LATAH COUNTY PROSECUTOR'S OFFICE
WILLIAM W. THOMPSON, JR., ISB 2613
PROSECUTING ATTORNEY
INGRID BATEY, ISB 10022
SPECIAL ASSISTANT ATTORNEY GENERAL
Latah County Courthouse
P.O. Box 8068
Moscow, ID 83843
Phone: (208) 883-2246
paservice@latahcountyid.gov

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO, Plaintiff, V. BRYAN C. KOHBERGER Defendant.	Case No. CR01-24-31665 STATE'S OBJECTION TO DEFENDANT'S MOTION TO STRIKE HAC AGGRAVATOR

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and hereby objects to the Defendant's Motion to Strike the HAC (Heinous, Atrocious, and Cruel) Aggravator. For the following reasons, Defendant's motion should be denied.

ARGUMENT

It is well-established that a capital sentencing scheme must "genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder." *Lowenfeld v. Phelps,* 484 U.S. 231, 244, 108 S.Ct. 546 (1988) (quoting *Zant v. Stephens*, 462 U.S. 862, 877, 103 S.Ct. 2733 (1983)). In a companion motion filed contemporaneously with this one, Defendant correctly

acknowledges that the Idaho Supreme Court has held that Idaho's capital sentencing scheme meets that standard. *See Defendant's Motion to Strike Utter Disregard Aggravator*, p. 2 (citing *State v. Wood*, 132 Idaho 88, 103, 967 P.2d 702 (1998)). As the Idaho Supreme Court explained in *Wood*, "this Court has upheld the constitutionality of its death penalty statutes on numerous occasions." *Wood* at 102, 967 P.2d at 716. Nevertheless, the Defendant advances two arguments. First, he argues that the Court should find that the "gloss" placed on the [HAC] aggravator by the Idaho Supreme Court was in violation of the Idaho Constitution.[1] *Defendant's Motion to Strike Utter Disregard Aggravator* at 17. Second, he asserts that the Idaho Criminal Jury Instruction (ICJI) for the HAC aggravator does not contain the necessary limiting construction set forth by the Idaho Supreme Court in *State v. Osborn*. *Id.* at 17-18. For the reasons set forth below, both of Defendant's arguments fail.

A. This Court Cannot Overrule the Idaho Supreme Court.

As a threshold matter, this Court cannot overrule the Idaho Supreme Court. The Idaho Supreme Court unambiguously set forth its authority in *State v. Guzman*:

> To this Court falls the obligation to be and remain the ultimate authority in fashioning, declaring, amending, and discarding rules, principles, and doctrines of precedential law by application of which the lower courts will fashion their decisions. This Court has been and remains the final arbiter of Idaho rules of law, both those promulgated and those evolving decisionally.

State v. Guzman, 122 Idaho 981, 987, 842 P.2d 660, 666 (1992). Because Defendant's argument—that this Court should hold unconstitutional the Idaho Supreme Court's limiting construction set

[1] [1] Defendant specifically requests that "this Court should find that the gloss placed on the aggravator by the Idaho Supreme Couet was in violation of Art II Sec. 2 of the Idaho Constitution." *Def. Motion to Strike Utter HAC Aggravator*, p. 17. But Article II of Idaho's Constitution does not have a section 2. Thus, the State presumes from context that the Defendant intended to cite to Art. II Sec. 1 of the Idaho Constitution to advance a separation of powers argument.

forth in *State v. Osborn*—requires this Court to effectively overrule a higher court, the Court should disregard it outright.

B. The Constitutionality of the HAC Aggravator Has Repeatedly Been Upheld.

As Defendant acknowledges by his citation to *State v. Osborn*, the Idaho Supreme Court has upheld the constitutionality of the HAC aggravator with a limiting construction. *Def. Motion to Strike HAC Aggravator*, p. 4 (citing *State v. Osborn*, 102 Idaho 405, 418, 631 P.2d 187, 200 (1981)). In adopting the limiting construction placed on the HAC aggravator, the Idaho Supreme Court followed the standards set forth by the United States Supreme Court in *Godfrey v. Georgia*:

> [I]n *Godfrey v. Georgia*, the Supreme Court held that where statutory provisions concerning aggravating circumstances such as these could be applied to any murder, a limiting construction is indispensable if the state is to meet its constitutional obligation "to tailor and apply its law in a manner that avoids the arbitrary and capricious infliction of the death penalty."

Osborn at 417, 631 P.2d 199 (quoting *Godfrey v. Georgia*, 446 U.S. 420, 428, 100 S.Ct. 1759, 2938 (1980)). Adopting language utilized by the Florida Supreme Court, the *Osborn* Court held that:

> heinous means extremely wicked or shockingly evil; that atrocious means outrageously wicked and vile; and, that cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others. What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capitol felonies - the conscienceless or pitiless crime which is unnecessarily torturous to the victim.

