IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Appellant, vs. GERALD ROSS PIZZUTO, JR., Defendant-Respondent.	DOCKET NO. 49489-2022 Idaho County District Court No. CR-1985-22075 **CAPITAL CASE**
GERALD ROSS PIZZUTO, JR., Petitioner-Respondent, vs. STATE OF IDAHO, Respondent-Appellant.	DOCKET NO. 49531-2022 Idaho County District Court No. CV25-22-0004

OPENING BRIEF OF PLAINTIFF-APPELLANT/RESPONDENT-APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

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STATEMENT OF THE CASE

Nature Of The Case

In this consolidated appeal, Plaintiff-Appellant/Respondent-Appellant State of Idaho ("state") appeals from: (1) the district court's Memorandum Opinion and Order on Motion to Preclude Issuance of Death Warrant and Motion to Correct Death Sentence Under I.C.R. 35(a) that modified Defendant-Respondent/Petitioner-Respondent's ("Pizzuto") death sentences to fixed life without the possibility of parole, and (2) the district court's Final Judgment that granted post-conviction relief also modifying Pizzuto's death sentences to fixed life without the possibility of parole.

Statement Of Facts And Course Of Proceedings

The facts leading to Pizzuto's 1985 first-degree murder convictions and death sentences after viciously and brutally using a hammer to bludgeon the skulls of Berta Herndon and her nephew, Del Herndon, are detailed in State v. Pizzuto (Pizzuto I), 119 Idaho 742, 748-49 (1991).[1] Since this Court affirmed Pizzuto's first-degree murder convictions, death sentences, and denial of his first post-conviction petition, *see* Pizzuto I, *supra,* he has spent over 30 years filing additional collateral challenges to his convictions and death sentences in state and federal court, which were all rejected, *see* Pizzuto v. Blades, 933 F.3d 1166 (9th Cir. 2019); Pizzuto v. Ramirez, 783 F.3d 1171 (9th Cir. 2015); Pizzuto v. Blades, 673 F.3d 1003 (9th Cir. 2012); Pizzuto v. Arave, 280 F.3d 949, 954 (9th Cir. 2002), *dissent amended and superseded in part by*, 385 F.3d 1247 (9th Cir. 2004); Pizzuto v. State (Pizzuto VII), 168 Idaho 542 (2021); Pizzuto v. State (Pizzuto VI), 149

[1] Unless otherwise noted, all internal quotations, citations, brackets, ellipses, footnotes, and emphasis are omitted.

Idaho 155 (2010); Pizzuto v. State (Pizzuto V), 146 Idaho 720 (2008); Rhoades et al. v. State (Pizzuto IV), 149 Idaho 130 (2010);[2] Pizzuto v. State (Pizzuto III), 134 Idaho 793 (2000); Pizzuto v. State (Pizzuto II), 127 Idaho 469 (1995).

After this Court affirmed in Pizzuto VII, and because there were no stays of execution in place, the district court issued a Death Warrant setting Pizzuto's execution for June 2, 2021. (#49489, R., pp.323-25.)[3] However, Pizzuto filed a Petition for Commutation with the Idaho Commission of Pardons and Parole ("Commission") (id., pp.662-71), and the Commission granted him a commutation hearing that was scheduled to commence November 30, 2021 (id., p.598). Because Pizzuto's execution was scheduled to take place prior to the hearing and based upon I.C. § 19-2715(1), the parties stipulated to stay the execution (id., pp.516-17), which the district court granted (id., p.518).

Prior to the hearing, Ashley Dowell, Executive Director of the Commission, reaffirmed in a letter that, "[i]f the Commission recommends to the Governor that a commutation be granted, the Governor has thirty (30) days to grant or deny the commutation. If no action is taken by the Governor within 30 days, the request is considered denied. If the Commission denies the commutation, the process is complete, and no further action will be taken." (Id., p.599.)

Pizzuto's commutation hearing took place as scheduled, and on December 30, 2021, a four-member majority of the Commission released its decision, stating, "The Commission is recommending by a majority decision that Governor Little grant the

[2] Pizzuto IV was a consolidated appeal with several other death-sentenced murderers who challenged their death sentences as a result of Ring v. Arizona, 536 U.S. 584 (2002).
[3] Because this is a consolidated appeal from two different underlying cases, the state will cite to the two respective Clerk's Records and Reporter's Transcripts by their respective Idaho Supreme Court case numbers.

commutation of Gerald Ross Pizzuto's two (2) death sentences in Idaho County Case No. CR-1985-22075 to life in prison without the possibility of parole." (Id., p.563.) Three members of the Commission dissented, explaining that Pizzuto's death sentences were "justified at the time of sentencing and [are] justified today." (Id., p.564.) That same day, Dowell sent Governor Brad Little a Memorandum with the Commission's decisions that stated, "In accordance with Idaho Code § 20-1016(2), the Commission's majority decision recommending the commutation of Mr. Gerald Ross Pizzuto's death sentence to life in prison without the possibility of parole is enclosed for your review and consideration." (#49531, R., p.40.) That same day, "[p]ursuant to Article IV, Section 7 of the Idaho Constitution and Section 20-1016, Idaho Code," Governor Little recognized, "the Commission's written decision constitutes a recommendation to the Governor," and reasoned that, "[a]fter a thorough review of the voluminous records submitted during the November 30 public hearing," "commuting Pizzuto's death sentences would be inappropriate." (#49489, R., p.566.) Therefore, Governor Little "den[ied] the Commission's recommendation so that the lawful and just sentences for the murders of Berta and Del can be fully carried out as ordered by the court." (Id.)

On January 5, 2022, Pizzuto filed another successive Petition for Post-Conviction Relief with multiple attachments (#49531, R., pp.5-42), contending, "It is unconstitutional for [I.C] § 20-1016 to condition commutations on the Governor's approval when [Article IV,] Section 7 [of the Idaho Constitution] confers the commutation power solely on the Commission" (id., p.11). The next day Pizzuto filed a Motion to Correct Sentence Under I.C.R. 35(a) with a supporting memorandum and attachments (#49489, R., pp.549-71), making the same arguments from his successive petition, contending his death sentences

should "be corrected to life without the possibility of parole because [they] have been rendered illegal under the Idaho Constitution by their recent commutation" (id., p.551).

The state filed an answer to Pizzuto's successive petition (#49531, R., pp.61-69) and Motion for Summary Dismissal with a supporting brief (id., pp.80-103). The state specifically asserted I.C. § 20-1016 does not conflict with Article IV, Section 7 of the Idaho Constitution because Article IV, Section 7 of the Idaho Constitution unambiguously limits the authority of the Commission "as provided by statute," and I.C. § 20-1016 mandates that the Commission's decision to commute a death sentence is only a recommendation to the Governor. (Id., pp.91-99.) The state also responded to Pizzuto's Rule 35(a) motion making the same argument. (#49489, R., pp.580-88.)

On February 4, 2022, the district court granted Pizzuto's Rule 35(a) motion, concluding that the phrase, "only as provided by statute," is ambiguous, and "[h]ad the founders or the people of the state of Idaho intended to vest the sole power of commutation of death sentences with the governor alone, Article IV, Section 7 could have been drafted with this specific language, just as was done in other states." (Id., pp.742, 752-73.) Consequently, the court concluded that, because "I.C. § 20-1016(b) contradicts the language of Article IV, Section 7," it is unconstitutional, and Pizzuto's death sentences are illegal because of the "commission's decision that the sentences should be commuted to life in prison without parole." (Id., p.752.) Relying upon the same analysis, the district court denied the state's Motion for Summary Dismissal and granted Pizzuto post-conviction relief. (#49531, R., pp.194-96.) Judgment was filed February 25, 2022. (Id., pp.198-99.) The state's Notice of Appeal in the Rule 35 case was timely filed on February

9, 2022 (#49489, R., pp.756-59), and timely filed on February 28, 2022, in the post-conviction case (#49531, R., pp.200-03).

