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Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

TRACY TUCKER, et al., on behalf of themselves and all others similarly situated, Plaintiffs-Appellants, vs. STATE OF IDAHO, et al., Defendants-Respondents.	Supreme Court Docket No. 51631-2024 Ada County District Court No. CV-OC-2015-10240

RESPONDENTS' BRIEF

RAÚL R. LABRADOR
ATTORNEY GENERAL

ALAN HURST
Solicitor General

Joseph M. Aldridge ISB #9194;
Special Deputy Attorney General
Keegan C. Hahn ISB #11298;
SCANLAN GRIFFITHS + ALDRIDGE
913 W. River Street, Suite 310
Boise, Idaho 83702
Telephone (208) 991-1200
Fax (208) 908-0043

Attorneys for Defendants-Respondents

RAÚL R. LABRADOR
ATTORNEY GENERAL

ALAN HURST
Solicitor General

Slade D. Sokol, ISB #8684
Special Deputy Attorney General
Parsons Behle & Latimer
800 W. Main Street, Ste. 1300
Boise, ID 83702
Telephone: (208) 562-4900
Facsimile: (208) 562-4901

Attorneys for Defendants-Respondents
Eric Lehtinen and Ben Anderson

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I. STATEMENT OF THE CASE

A. The Nature of the Case

More than fifteen years ago, Idaho began taking steps to examine and improve its indigent defense delivery system. Some years after that endeavor got underway, Appellants filed this class action lawsuit alleging Idaho's then county-based indigent defense system was constitutionally inadequate. Throughout the intervening time, Idaho has continued its efforts to improve indigent defense, and Appellants have continued to claim those efforts are inadequate.

In April 2023, the State passed the Idaho State Public Defender Act ("SPD Act")—a sweeping piece of legislation that established the Office of the State Public Defender and transitioned Idaho from a county-based system with state assistance to a completely state-funded and state-administered system effective October 1, 2024. The prior county-based model in place at the time of the named class representatives' criminal cases was abolished. The Idaho Public Defense Commission ("PDC"), which had provided assistance and oversight to the county-based system since 2014, was dissolved. As of the filing of this brief, the State Public Defender has been in charge of indigent defense in Idaho for less than two months.

The District Court dismissed this case in February 2024 because it found the future harm at issue—i.e., widespread, persistent structural deficiencies likely to result in the actual or constructive denial of counsel—was unlikely under the new state-based system. The District Court noted that any plan it might come up with would likely resemble the new SPD Act, and found its intervention would at best duplicate the State's efforts and waste finite public resources, and at worst would invite inter-governmental confusion and conflict over the details of carrying out an agreed objective.

The Appellants have never actually proven indigent defense in Idaho suffered from "longstanding structural deficiencies" under the prior county-based or state-assisted systems. From

the ground view, Appellants' claims of unconstitutional representation were not substantiated by defending attorneys and did not reflect the day-to-day reality in Idaho courtrooms. From 30,000 feet, Appellants' statistical analysis of the prior system was misleading, inherently limited, and did not support their conclusions regarding the state of indigent defense in Idaho. Regardless, because Idaho was transitioning to a state-based system, the District Court found it unnecessary to have a 40-day trial based on evidence from the prior systems.

Appellants sought declaratory and prospective injunctive relief at a time when Idaho was in the midst of overhauling its indigent defense delivery model. The SPD Act—which is not being challenged by Appellants and which is presumed to be constitutional—was enacted to ensure the State meets its constitutional obligations to indigent defendants. The new state-based system is in its infancy. It would be difficult to imagine a more inappropriate time to put Idaho's indigent defense system on trial. The passage of the SPD Act and the rapidly changing state of indigent defense in Idaho provided a number of grounds for dismissing the case. The District Court, in its discretion, chose to dismiss the case under the prudential mootness doctrine. It did not err in doing so.

B. Course of Proceedings and Statement of Facts

1. The Course of Proceedings Below.

Appellants filed their original complaint on June 17, 2015. The District Court initially dismissed the case at the pleading stage on January 20, 2016. Appellants subsequently appealed that dismissal to this Court.

On the first appeal, this Court affirmed in part and reversed in part, issuing its decision on April 28, 2017. *See Tucker v. State*, 162 Idaho 11, 30, 394 P.3d 54, 73 (2017) ("*Tucker I*"). The Court confirmed the State had the "responsibility to ensure that the public defense system passes constitutional muster." *Id*. at 21, 394 P.3d at 64. The Court also clarified that for Appellants to

satisfy their standing requirements, at least one named class representative must prove their allegations of "actual and constructive denials of counsel at critical stages of the prosecution." *Id*. at 20, 394 P.3d at 63.

Following remand, on January 17, 2018, the District Court granted class certification, defining the class as:

> all indigent persons who are now or who will be under formal charge before a state court in Idaho of having committed any offense, the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correction facility (regardless of whether actually imposed) and who are unable to provide for the full payment of an attorney and all other necessary expenses of representation in defending against the charge.

R. at 5562. After engaging in extensive discovery, the parties filed cross motions for summary judgment in 2018, which the District Court ultimately denied, recommending an interlocutory appeal for this Court to determine the applicable legal standard.

