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3 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
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5 STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

6
7 IDAHO LEGAL AID SERVICES, INC.,

8 Plaintiff,

9 vs.

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11 STATE OF IDAHO,

12 Defendant.
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Case No. CV01-20-09078

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

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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.

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2 5. Enter preliminary and permanent injunctions prohibiting the State of Idaho
3 and all of its agents, including its Courts, from failing to inform parties of the
4 right to demand a jury trial in unlawful detainer actions by making clear in any
5 summonses issued in those actions that defendants may file a written response or
6 otherwise demand a jury trial.

7 6. Enter preliminary and permanent injunctions prohibiting the State of Idaho
8 and all of its agents, including its Courts, from failing to inform parties in
9 unlawful detainer actions of the right to demand a jury trial by providing a place
10 on any approved court forms for unlawful detainer actions, including approved
11 complaint and answer forms, for any party to demand a jury trial.

12 7. Enter preliminary and permanent injunctions prohibiting the State of Idaho
13 and all of its agents, including its Courts, from failing to inform parties of the
14 right to demand a jury trial in unlawful detainer actions by providing appropriate
15 references to a party's right to demand a jury trial in the approved Court
16 Assistance Office instructions for those actions.

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

22 STANDARD OF REVIEW

23 In reviewing a motion to dismiss pursuant to IRCP 12(b), a court must make every
24 reasonable intendment to sustain the complaint. *Idaho Comm'n on Human Rights v. Campbell*,
25 95 Idaho 215, 217, 506 P. 2d 112, 114 (1973). A court will dismiss pursuant to Rule 12(b)(6)
26 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

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

4 ANALYSIS

5 In its opposition to Legal Aid’s motion, as well as in support of its own motion to
6 dismiss, the State argues that: Legal Aid lacks standing; Legal Aid seeks an advisory opinion in
7 the form of a declaratory judgment; Legal Aid’s issue is not ripe; that Idaho Code section 6-
8 311A is not facially unconstitutional; and, that Legal Aid seeks improper preliminary
9 injunctions.

10 **1. Justiciability**

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

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

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

26 **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
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INJUNCTION, AND MOTION TO DISMISS - Page 3

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

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

21 As determined above, section 34-1809(4) is unconstitutional and therefore cannot
22 confer standing to *Regan*. However, even though *Regan* cannot demonstrate a
23 distinct palpable injury sufficient to confer standing, due to the urgent nature of
24 the alleged constitutional violations, we will relax the traditional standing
25 requirements and consider *Regan*’s petition. In so doing, we note the need for
26 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.

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

31 It cannot be reasonably disputed that, at present, the State of Idaho and its citizens are
32 particularly beset by the worldwide Covid-19 pandemic. Idahoans, along with millions of
33 Americans have lost jobs due to the closure of businesses and rising unemployment has become
34 a nationwide concern. The Idaho Supreme Court has expressly addressed and attempted to lessen
35 that impact specifically on Eviction cases in Idaho by ordering a 160 day Eviction Moratorium
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1 under the CARES Act. Even with that protection, Legal Aid has submitted the Declaration of
2 James Cook, which declares:

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

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

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

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

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

21 a. Of the 65 cases filed:

22 i. There were no responsive pleadings filed in 51 cases. See exhibits 1 and
23 2.

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

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

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.

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

1 objections.

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

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

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

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

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

26 **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

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

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

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

21 **iii. Organizational Standing**

22 Finally, Legal Aid argues that it has organizational standing because the challenged
23 polices have perceptibly impaired its ability to provide the services they were formed to provide.
24 Legal Aid cites extensively to *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742 (9th Cir.
25 2018), arguing in its briefing that:

26 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
2 provide other legal services. *See id.*

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

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

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

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

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

5 *E. Bay Sanctuary Covenant*, 932 F.3d at 765–66 (internal citations and quotations omitted). As a
6 service that provides legal aid and services, Legal Aid cannot argue that having to provide legal
7 services for clients during litigation concerning the constitutionality of an enacted statute would
8 impair its ability to provide the services it was formed to provide. The Executive Director of
9 Idaho Legal Aid Services, Inc., James Cook, stated in his first declaration that: “ILAS’S mission
10 is to provide equal access to justice for low income people through quality advocacy and
11 education.” That is the very purpose for which Legal Aid was formed. Thus, Legal Aid would
12 need to show that, outside of the cost of this litigation, the challenged policy frustrates Legal
13 Aid’s goals and requires Legal Aid to expend resources in representing clients it otherwise would
14 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.

15 **b. Ripeness**

16 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.

17 Ripeness is that part of justiciability that asks whether there is any need for court
18 action at the present time. The traditional ripeness doctrine requires a petitioner or
19 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.

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

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

5 **c. Declaratory Judgment as an Advisory Opinion**

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

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

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

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

22 *Idaho Watersheds Project v. State Bd. of Land Comm’rs*, 133 Idaho 64, 66, 982 P.2d 367, 369
23 (1999) (internal quotations and citations omitted). In a normal situation, the State’s arguments
24 would be sound. Generally, for the Court to grant a declaratory judgment there must be a case
25 and controversy by which the statute in question has adversely affected the party challenging its
26 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.