ISSUE

Did the district court err in both the Rule 35 and post-conviction cases by finding the phrase, "only as provided by statute," is ambiguous in Article IV, Section 7 of the Idaho Constitution, and, therefore concluding that I.C. § 19-1016 is unconstitutional because the power to commute death sentences is vested exclusively with the Commission under Article IV, Section 7 of the Idaho Constitution?

ARGUMENT

A. Introduction

The district court initially concluded that the phrase, "only as provided by statute," in Article IV, Section 7 of the Idaho Constitution is ambiguous. (49489, R., p.743.) While the court provided no real analysis to support its conclusion, it appears to be based upon Pizzuto's contention that there is a different way to read the phrase. The court then examined the history of Article IV, Section 7, and concluded, "[t]here is scant guidance regarding the 1986 amendment" and "no indication that the founders, or the people of the State of Idaho in 1986, intended to give the governor the ultimate decision making authority with respect to whether a death sentence should be commuted." (Id., pp.743-49.) Consequently, after finding that I.C. § 20-1016 contradicts Article IV, Section 7, the court concluded the Governor could not override the Commission's majority recommendation to commute Pizzuto's death sentences, and granted Rule 35 and post-conviction relief.

The district court initially erred because the phrase, "only as provided by statute," is not ambiguous. Moreover, legislative history and rules of statutory construction support

the position that, when Article IV, Section 7 was amended in 1986, the intent of the Idaho Legislature was to convey upon the Legislature the sole power to determine how and when commutations and pardons can be provided. Therefore, because Article IV, Section 7 provides the Legislature authority to enact statutes governing when and how commutations and pardons are provided, I.C. § 20-1016 does not conflict with the Idaho Constitution.

B. Standard Of Review

"Issues of constitutional and statutory interpretation are questions of law and are reviewed by this Court de novo." State v. Winkler, 167 Idaho 527, 529 (2020).

C. The District Court Erred By Concluding That I.C. § 20-1016 Is Unconstitutional Because It Allegedly Conflicts With Article IV, Section 7

Article IV, Section 7 of the Idaho Constitution, reads as follows:[4]

> Said board, or a majority thereof, shall have power to remit fines and forfeitures, and, **only as provided by statute**, to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment. The legislature shall by law prescribe the sessions of said board and the manner in which application shall be made, and regulate proceedings thereon, but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.
>
> The governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons; and such board shall at

[4] While Section 7 refers to "the board of pardons" and I.C. § 20-1016 refers to "the commission," the two are the same. Bates v. Murphy, 118 Idaho 239, 243 n.3 (1990).

> such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct its execution, or grant further reprieve.

(Emphasis added).

The phrase, "only as provided by statute," was added to Article IV, Section 7 by way of amendment in 1986, and, outside of eliminating some outdated language regarding when the original version would commence, it was the only change. 1986 Idaho Sess. Laws, S.J.R. No. 107, p.867. The Joint Resolution also provided the question that was submitted to the "electors of the state of Idaho": "Shall Section 7, Article IV of the Constitution of the state of Idaho be amended to remove outdated language and to provide that **the power** of the Board of Pardons to grant commutations and pardons after conviction and sentence **shall be only as provided by the statute**?" Id. at 868 (emphasis added).

The relevant portion of I.C. § 20-1016 reads as follows:

> (1) The commission shall have full and final authority to grant commutations and pardons after conviction and judgment in all cases of offenses against the state except treason or impeachment and as otherwise provided in this section.
>
> (2) With respect to commutations and pardons for offenses, or conspiracies to commit any offense, for which the maximum punishment allowed by law at the time of the sentencing is death or life imprisonment, the commission's determination shall only constitute a recommendation subject to approval or disapproval by the governor. No commutations or pardons for such offenses shall be effective until presented to and approved by the governor. Any commutation or pardon recommendation not so approved within thirty (30) days of the commission's recommendation shall be deemed denied.

"When construing the Idaho Constitution, the primary object is to determine the intent of the framers. The best resource is the compilation of the Proceedings and Debates of the Constitutional Convention of Idaho 1889." State v. Clarke, 165 Idaho 393, 397 (2019). As explained in Winkler, 167 Idaho at 531, "When interpreting constitutional provisions, the fundamental object is to ascertain the intent of the drafters by reading the words as written, employing their natural and ordinary meaning, and construing them to fulfill the intent of the drafters. Where the constitutional provision is clear and unambiguous, the expressed intent of the drafters must be given effect." As further explained in Pentico v. Idaho Comm. For Reapportionment, --- Idaho ---, 504 P.3d 376, 379-80 (2022), "Where a statute or constitutional provision is clear we must follow the law as written. Where the language is unambiguous, there is no occasion for the application of rules of construction."

1. The Clause, "Only As Provided By Statute," Is Not Ambiguous

Relying upon Winkler, 167 Idaho at 531, but with virtually no analysis, the district court concluded that the phrase, "only as provided by statute," is ambiguous, presumably because Pizzuto had a different interpretation of the phrase than the state. (#49489, R., p.743.) However, the district court never discussed Pizzuto's interpretation of the phrase, but merely launched into a discussion of the history of Article IV, Section 7 and a discussion of Title 20, Chapter 10 of the Idaho Code, concluding "[t]here is scant guidance regarding the 1986 amendment to Article IV, Section 7 to include the language 'only as provided by statute.'" (Id., pp.744-49.) After reviewing the history of Article IV, Section 7, the court concluded, "there is no indication that the founders, or the people of the State of Idaho in 1986 intended to give the governor the ultimate decision making authority with

respect to whether a death sentence should be commuted." (Id., p.749.) However, the district court erred by failing to examine the plain words of the 1986 amendment prior to embarking on a review of the history of Article IV, Section 7.

The first step in construing either a constitutional or statutory provision is to examine the "literal words," which "must be given their plain, usual, and ordinary meaning." State v. Thiel, 158 Idaho 103, 108 (2015).[5] This review "does not need to look outside the language of the statute." Jen-Rath Co., Inc. v. Kit Mfg. Co., 137 Idaho 330, 335 (2002). "Where the language of a statute [or constitutional provision] is clear and unambiguous, statutory construction is unnecessary, and this Court need only determine the application of the words to the facts of the case at hand." Porter v. Board of Trustees, Preston School Dist. No. 201, 141 Idaho 11, 14 (2004). "However, if the language of the statute is capable of more than one reasonable construction it is ambiguous, and a statute that is ambiguous must be construed with the legislative intent in mind, which is ascertained by examining not only the literal words of the statute, but the reasonableness of the proposed interpretations, the policy behind the statute, and its legislative history." BHC Intermountain Hosp., Inc. v. Ada County, 150 Idaho 93, 95 (2010); *see also* State v. Armstad, 164 Idaho 403, 406 (2018) (after finding a statute ambiguous, this Court explained the statute must be construed "by examining the literal words of the statute, the reasonableness of proposed constructions, the public policy behind the statute, and its

[5] "Generally, the statutory rules of construction apply to the interpretation of constitutional provisions." Leavitt v. Craven, 154 Idaho 661, 667 (2012); *see also* Westerberg v. Andrus, 114 Idaho 401, 403-04 n.2 (1988) ("The general rules of statutory construction apply to constitutional provisions generally, as well as to the amendment of a constitution.").

legislative history"). As explained in Farmers Nat. Bank v. Green River Dairy, LLC, 155 Idaho 853, 856 (2014):

> A statute is ambiguous where the meaning is so doubtful or obscure that reasonable minds might be uncertain or disagree as to its meaning. However, ambiguity is not established merely because different possible interpretations are presented to a court. If this were the case then all statutes that are the subject of litigation could be considered ambiguous. A statute is not ambiguous merely because an astute mind can devise more than one interpretation of it.

