenings for alternative forms of relief to facilitate referrals or other forms of assistance." Moreover, 14 several of the Organizations explained that because other forms of relief from 15 removal—such as withholding of removal and relief under the Convention Against Torture—do not allow a principal applicant to file a derivative 16 application for family members, the Organizations will have to submit a greater number of applications for family-unit clients who would have otherwise been 17 eligible for asylum. Increasing the resources required to pursue relief for family-unit clients will divert resources away from providing aid to other clients. Finally, 18 the Organizations have each undertaken, and will continue to undertake, 19 education and outreach initiatives regarding the new rule, efforts that require the diversion of resources away from other efforts to provide legal services to their 20 local immigrant communities.

21 *E. Bay Sanctuary Covenant*, 932 F.3d at 766. The court in *E. Bay Sanctuary Covenant*, did not 22 hold that each act individually provided a basis for organizational standing, rather, the court 23 based its decision on the combined evidence presented to conclude that the plaintiff had met its 24 burden to show organizational standing. In this case the Court cannot find that Legal Aid has met its burden.

25 First, the Organizations can demonstrate organizational standing by showing that 26 the challenged practices have perceptibly impaired their ability to provide the services they were formed to provide.

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> We have thus held that, under *Havens Realty*, a diversion-of-resources injury is sufficient to establish organizational standing for purposes of Article III, if the organization shows that, independent of the litigation, the challenged policy frustrates the organization's goals and requires the organization to expend resources in representing clients they otherwise would spend in other ways.

E. Bay Sanctuary Covenant, 932 F.3d at 765–66 (internal citations and quotations omitted). As a service that provides legal aid and services, Legal Aid cannot argue that having to provide legal services for clients during litigation concerning the constitutionality of an enacted statue would impair its ability to provide the services it was formed to provide. The Executive Director of Idaho Legal Aid Services, Inc., James Cook, stated in his first declaration that: "ILAS'S mission is to provide equal access to justice for low income people through quality advocacy and education." That is the very purpose for which Legal Aid was formed. Thus, Legal Aid would need to show that, outside of the cost of this litigation, the challenged policy frustrates Legal Aid's goals and requires Legal Aid to expend resources in representing clients it otherwise would spend in other ways. Once again the Court is hard pressed to conclude that the enactment and application of an allegedly unconstitutional statute somehow frustrates Legal Aid's goal of providing indigent clients with legal services aimed at protecting their constitutional rights.

b. Ripeness

The State argues that Legal Aid's claims are not ripe as they do not involve an actual case and controversy and are therefore not justiciable. The Court disagrees.

> Ripeness is that part of justiciability that asks whether there is any need for court action at the present time. The traditional ripeness doctrine requires a petitioner or plaintiff to prove 1) that the case presents definite and concrete issues, 2) that a real and substantial controversy exists, and 3) that there is a present need for adjudication.

ABC Agra, LLC v. Critical Access Grp., Inc., 156 Idaho 781, 783, 331 P.3d 523, 525 (2014) (internal citations and quotations omitted). As reasoned above when the Court concluded that Legal Aid had standing under the relaxed standing theory in *Regan*, the Court determined that Legal Aid has presented sufficient facts concerning a possible constitutional violation of an urgent nature. It is that urgent nature which satisfies the same case and controversy requirement in ripeness that it does in a standing analysis and dictates the need for court action at the present time.

The Court notes that the majority in the *Regan* decision did not squarely address ripeness; and the Court also notes the dissenting opinions of Justice Brody and Justice Moeller in the *Regan* decision. However, based upon the theory of relaxed standing and the urgent nature of the possible constitutional violation, the Court concludes that the issue is ripe for adjudication.

c. Declaratory Judgment as an Advisory Opinion

Similar to its ripeness argument, the State argues that Legal Aid's claims do not involve an actual case and controversy and are therefore not justiciable. Once again, the Court disagrees.

> Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

I.C. § 10-1201. "Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. . . ." I.C. § 10-1208.

> While one of the methods to test the constitutional validity of a statute is through a declaratory judgment action, the party seeking the declaration must have standing in order to bring the action. Whether a party has standing focuses on the party seeking relief. Only those to whom a statute applies and who are adversely affected by it can draw in question its constitutional validity in a declaratory judgment proceeding.