On the second appeal, this Court held the proper legal standard to be applied to Appellants' claims at trial, and the respective burdens of the parties going forward, was as follows:

> To obtain declaratory or injunctive relief, [Appellants] must prove by a preponderance of the evidence that Idaho's public defense system suffers from widespread, persistent structural deficiencies that likely will result in indigent defendants suffering actual or constructive denials of counsel at critical stages of criminal proceedings.

Tucker v. State, 168 Idaho 570, 584-85, 484 P.3d 851, 865-66 (2021) ("*Tucker II*"). The Court explained Appellants must prove "the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law." *Id*. at 585, 484 P.3d at 866. As evidence of this injury, Appellants must "establish a likelihood of future systemic harm to members of the certified class." *Id*. at 584, 484 P.3d at 865.

The Court recognized, however, before Appellants could prove their class action claims, at least one class representative must prove their allegations of actual and constructive denials of

counsel to have standing. *Id*. at 575, 484 P.3d at 856. The Court also noted, *sua sponte*, the case could become moot if the Respondents show "there is no reasonable expectation that the wrong will be repeated." *Id*. at 582, 484 P.3d at 863 (quotation omitted).

2. Idaho's Efforts to Improve Indigent Defense Predate This Lawsuit.

In 2007, Idaho independently commissioned the review of its indigent defense services and, in 2009, following the formation of the Public Defense Subcommittee, contracted with the National Legal Aid and Defender Association ("NLADA") to conduct that study. R. at 3803; 5555-56.[1] In January 2010, NLADA issued its report, which was critical of trial-level indigent defense services in several Idaho counties. *Id*. Since the NLADA report, Idaho has continually taken steps designed to improve trial level indigent defense services throughout the State.

In 2014, the Idaho legislature created the PDC. Idaho Code § 19-848 (repealed 2024). During its existence the PDC, among other things, implemented rules and standards for defending attorneys, created the Public Defense Roster to help ensure that defending attorneys were complying with those standards, distributed state funding to the counties as they improved their indigent defense systems, and provided scholarship-funded trainings for indigent defense attorneys statewide. *See* R. at 3805-12.

During the PDC's tenure, county and state expenditures on indigent defense also steadily increased. In fiscal year 2013, counties in Idaho spent approximately $24 million on indigent defense. By fiscal year 2017, total expenditures had increased to approximately $36 million, with counties spending approximately $32 million and an additional $4.3 million provided through state-funded grants administered by the PDC. In fiscal year 2020, Idaho spent a total of $43 million on indigent defense, with $33.9 million coming from counties and an additional $9.1 million provided through

[1] Clerk's Record on Appeal ("R"), entered April 25, 2024.

PDC grants. And by fiscal year 2023, the State and County expenditures for indigent defense had increased to a combined total of approximately $48 million. 2022 Idaho Sess. Law 318.

3. Public Defense in Idaho Today Is in the Initial Stages of a Seismic Change.

Following *Tucker II*, the State continued to improve the indigent defense system in Idaho, ultimately culminating in a legislative overhaul to transition Idaho to an entirely state-run system. In 2022, Idaho enacted legislation that made the State solely responsible for funding indigent defense and created a dedicated funding source for that purpose. *See* 2022 Idaho Sess. Law 318. Upon its enactment, the State assumed the full financial obligation to provide indigent defense services starting October 1, 2024. *Id*. The legislation allocated $48 million annually for indigent defense.[2] *Id.* This meant Idaho would be spending over $25 per capita on indigent defense while the national average was just under $20 per capita. *See* R. at 3732.

In April 2023, the State enacted the SPD Act, transitioning Idaho to a state-based indigent defense delivery model. Idaho Code § 19-6001 *et seq*. The SPD Act creates the Office of the State Public Defender, a self-governing agency, which is run by the State Public Defender.[3] The District Court found "the state-based system in law is completely different in every aspect previously complained of." R. at 5575-76. *See also* Idaho Code § 19-6001 *et seq*; R. at 3824-25; 4013-16, ¶¶ 34-38. The SPD Act included a provision for the dissolution of the PDC, which occurred on July 1, 2024, and introduced various reforms aimed at improving indigent defense. *See* R. at 5604-05; Idaho Code § 19-6005. These include, among other things, provisions for implementing the most current ABA standards, including caseloads; requiring uniform data reporting and contracts; and the

[2] The Office of the SPD can also request additional funding for public defense from the legislature as necessary through the State's annual budget and appropriations process. *See* Idaho Code § 67-3502.
[3] Governor Little named Eric Fredericksen the State Public Defender, effective September 25, 2023. R. at 3986, ¶ 1.

formation and submission of a budget request sufficient to meet the State's constitutional obligation to provide indigent defense services. *Id.* This is a major undertaking, and the SPD Act provided for a transition period until October 1, 2024, when the state-based system came fully into effect.

4. The State Public Defender Act—Which Is Not Being Challenged by Appellants and Is Presumed Constitutional—Was Enacted to Ensure the State Meets Its Constitutional Obligations to Indigent Defendants.