"The plain, obvious, and rational meaning of language in a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover." State v. Browning, 123 Idaho 748, 750 (1993). Moreover, "the purpose of an unambiguous statute is not the concern of the courts when attempting to interpret a statute. This Court has stated that when the language of a statute is definite, courts must give effect to that meaning whether or not the legislature anticipated the statute's result." Rim View Trout Co. v. Higginson, 121 Idaho 819, 824 (1992). And "[w]here a statute or **constitutional** provision is clear we must follow the law as written." Pentico, 504 P.3d at 379 (emphasis added).

It is difficult to envision how the phrase, "only as provided by statute," is ambiguous. The ordinary meaning of "only" is "solely, exclusively." *Only*, MERRIAM-WEBSTER'S DICTIONARY, https://www.merriam.com/dictionary/only (last visited April 7, 2022). Consequently, the Commission can grant commutations and pardons after conviction and judgment "only as provided by statute." *See* State v. Clark, 168 Idaho 503, 509 (2021) (utilizing this website to ascertain the meaning of "committed," and concluding it "unambiguously means the completed commission of a felony").

The only analysis for the district court's conclusion that the phrase is ambiguous, is that, "[i]f the drafters intended to allow the governor to have the power of commutation, which is greater than the power to grant respites and reprieves, the drafters could have specifically stated this when they drafted Article IV, Section 7" as other states have done in their constitutions. (#49489, R., pp.742-43, *see also* p.742 ("Had the founders or the people of the state of Idaho intended to vest the sole power of commutation of death sentences with the governor alone, Article IV, Section 7 could have been drafted with this specific language, just as was done in other states like Texas, Oklahoma, Pennsylvania, and Arizona.").) However, whether other jurisdictions have a constitution or statute that contains more "specific language" than Article IV, Section 7 does not mean it is ambiguous. Rather, in determining ambiguity, the Court "ascribe[s] to words their plain, usual, and ordinary meanings." Pizzuto v. Idaho Dep't of Corr., 2022 WL 775584, *4 (2022) (*pet for rehg*. pending). The state is unaware of any authority for the proposition that in determining the "plain, usual, and ordinary meanings" of words, the courts just look to another jurisdiction to find language that is more specific. Indeed, this Court has recently reaffirmed its use of "an ancient, yet well-established interpretive tool of an appellate court: the dictionary," State v. Burke, 166 Idaho 621, 624 n.2 (2020), and later declined to "assess the meaning of words by plucking synonyms from a thesaurus," Pizzuto, 2022 WL 775584 at *4. There will always be rules, statutes, and constitutions from other jurisdictions that use more "specific language." That does not mean a particular clause, statute, rule, or constitutional provision is ambiguous.

Moreover, the district court had a fundamental misunderstanding of the clause, apparently believing it somehow vested the "sole commutation of death sentences with the

governor alone." (#49489, R., p.742.) The amendment makes no such statement, but merely limits the authority of the Commission to grant commutations and pardons based upon legislative enactments. As a result of the clause, the Legislature enacted I.C. § 20-1016(2), which governs commutations and pardons where "the maximum punishment allowed by law at the time of sentencing is death or life imprisonment," and limits the Commission's determination to "a recommendation subject to approval or disapproval by the governor." I.C. § 20-1016(2). It is difficult to imagine a clause that more clearly establishes that the Idaho Legislature determines the authority of the Commission through statutory enactments, including the entity or person that makes the final decision regarding a commutation or pardon when a fixed life sentence or the death penalty are involved.

Although not discussed in its decision, it is possible the district court concluded that the phrase is ambiguous based upon Pizzuto's interpretation of Article IV, Section 7. Before the district court, Pizzuto contended, "In context, the caveat[, 'only as provided by statute,'] is properly understood as confirming that the legislature is entitled to regulate the *process* by which the Commission exercises its power, not to take that power and give it to someone else." (#48489, R., p.557) (emphasis in original). However, Pizzuto's interpretation requires the insertion of the word "process" within the confines of the 1986 amendment, which does not exist. And this Court "has been unwilling to insert words into a statute that the Court believes the legislature left out, be it intentionally or inadvertently." St. Alphonsus Reg'l Med. Ctr. v. Gooding Cty., 159 Idaho 84, 89 (2015); *see also* Bedke v. Ellsworth, 168 Idaho 83, 97 (2021) ("Ellsworth's interpretation is unreasonable because it defies the plain text by adding a procedural step not set forth in the statute's plain language."). Thiel, 158 Idaho at 107-8, is particularly instructive, where this Court

examined the meaning of I.C. § 20-261, and focused upon the word, "shall," because it "signals clear legislative intent." Id. The Court rejected the state's arguments that focused upon the words, "recommendation" and "allowed," concluding they were "unpersuasive and ignore[d] the operative and controlling imperative 'shall' at the beginning of the phrase at issue." Id. at 108. Pizzuto's argument should also be rejected because it ignores the "operative and controlling imperative ['only'] at the beginning of the phrase at issue."

Pizzuto's interpretation is not a "reasonable construction" that is based upon the "plain, usual, and ordinary meaning" of the words in the clause, but comes from "an astute mind [that] devise[d] more than one interpretation of it." Farmers Nat. Bank, 155 Idaho at 856. Because the phrase, "only as provided by statute," unambiguously empowers the Idaho Legislature with the sole power to determine all aspects of commutations and pardons, the district court erred by concluding the Legislature could not enact I.C. § 20-1016 and limit the Commission's authority to only making recommendations for commutations and pardons in death penalty cases that can be rejected by the Governor.

2. The District Court's Decision Is Contrary To Legislative History And Statutory Construction

Even if this Court finds the clause ambiguous, the state's interpretation of Article IV, Section 7 is bolstered by legislative history. When Article IV, Section 7 was first adopted at the 1889 constitutional convention, there was no debate or amendment. *See* Winkler, 167 Idaho at 531. The original version read as follows:

> **The governor, secretary of state, and attorney general** shall constitute a board to be known as the board of pardons. Said board, or a majority thereof, shall have power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment. The **legislature**

> **shall by law prescribe** the sessions of said board and **the manner** in which application shall be made, and **regulate proceedings** thereon; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks.

Idaho Const. Art. IV, Section 7 (1889) (emphasis added).

Pardons and commutations were a broad power possessed by the governor, secretary of state, and attorney general with the Idaho Legislature only being permitted to legislate **procedural** aspects of the process by regulating "the manner in which the application shall be made, and regulate proceedings thereon." *See* Ex Parte Prout, 12 Idaho 494, 497 (1906) (discussing the 1889 version of Article IV, Section 7, "It is urged by the Attorney General that the board of pardons may impose any conditions whatever upon the granting of a parole. That proposition is correct, and is the well-settled and uniform rule of law as adopted both in this country and in England, and was, indeed, the rule of the common law.").

A 1945 amendment to Article IV, Section 7 created a "board of pardons," which was granted the same power as what had originally been granted to the governor, secretary of state, and attorney general. 1945 Idaho Sess. Laws, S.J.R. No. 3. The amendment did not change the very broad power vested in the executive branch. Id. Pursuant to the new amendment, the Legislature enacted I.C. § 20-210 to create the State Board of Correction, and in 1969, the Legislature created the state commission of pardons and parole, "which shall succeed to and have all rights, powers and authority of said board of pardons as are granted and provided by the provisions of the constitution of the state of Idaho." 1969

Idaho Sess. Laws, Ch. 97, § 5. Consequently, the Commission had the same broad power – not limited by the legislature – that had been set forth in earlier versions.