Idaho Watersheds Project v. State Bd. of Land Comm'rs, 133 Idaho 64, 66, 982 P.2d 367, 369 (1999) (internal quotations and citations omitted). In a normal situation, the State's arguments would be sound. Generally, for the Court to grant a declaratory judgment there must be a case and controversy by which the statute in question has adversely affected the party challenging its constitutionality, and that party must have standing to bring the claim. However, the Court applies the same analysis to the State's declaratory judgment argument as it does to the State's ripeness argument and concludes that based upon the theory of relaxed standing and the urgent nature of the possible constitutional violation, Legal Aid has standing to bring a claim for declaratory judgment in this case as there is a present need for adjudication.

2. Idaho Code section 6-311A is Facially Unconstitutional

The general historical background of Idaho Code section 6-311A is not disputed. At the time the Idaho Constitution was adopted, Chapter 4 of title 3 of the Code of Civil Procedure, Revised Statutes of 1887, titled "Summary Proceedings for Obtaining Possession of Real Property," governed forcible entry and unlawful detainer actions and the remedies therefore. *See*

R.S. §§ 5091-5109. In such proceedings, "[w]henever an issue of fact [was] presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases." R.S. § 5103. By 1973, the Idaho Legislature had carved out a specific type of unlawful detainer action, an action exclusively for possession of a tract of land of five acres of less when the landlord sought possession on for nonpayment of rent, from those that were originally governed by Chapter 4 of title 3 of the Code of Civil Procedure, Revised Statutes of 1887 for an expedited eviction process. *See* S.L. 1973, ch. 261, §§ 2-5. This subset of unlawful detainer proceedings was codified at Idaho Code sections 6-310 to 6-311B. Idaho Code section 6-311A addressed the procedure when the case was tried by a judge and Idaho Code section 6-311B addressed the procedure when the case was tried by a jury. *Id.* at §§ 4-5. In 1996, Idaho Code section 6-311A was amended to read "the action shall be tried by the court without a jury" and Idaho Code section 6-311B was repealed. S.L. 1996, ch. 169, §§ 1-2. At present, Idaho Code section 6-311A provides:

> In an action exclusively for possession of a tract of land of five (5) acres or less for the nonpayment of rent or on the grounds that the landlord has reasonable grounds to believe that a person is, or has been, engaged in the unlawful delivery, production, or use of a controlled substance on the leased premises during the term for which the premises are let to the tenant, or for forcible detainer, or if the tenant is a tenant at sufferance pursuant to subsection (11) of section 45-1506, Idaho Code, *the action shall be tried by the court without a jury*. If, after hearing the evidence the court concludes that the complaint is not true, it shall enter judgment against the plaintiff for costs and disbursements. If the court finds the complaint true or if judgment is rendered by default, it shall render a general judgment against the defendant and in favor of the plaintiff, for restitution of the premises and the costs and disbursements of the action. If the court finds the complaint true in part, it shall render judgment for the restitution of such part only, and the costs and disbursements shall be taxed as the court deems just and equitable. No provision of this law shall be construed to prevent the bringing of an action for damages.

I.C. § 6-311A (emphasis added). Idaho Code section 6-313 also provides: "Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending." I.C. § 6-313.

Reaching the substantive issue of Legal Aid's claim that Idaho Codes section 6-311A is unconstitutional; the State argues that the statute is not unconstitutional on its face. The State admits that there is a constitutional right to a jury trial in such proceedings, "[w]henever an issue

of fact [was] presented by the pleadings, it must be tried by a jury, unless such jury be waived as in other cases;" language that is mirrored by present day Idaho Code section 6-313. However, the State argues that defendants infrequently file answers in forcible and unlawful detainer proceedings and, as a result of the extremely limited set of facts at issue in unlawful detainer claims, the facts are rarely contested. The State concludes that defendants rarely have a right to a jury under article I, section 7 of the Idaho Constitution; thus, Idaho Code § 6- 311A is rarely constitutionally problematic and the law is not unconstitutional in all of its applications. The Court disagrees.

> A party may challenge a statute as unconstitutional on its face or as applied to the party's conduct. A facial challenge to a statute or rule is "purely a question of law. Generally, a facial challenge is mutually exclusive from an as applied challenge. For a facial constitutional challenge to succeed, the party must demonstrate that the law is unconstitutional in all of its applications. In other words, the challenger must establish that no set of circumstances exists under which the law would be valid. In contrast, to prove a statute is unconstitutional as applied, the party must only show that, as applied to the defendant's conduct, the statute is unconstitutional.

Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res., 143 Idaho 862, 870, 154 P.3d 433, 441 (2007). Under the State's analysis, Idaho Code section 6-311A is not unconstitutional on its face because it can be applied to parties who do not have a constitutional right to a jury trial, or to parties who waive their right to a jury trial. The State's interpretation of the unconstitutional on its face analysis is unpersuasive.