Appellants spend many pages arguing the plain language of the SPD Act is insufficient to ensure constitutional representation. App. Br. at 10-16. Many of Appellants' claims mischaracterize the language of the SPD Act or the realities of the system. For example, Appellants correctly provide that legislation initially allocates approximately $48 million for indigent defense, which they argue is a decrease in overall funding from the previous year. App. Br. at 11. However, Appellants fail to acknowledge that Idaho fiscal year 2025 runs from July 1, 2024, through June 30, 2025, and that Idaho began paying the entire bill for indigent defense on October 1, 2024. R. at 4016-17, ¶¶ 38-40. Idaho counties were still responsible for paying for indigent defense from July 1, 2024, to September 30, 2024. *Id*. Thus the $48 million dollar allotment was a starting point, paying for indigent defense for nine months in fiscal year 2025. *Id*.

Likewise, the District Court flatly rejected Appellants' contention that the plain language of the SPD Act was somehow inadequate. R. at 5572. And Appellants acknowledge they are not challenging the constitutionality of the SPD Act. App. Br. at 32. Regardless, the SPD Act is presumed constitutional. *See Oneida Cnty. Fair Bd. v. Smylie*, 86 Idaho 341, 346, 386 P.2d 374, 376 (1963) ("A legislative act is presumed to be constitutional and all reasonable doubt as to its constitutionality must be resolved in favor of its validity."). The SPD Act was enacted for the express purpose of ensuring the State meets its constitutional obligations to indigent defendants. Appellants' claims that the Act is somehow deficient are purely speculative.

5. The District Court Dismissed This Case as Moot Based on the State's Passage of the SPD Act.

While the above changes to indigent defense in Idaho were ongoing, litigation in this case continued. On September 8, 2023, Respondents filed their Motion to Dismiss Without Prejudice for Lack of Subject Matter Jurisdiction and Motion to Decertify Future Class Members, along with supporting memoranda. *See* R. at 566-1146; 1147-84. On September 22, 2023, the parties filed cross-motions for summary judgment, with supporting memoranda and declarations. *See* R. at 1229-3426; 3427-3870; C.R. at 216-94.[4] On October 20, 2023, the Respondents filed a Motion to Strike the Declaration of Jason Sharp. R. at 3953-62. On November 11, 2023, Appellants filed a Motion to Strike the Declaration of Mark Lasalle. R. at 5367-76. On December 1, 2023, after the motions were fully briefed, the District Court heard arguments and took the matter under advisement.

On February 6, 2024, the District Court entered its Amended Memorandum Decision and Order,[5] dismissing the case against the PDC with prejudice and against the State without prejudice. R. at 5576. The District Court dismissed the case under the prudential mootness doctrine, based on the State's enactment of the SPD Act. R. at 5574. In making its decision, the District Court recognized its discretion and analyzed relevant case law and facts. R. at 5565-76. The District Court ultimately found the Respondents had "met their burden of showing future harm is not likely with the state-based system." R. at 5574. It reasoned "prudence and comity counsel against deciding the case on the merits" because the State had enacted the SPD Act which provided the relief Appellants were seeking. R. at 5574-75. The District Court recognized any plan it might devise and create "would likely resemble" the SPD Act, and that such a systemic change takes

[4] Supplemental Confidential Exhibits ("C.R.") entered on June 20, 2024.
[5] On February 2, 2024, the District Court originally entered its *Memorandum Decision and Order*. R. at 5528-51. The Judgment was entered the same day. R. at 5552-53.

time. R. at 5574, 5575 n.83. Because of its decision, the District Court did not rule on the Respondents' other arguments for dismissal, or the remaining pending motions. R. at 5575.

The District Court noted that Appellants had never actually proven the indigent defense system in Idaho was unconstitutional, but, relying on its inherent discretion to "mould each decree to the necessities of the case," did enter an injunction prohibiting the State from reverting back to the county-based or state-assisted indigent defense system. R. at 5573-74. The District Court concluded by finding that both parties had prevailed in part, and did not award costs or attorneys' fees to either party. R. at 5576. The State did not appeal the District Court's injunction.

6. It Will Take Time to Fully Implement the New State-Based System and to Gauge Its Performance.

The District Court recognized it "will take at least a few years before sufficient cases move through the judicial process before any determination could be made whether there are 'widespread, persistent, structural deficiencies' in existence." R.at 5574. Appellants likewise acknowledge the impacts of the overhaul "will not be known for some time." App. Br. at 11.

Despite acknowledging time is needed to gauge the performance of the new system, Appellants contend this Court can declare public defense in Idaho to be constitutionally deficient today based on their analysis of fiscal year 2022 data from the prior system. *See* App. Br. at 6-10. While Respondents do not believe it is appropriate to ask this Court to review a dismissed summary judgment motion or to weigh conflicting evidence on appeal, they have thoroughly rebutted Appellants' claims with Respondents' own evidence and briefing submitted in support of their summary judgment motion. R. at 3802-77, 3828-70, 3963-84, 3989-4019, 5324-66. In particular, the reports of Respondents' analytics experts explain in detail both the shortcomings of Appellants' statistical methodology and why the conclusions of Appellants' analysis are misleading and not

representative of any ground truths regarding indigent defense in Idaho.[6] *See infra*, Section IV.C.2.a. As such, Appellants' summary judgment evidence is not only disputed, it has been thoroughly refuted. *See* R. at 3777-87; 3797-3801. Regardless, Appellants are only seeking prospective relief, and it makes little sense to ask this Court to rule on the adequacy of Idaho's new indigent defense system based on outdated and inherently limited data from the prior system.