However, in 1986, Article IV, Section 7 was again amended by adding the words, "only as provided by statute," making the entirety of the sentence read, "Said board, or a majority thereof, shall have power to remit fines and forfeitures, and, **only as provided by statute,** to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment." 1986 Idaho Sess. Laws, S.J.R. No. 107, p.867 (emphasis added). While the district court concluded "[t]here is scant guidance regarding the 1986 amendment," (#49493, R., p.748), there is sufficient information to conclude the Legislature intended to remove the unbridled power of the Commission to grant commutations and pardons.

In 1985 and 1986, Idaho citizens, judges, and the Legislature were concerned with the way the Commission was granting parole, commutations, and pardons. In an article in the Idaho Statesman, Judge Gary Haman expressed concern over the time criminals served, explaining that judges can impose a sentence, but the time actually served was left to the Commission. Idaho Statesman, *Judges: Sentencing Laws Need Major Revisions*, June 21, 1985 (Appendix A). As a result of this frustration, the Legislative Council Committee on Criminal Sentencing was formed. Idaho Statesman, *Legislators Study Issues in Sentencing,* July 25, 1985 (Appendix B). Proposals included restructuring criminal sentencing to include a fixed sentence during which the Commission could not grant a prisoner parole, followed by an indeterminate sentence, and to give the governor the final say over certain commutations and pardons. Idaho Statesman, *'86 Legislature Must Tackle Prison Issues*,

January 1, 1986 (Appendix C). The proposal regarding restricting criminal sentencing resulted in passage of the Unified Sentencing Act, which requires judges to impose a minimum period of confinement for felonies offenses, during which time the Commission cannot grant parole. 1986 Idaho Sess. Laws, Ch. 232, § 3, pp.639-40. The proposal giving the governor the final say over certain categories of criminal offenses, including commutations and pardons, resulted in passage of S.J.R. 107, which proposed a constitutional amendment to curtail the powers of the Commission. Idaho Statesman, *Senate Backs Compromise on Parole Panel*, January 3, 1986 (Appendix D).

When S.J.R. 107 was debated before the House Judiciary, Rules and Administrative Committee, Representative Keeton said the bill "was a representation of no confidence in the Board of Pardons," and Representatives Sorenson and Herndon opined that passage of the resolution "would be turning this bill into a political football," all of which implies the Legislature intended to remove any power previously held by the Commission regarding commutations and pardons except what was "provided by statute." SJR 107, 1986 House Judiciary, Rules and Administration Committee Minutes, March 19, 1986 (Appendix E). Prior to S.J.R. 107 going before Idaho voters, the Idaho Statesman published an editorial supporting the amendment, which would make the power of the Commission "subject to laws passed by the Legislature." Idaho Statesman, *Legislators Need More Say*, October 21, 1986. (Appendix F). Attorney General Jim Jones also supported the amendment "giving the Legislature direct control over the granting of pardons and commutations" because the Commission had "absolutely no accountability." Idaho Statesman, *Attorney General Urges Limit on Parole Commission*, October 23, 1986 (Appendix G).

The public notice to voters explained that the power of the Commission to issue commutations and pardons was being removed and that the amendment would "make the powers of commutation and pardon subject to amendment by statute by the Legislature." Public Notice, Constitutional Amendments, Legislative Council's Statement of Meaning and Purpose S.J.R. No. 107 (Appendix H). The effect of the resolution stated, "The Legislature would have the authority to set **policies and procedures** for commutations and pardons and could also review Board Commutation and pardon decisions." Id. (emphasis added). In the statements supporting the proposed amendment, the Public Notice explained that, without the amendment, the Commission could "reduce criminal sentences and release prison inmates," which abrogated "truth in sentencing" because the public would not know "what the final criminal sentence is." Id. The statement explained, "Many of the [Commission's] decisions to reduce sentences for crimes of violence have been controversial, and many Idaho citizens disagreed with those decisions," and "[a]doption of this amendment will require that the [Commission] be subject to the same legislative, executive and judicial controls as all other agencies of state government." Id.

In Winkler, 167 Idaho at 530 (footnote omitted), this Court recognized the importance of the 1986 amendment and how it limited the Commission's power:

> Before Article IV, Section 7 was amended, the executive branch had mostly unfettered discretion in determining whether to grant a pardon. *See* Idaho Const. art. IV, § 7 (1890) (vesting a largely unrestricted pardon power in the executive branch with the exception of pardons for treason and conviction on impeachment). However, Article IV, Section 7 was amended in 1986, limiting the executive branch's power to grant pardons "only as provided by statute." Idaho Const. art. IV, §7.
>
> At the time Winkler was pardoned, Idaho Code section 20-240 was the statute used by the legislature to provide for the Commission's pardon power. *See* I.C. § 20-240 (1988) (amended 2020). Consistent with the 1986 amendment to Article IV, Section 7, Idaho Code section 20-240 provided

> the Commission with "full and final authority to grant commutations and pardons" except with respect to pardons for a number of listed offenses. Because driving under the influence is not one of the offenses for which the legislature has explicitly limited the Commission's pardon power under section 20-240, Winkler's pardon carries with it the full effect of a pardon as envisioned under the Idaho Constitution.[6]

This Court also noted the Legislature had recently enacted I.C. § 20-240A, which granted the Commission "full and final authority to grant commutations and pardons after conviction and judgment in all cases of offenses against the state except treason or impeachment." Id. at 530 n.1. However, the court also recognized "where the offense is one for which the maximum punishment allowed by law is death or life imprisonment, the Commission's pardon power is limited to that of providing a recommendation that must be approved by the governor." Id.

The district court attempted to distinguish Winkler by concluding this Court "was addressing a **parole** issue, and not a commutation issue." (#49489, R., p.750) (emphasis added). However, Winkler did not involve a "parole" issue, but "whether a **pardon** issued by the Commission prevents Idaho Code section 18-8005(9) from applying to a prior felony DUI." Winkler, 167 Idaho at 529 (emphasis added). This is significant because Article IV, Section 7 expressly states that the Commission, "or a majority thereof, shall have power to remit fines, and, only as provided by statute, to grant **commutations** and **pardons**." (Emphasis added). In other words, the phrase, "only as provided by statute," has no application to parole issues, but expressly applies to both commutations and pardons, which means this Court's conclusion that when Article IV, Section 7 was amended in 1986, it "limit[ed] the executive branch's power to grant [commutations and] pardons 'only as

[6] Idaho Code §§ 20-240 and 240A were amended, combined, and redesignated in 2021, and are now codified in I.C. § 20-1016. 2021 Idaho Sess. Laws, Ch. 196, § 2.

provided by statute.'" Winkler, 167 Idaho at 530. And one of the statutes that the Legislature enacted is I.C. § 20-1016, which limits the Commission's authority to commute a death sentence to a recommendation that can be rejected by the Governor.

Further, prior to the 1986 amendment, Article IV, Section 7 already provided the Legislature with the procedural power to "prescribe the sessions of said board and the manner in which application shall be made, and regulate proceedings thereon." *See* 1986 Idaho Sess. Laws, S.J.R. No. 107, pp.867-68. Consequently, there would be no basis for adding the phrase, "only as provided by statute," if the goal was to merely provide the Legislature with the authority to "regulate the process by which the Commission exercises its powers" (#49489, R., p.557), something the legislature already possessed. As explained in Idaho Press Club, Inc. v. State Legislature of the State, 142 Idaho 640, 643 (2006), "We should avoid an interpretation which would render terms of a constitution surplusage." By interpreting the clause, "only as provided by statute," to include only procedural aspects of commutations and pardons when those procedures were already provided prior to enactment of the amendment would render the clause nothing more than mere surplusage.

Additionally, because the 1986 amendment initially resulted from a joint legislative resolution that was followed by statutes implementing the amendment after it was enacted, it is exceptionally doubtful that the intent of the Legislature was to limit application of the amendment to merely define the "process by which the Commission exercises its power." (#49489, R., p.557.) Indeed, the title to the joint resolution expressly stated the Legislature wanted to "provide that the board of pardons shall have the power to grant commutations and pardons after conviction and judgment, only as provided by statute," 1986 Idaho Sess.