Hypothetically, and perhaps extremely and unrealistically so, if the Idaho Legislature were to enact a statute which provided: "No one in Idaho may vote in any election." Under the State's proffered analysis, that statute would not be unconstitutional on its face. It would not apply to people without a right to vote; such as non-residents visiting from out of state; people under the legal age to vote; or to people who may waive their right to vote, such as the approximate 52% of the voting age populace who did not vote in the 2018 Idaho general election (according to the Secretary of State's Office website.) However, in this case, in 100% of the cases in which a party would have had a right to a jury trial, Idaho Code section 6-311A takes that right away from them before they even get a chance to waive that right by failing to present a factual dispute through pleadings. The Court cannot find that there are any set of circumstances, in which a party would have a right to a jury trial, whereby Idaho Code section 6-

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311A is not unconstitutional.[1] That conclusion comports with a 2019 Opinion from the State's own Attorney General's Office which provides:

Question

> 5. Does the language in Idaho Code § 6-311A ". . .the action shall be tried by the court without a jury . . ." violate provisions of the Idaho Constitution or the United States Constitution?

Answer

> 5. Yes. In 1972, the Idaho Supreme Court held in *Loughely v. Weitzel*, 94 Idaho 833, 836, 498 P.2d 1306, 1309 (1972) that a tenant in an unlawful detainer action "had the right to a jury trial in the district court." The Court did not cite to Article 1 § 7 of the Idaho Constitution in making this declaration, but its footnote 7 does reference "the constitutional right to a jury in civil cases," indicating to us that the basis of the right is rooted in our Constitution. We note that Idaho Code § 6-31 1A was enacted in 1974, two years after Loughery, but legislation cannot trump constitutional matters.

With respect to *Loughely v. Weitzel*, the State argues that it only provides dicta, and that it does not stand for the proposition that a right to a jury trial is present in *all* unlawful detainer proceedings, as argued by Legal Aid. The Court agrees with the State to a certain extent. The *Loughely v. Weitzel* decision provides in relevant part:

> Appellant had the right to a jury trial in the district court. The court and jury were prepared to try the case de novo. If a district court jury trial had been utilized the appellant could not now complain of the probate court's failure to provide a jury trial. n.7 Therefore, any failure to obtain a jury in the probate court is not now reversible error on appeal to this Court from the district court trial de novo.

Loughrey v. Weitzel, 94 Idaho 833, 836, 498 P.2d 1306, 1309 (1972).

> *See generally*, 47 Am.Jur.2ds 56, p. 676 (1969): 'It is a general rule with respect to civil cases that the right to trial by jury is not impaired where, although no jury is allowed in the court in which the action was originally tried, an appeal lies to a court in which a jury trial may be had, if no unreasonable conditions are imposed.'
>
> *See also*: 50 C.J.S. Juries s 132, p. 860 (1947): 'The constitutional right to a trial by jury in civil cases is secured, although such a trial is not authorized in the first

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[1] The Court notes that during the hearing on the motions the State argued that an "as applied" constitutionality argument would have been a more appropriate challenge for Legal Aid to bring. As there is no specific party with a set of facts before the Court in this case, it may not consider an as applied analysis, and Idaho case law prohibits any mixing of the two separate constitutional challenges. However, the Court cannot help but opine that had there been a specific set of facts for the Court to consider, the "as applied" constitutional analysis would have consisted of a single question: Is there a question of fact at issue? In all cases, if the answer to that question is yes, then Idaho Code section 6-311A would be unconstitutional as applied to that party as it would remove the right to a jury trial from the party prior to that party even having a chance to exercise or waive that right.

instance, provided there is a right of appeal without any unreasonable restrictions to a court in which a jury trial may be had.'

Loughrey v. Weitzel, 94 Idaho 833, 836 n.7, 498 P.2d 1306, 1309 n.7 (1972). In reviewing the decision, there is no analysis of the constitutional basis for the right to a jury trial in *all* unlawful detainer actions. Rather, the Court in *Loughely v. Weitzel* focuses primary on the right to a jury trial on appeal. There is no analysis or reasoning concerning whether there was, or was not, any factual dispute during the proceedings at the magistrate level or whether there would be a right to a jury trial in the absence of a factual dispute. Thus, *Loughely v. Weitzel* does not conclusively support Legal Aid's claim that the right to a jury trial is present in *all* unlawful detainer actions.