As the District Court noted, and as Appellants acknowledge, it will take time to fully implement the new system and to gauge its performance. While Appellants make frequent references to national standards when critiquing public defense in Idaho, such national standards are aspirational—they are not constitutional requirements. Still, the SPD Act moves Idaho closer than most states to achieving those standards. The new system deserves a fair chance to realize its full potential.

II. ISSUES PRESENTED ON APPEAL

(1) Whether the District Court properly dismissed Appellants' claims on prudential mootness grounds?

(2) Whether the District Court properly denied Appellants' requested relief?

(3) Whether the District Court properly found neither party was entitled to attorney's fees and costs?

(4) Whether Appellants are entitled to attorneys' fees and costs on appeal.

III. STANDARD OF REVIEW

A. Standards of Review

[6] As noted by Respondents' analytics experts Mark LaSalle and Dr. William England, Appellants' statistical analysis of 2022 FCE datasets does not take into account data variance or potential redundancies, nor does it account for the data distribution between attorneys, the number of cases in each county, or county population, making the conclusions unreliable and misleading. *See* R. at 3777-87; 3797-3801. The "methodological choices made by [Appellants'] analyst team … inevitably led to the statistical appearance of a concerning problem with Idaho's public defense system." R. at 3801. As such, Appellants' statistical analysis is "not a good representation of the Idaho public defense system as a whole" under the prior model. R. at 3787. The analysis has even less bearing on the current system.

Discretionary Standard

"[P]rudential mootness is concerned with the court's discretion to exercise its power to provide relief," which is reviewed for an abuse of discretion. *Fletcher v. United States*, 116 F.3d 1315, 1321 (10th Cir. 1997). *See also United States v. W.T. Grant Co.*, 345 U.S. 629, 634 (1953); *O'Boskey v. First Fed. Sav. & Loan Ass'n of Boise*, 112 Idaho 1002, 1006–07, 739 P.2d 301, 305–06 (1987) ("The decision of whether to impose injunctive relief is within the discretion of the district court."); *Harris v. Cassia Cnty.*, 106 Idaho 513, 517, 681 P.2d 988, 992 (1984) (providing a trial court has discretion when deciding not to grant injunctive relief); 2A Fed. Proc., L. Ed. § 3:259. "The court which is to exercise the discretion is the trial court and not the appellate court, and an appellate court will not interfere absent a manifest abuse of discretion." *Harris*, 106 Idaho at 517, 681 P.2d at 992.

"When this Court reviews an alleged abuse of discretion by a trial court, [it] consider[s] "[w]hether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason." *Westover v. Idaho Ctys. Risk Mgmt. Program*, 164 Idaho 385, 388, 430 P.3d 1284, 1287 (2018) (quotation omitted).[7]

Affirmation on Alternative Grounds

When a judgment on appeal reaches the correct result, but employs reasoning that this Court does not accept, this Court may affirm the judgment on alternative grounds. "[T]he Court will uphold the decision of a trial court if any alternative legal basis can be found to support it." *Syringa Networks, LLC v. Idaho Dep't of Administration*, 159 Idaho 813, 817, 367 P.3d 208, 222 (2016) (internal punctuation omitted) (quotation omitted).

[7] While it may not be fatal to Appellants' appeal, Respondents note that Appellants have failed to cite or apply the correct standard of review to their arguments related to prudential mootness. *See State v. Jeske*, 164 Idaho 862, 870, 436 P.3d 683, 691 (2019).

Free Review

The Court exercises free review over issues of justiciability. *Tucker I*, 162 Idaho at 17, 394 P.3d at 60. Appellants' contention that the Court exercises *de novo* review over the denial of their summary judgment motion is misplaced. *See* App. Br. at 17. "It is well settled in Idaho that '[a]n order denying a motion for summary judgment is an interlocutory order from which no direct appeal may be taken.'" *Garcia v. Windley*, 144 Idaho 539, 542, 164 P.3d 819, 822 (2007) (quoting *Dominguez ex rel. Hamp v. Evergreen Res., Inc.,* 142 Idaho 7, 13, 121 P.3d 938, 944 (2005)).

Attorneys' Fees

The decision to deny attorneys' fees under 42 U.S.C. § 1988 and the private attorney general doctrine is reviewed for an abuse of discretion. *Miller v. Bd. of Trustees*, 132 Idaho 244, 247, 970 P.2d 512, 515 (1998); 42 U.S.C. § 1988(b); *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 718, 721, 947 P.2d 391, 394 (1997) *abrogated on other grounds*, *Syringa Networks, LLC*, 155 Idaho 55, 305 P.3d 499. "[T]he characterization of prevailing party status for awards under fee-shifting statutes such as § 1988 is a legal question subject to *de novo* review." *Romain v. Walters*, 856 F.3d 402, 405–06 (5th Cir. 2017) (citation omitted).

IV. ARGUMENT

A. The District Court Appropriately Dismissed This Case Under the Prudential Mootness Doctrine.

1. Prudential Mootness Grants the Court the Necessary Discretion to Stay Its Hand in Situations Where, as Here, Judicial Action Would Be Unwarranted, If Not Harmful.