Laws, S.J.R. No. 107, p.867, and the intent of proposed amendments can be established by review of the title of a joint resolution, *see* Haile v. Foote, 90 Idaho 261, 270 (1965).

The intent of the Legislature can also be ascertained from the question that was submitted to the voters as contained in Section 3 of the Joint Resolution:

> Shall Section 7, Article IV, of the Constitution of the State of Idaho be amended to remove outdated language and to provide that the power of the Board of Pardons to grant commutations and pardons after conviction and judgment shall be only as provided by statute?

1986 Idaho Sess. Laws, S.J.R. No. 107, p.868.

Once again, it is difficult to ascertain a clearer statement of intent: the **power** of the Commission to grant commutations shall be "only as provided by statute." And the statute that governs commutations in death penalty cases is I.C. § 20-1016(2), which provides the Commission authority to issue only a recommendation for commutation that can be rejected by the Governor.

In Standlee v. State, 96 Idaho 849, 852 (1975), this Court examined whether Article X, Section 5 of the Idaho Constitution, which originally provided control, direction, and management of state prisons to a board consisting of the Governor, Secretary of State, and Attorney General, conflicted with I.C. § 20-223 and/or Article II, Section 1 of the Idaho Constitution. Noting the constitution was later amended in 1941, this Court concluded the legislature implemented the amendment by enacting several statutes that "prescribe[ ] the powers and duties of the Board of Correction." Id. In addressing whether there was a conflict, the Court explained, "Constitutional provisions apparently in conflict must be reconciled if at all possible." Id. As explained by the Court, "The state constitution is not a grant but a limitation on the legislative power so that the **legislature may enact any law** not expressly or inferentially prohibited by the state or federal constitutions." Id. (emphasis

added). Ultimately, this Court reasoned that Art. X, Section 5 did not conflict with other constitutional provisions or statutes. Id. at 852-53.

In this case, Article IV, Section 7 did not limit the Legislature, but expressly required the Legislature to enact statutes that would permit the granting of commutations and pardons. Indeed, in State v. Hall, 163 Idaho 744, 805 (2018), a death-sentenced murderer challenged a jury instruction discussing the authority the Governor has to grant a commutation or pardon based upon "a recommendation from the Idaho Department of Pardons and Parole." Addressing I.C. § 20-240, the precursor to I.C. § 20-1016, this Court concluded there was no error because the instruction "indicated that the governor may commute a sentence or pardon an individual based on a recommendation from the commission of pardons and parole." Id. at 806. It is exceptionally doubtful this Court would have reasoned that the instruction was correct if I.C. § 20-1016 contradicted Article IV, Section 7, and unconstitutionally impinged the Commission's authority to grant commutations.

Additionally, the Commission clearly believed it only had the authority to make a recommendation to the Governor. In a September 1, 2021 letter to the parties, Executive Director Ashley Dowell, explained that, "[i]f the Commission recommends to the Governor that a commutation be granted, the Governor has thirty (30) days to grant or deny the commutation. (#49489, R., p.599.) In Dowell's transmission letter to Governor Little, she stated, "In accordance with Idaho Code § 20-1016(2), the Commission's majority decision recommending the commutation of Mr. Gerald Ross Pizzuto's death sentence to life in prison without the possibility of parole is enclosed for your review and consideration." (Id., p.40.) And the decision of the four-member majority of the Commission stated, "The

Commission is recommending by a majority decision that Governor Little grant the commutation of Gerald Ross Pizzuto's two (2) death sentences." (Id., p.563.)

It is clear that the Commission believed its authority was limited by I.C. § 20-1016, and it was only making a recommendation to the Governor. This is significant because "it is constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere." Caldwell v. Mississippi, 472 U.S. 320, 328-29 (1985). Indeed, this was the issue in Hall, *supra*. While Caldwell and Hall both involved juries imposing the death penalty, the same principle applies with respect to the Commission: if the district court was correct, the Commission unconstitutionally abrogated its responsibility when it believed it was making only a recommendation and that the responsibility of the appropriateness of Pizzuto's death rested with the Governor.

The district court also relied upon the never-ending battle cry that "death is different," by concluding, "The Idaho Constitution has never directed that one individual has the power to decide matters of commutation in any criminal matter, let alone a case with the ultimate penalty of death." (#49489, pp.751-52.) However, the clause, "only as provided by statute," has nothing to do with the death penalty, but merely permits commutations by the Commission, "only as provided by statute." Indeed, utilizing the "death is different" mantra could result in an entirely different interpretation of the clause for non-capital cases, something that is not only nonsensical, but unsupported by authority from any jurisdiction, let alone this Court.

Finally, the district court's reliance upon Ex Parte Prout, 12 Idaho at 277 (#49489, R., p.752), is inapposite because it was obviously decided long before the 1986 amendment to Article IV, Section 7, when the authority to grant commutations and pardons was vested exclusively with the governor, secretary of state, and attorney general with the Idaho Legislature only being permitted to legislate procedural aspects of the process. *See* Idaho Const. Art. IV, § 7 (1889). Moreover, the Commission did not grant Pizzuto a commutation, which was then taken away by Governor Little. Rather, pursuant to I.C. § 20-1016, the Commission merely recommended commutation, which the Governor rejected.

Because the 1986 amendment to Article IV, Section 7 of the Idaho Constitution is not ambiguous, and because legislative history and rules of statutory and constitutional construction establish the amendment was meant to divest the Commission of the broad power originally contained in Article IV, Section 7 and grant that power to the Legislature, the district court erred by granting Rule 35 and post-conviction relief.

CONCLUSION

The state respectfully requests that this Court reverse the decisions of the district court and order the district court to immediately issue a new death warrant scheduling Pizzuto's execution as provided by law.

DATED this 8th day of April, 2022.

/s/ *L. LaMont Anderson*
L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on or about the 8th day of April, 2022, I caused to be serviced a true and correct copy of the foregoing document by the method indicated below, postage prepaid where applicable, and addressed to the following:

Jonah Horwitz Deborah A. Czuba Federal Defender Services of Idaho Capital Habeas Unit 702 W. Idaho Street, Suite 900 Boise, ID 83702 Jonah_Horwitz@fd.org	_____ U.S. Mail _____ Hand Delivery _____ Overnight Mail _____ Facsimile __X__ Electronic Court Filing

/s/ *L. LaMont Anderson*
L. LaMONT ANDERSON
Deputy Attorney General
Chief, Capital Litigation Unit

APPENDIX A

6/21/1985

Idaho Statesman (published as The Idaho Statesman) - June 21, 1985 - page 40
June 21, 1985 | Idaho Statesman (published as The Idaho Statesman) | Boise, Idaho | Page 40

Judges: Sentencing laws need major revisions

By QUANE KENYON
The Associated Press

Two district judges say Idaho's criminal sentencing laws, which have evolved since statehood, need major revisions to promote consistency.

Otherwise, said district judges Douglas Kramer of Hailey and Gary Haman of Coeur d'Alene, inconsistencies such as the following can occur:

- A person accused of vehicular manslaughter, killing a person probably because of drunken driving, can get a maximum of seven years in prison.
- People convicted of breaking into a car and stealing a stereo can be ordered to serve up to 15 years in prison for burglary.
- A defendant convicted of distributing cocaine, even a gift of a tiny amount, can be ordered to serve life in prison.
- Adultery is a crime that can carry a county jail sentence of one year or a state prison term up to three years.

Both judges testified Thursday before an interim legislative committee on Idaho's criminal sentencing system. Eventually it will make recommendations to the next session of the Idaho Legislature.

Actually, said Haman, a 2nd District judge, judges feel they have little control over the time actually served by a criminal. A judge can impose a sentence, but the time served is up to the Board on Pardons and Parole.

