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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

	Case No. CR01-24-31665
STATE OF IDAHO,	
Plaintiff,	STATE'S OBJECTION TO EXPERT TESTIMONY FROM ALIZA P. COVER
V.	
BRYAN C. KOHBERGER Defendant.	

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and hereby objects to the proposed testimony of Aliza P. Cover in support of Defendant's Motion to Strike State's Notice Pursuant to Idaho Code § 18-4004A on Grounds of Arbitrariness ("Motion").
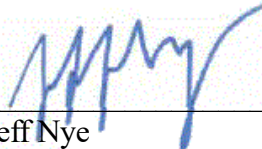
Professor Cover's testimony would not be helpful to this Court. *See* I.R.E. 702. It is now well-established in Idaho that "testimony containing conclusions of law by an expert witness is

generally inadmissible." *Ybarra v. Bedke*, 166 Idaho 902, 908, 466 P.3d 421, 427 (2020). As the Idaho Supreme Court has explained, "when an expert witness offers a legal conclusion it invades the province of the court to determine the applicable law." *Id.* Defendant submitted as Professor Cover's expert report a law review article titled Narrowing Death Eligibility in Idaho: An Empirical and Constitutional Analysis. (*See* Mot., Ex. A.) As the title suggests, Professor Cover's article is a legal analysis of Idaho's capital sentencing scheme. The article sets out her view of Supreme Court precedent on capital punishment and ultimately concludes that Idaho's "high rate of death eligibility shows that the capital scheme is failing to 'genuinely narrow the class of persons eligible for the death penalty,' and therefore violates the Eighth Amendment." (Mot., Ex. A, p.605.) Such legal analysis and argument is adequately performed by Defendant's counsel, and admitting it through Professor Cover's testimony would "invade[] the province of the court to determine the applicable law." *Ybarra*, 166 Idaho at 908, 466 P.3d at 427.
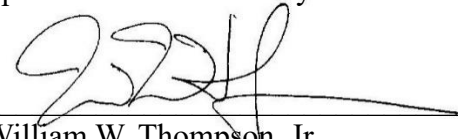
Moreover, Professor Cover does not have sufficient foundation to testify in a court of law as to the results of her empirical study. *See* I.R.E. 702. "The proponent of expert testimony must lay foundation for it." *Rich v. Hepworth Holzer, LLP*, 172 Idaho 696, ___, 535 P.3d 1069, 1080 (2023). "This means that courts must review both the expert's qualifications and the records relied upon by the expert to determine whether the expert can establish the necessary foundation." *Id.* (internal quotations omitted). As the State explained in its response, Professor Cover did not have access to sufficient information to determine whether each of the defendants mentioned in her article were legally eligible for the death penalty. (*See* Objection to Defendant's Motion to Strike State's Notice Pursuant to Idaho Code §18-4004A on Grounds of Arbitrariness, pp.6-8.) Neither Professor Cover nor Defendant provided this Court with sufficient information such that it could

fulfill its obligation to review "the records relied upon by the expert to determine whether the expert can establish the necessary foundation." *Id.* Defendant has thus failed to lay a proper foundation for Professor Cover, and this Court should preclude her testimony.

RESPECTFULLY SUBMITTED this 9<u>th</u> day of October, 2024.

Jeff Nye
Special Assistant Attorney General

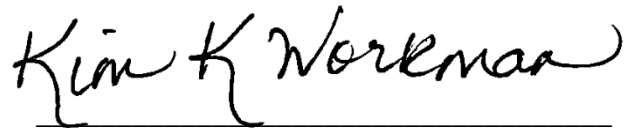William W. Thompson, Jr.
Prosecuting Attorney

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the STATE'S OBJECTION TO EXPERT

TESTIMONY FROM ALIZA P. COVER was served on the following in the manner indicated below:

Anne Taylor   ☐ Mailed
Attorney at Law   ☒ E-filed & Served / E-mailed
PO Box 2347   ☐ Faxed
Coeur D Alene, ID 83816-9000   ☐ Hand Delivered

Dated this 9th day of October 2024.

Kim K Workman

_____
Kim K. Workman