The Court in *Tucker II* recognized that this case could become moot if the Respondents show there is no reasonable expectation that the alleged wrong at issue will be repeated. 168 Idaho at 582, 484 P.3d at 863. "In other words, Respondents would be required to show that future harm is *unlikely*." *Id*. (emphasis in original). The District Court found that, by overhauling Idaho's

indigent defense system for the express purpose of ensuring there is a structure to provide constitutional representation, the State has shown future widespread, persistent structural deficiencies are unlikely.

Prudential mootness "permits a court to dismiss [a case] not technically moot if circumstances have changed since the beginning of litigation that forestall any occasion for a meaningful relief . . . ." *Deutsche Bank Nat. Trust Co. v. F.D.I.C.*, 744 F.3d 1124, 1135 (9th Cir. 2014). It can be used in circumstances when "a controversy, not actually moot, 'is so attenuated that considerations of prudence and comity for coordinate branches of government counsel the court to stay its hand, and to withhold relief it has the power to grant.'" *W. Watersheds Project v. U.S. Fish & Wildlife Serv.*, No. 4:10-CV-229-BLW, 2012 WL 369168, at *10 (D. Idaho Feb. 2, 2012) (quotation omitted).

A trial court is given broad discretion when deciding whether to grant injunctive relief and may even provide relief after the alleged harmful conduct has ended. *W.T. Grant Co.*, 345 U.S. at 633. "The purpose of an injunction is to prevent future violations" which requires the moving party to "satisfy the court that relief is needed." *Id*. at 633. "The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." *Id*. When making this determination, courts considered a party's "expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations." *Id*.

Respondents acknowledge that prudential mootness is a specialized doctrine that puts a significant burden on the State. This is not an average lawsuit. And the State's transition to a state-based system is a significant undertaking. In its discretion, the District Court found the Respondents

met their burden and dismissal under the prudential mootness doctrine was appropriate. Because the District Court did not abuse its discretion, the Court should affirm the decision.

2. The Doctrine of Prudential Mootness is Consistent with This Court's Jurisprudence and the Idaho Constitution.

This Court expressly provided the Respondents could establish mootness by showing "there is no reasonable expectation that the wrong will be repeated." *Tucker II*, 168 Idaho at 582, 484 P.3d at 863 (quoting *O'Boskey*, 112 Idaho at 1006–07, 739 P.2d at 305–06). In recognizing government action could address the alleged harm at issue, the Court implicitly recognized the validity of the prudential mootness doctrine, even if it did not expressly call it by that name. The Court's pronouncement of the mootness standard in *Tucker II* is thus the "law of the case."

"The doctrine of the law of the case provides that where an appellate court states a principle of law in deciding a case, that rule becomes the law of the case and is controlling both in the lower court and on subsequent appeals as long as the facts are substantially the same." *Swanson v. Swanson*, 134 Idaho 512, 516, 5 P.3d 973, 977 (2000)). In this case, the District Court relied on the mootness principles stated in *Tucker II.* The Appellants cannot challenge those principles now.

Likewise, the prudential mootness doctrine, as first articulated in the United States Supreme Court's decision in *United States v. W.T. Grant Co.*,[8] has been utilized for many years. The doctrine has been widely accepted by federal courts. *See People Not Politicians Oregon v. Clarno*, 826 F. App'x 581, 586 (9th Cir. 2020) (Nelson, Circuit Judge, dissenting) (collecting cases). It is not, as Appellants and their supporting amicus suggest, a fringe doctrine that is inconsistent with this Court's jurisprudence and the Idaho Constitution. App. Br. at 18-22, *Amicus*

[8] *United States v. W.T. Grant Co.*, 345 U.S. 629 (1953).

Brief for Idaho State Law Scholars. Given the wide adoption of the prudential mootness doctrine—including reliance by this Court on *W.T. Grant Co.*—its use should be affirmed here.

a. The Idaho Supreme Court has adopted the reasoning of *W.T. Grant Co.*—the case attributed with creating the prudential mootness doctrine.

This Court has relied upon the reasoning in *W.T. Grant Co.* on multiple occasions. This includes *Tucker II*, where the Court used language from *W.T. Grant Co.* for the mootness standard, providing that the case could be considered moot if Respondents can show "there is no reasonable expectation that the wrong will be repeated." *Tucker II*, 168 Idaho at 582, 484 P.3d at 863 (quoting *O'Boskey*, 112 Idaho at 1007, 739 P.2d at 306).[9] *See also Nelson v. Marshall*, 94 Idaho 726, 728, 497 P.2d 47, 49 (1972) (citing *W.T. Grant Co.*, 345 U.S. at 632).

In *W.T. Grant Co.*, the United States Supreme Court recognized the difference between constitutional mootness,[10] and prudential mootness. 345 U.S. at 633. The Court noted even if a case is not constitutionally moot, it still may be considered moot "if the defendant can demonstrate that 'there is no reasonable expectation that the wrong will be repeated,'" which the Court found to be a heavy burden. *Id.* The Court also found if the illegal conduct was discontinued, a moving party may still receive injunctive relief if they can satisfy the court relief is still needed. *Id.* at 633. "The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." *Id.* The Court reasoned that a trial court has discretion when determining whether to refuse injunctive relief on mootness grounds. *Id.* at 633–34.[11]

[9] *O'Boskey* was in turn quoting *W.T. Grant Co.* for the proposition. The Court in *O'Boskey* went on to cite *W.T. Grant Co.* extensively. *See O'Boskey*, 112 Idaho at 1007, 739 P.2d at 306.