Both Kramer, administrative judge in the 5th District, and Haman suggested some sort of "category" system for criminal sentencing. All crimes in a certain category would carry the same penalties, such as crimes of violence. Lesser crimes all would carry similar penalties.

Kramer said the judiciary needs clearer guidelines, and they can come only from the Legislature. "The legislative representatives of the people reflect the public perception of the criminal justice system," he said.

Haman warned that revising the criminal code would be "a monumental task" that should not be approached piecemeal.

Some of Idaho's criminal sentencing laws date to statehood, he said, and were drawn up because of one event or another, with "no rational rhyme or reason" behind the penalties.

Both judges said they dislike the idea of automatic, fixed or mandatory penalties that take discretion away from sentencing judges.

"As long as prisons are warehouses only, then they serve only to defer, as distinguished from deter," said Kramer. "Under this philosophy, crime will continue to rise."

He suggested giving courts authority to impose fines in every criminal proceeding. "In our capitalistic system, this is sometimes a greater punishment than incarceration," he said.

Haman said he feels as a judge he needs to "look into the eyeballs" of a defendant to help determine a sentence. He said he's seldom influenced by arguments of attorneys on sentences, but often is influenced by what a defendant says or does not say.

APPENDIX B

7/26/1985

Idaho Statesman (published as The Idaho Statesman) - July 26, 1985 - page 26
July 26, 1985 | Idaho Statesman (published as The Idaho Statesman) | Boise, Idaho | Page 26

Legislators study issues in sentencing

Proposals concern time off, parole

The Associated Press

Idaho needs "truth in sentencing" to replace the punishment morass that judges, offenders and the public now face, says the head of a legislative panel formed to examine issues in sentencing.

Options for early release and the discretion granted the Commission on Pardons and Parole have fueled "confusion and second-guessing" in the punishment system, Sen. Roger Fairchild, R-Fruitland, said Thursday. He said he hopes the work of a committee he co-chairs will make the process more straightforward.

Proposals examined on Thursday by the Legislative Council Committee on Criminal Sentencing ranged from tightening sentence commutations to ending automatic time off for good behavior.

Committee members said people are frustrated, particularly in cases of violent crime, by a system that frequently allows prisoners to go free when they have served less than 50 percent of their sentences.

The committee was formed after the 1985 Legislature refused to reappoint Ellie Kiser, a Boise counselor, to the Commission on Pardons and Parole. Criticism of Kiser was led by Senate President Pro Tem Jim Risch, R-Boise, who charged she advocated the early release of dangerous criminals.

Fairchild said during a break in Thursday's meeting that "a positive catharsis" resulted from the Kiser controversy.

In the months since, legislators have come to a better understanding about weaknesses in the probation and parole system, and commissioners have gained understanding about the approach the Legislature wants them to take, he said.

Commission Chairman Tony Skoro said that last week the panel considered 25 or 30 requests for sentence commutations and didn't grant any of them. He told lawmakers that was partly in response to their concerns.

Fairchild acknowledged inadequate prison space in Idaho has been an incentive to free offenders early, and he said his group hopes to build a framework for funding of a new maximum-security facility.

Speakers at Thursday's meeting included Idaho Attorney General Jim Jones, who said perpetrators of crimes against other people should be considered for parole only after serving two-thirds of their sentences.

Calling for tighter reins on the Commission on Pardons and Parole, Jones said judges need some assurances about what will become of the men and women they sentence. Too often, he said, the work of people in the justice system is unraveled through cavalier use of pardon, parole and commutation powers.

APPENDIX C

1/1/1986

Idaho Statesman (published as The Idaho Statesman) - January 1, 1986 - page 6

Where we stand

'86 Legislature must tackle prison issues

This is the first in a series of editorials on issues facing the 1986 Legislature.

Meeting the mounting needs of the state's prison system will be one of the thorny problems confronting the next Legislature. Unfortunately for an already strapped state budget, many of the answers begin with a dollar sign.

The biggest problem is the most basic: increasing the holding capacity of the penitentiary system. It's something nearly everyone agrees must be done, but how is a tougher question. The system is operating with a waiting list under a 1,300-inmate cap imposed by the Board of Correction. That figure is about 200 more than the facilities were designed to hold.

The acute need is for a new maximum-security prison to hold between 200 and 500 inmates. Constructing a new building would cost between $14 million and $17 million. Gov. John Evans has recommended funding to begin design and site selection for a new prison. Sen. Roger Fairchild, R-Fruitland, chairman of the Senate Judiciary and Rules Committee, will propose doubling the building fund head tax to $20 for five years. The $17 million that would raise would pay for construction and help counties upgrade their jails so they can hold more prisoners longer, taking some of the pressure off the overcrowded state prison system. Although the building fund is a flat tax, and thus regressive, it seems to have the best chance of passage through a Legislature averse to tax increases.

Although the Legislature gave the prison an additional $2.8 million last session to meet court-ordered improvements, that court order remains in effect. The prison now faces $1.8 million in life-safety and building code improvements. Those, too, might be included in the court order, increasing financial pressure on the Legislature.

Beyond these are more human needs. The prison sorely needs counselors for alcoholism, drug abuse, and other problems. Although counselors may seem a luxury to a tight-fisted Legislature, helping inmates solve

their personal afflictions would reduce crime, decrease recidivism and lower the financial and emotional costs to the state and its residents.

Change rules on sentencing

Changing the way the state handles criminals is another key order of business facing the Legislature.

An interim committee co-chaired by Sen. Roger Fairchild, R-Fruitland, and Rep. Larry Harris, R-Boise, is working on several proposals. The principal ones are:

- Restructuring the five-member, part-time Commission on Pardons and Parole, now appointed by the Board of Correction, into a three-member, full-time board named by the governor. The committee and Attorney General Jim Jones favor the change as a means of increasing the accountability of the commission, which has been criticized as too lenient.

This proposal has merit. However, if accountability is the goal, the pardons and parole board should work in open session so its decisions can be analyzed publicly. An attorney general's opinion to that effect issued Tuesday is welcome news.

- Giving the governor the final say over pardons and commutations. Again, accountability is the goal. This sensible idea would require a constitutional amendment.
- Restructuring criminal sentences so that perpetrators of violent crimes such as murder and rape would have to serve at least two-thirds of their sentences; other criminals would have to serve at least one-third. Another option would set a fixed sentence a criminal must serve plus an indeterminate sentence that could be shortened. Both proposals are improvements over the present system. Curently judges have little idea how much time the criminals they sentence actually will serve because of automatic reductions due to "goodtime," sentence reductions the parole board can grant and parole itself.
- Revising or eliminating the goodtime law, which lets prisoners accrue automatic reductions in their sentences despite their behavior. Eliminating goodtime, or changing it so prisoners must earn it, would make more sense than the current system.

Sen. Fairchild said that if no money is forthcoming from the Legislature for a new prison, he will "button up his briefcase" and forget the interim-committee's reforms, which undoubtedly would increase the prison population. He's right. If you're going to be tougher on criminals, you have to pay the price.

APPENDIX D

1/23/1986

Idaho Statesman (published as The Idaho Statesman) - January 23, 1986 - page 10
January 23, 1986 | Idaho Statesman (published as The Idaho Statesman) | Boise, Idaho | Page 10

Senate backs compromise on parole panel

The Associated Press

The Idaho Senate voted 22 to 17 Wednesday to restrict access to parole-board voting records to the governor and state Board of Correction.

The vote came as the Senate redrafted a compromise bill intended to partly open up meetings of the Commission on Pardons and Parole, which have been closed despite the state's Open Meeting Law.

Information on how commission members voted "could be used for or against an individual" for political purposes, Sen. C.A. Smyser, R-Parma, said.