Thus, the Court will enter a declaratory judgment declaring Idaho Code section 6-311A unconstitutional to the extent that it deprives parties of the right to a jury trial in instances where "an issue of fact is presented by the pleadings" as provide by Idaho Code section 6-313 and the Idaho Constitution at the time of its enactment; however, the Court will not enter a declaratory judgment that a right to a jury trial exists in *all* unlawful detainer actions regardless of the existence of a question of fact presented in the pleadings.[2]

The court acknowledges that the relief to tenants provided by the declaration herein will, in those cases where the right is invoked, come with the corresponding deprivation of the landlords' rights to their property. And, that deprivation is likely to continue for a significant period of time given the current moratorium on civil jury trials and the concomitant likelihood that future jury trials will be delayed by the need to resolve the backlog that is currently accumulating. Whether those potential interests should be balanced against those whose constitutional right is currently being denied is a matter beyond the scope of the question at hand, and will, almost certainly, be presented in future litigation. Paraphrasing Justice Horton in *State v. Clarke*, 165 Idaho 393, 400, 446 P.3d 451, 458 (2019), *reh'g denied* (Aug. 26, 2019), the policy considerations which support upholding Idaho Code section 6-311A must yield to the requirements of the Idaho Constitution.

[2] The Court notes that this argument is really a distinction without a difference. The application of Summary Judgment under Idaho Rule of Civil Procedure 56 renders all cases in which "there is no genuine dispute as to any material fact" subject to a de facto court trial and Legal Aid has put forth no argument or authority concerning the application of summary judgment to unlawful detainer proceedings.

3. Legal Aid is not entitled to Preliminary Injunctions

Legal Aid requests that the Court enter four preliminary and permanent injunctions pursuant to Idaho Rule of Civil Procedure 65, which provides:

> A preliminary injunction may be granted in the following cases:
>
> (1) when it appears by the complaint that the plaintiff is entitled to the relief demanded, and that relief, or any part of it, consists of restraining the commission or continuance of the acts complained of, either for a limited period or perpetually;
>
> (2) when it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff;

I.R.C.P. 65.

> Whether to grant or deny a preliminary injunction is a matter for the discretion of the trial court. An appellate court will not interfere with the trial court's decision absent a manifest abuse of discretion. A preliminary injunction is granted only in extreme cases where the right is very clear and it appears that irreparable injury will flow from its refusal.

Brady v. City of Homedale, 130 Idaho 569, 572, 944 P.2d 704, 707 (1997) (internal citations and quotations omitted). Legal Aid's requests are discussed in turn.

a. Preliminary Injunction with respect to the Magistrate Courts

Legal Aid requests that the Court:

> 4. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its magistrate courts, from enforcing Idaho Code § 6-311A.

The Court declines to do so. Magistrate courts are subject to the decisions, orders, and judgments of the District courts, and bound to the same principles regarding binding or persuasive authority that the all courts in Idaho are bound to. In an exercise of its discretion, this Court will not enter a preliminary injunction ordering the Magistrate court to continue doing its job.

b. Preliminary Injunction with respect to Summonses/Forms/Instructions

Legal Aid requests that the Court enter multiple preliminary injunctions concerning certain summonses issued in unlawful detainer action, Idaho Supreme Court approved complaint and answer forms, and the approved Court Assistance Office instructions. Specifically, Legal Aid requests:

> 5. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its Courts, *from failing to inform parties* of the right to demand a jury trial in unlawful detainer actions *by making clear in any*

> *summonses issued in those actions* that defendants may file a written response or otherwise demand a jury trial.
>
> 6. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its Courts, *from failing to inform parties* in unlawful detainer actions of the right to demand a jury trial *by providing a place on any approved court forms* for unlawful detainer actions, including approved complaint and answer forms, for any party to demand a jury trial.
>
> 7. Enter preliminary and permanent injunctions prohibiting the State of Idaho and all of its agents, including its Courts, *from failing to inform parties* of the right to demand a jury trial in unlawful detainer actions *by providing appropriate references* to a party's right to demand a jury trial in the approved Court Assistance Office instructions for those actions.