[10] In the constitutional mootness sense, when a case is moot, it "means that the defendant is entitled to a dismissal as a matter of right." *W.T. Grant Co.*, 345 U.S. at 632.

[11] In *W.T. Grant Co.*, the Court found the trial court had not abused its discretion by finding the case moot—even noting it may have come to a different conclusion if it had been the trial court. *Id.* at 634.

In *O'Boskey v. First Fed. Sav. & Loan Ass'n of Boise*, the Idaho Supreme Court adopted the reasoning provided in *W.T. Grant Co*.—albeit without calling it prudential mootness—when analyzing whether a request for injunctive relief was moot after a defendant claimed to have ceased the alleged harmful conduct. 112 Idaho at 1007, 739 P.2d at 306. The Court relied heavily on *W.T. Grant Co.*, providing that:

> It is true that injunctions should issue only where irreparable injury is actually threatened. *See Cazier v. Economy Cash Stores, Inc.,* 71 Idaho 178, 187, 228 P.2d 436, 441 (1951). Where the conduct causing injury has been discontinued, the dispute is moot and the injunction should be denied. Wright & Miller, *supra,* § 2942, p. 371. However, as the United States Supreme Court observed, the trial court must be convinced that "there is no reasonable expectation that the wrong will be repeated." *United States v. W.T. Grant Co.,* 345 U.S. 629, 633, 73 S.Ct. 894, 897, 97 L.Ed. 1303 (1953). Further, the burden on the defendant to make this showing "is a heavy one." *Id.*
>
> The reason for so burdening the defendant lies in inevitable questions concerning the motive of the defendant's voluntary cessation. The Supreme Court warned: "It is the duty of the courts to beware of efforts to defeat injunctive relief by protestations of repent[a]nce and reform, especially when abandonment seems timed to anticipate suit, and there is probability of resumption." *United States v. Oregon State Medical Society,* 343 U.S. 326, 333, 72 S.Ct. 690, 696, 96 L.Ed. 978 (1952). To accept such protestation and cessation on face value would leave the defendant "free to return to his [or her] old ways." *W.T. Grant, supra,* 345 U.S. at 632, 73 S.Ct. at 897. Thus, the power of the district court "to grant injunctive relief survives discontinuance of the illegal conduct." *Id.* at 633, 73 S.Ct. at 897.

Id. at 1007, 739 P.2d at 306 (cleaned up).

Here, despite Appellants' claims otherwise, the Court has adopted the reasoning of *W.T. Grant Co.* Likewise, the prudential mootness doctrine has been widely adopted in federal courts.[12] Even if the Court has not expressly titled it "prudential mootness," it has recognized a trial court has discretion to decide whether to grant injunctive relief when a defendant has voluntarily ended the alleged harm. *See O'Boskey*, 112 Idaho at 1007, 739 P.2d at 306.

[12] "Nearly every one of our sister circuits have adopted this doctrine in some form." *People Not Politicians Oregon*, 826 F. App'x at 586 (Nelson, Circuit Judge, dissenting).

b. The District Court's decision to dismiss the case under the prudential mootness doctrine did not violate Article I, § 18 of the Idaho Constitution.

The Court should reject Appellants' argument that prudential mootness is inconsistent with Article I, § 18 of the Idaho Constitution. Idaho trial courts have utilized discretion in deciding injunctive relief since the Constitution's enactment, and trial courts have statutorily-provided discretion to issue declaratory relief. Such discretion is at the heart of the prudential mootness doctrine.

Article I, § 18 provides:

> Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay, or prejudice.

IDAHO CONST. art. I, § 18. "This Court has consistently held, however, that Article I, Section 18 of the Idaho Constitution does not create any substantive rights." *Gomersall v. St. Luke's Reg'l Med. Ctr., Ltd.*, 168 Idaho 308, 316, 483 P.3d 365, 373 (2021). The purpose of Article I, § 18, is to ensure that Idaho citizens retain the rights and remedies under the law that were available at the time the Constitution was adopted. *Struhs v. Prot. Techs., Inc.*, 133 Idaho 715, 722, 992 P.2d 164, 171 (1999) (citing *Martinez v. State,* 130 Idaho 530, 535, 944 P.2d 127, 132 (Ct. App. 1997)). However, "[n]othing in Art. I, § 18, either explicitly or implicitly prohibits legislative modification of common law actions." *Id*. (quotation omitted).

Here, Appellants are seeking injunctive relief and a declaratory judgment. App. Br. at 1. At its core, the prudential mootness doctrine prescribes that a trial court has discretion to decline issuing injunctive and declaratory relief—a right that is already inherent in a trial court's equitable powers. *See generally Winzler v. Toyota Motor Sales U.S.A., Inc.*, 681 F.3d 1208, 1210 (10th Cir. 2012) ("After all, if events so overtake a lawsuit that the anticipated benefits of a remedial decree no longer justify the trouble of deciding the case on the merits, equity may demand not decision but dismissal."). Appellants' constitutional question is properly framed as whether Article I, § 18

allows a trial court to use its discretion in ruling on a declaratory judgment and injunctive relief—which is a common practice in the law—not whether the prudential mootness doctrine was a named practice at the time the Idaho Constitution was enacted.