The measure, which requires formal Senate approval before going to the House, has been pushed by Gov. John Evans, the state Corrections Board and the commission itself in the wake of an attorney general's opinion last month directing that all board hearings and deliberations must be open to the public.

The pending legislation is an attempt to strike a compromise on the issue, but Senate President Pro Tem Jim Risch, R-Boise, a former prosecutor and sharp critic of the commission, has vowed to oppose it on the final vote.

The compromise would open their parole hearings to the public but allow secret deliberations on each case. While requiring the vote of each member to be recorded, the bill would keep that record confidential.

Idaho Statesman (published as The Idaho Statesman) - January 31, 1986 - page 9
January 31, 1986 | Idaho Statesman (published as The Idaho Statesman) | Boise, Idaho | Page 9

sonal income taxes on a countywide basis, if 55 percent of the voters approve.

● Legislation extending the sales tax to most services now exempt. Rep. Dean Haagenson, R-Coeur d'Alene, said he felt that would be a better way to go than raising the sales tax.

Senate backs plan to cut powers of parole panel

The Associated Press

The Idaho Senate approved a proposed constitutional amendment Thursday that would allow lawmakers to curtail powers of the state Commission on Pardons and Parole.

The proposition, approved 39 to 2, must win two-thirds approval from the House before it can be submitted to voters in November.

The proposed amendment would permit the Legislature, by a majority vote of both houses, to set general restrictions on the commission's power to shorten sentences.

Although the state has minimum sentencing laws on the books, Senate President Pro Tem Jim Risch, R-Boise, said they cannot be effectively enforced because of the commission's powers.

Tougher criminal sentencing has been recommended by an interim legislative committee, which found little correlation between the sentences imposed on convicted felons and the time they actually serve in prison.

Committee approves bill to expand B.R.A. board

A bill that would allow expansion of the Boise Redevelopment Agency board from five to nine members won quick approval Thursday from the House Local Government Committee.

House Bill 444, carried by Rep. Dean Sorensen, R-Boise, was sent to the floor with a unanimous "do pass" recommendation.

The measure would allow the mayor to appoint between five and nine board members. It also would allow City Council members to serve on the agency alongside non-officeholders.

Current law sets membership at five and requires that its members be either all elected officials or all non-officeholders. The B.R.A. has had both types of boards, but now has one composed of private citizens.

Legislation to add student to Ed Board introduced

The Associated Press

Even the sponsor admits the idea won't be universally popular. But the House Education Committee on

APPENDIX E

HOUSE JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

MEETING MINUTES

WEDNESDAY, MARCH 19, 1986

GUEST SPEAKERS:

Tony Skoro - Board on Pardons and Parole
Carl Bianchi - Administrative Director of the Courts
Greg Bower - Ada County Prosecuting Attorney
Pat Kole - Deputy Attorney General
Senator Roger Fairchild

GUESTS:

(See attached roster.)

The meeting was called to order at 3:10 P.M. by Chairman Harris. All members were present with the exception of Reps. Bayer, Loveland and Stoker who were excused.

MOTION — Moved by Rep. Bengson and seconded by Rep. Herndon to approve the minutes as they appear. Motion passed.

SJR 107 — Chairman Harris requested Rep. Montgomery to introduce testimony and make opening remarks on SJR 107. Rep. Montgomery said his sub-committee met on this bill and felt the bill could contain some better language; but it was the general consensus of the sub-committee that we should proceed forward with the bill.

Rep. Herndon asked Rep. Montgomery to yield to a question he had on Line 34, pertaining to respites or reprieves. Rep. Montgomery responded.

Rep. Speck commented on the respites and reprieves. Rep. Sorensen said this change was of great importance to the Committee. Rep. Herndon said his concern was to clarify some of the procedures in the bill. Rep. Keeton said this bill was a representation of no confidence in the Board of Pardons and Parole, and we should let them make the decisions themselves.

Further discussion from Reps. Sorensen and Herndon who said we would be turning this bill into a political football.

Tony Skoro commented and said the Board had no problems with whatever decision would be handed down by the Committee.

Further Committee discussion from Reps. Speck, Herndon, Keeton, Sorensen, McDermott, Forrey, Montgomery and Bengson.

MOTION — Moved by Rep. Sorensen and seconded by Rep. Hay to send SJR 107 to the floor with a "Do Pass" recommendation.

Division called for by Rep. McDermott. Six in favor, six opposed. Motion failed to carry for lack of a majority.

SUBSTITUTE MOTION — Moved by Rep. Fry and seconded by Rep. McDermott to hold SJR 107 in Committee until the next meeting day.

Discussion on his motion by Rep. Fry. Further discussion from Rep. Montgomery who said we need to make necessary amendments to the bill.

Further comments from Rep. McDermott.

Motion passed with no objections to hold in Committee until the next Committee meeting.

UNANIMOUS CONSENT REQUEST — Unanimous consent was requested by Rep. Herndon to move H 628 to the top of the agenda. There were no objections.

Rep. Speck addressed the issue and gave introductory remarks.

Questions of Rep. Speck by Rep. McDermott on Page 1, line 25.

APPENDIX F

10/21/1986

Idaho Statesman (published as The Idaho Statesman) - October 21, 1986 - page 6
October 21, 1986 | Idaho Statesman (published as The Idaho Statesman) | Boise, Idaho | Page 6

Legislators need more say

The Legislature should have more say over the commutation of prison sentences and the pardoning of criminals. That is why we support the adoption of Senate Joint Resolution 107, which would amend the Idaho Constitution to make such powers subject to laws passed by the Legislature.

In 1946, the constitution was amended to give the power of commutation and pardon to an appointed board. The idea was to "take politics" out of such decisions.

But few issues are as near and dear to the hearts of voters than crime and punishment. The representatives of the people should establish the rules by which criminals' sentences are shortened and they are pardoned.

Commutation and pardon policies are now adopted by a board that is appointed by the governor and confirmed by the Senate. That does not give the Legislature much control over the process.

The public does not know now whether a criminal serves the full sentence handed down by a judge. The appointed board can shorten the sentence. The proposed constitutional amendment would give us "truth in sentencing."

The appointed board needs direction and guidance from the Legislature. Legislative oversight would even help the appointed board members by giving them clear direction on which sentences to commute and what kind of criminals to pardon.

Giving the Legislature more power over commutations and pardons will ensure that consideration for the public's health and safety comes before the criminals' convenience.

APPENDIX G

Idaho Statesman (published as The Idaho Statesman) - October 23, 1986 - page 30
October 23, 1986 | Idaho Statesman (published as The Idaho Statesman) | Boise, Idaho | Page 30

Attorney general urges limit on Parole Commission

The Associated Press

If it so desired, Idaho's Commission on Pardons and Parole could commute the death penalties of everyone on Death Row at the Idaho State Penitentiary, and it wouldn't have to answer to anyone, Attorney General Jim Jones says.

Jones is urging approval of a proposed constitutional amendment giving the Legislature direct control over the granting of pardons and commutation of sentences. At the present time, the appointed commission has complete discretion.

"Our present system has absolutely no accountability," Jones said Wednesday. "If an inappropriate commutation is granted and a convict is released before he should be, no one has to answer to the people."

Jones said the constitutional amendment would allow the Legislature to set reasonable ground rules for sentence reductions.

If the amendment passes, Jones said he will prepare legislation giving the governor final authority whether commutation will be granted, as is done in many other states.

"It is an important policy determination to reduce the time an inmate serves below that which was contemplated by the sentencing judge," the attorney general said. "This is the type of determination which ultimately should be made by an elected official who has to answer to the people."

APPENDIX H

PUBLIC NOTICE

CONSTITUTIONAL AMENDMENTS

Three amendments to the Idaho Constitution will appear on the November 4, 1986 general election ballot. These have been proposed to the people for ratification following action by the legislature.