(emphasis added). In reviewing each of these three requests, it becomes evident that Legal Aid is not, in fact, asking for preliminary injunctions, rather Legal Aid is requesting that the Court enter writs of mandamus ordering the State of Idaho and the Idaho Supreme Court to change its summonses, forms, and instructions. In each request, Legal Aid asks that the Court prohibit the "State of Idaho" and its "Courts" from "failing to inform parties," by "making clear in any summons issued," by "providing a place," and by "providing appropriate references" in the forms or instructions. Put another way, Legal Aid is asking this Court to enter preliminary injunctions against the State of Idaho and the Idaho Supreme Court that "compels the performance of an act which a party has a duty to perform as a result of an office, trust or station." I.R.C.P. 74(a)(1)(A). The Court declines to do so. Writs of Mandamus may only be issued "by the court to any inferior court." I.R.C.P. 74(a)(1). In an exercise of its discretion the Court will not enter writs of mandamus to the State of Idaho or the Idaho Supreme Court under the guise of preliminary injunctions.

CONCLUSION

Legal Aid's request for declaratory judgment under Count 2 of its motion is GRANTED. Legal Aid's requests for declaratory judgment under Count 3 of its motion and its requests for preliminary injunctions under Counts 4-7 of its motion are DENIED. The State's motion to dismiss for lack of justiciability is DENIED. As Legal Aid has abandoned the issue, the State's motion to dismiss with respect to the application of 42 U.S.C. § 1983 in Count 4 is GRANTED.

IT IS SO ORDERED.

Signed: 7/20/2020 10:42 AM

Dated this ______ day of ________________, 2020.

MICHAEL REARDON
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 20th day of July, 2020, I served a true and correct copy of the:

MEMORANDUM DECISION ON MOTION FOR EXPEDITED DECLARATION AND PRELIMINARY INJUNCTION, AND MOTION TO DISMISS

to each of the parties below:

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PHIL MCGRANE
Clerk of the District Court
Ada County, Idaho

Date: Signed: 7/20/2020 11:03 AM

By Beth Masters
Deputy Clerk

ADDENDUM 5
Decision on Appeal
Hill-Vu Mobile Home Park v. Christine Lloyd

Filed: 02/14/2022 07:59:23
Sixth Judicial District, Bannock County
Jason Dixon, Clerk of the Court
By: Deputy Clerk - Hilgert, April

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HILL-VU MOBILE HOME PARK, RICKY ROBINSON and CINDY REED, Plaintiffs/Respondents, vs. CHRISTINE LLOYD and JAMES LOCKHART, Defendants/Appellants.	Case No. CV03-21-1913 DECISION ON APPEAL FROM MAGISTRATE DIVISION HON. ROBERT C. NAFTZ

NATURE OF THE ACTION

This is an appeal from a Judgment and Order of Possession entered on June 25, 2021, by which Defendants/Appellants ("Tenants") were evicted from their home. Plaintiffs/Respondents ("Landlords") filed an expedited unlawful detainer action alleging that the Tenants were in default in the payment of rent and that proper notice had been given prior to the filing of the Complaint. Over the objection of Tenants, who had demanded a jury trial, a court trial was held on June 23, 2021. A Judgment and Order was granted to Landlords following the court trial.

COURSE OF PROCEEDINGS

Landlords invoked this expedited unlawful detainer action on June 14, 2021, by filing a complaint in the Magistrate Court seeking to evict the Tenants for non-payment of rent.[1] A

[1] Complaint for Eviction (Expedited Proceedings), June 14, 2021.

summons was issued that same day, setting trial for June 21, 2021.[2] The trial date was within 12 days of the date of filing the Complaint as required by Idaho Code § 6-310(2).

Tenants filed their Answer on June 18, 2021.[3] Tenants disputed the non-payment of rent and asserted as an affirmative defense that the Landlords allegedly breached the lease agreement.[4] Tenants demanded a jury trial under Idaho Code § 6-313 because their Answer raised questions of fact.[5]

The parties appeared before the magistrate court on June 21, 2021. The magistrate judge expressed her intention to hold the requested jury trial, as evidenced by her statement that "I would interpret the answer as raising issues of fact, so I feel that a jury trial demand has been adequately made under the statute."[6] However, the magistrate understood Tenants' demand for a jury trial to "essentially" be a request for "a continuance" because a jury trial meant "hav[ing] this expedited proceeding put off more than two days so that a jury could be impaneled."[7] Because the Tenants refused to post security, the magistrate court then "reset [the trial] for two days out" to allow time for Tenants to brief the issue.[8]

At the time of the scheduled trial, the Tenants reasserted their objection to a court trial.[9] Based on further research, the magistrate court rejected Tenants' objection, concluding that Idaho Code § 6-311A resolved the conflict inherent in requiring a jury trial in an expedited proceeding by mandating that the court "hold [the] trial within two days if that security wasn't