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

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

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

14 In an action exclusively for possession of a tract of land of five (5) acres or less
15 for the nonpayment of rent or on the grounds that the landlord has reasonable
16 grounds to believe that a person is, or has been, engaged in the unlawful delivery,
17 production, or use of a controlled substance on the leased premises during the
18 term for which the premises are let to the tenant, or for forcible detainer, or if the
19 tenant is a tenant at sufferance pursuant to subsection (11) of section 45-1506,
20 Idaho Code, *the action shall be tried by the court without a jury.* If, after hearing
21 the evidence the court concludes that the complaint is not true, it shall enter
22 judgment against the plaintiff for costs and disbursements. If the court finds the
23 complaint true or if judgment is rendered by default, it shall render a general
24 judgment against the defendant and in favor of the plaintiff, for restitution of the
25 premises and the costs and disbursements of the action. If the court finds the
26 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.

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

25 Reaching the substantive issue of Legal Aid’s claim that Idaho Codes section 6-311A is
26 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

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

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

18 *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 870, 154 P.3d 433,
19 441 (2007). Under the State’s analysis, Idaho Code section 6-311A is not unconstitutional on its
20 face because it can be applied to parties who do not have a constitutional right to a jury trial, or
21 to parties who waive their right to a jury trial. The State’s interpretation of the unconstitutional
22 on its face analysis is unpersuasive.

23 Hypothetically, and perhaps extremely and unrealistically so, if the Idaho Legislature
24 were to enact a statute which provided: “No one in Idaho may vote in any election.” Under the
25 State’s proffered analysis, that statute would not be unconstitutional on its face. It would not
26 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-

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 § 6-311A 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

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.

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

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

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

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

1 **3. Legal Aid is not entitled to Preliminary Injunctions**

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

4 A preliminary injunction may be granted in the following cases:

5 (1) when it appears by the complaint that the plaintiff is entitled to the relief
6 demanded, and that relief, or any part of it, consists of restraining the commission
7 or continuance of the acts complained of, either for a limited period or
8 perpetually;

9 (2) when it appears by the complaint or affidavit that the commission or
10 continuance of some act during the litigation would produce waste, or great or
11 irreparable injury to the plaintiff;

12 I.R.C.P. 65.

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

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

20 **a. Preliminary Injunction with respect to the Magistrate Courts**

21 Legal Aid requests that the Court:

22 4. Enter preliminary and permanent injunctions prohibiting the State of Idaho
23 and all of its agents, including its magistrate courts, from enforcing Idaho Code §
24 6-311A.

25 The Court declines to do so. Magistrate courts are subject to the decisions, orders, and judgments
26 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*

1 *summonses issued in those actions* that defendants may file a written response or
2 otherwise demand a jury trial.

3 6. Enter preliminary and permanent injunctions prohibiting the State of Idaho
4 and all of its agents, including its Courts, *from failing to inform parties* in
5 unlawful detainer actions of the right to demand a jury trial *by providing a place*
6 *on any approved court forms* for unlawful detainer actions, including approved
7 complaint and answer forms, for any party to demand a jury trial.

8 7. Enter preliminary and permanent injunctions prohibiting the State of Idaho
9 and all of its agents, including its Courts, *from failing to inform parties* of the
10 right to demand a jury trial in unlawful detainer actions *by providing appropriate*
11 *references* to a party's right to demand a jury trial in the approved Court
12 Assistance Office instructions for those actions.

13 (emphasis added). In reviewing each of these three requests, it becomes evident that Legal Aid is
14 not, in fact, asking for preliminary injunctions, rather Legal Aid is requesting that the Court enter
15 writs of mandamus ordering the State of Idaho and the Idaho Supreme Court to change its
16 summonses, forms, and instructions. In each request, Legal Aid asks that the Court prohibit the
17 "State of Idaho" and its "Courts" from "failing to inform parties," by "making clear in any
18 summons issued," by "providing a place," and by "providing appropriate references" in the
19 forms or instructions. Put another way, Legal Aid is asking this Court to enter preliminary
20 injunctions against the State of Idaho and the Idaho Supreme Court that "compels the
21 performance of an act which a party has a duty to perform as a result of an office, trust or
22 station." I.R.C.P. 74(a)(1)(A). The Court declines to do so. Writs of Mandamus may only be
23 issued "by the court to any inferior court." I.R.C.P. 74(a)(1). In an exercise of its discretion the
24 Court will not enter writs of mandamus to the State of Idaho or the Idaho Supreme Court under
25 the guise of preliminary injunctions.
26

CONCLUSION

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

6 IT IS SO ORDERED.

7 Signed: 7/20/2020 10:42 AM

8 Dated this _____ day of _____, 2020.

9 
10 _____
11 MICHAEL REARDON
12 District Judge
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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 Berk Masten
Deputy Clerk

