

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, )  
 ) No. 49358-2021  
 Plaintiff-Respondent, )  
 ) Ada County Case No.  
 v. ) CR01-17-46404  
 )  
 NICKOLAUS AARON OLDENBURG, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

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

\_\_\_\_\_  
**HONORABLE PATRICK J. MILLER**  
District Judge  
\_\_\_\_\_

**LAWRENCE G. WASDEN**  
Attorney General  
State of Idaho

**MARK A. KUBINSKI**  
Deputy Attorney General  
Chief, Criminal Law Division

**KENNETH K. JORGENSEN**  
Deputy Attorney General  
Criminal Law Division  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534  
E-mail: [ecf@ag.idaho.gov](mailto:ecf@ag.idaho.gov)

**ATTORNEYS FOR  
PLAINTIFF-RESPONDENT**

**JUSTIN M. CURTIS**  
Deputy State Appellate Public Defender  
322 E. Front St., Ste. 570  
Boise, Idaho 83702  
(208) 334-2712  
E-mail: [documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

**ATTORNEY FOR  
DEFENDANT-APPELLANT**

## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE.....	1
Nature Of The Case .....	1
Statement Of The Facts And Course Of The Proceedings .....	1
ISSUE .....	2
ARGUMENT .....	3
Oldenburg Has Shown No Error In The District Court’s Order Denying His Request To Seal Judicial Records .....	3
A.    Introduction.....	3
B.    Standard Of Review .....	3
C.    Oldenburg Has Failed To Show That The District Court Erroneously Concluded That, Absent A Rule From This Court Adopting Its Provisions, I.C. § 67-3004(10) Is Not Self-Executing.....	3
CONCLUSION.....	6
CERTIFICATE OF SERVICE .....	7

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>In re SRBA Case No. 39576</u> , 128 Idaho 246, 912 P.2d 614 (1995).....	4, 6
<u>Osmunson v. State</u> , 135 Idaho 292, 17 P.3d 236 (2000) .....	4
<u>State v. Allen</u> , 156 Idaho 332, 325 P.3d 673 (Ct. App. 2014).....	5
<u>State v. Beam</u> , 121 Idaho 862, 828 P.2d 891 (1992) .....	4
<u>State v. Clarke</u> , 165 Idaho 393, 446 P.3d 451 (2019).....	3
<u>State v. Currington</u> , 108 Idaho 539, 700 P.2d 942 (1985).....	5
<u>State v. Olivas</u> , 158 Idaho 375, 347 P.3d 1189 (2015).....	4
<u>State v. Ricks</u> , 122 Idaho 856, 840 P.2d 400 (Ct. App. 1992).....	5
<u>Talbot v. Ames Const.</u> , 127 Idaho 648, 904 P.2d 560 (1995) .....	3
 <u>STATUTES</u>	
I.C. § 67-3004(10).....	1, 4, 5, 6
 <u>RULES</u>	
I.C.A.R. 32 .....	4, 5, 6
 <u>CONSTITUTIONAL PROVISIONS</u>	
Idaho Const. art. V, § 13 .....	4

## STATEMENT OF THE CASE

### Nature Of The Case

Nickolaus Aaron Oldenburg appeals from the district court's order denying his motion to seal court records in this case.

### Statement Of The Facts And Course Of The Proceedings

The state charged Oldenburg with thirteen counts of sexual exploitation of a child, for distributing sexually graphic images of children, and a persistent violator enhancement. (R., pp. 34-38, 53-54.) The charges were dismissed pursuant to a "global resolution" involving three cases. (R., pp. 55-58, 95.)

A little over two years later Oldenburg filed a motion to seal the district court's criminal case file. (R., p. 67.) Oldenburg argued that he was entitled to have the case file sealed pursuant to I.C. § 67-3004(10). (R., pp. 68-70, 79-91.)

The district court denied the motion, finding that the 2018 amendment to the statute to include court records was not "self-executing" and that the district court lacked authority to seal records unless and until the Supreme Court approved rules regarding such sealing. (R., pp. 94-99.) Oldenburg timely appealed. (R., pp. 101-03.)

## ISSUE

Oldenburg states the issue on appeal as:

Did the district court err by denying Mr. Oldenburg's unopposed motion to seal his criminal case file?

(Appellant's brief, p. 2.)

The state rephrases the issue as:

Has Oldenburg failed to show that the district court erred by concluding that I.C. § 67-3004(10), insofar as it relates to judicial records, is not effective to alter the Idaho Supreme Court's constitutional control over court records absent adoption of an applicable rule?

## ARGUMENT

### Oldenburg Has Shown No Error In The District Court's Order Denying His Request To Seal Judicial Records

#### A. Introduction

The district court concluded that a legislative enactment regarding judicial records is not effective absent this Court adopting rules effectuating that enactment. (R., pp. 94-99.) Oldenburg argues the district court erred because the statute plainly applies. (Appellant's brief, pp. 3-9.) His argument fails because it does not address, much less refute, the district court's core analysis that it is this Court, and not the Idaho Legislature, that has constitutional authority over court records. Here the district court properly denied the motion because there is a rule of procedure directly applicable to the question and the Idaho Supreme Court, which has constitutional power to establish procedural rules for the Courts of Idaho, has not adopted the legislative enactment.