The amendment proposals, the Legislative Council's statements of meaning and purpose, and the statements for and against are listed as follows:

S.J.R. No. 102

That Section 6, Article XVIII, of the Constitution of the State of Idaho be amended to read as follows:

SECTION 6. COUNTY OFFICERS. The legislature by general and uniform laws shall, commencing with the general election in ~~1970~~86, provide for the election biennially, in each of the several counties of the state, of county commissioners ~~and a coroner~~ and for the election of a sheriff, ~~and~~ a county assessor, a county coroner and~~,~~ a county treasurer, who is ex-officio public administrator, every four years in each of the several counties of the state. All taxes shall be collected by the officer or officers designated by law. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor, county treasurer, and ex-officio tax collector, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their office may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners.

The question to be submitted to the electors of the State of Idaho at the next general election shall be as follows:

"Shall Section 6, Article XVIII, of the Constitution of the State of Idaho be amended to provide for the election of county coroners every four years commencing with the general election of 1986, rather than every two years as presently required?"

LEGISLATIVE COUNCIL'S STATEMENT OF MEANING AND PURPOSE S.J.R. NO. 102

MEANING AND PURPOSE

The purpose of this proposed amendment to Section 6, Article XVIII, of the Constitution of the State of Idaho is to provide for the election of county coroners every four years commencing with the general election of 1986, rather than every two years as is presently required.

EFFECT OF ADOPTION

If this amendment is adopted, Section 6, Article XVIII, of the Constitution of the State of Idaho would provide that county coroners shall be elected to a term of office for the same number of years as county clerks, county sheriffs, county assessors, county treasurers and prosecuting attorneys currently are elected for.

STATEMENTS FOR THE PROPOSED AMENDMENT

1. This amendment will make the term of office for the county coroner consistent with the terms of office for the county clerk, county sheriff, county assessor, county treasurer and prosecuting attorney, and will thus result in efficiency in the election process if the office of county coroner is contested once every four years instead of every two years as currently occurs.

2. If the term of office of county coroner is four years, the office might be attractive to a wider variety of qualified people.

3. The office of county coroner requires some technical experience, and two years may be too short a time to develop expertise and to obtain familiarity with the effective functioning of the agencies and individuals with whom the coroner must interact.

STATEMENTS AGAINST THE PROPOSED AMENDMENT

1. The office of county coroner potentially could be very politically sensitive and should be subject to election every two years.

S.J.R. No. 107

That Section 7, Article IV, of the Constitution of the State of Idaho be amended to read as follows:

SECTION 7. THE PARDONING POWER. ~~From and after July 1, 1947, s~~Such board as may hereafter be created or provided by legislative enactment shall constitute a board to be known as the board of pardons. Said board, or a majority thereof, shall have power to remit fines and forfeitures, and, only as provided by statute, to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment. The legislature shall by law prescribe the sessions of said board and the manner in which application shall be made, and regulated proceedings thereon, but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.

The governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons; and such board shall at such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve.

The question to be submitted to the electors of the State of Idaho at the next general election shall be as follows:

"Shall Section 7, Article IV, of the Constitution of the State of Idaho be amended to remove outdated language and to provide that the power of the Board of Pardons to grant commutations and pardons after conviction and judgment shall be only as provided by statute?"

LEGISLATIVE COUNCIL'S STATEMENT OF MEANING AND PURPOSE S.J.R. NO. 107

MEANING AND PURPOSE

The purpose of this proposed amendment to Section 7, Article IV of the Constitution of the State of Idaho is to remove from constitutional status the powers of commutation and pardon, which are held by the Board of Pardons, and to make the powers of commutation and pardon subject to amendment by statute by the Legislature.

EFFECT OF ADOPTION

Presently, the Board of Pardons has the constitutional powers of commutation and pardon. Because these powers are constitutional, they cannot be amended or changed by statutory enactment and are not subject to review. If SJR 107 is adopted, the commutation and pardon power will no longer have a constitutional status; they will be subject to amendment by statutory enactment. The Legislature would have the authority to set policies and procedures for commutations and pardons and could also review Board commutation and pardon decisions.

STATEMENTS FOR THE PROPOSED AMENDMENT

1. Through its constitutional commutation and pardon powers, the Board of Pardons can reduce criminal sentences and release prison inmates. As a result, the public never knows what the final criminal sentence is, because the sentence handed down by the judge is always subject to change by the Board of Pardons. This amendment will promote truth in sentencing, by letting the judge's sentence stand.

2. No other agency in Idaho state government is isolated from legislative, executive, and judicial review, as is the Board of Pardons. Many of the Board's decisions to reduce sentences for crimes of violence have been controversial, and many Idaho citizens disagreed with those decisions. Adoption of this amendment will require that the Board of Pardons be subject to the same legislative, executive and judicial controls as all other agencies of state government.

3. The Board of Pardons is insulated from public input and values concerning releasing inmates. Giving the Legislature the authority to set standards for commutations and pardons will insure that the Board's actions will be made with an emphasis on public health and safety.

STATEMENTS AGAINST THE PROPOSED AMENDMENT

1. Removing the constitutional status of the Board's commutation and pardon powers and making them subject to the control of the Legislature will remove the Board's independence and could subject the Board's decisions to political pressure. Such political pressure could result in special dispensations being given based on political clout instead of individual merit.

2. The Board should be free to make a decision on the individual merits of a case. If an extensive statutory scheme is passed by the Legislature, some of the Board's flexibility to fashion a decision according to the merits of a case may be lost.

3. The constitutional powers of commutation and pardon were given to the Board by constitutional amendment in 1946. Since then, the Board has made hundreds of commutation and pardon decisions in an independent and objective manner, with little resulting controversy. Therefore, the present system is working smoothly, change is not needed.

H.J.R. No. 4

That Section 2, Article III, of the constitution of the State of Idaho be amended to read as follows:

SECTION 2. MEMBERSHIP OF HOUSE AND SENATE. Following the decennial census of 1990 and in each legislature thereafter, t~~T~~he senate shall consist of ~~one (1) member from each county~~ not less than thirty nor more than thirty-five members. The legislature may fix the number of members of the house of representatives at not more than ~~three (3)~~ two times as many representatives as there are senators. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may, from time to time, by divided by law.

That Section 4, Article III, of the Constitution of the State of Idaho be amended to read as follows:

SECTION 4. APPORTIONMENT OF LEGISLATURE. The members of the ~~first~~ legislature following the decennial census of 1990 and each legislature thereafter shall be apportioned to ~~the several~~ not less than thirty nor more than thirty-five legislative districts of the state ~~in proportion to the number of votes polled at the last general election for delegate to congress, and thereafter to be apportioned~~ as may be provided by law~~: provided, each county shall be entitled to one representative.~~

That Section 5, Article III, of the Constitution of the State of Idaho be amended to read as follows:

SECTION 5. SENATORIAL AND REPRESENTATIVE DISTRICTS. A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, and ~~no~~ a county ~~shall~~ may be divided in creating ~~such~~ districts only to the extent it is reasonably determined by statute that counties must be divided to create senatorial and representative districts which comply with the constitution of the United States. A county may be divided into more than one legislative district when districts are wholly contained within a single county. No floterial district shall be created. Multimember districts may be created in any district composed of more than one county only to the extent that two representatives may be elected from a district from which one senator is elected. The provisions of this section shall apply to any apportionment adopted following the 1990 decennial census.

The question to be submitted to the electors of the State of Idaho at the next general election shall be as follows:

"Shall Sections 2, 4 and 5, Article III, of the Constitution of the State of Idaho, relating to apportionment of the Legislature, be amended as they apply to apportionments after 1990, to limit the membership of the Senate to not less than thirty nor more than thirty-five members and the House of Representatives to not more than two times the size of the Senate; to delete the requirement that each county shall be entitled to one representative; to provide that counties shall be divided only to the extent determined necessary by statute to

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