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[2] Summons For Eviction Pursuant to Idaho Code § 6-310 (Expedited Proceedings), June 14, 2021.
[3] Verified Answer and Demand for Jury Trial, June 18, 2021.
[4] *Id.* at 1, ¶ 4-6.
[5] *Id.* at 4, ¶ 2.
[6] Tr.1, 14:2-5, filed Sept. 1, 2021.
[7] Tr. 1, 5:10-11, 6:25-7:2, filed Sept. 1, 2021.
[8] Tr. 1, 9:12-24, 10:21-11:1, 16:7-9, filed Sept. 1, 2021.
[9] Objection to Bench Trial, June 23, 2021; Motion to Dismiss for Lack of Jurisdiction (I.R.C.P. 12(b)(1)-(2)), June 23, 2021.

posted."[10] The magistrate then held a bench trial in which Tenants refused to participate.[11] Because the magistrate found the necessary elements had been met, it entered judgment in favor of the Landlords, awarding possession of the property to the Landlords based on the nonpayment of rent.[12]

Tenants have now appealed the magistrate's Order of Possession to this Court.[13] This Court determined the method of appeal would be judicial review of the record.[14]

STANDARD OF REVIEW

Appeals from the magistrate division are generally heard by the district court as an appellate proceeding and are governed by the same standards and procedures used in an appeal to the Idaho Supreme Court.[15] Thus, when a district court is sitting in an appellate capacity under Rule 83(u)(1), the proper standard of review is whether there is substantial and competent evidence in the record that supports the magistrate's finding as a trial court.[16] "Trial court's findings and conclusions that are based on substantial although conflicting evidence will not be disturbed on appeal. Such findings will not be set aside unless clearly erroneous."[17] "Evidence is substantial if a reasonable trier of fact would accept and rely upon it in determining whether a disputed point of fact has been proven."[18] Further, the appellate court "exercises free review over

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[10] Tr. 2, 18:3-8, filed Sept. 1, 2021.
[11] Tr. 2, 22:23-24:15, filed Sept. 1, 2021.
[12] Tr. 2, 31:8-32:16; Judgment, filed June 25, 2021; Order of Possession, filed June 25, 2021; Writ of Restitution of Premises, filed June 25, 2021.
[13] Notice of Appeal, filed June 25, 2021.
[14] Scheduling Order on Appeal and Order for Transcripts, 1, ¶1, filed Oct. 20, 2021.
[15] Idaho R. Civ. P. 83(b); 83(u)(1)(2019).
[16] *Howard v. Cornell*, 134 Idaho 403, 405, 3 P.3d 528, 530 (2000) (citing *Shurtliff v. Shurtliff*, 112 Idaho 1031, 1033, 739 P.2d 330, 332 (1987)). *See also Sun Valley Shamrock Resources, Inc. v. Travelers Leasing Corp.*, 118 Idaho 116, 118 794 P.2d 1389, 1391 (1990).
[17] *Sun Valley Shamrock Resources, Inc.*, 118 Idaho at 118.
[18] *Doe I v. Doe*, 138 Idaho 893, 906, 71 P.3d 1040, 1053 (2003) (quoting *Weaver v. Millard*, 120 Idaho 692, 698, 819 P.2d 100, 116 (Ct.App.1991)).

questions of law."[19] As such, "[t]his Court is not bound by the legal conclusions of the magistrate, and is free to draw its own conclusions from the facts presented."[20]

ISSUES

A. The magistrate erred by not conducting a jury trial.

B. Appellants were not required to post security.

C. Landlords failed to preserve the issue of attorney fees on appeal.

D. The appeal is not moot.

DISSCUSSION

A. The magistrate erred by not conducting a jury trial.

This Court agrees with the State for the proposition that "courts are obligated to seek an interpretation of a statute that upholds its constitutionality."[21] As pointed out by the State in their brief, the Idaho Supreme Court has explained the interpretation of a statute as follows:

> We are obligated to seek an interpretation of a statute that upholds its constitutionality.
>
> Whenever an act of the Legislature can be so construed and applied as to avoid conflict with the Constitution and give it the force of law, such construction will be adopted by the courts; and it is held by many courts that where there is room for two constructions of a statute, both equally obvious and equally reasonable, the court must, in deference to the Legislature of the state, assume that it did not overlook the provisions of the Constitution, and designed the act to take effect.[22]

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[19] *Jensen v. Jensen*, 128 Idaho 600, 604, 917 P.2d 757, 761 (1996)(internal citation omitted).