Idaho courts have long had discretion in whether or not to provide injunctive relief. *See Washington & I.R. Co. v. Coeur d'Alene Ry. & Nav. Co.*, 2 Idaho 405, 17 P. 142, 142 (1888) ("The granting or refusing of a temporary injunction rests in the sound discretion of the court."). *See also Staples v. Rossi*, 7 Idaho 618, 65 P. 67, 69 (1901) (although decided shortly after the Idaho Constitution was adopted, the Court noted "[i]t has been held repeatedly in this court that the granting of an injunction is a matter within the discretion of the lower court . . . .").

Likewise, the Idaho legislature has provided courts with discretion in whether to provide declaratory relief in cases like this one. *See* Idaho Code § 10-1206.[13] Implicit in the District Court's decision was the understanding that providing the requested declaratory relief "would not terminate the uncertainty or controversy giving rise to the proceeding." The District Court found a decision on the merits was not prudent because of the imminent structural changes to the indigent defense system, and any finding by the District Court would not speak to the risk of future harm. R. at 5574. Therefore, the District Court's decision to invoke its discretion and find the case prudentially moot does not violate Appellants' rights under Article I, § 18.

Finally, the cases cited by Appellants and their supporting amici do not support the conclusion the prudential mootness doctrine violates Article I, § 18. *See Gomersall*, 168 Idaho at 316, 483 P.3d at 373 (finding that the legislative enactment of the tolling period for the statute of limitations in medical malpractice cases did not violate Art. I, § 18); *State Dep't of Health &*

[13] "The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." Idaho Code § 10-1206.

Welfare v. Slane, 155 Idaho 274, 311 P.3d 286 (2013) (finding the court's refusal to hear a motion, as well as its decision to dismiss a motion, based on the plaintiff being in contempt violated Art. I, § 18); *Davis v. Moran*, 112 Idaho 703, 709, 735 P.2d 1014, 1020 (1987) (remanding to the trial court to determine when the statute of limitations commenced running, in which two concurrences invoke Art. I, § 18); *Billings v. Sisters of Mercy of Idaho*, 86 Idaho 485, 498, 389 P.2d 224, 232 (1964) (ruling on when the statute of limitations begins to accrue in a medical malpractice action, over a dissent invoking Art. I, § 18); *Martinez*, 130 Idaho at 536, 944 P.2d at 133 (finding that Art. I, § 18 required inmates be allowed adequate prison law libraries to assist them in accessing the courts). As such, the District Court's dismissal does not implicate Article I, § 18 of the Idaho Constitution.

c. The State provided Appellants with a remedy, therefore their rights under Article I, § 18 were not violated.

Appellants have never specified the precise characteristics of the indigent defense system they are looking for. Instead, Appellants have simply asked that the State be ordered to implement a system that "meets constitutional standards." App. Br. at 45-46; C.R. at 292. This is precisely what the State did in enacting the SPD Act.

The SPD Act provides—among other things—a state-administered and funded indigent defense system; uniform training and continuing legal education; centralized case management; uniform data reporting and collection; State oversight; implementation of the most current ABA standards for indigent defense; uniform contracts for contract defending attorneys; and expenditure, caseload, and workload tracking. Idaho Code § 19-6005 *et seq*. *See supra* Sections I.B.3, 4.[14] The

[14] The SPD Act provides many of the qualities Appellants' own expert, the late Norman Lefstein, recommended:

> Although the Supreme Court has left it to each state to decide how best to discharge its duty to provide defense services for those unable to afford counsel, the majority

District Court acknowledged that if it were to devise and create an indigent defense plan, "it would likely resemble the legislative plan already in place." R. at 5575 n.83.[15]

Appellants do not explain how their request that the State be ordered to implement and monitor an indigent defense plan would not be duplicative of the work of other governmental branches or avoid inter-governmental confusion.[16] Appellants' very request (at least how they have presented it) would require the State to implement an entirely new system of indigent defense—less than a year after the Legislature created the SPD Act.[17]

Ultimately, the State has already created what Appellants are requesting in their prayer for relief: a state-funded and state-administered indigent defense system that is consistent with the United States and Idaho constitutions.[18]

> of state governments do so through statewide programs with state funding rather than leaving it to each county to decide how best to provide defense services and requiring each county to cover the expense of defense representation. The majority approach minimizes differences among counties in providing defense services and substantially eliminates differing levels of financial support for public defense unrelated to criminal activity and a county's population. To achieve uniformity of defense services statewide, a coordinated program directed at the state government level together with state funding makes excellent sense. Obviously, the quality of justice provided to the indigent accused should be substantially the same regardless of the county in which a person is prosecuted or charged with delinquency.

See R. at 4014-15; Clerk's Record on Appeal entered on August 15, 2019, ("2019 C.R.") for Supreme Court Case No. 46882, at 002268. (*See* Order Augmenting Appeal, March 13, 2024).