Id. at 418, 631 P.2d 200 (*internal citations omitted*). The *Osborn* Court also adopted language from the Nebraska Supreme Court defining exceptional depravity:

> In interpreting this portion of the statute, the key word is 'exceptional.' It might be argued that every murder involves depravity. The use of the word 'exceptional,' however, confines it only to those situations where depravity is apparent to such an extent as to obviously offend all standards of morality and intelligence.

Id. (*internal citations omitted*). The *Osborn* Court explained that with a limiting construction, the HAC aggravator is "sufficiently definite and limited to guide the sentencing court's discretion in imposing the death penalty." *Id.*

Decades later, in *State v. Hall*, the Idaho Supreme Court affirmed the constitutionality of the HAC aggravator. *State v. Hall*, 163 Idaho 744, 419 P.3d 1042 (2017). The Court held that the appellant had provided "no basis, principled or otherwise" to support his vagueness challenge, and noted that the HAC aggravator "has been determined constitutional time and time again." *Id.* at 786, 163 Idaho 1084.[2]

Defendant's argument that the Idaho Supreme Court's decision in *Verska v. St. Alphonsus Regional Medical Center* reversed its ability to provide judicial interpretation to statutes is self-evidently wrong. *See Def. Motion to Strike HAC Aggravator*, p. 18. In *Verska*—and in a passage quoted by Defendant himself—the Idaho Supreme Court merely explained that "we have never revised or voided an unambiguous statute on the ground that it was patently absurd or would produce absurd results when construed as written, and we do not have the authority to do so." *Verska v. Saint Alphonsus Regional Medical Center,* 151 Idaho 889, 896, 265 P.3d 502, 509 (2011). The *Verska* Court simply stated that the Court could not rewrite unambiguous statutes. *Id.* The *Verska* Court did not limit the Court's ability to interpret statutes or add judicial "gloss" to statutes. Indeed, in *Hall*—decided six years after *Verska*—the Idaho Supreme Court reiterated the propriety and importance of the HAC limiting construction, holding that the "limiting construction and the

[2] Notably, the Ninth Circuit Court of Appeals has also found Idaho's HAC aggravator to be constitutional. *See Leavitt v. Arave*, 383 F.3d 809, 835-37 (9th Cir. 2004) ("In fine, taken as a whole, Idaho's delineation of the meaning of heinous, atrocious, or cruel aggravation is sufficient to guide the discretion of the sentencer.").

[HAC] aggravating circumstance as a whole have repeatedly been interpreted by this Court as constitutionally sufficient." *Hall* at 786, 163 Idaho 1084.

Defendant's constitutional claims therefore fly in the face of well-established precedent and should be disregarded by this Court.

C. The ICJI for the HAC Aggravator Appropriately Reflects the Caselaw

Defendant argues that ICJI 1713, the instruction for the HAC aggravator, "does away with the additional proofs set forth in Osborn." *Def. Motion to Strike HAC Aggravator,* p. 20. That is wrong. A comparison can be found below:

State v. Osborn	**ICJI 1713**
What is intended to be included are those capital crimes where the actual commission of the capital felony was accompanied by such additional acts as to set the crime apart from the norm of capital felonies[.]	The terms heinous, atrocious, or cruel are intended to refer to those first-degree murders where the actual commission of the first-degree murder was accompanied by such additional acts as to set the crime apart from the norm of first-degree murders.
Heinous means extremely wicked or shockingly evil	A murder is 'heinous' if it extremely wicked or shockingly evil
Atrocious means outrageously wicked and vile	Atrocious means outrageously wicked and vile
Cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others	Cruel means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others
It might be argued that every murder involves depravity. The use of the word 'exceptional,' however, confines it only to those situations where depravity is apparent to such an extent as to obviously offend all standards of morality and intelligence.	It might be thought that every murder involves depravity. However, exceptional depravity exists only where depravity is apparent to such an extent as to obviously offend all standards of morality and intelligence.

See State v. Osborn at 418, 631 P.2d 200, *and see* Idaho Criminal Jury Instruction 1713, *available at* https://isc.idaho.gov/main/criminal-jury-instructions. The language of ICJI 1713 is nearly identical to the language in *State v. Osborn.* Defendant's argument that the Idaho Supreme Court has somehow changed the wording of the HAC aggravator within the body of ICJI 1713 is flatly wrong and should be disregarded entirely.

CONCLUSION

Defendant's constitutional claims are foreclosed by well-established caselaw, and his motion is legally meritless. It should be denied.

RESPECTFULLY SUBMITED this 9th day of October 2024.

Ingrid Batey
Special Assistant Attorney General

William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the was served on the STATE'S OBJECTION TO DEFENDANT'S MOTION TO STRIKE HAC AGGRAVATOR following in the manner indicated below:

Anne Taylor
Attorney at Law
PO Box 2347
Coeur D Alene, ID 83816-9000

☐ Mailed
☒ E-filed & Served / E-mailed
☐ Faxed
☐ Hand Delivered

Dated this 9th day of October 2024.

Kim K. Workman