[20] *Id.*(citing *Kootenai Elec. Coop., Inc. v. Washington Water Power Co.*, 127 Idaho 432, 435, 901 P.2d 1333, 1336 (1995); *Cluff v. Bonner County*, 126 Idaho 950, 952, 895 P.2d 551, 553 (1995)).

[21] Amicus Curie Brief, 11, filed Dec. 3, 2021. *State v. Olivas*, 158 Idaho 375, 380, 347 P.3d 1189, 1194 (2015); *Am. Falls Reservoir Dist. No.2 v. Idaho Dep't of Water Res.*, 143 Idaho 862,869, 154 P.3d 433, 440 (2007); *In re Bermudes*, 141 Idaho 157, 159, 106 P.3d 1123, 1125 (2005); *State v. Cobb*, 132 Idaho 195, 197, 969 P.2d 244, 246 (1998); *State v Newman*, 108 Idaho 5, 13 n. 12, 696 P.2d 856, 864 n. 12 (1985); *Grice v. Clearwater Timber Co.*, 20 Idaho 70, 77, 117 P. 112, 114 (1911).

[22] Amicus Curie Brief, 11, filed Dec. 3, 2021. *Olivas*, 158 Idaho at 380, 347 P.3d at 1194 (cleaned up) (quoting *In re Bermudes*, 141 Idaho at 159, 106 P.3d at 1125; *Grice*, 20 Idaho at 77, 117 P. at 114).

This Court also agrees that it is obligated to read Idaho Code § 6-311A and Idaho Code § 6-313 to preserve the constitutionality of both statutes.

Idaho Code § 6-311A clearly states that an action for unlawful detainer "shall be tried before the court without a jury."[23] Without further review of the unlawful detainer statutes, the conclusion reached is that jury trials are never allowed when the action is "exclusively for possession of a tract of land of five (5) acres or less for nonpayment of rent."[24] However, as argued by the State, "this interpretation would conflict with the constitutional right to a jury trial"[25] and Idaho Code § 6-313.

This Court agrees that a reasonable interpretation of Idaho Code § 6-311A is that this section applies when there is no issue of fact presented by the pleadings. This scenario would occur "when the tenant's answer does not conflict with the factual allegations in the complaint, or when no answer is filed, or when the factual disputes are outside the scope of the proceedings."[26] However, Idaho Code § 6-313 requires an unlawful detainer action to be tried before a jury when a material factual dispute is presented on the pleadings. Thus, the Legislature preserved the right of a jury trial for a tenant under specific circumstances, maintaining the constitutionality of both statutes.

In this case, Tenants denied the allegations that they were in default of the payment of rent in the stated amount, that they had failed to pay past due rent, and that the Landlords were entitled to possession of the rental property.[27] Tenants also asserted an affirmative defense based on Landlord's refusal to accept payments on their behalf.[28] Thus, Tenants presented issues of fact

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[23] Idaho Code § 6-311A.
[24] *Id.*
[25] Amicus Curie Brief, 13, filed Dec. 3, 2021.
[26] *Id.*
[27] Appellant's Reply Brief, 7, filed Dec. 10, 2021.
[28] *Id.*

that required a trial by jury according to Idaho Code § 6-313. However, the magistrate only considered the language in Idaho Code § 6-311A and did not assess the requirement for a jury trial pursuant to Idaho Code § 6-313. Because Tenants presented issues of fact in their pleadings and demanded a jury trial, the magistrate was bound to conduct a jury trial. As such, the magistrate erred by depriving Tenants of their right to a jury trial.

B. Tenants were not required to post security.

In their Amicus Curie brief, the State contends that Idaho Code § 6-311 requires security from a defendant who demands a jury trial if that demand results in a postponement of the trial for more than two days.[29] Tenants counter that the plain language of Idaho Code § 6-311 requires the posting of security only if a defendant requests a continuance, but it does not apply to a defendant who exercises their right to demand a jury trial.[30] This Court agrees with Tenants.