#### B. Standard Of Review

"[T]his Court freely reviews the trial court's application of constitutional principles in light of the facts found." State v. Clarke, 165 Idaho 393, 396, 446 P.3d 451, 454 (2019) (quotation marks omitted).

#### C. Oldenburg Has Failed To Show That The District Court Erroneously Concluded That, Absent A Rule From This Court Adopting Its Provisions, I.C. § 67-3004(10) Is Not Self-Executing

"The Court has the inherent power to make rules governing the procedure in all of Idaho's courts." Talbot v. Ames Const., 127 Idaho 648, 651, 904 P.2d 560, 563 (1995). "In direct recognition and reiteration of the separation of powers provided by Art. 2, § 1, Article V, Section 13 forbids the legislature from exercising powers rightly pertaining to

the judicial department.” State v. Olivas, 158 Idaho 375, 380, 347 P.3d 1189, 1194 (2015) (cleaned up).

This Court has exercised its rule-making authority and its constitutional authority over judicial department records by adopting I.C.A.R. 32. Rule 32 provides that certain court records should be automatically sealed. I.C.A.R. 32(g). Records of dismissed criminal charges are not automatically sealed. *Id.* The rule further provides that records may be sealed on a “case-by-case basis” under certain criteria. I.C.A.R. 32(i). I.C. § 67-3004(10) addresses the same topic covered by I.C.A.R. 32 insofar as it applies to the sealing of judicial department records. Application of relevant constitutional standards, however, shows its enforceability depends on (1) its compatibility with I.C.A.R. 32 and (2) the Legislature’s limited constitutional authority to create rules of court procedure.

Article V, Section 13 of the Idaho Constitution provides that the Idaho Legislature may enact procedural rules “when such rules are necessary because of changing times or circumstances or the absence of a rule from this Court.” In re SRBA Case No. 39576, 128 Idaho 246, 254, 912 P.2d 614, 622 (1995). “Whether legislative action in this context is necessary within the meaning of Article V, Section 13 is a constitutional determination to be passed upon by this Court.” *Id.* “The legislature is empowered to enact procedural rules that do not conflict with the rulemaking power of this Court.” Osmunson v. State, 135 Idaho 292, 298, 17 P.3d 236, 242 (2000). The applicable standard is “whether the additional procedures are not otherwise addressed by the applicable rules or are required by changing circumstances.” In re SRBA Case No. 39576, 128 Idaho at 257, 912 P.2d at 625. However, ““where conflict exists between statutory criminal provisions and the Idaho Criminal Rules in matters of procedure, the rules will prevail.”” State v. Beam, 121 Idaho

862, 863, 828 P.2d 891, 892 (1992) (quoting State v. Currington, 108 Idaho 539, 541, 700 P.2d 942, 944 (1985)); see also State v. Ricks, 122 Idaho 856, 860, 840 P.2d 400, 404 (Ct. App. 1992) (“to the extent that the rule places greater strictures upon the use of such evidence than does the statute, the rule must govern”).

The district court correctly recognized that this Court has provided a rule addressing the topic of sealing of judicial records. (R., p. 97.) I.C.A.R. 32 controls the sealing of court records. This rule “[s]trik[es] a balance between the public’s constitutional right to access criminal records and the privacy rights of individuals.” State v. Allen, 156 Idaho 332, 336, 325 P.3d 673, 677 (Ct. App. 2014); see also I.C.A.R. 32(a). Although not necessarily conflicting, I.C. § 67-3004(10) provides a ground for sealing not found in the rule.

The statute provides that “[a]ny person who was arrested ... and ... who has had all charges dismissed, ... may have the official court file thereof sealed.” I.C. § 67-3004(10). Rule 32 provides that certain court records should be automatically sealed. I.C.A.R. 32(g). Records of dismissed criminal charges are not automatically sealed. *Id.* The rule further provides that records may be sealed on a “case-by-case basis” under certain criteria. I.C.A.R. 32(i). Oldenburg has not alleged that he qualified to seal the records in this case under those criteria. (R., p. 98.) Moreover, dismissal of charges as part of a universal plea agreement does not meet the criteria for sealing under the rule. I.C.A.R. 32(i).

Because (1) the statute addresses sealing of court records, (2) a Court rule already addresses the topic of sealing court records, and (3) there is no conflict between the existing rule and the statute, the Legislature’s constitutional authority is limited to where such



rulemaking is “required by changing circumstances.” In re SRBA Case No. 39576, 128 Idaho at 257, 912 P.2d at 625. This requirement is not met.

In this case the charges were dismissed as part of a plea agreement resolving three cases. (R., pp. 55-58, 95.) Resolving cases by dismissal through plea agreement is not a new procedure. There are no “changing circumstances” requiring sealing of records where dismissal is pursuant to plea agreement, and therefore no constitutional power vested in the Legislature to require such a procedure. The district court properly held that, absent a change in I.C.A.R. 32 to adopt the standard in I.C. § 67-3004(10), it lacked a mandate and authority to do so. To hold otherwise would allow the Legislature to usurp Court constitutional authority over its procedural rules and violate the separation of powers.

#### CONCLUSION

The state respectfully requests this Court to affirm the district court’s order denying the motion to seal the criminal case.

DATED this 27th day of July, 2022.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 27th day of July, 2022, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

JUSTIN M. CURTIS  
DEPUTY STATE APPELLATE PUBLIC DEFENDER  
[documents@sapd.state.id.us](mailto:documents@sapd.state.id.us)

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

KKJ/dd