"Where the language of a statute is unambiguous, the clearly expressed intent of the legislature must be given effect; the Court need not go beyond the plain meaning of the statute."[31] It is not reasonable to believe that a demand for a jury trial equates to a motion to continue. The magistrate found that Tenants timely filed a demand for a jury trial and that the pleadings required a jury trial.[32] According to the applicable statutes, at this stage in the proceedings, the magistrate was required to set the case for a jury trial within two days.[33] Then, if Tenants believed they needed more time to prepare, the burden was theirs to actually file a motion to continue the jury trial and post the judicially approved security.[34] Even though as a practical matter the magistrate may have not been able to convene a jury within that two-day

[29] *Id.* at 15.
[30] Appellant's Opening Brief, 9, filed October 28, 2021.
[31] *Elsaesser v. Gibson,* 168 Idaho 585, 594, 484 P.3d 866, 874 (2021).
[32] Tr. 1, 5:1-2, 7:6-14, filed Sept. 1, 2021.
[33] Idaho Code § 6-311.
[34] *Id.*

timeframe, Tenants still should not have been burdened financially because the magistrate was unclear as to whether a jury panel could have been convened on such short notice.[35] As such, the magistrate erred by requiring the posting of security from Tenants.

C. Landlords are not entitled to attorney fees.

Landlords argue the magistrate erred by failing to award them attorney fees.[36] This Court agrees with Tenants' assertion that because Landlords did not file a cross-appeal, Landlords waived that issue on appeal.[37]

"In Idaho, a timely notice of appeal or cross-appeal is a jurisdictional prerequisite to challenge a determination made by a lower court. Failure to timely file such a notice 'shall cause automatic dismissal' of the issue on appeal."[38] Therefore, because Landlords failed to file a cross-appeal, the issue relating to the magistrate's failure to award attorney fees must be dismissed.

D. Mootness

Finally, Landlords argue this appeal should be dismissed because it is now moot. Landlords assert that "if the parties lack a legally cognizable interest in the outcome or the issues presented are no longer live, the issues are moot and preclude review."[39] They further argue that when a

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[35] *Tr. 1,* 6:23-7:2. Incidentally, Sixth Judicial District Administrative Order 2021-28 permitted the commencement of jury trials in Bannock County during the period of June 21-25, 2021.
[36] Respondent's Brief, 4, filed Nov. 19, 2021.
[37] **Idaho Appellate Rule 15. Cross-Appeal After an Appeal.**
(a) Right to cross-appeal. After an appeal has been filed, a timely cross-appeal may be filed from any interlocutory or final judgment or order. If no affirmative relief is sought by way of reversal, vacation or modification of the judgment or order, an issue may be presented by the respondent as an additional issue on appeal under Rule 35(b)(4) without filing a cross-appeal.
[38] *Carr v. Carr,* 116 Idaho 754, 757, 779 P.2d 429, 432 (Ct.App.1989) (citations omitted). See also *Miller v. Bd. of Trustees,* 132 Idaho 244, 247-48, 970 P.2d 512, 515-16 (1998) and *Hamilton v. Alpha Servs., LLC,* 158 Idaho 683, 693, 351 P.3d 611, 621 (215).
[39] *Dunlap v. State,* 141 Idaho 50, 62, 106 P.3d 376, 388 (2004), citing *Idaho School for Equal Educ. Opportunity v. Idaho State Bd. of Educ.,* 128 Idaho 276, 281-82, 912 P.2d 644, 649-50 (1996).

favorable judicial decision would not result in any relief, the party lacks a legal cognizable interest in the outcome.[40]

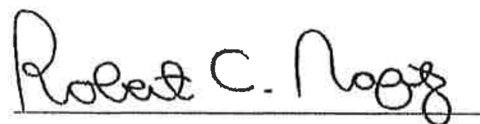
Based upon the determination that Tenants are entitled to a jury trial, this case is not moot. On remand, the magistrate will need to decide if possession of the property should immediately return to Tenants, or whether Landlords should retain possession until a jury trial results in a new judgment. Further, because Tenants did not surrender the property voluntarily and were deprived of their ability to potentially prevail in a jury trial, they were not provided with an opportunity to obtain an award of attorney fees and costs.

CONCLUSION

The magistrate erred by not scheduling a jury trial as required by the statute. Therefore, this Court vacates the Judgment and Judgment for Possession and remands this case to the magistrate to conduct a jury trial. The magistrate is not to require the posting of security unless Tenants request a continuance of the scheduled jury trial. Landlords are not entitled to attorney fees because they failed to timely file a cross-appeal.

This Court declines to award attorney fees or costs on appeal.

DATED February 11, 2022.



ROBERT C. NAFTZ
District Judge

[40] *Id.* See *Murphy v. Hunt*, 455 US 478 481-82, 102 S.Ct. 1181, 1183-84, 71 L.Ed.2d 353, 356-57 (1982).

CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

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Jason Dixon
Clerk of the Court

Dated: **2/14/2022 7:59:27 AM**

By:
April Hilgert
Deputy Clerk