[15] Judge Hoagland, who presided over the case for approximately 9 years, was also a federal public defender for 25 years. *See* R. at 5572 n.80.

[16] Nor would declaratory relief regarding the state of indigent defense under the prior system be probative in determining the future of indigent defense under the SPD Act.

[17] The District Court found it is "undeniable that the state-based system in law is completely different in every aspect previously complained of." R. at 5575-76.

[18] Appellants acknowledge that creating a new indigent defense system takes time—in their request for relief they ask that the State be ordered to "achieve the delivery of constitutional public defense *within two years*." App. Br. at 45 (emphasis added). *See also* App. Br. at 11. Yet Appellants and their supporters were willing to declare the SPD Act incurably "deficient" before the new state-based system was even in place. *Amicus* Brief for Contract Defense Attorneys.

3. The District Court Did Not Abuse Its Discretion in Dismissing This Case Under the Prudential Mootness Doctrine.

The District Court found "[Respondents] have met their burden of showing future harm is not likely with the state-based system." R. at 5574. Appellants fail to squarely address the abuse of discretion standard of review applicable in this case, instead arguing the District Court's decision was not consistent with legal standards and its decision was not reached by an exercise of reason. Appellants are mistaken on both accounts.[19]

a. The District Court acted consistently with legal standards.

The District Court correctly recognized the legal standards it was required to consider before determining the case was prudentially moot. The District Court recognized the Respondents carried a "heavy burden of proving the efficacy of its remedial promise." R. at 5568 (citing *Tucker II*, 168 Idaho at 864, 484 P.3d at 853). The District Court took these legal standards into consideration when determining whether prudential mootness was appropriate.

Appellants cite cases where the prudential mootness doctrine was not found appropriate for a variety of reasons. App. Br. at 22-25. However, those cases do not establish that the District Court in this case acted inconsistently with legal standards. Rather, case law demonstrates a district court may use its discretion to dismiss a case under the prudential mootness doctrine in precisely cases like this.

In *W.T. Grant Co.*, an anti-trust case, the alleged illegal conduct ceased upon the initiation of the suit, leading the trial court to dismiss it as moot. 345 U.S. at 630. On appeal, in establishing the prudential mootness doctrine, the Court found that even if the alleged illegal conduct is discontinued a court can still grant injunctive relief, "[b]ut the moving party must satisfy the court

[19] There is no question that the District Court correctly perceived the issue as one of discretion, R. at 5576, and that its decision to refrain from issuing a declaratory judgment or grant (additional) injunctive relief was within the boundaries of the District Court's discretion.

that relief is needed." *Id*. at 633. "The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive," and a trial court is given broad discretion in its decision. *Id*. The Court ultimately found the trial court did not abuse its discretion—noting it may not have been persuaded if it had been sitting as the trial court—and the government had failed to "demonstrate there was no reasonable basis for the [trial court]'s decision." *Id*. 634. The Court found there were facts which the trial court could rely upon to find there was "no significant threat of future violation and that there was no factual dispute about the existence of such a threat." *Id*. at 635.

In an analogous case, and one relied upon by the District Court, the Tenth Circuit upheld a trial court's decision to dismiss a case under the prudential mootness doctrine when the defendant voluntarily addressed the plaintiff's alleged harm through a statutory process, rather than through the judiciary. *Winzler*, 681 F.3d 1208. In *Winzler*, a proposed nationwide class action lawsuit, the plaintiff alleged vehicles had defective parts and asked that the defendant notify owners and pay for repairs. *Id*. at 1209. After the lawsuit was filed, the defendant announced a nationwide recall, which addressed the plaintiff's prayer for relief. *Id*. On appeal,[20] the Tenth Circuit noted cases seeking only equitable relief "appeal to the 'remedial discretion' of the courts" because decrees are tailored to the "necessities of the particular case." *Id*. at 1210.

> And inhering in that power is the concomitant power to deny relief altogether unless "the moving party [can] satisfy the court that relief is needed." After all, if events so overtake a lawsuit that the anticipated benefits of a remedial decree no longer justify the trouble of deciding the case on the merits, equity may demand not decision but dismissal. When it does, we will hold the case "prudentially moot." Even though a flicker of life may be left in it, even though it may still qualify as an Article III "case or controversy," a case can reach the point where prolonging the litigation any longer would itself be inequitable.

[20] Prior to the national recall, the trial court had dismissed the plaintiff's complaint under Federal Rule of Civil Procedure 12(b)(6). *Id*.

> Prudential mootness doctrine often makes its appearance in cases where a plaintiff starts off with a vital complaint but then a coordinate branch of government steps in to promise the relief she seeks. Sometimes the plaintiff will seek an injunction against the enforcement of a regulation the relevant agency later offers to withdraw on its own. Sometimes the plaintiff will seek an order forcing a department to take an action that it eventually agrees to take voluntarily. However it comes about though, once the plaintiff has a remedial promise from a coordinate branch in hand, we will generally decline to add the promise of a judicial remedy to the heap. While deciding the lawsuit might once have had practical importance, given the assurances of relief from some other department of government it doesn't any longer.

Id. (internal citation omitted). The court went on to note the remedial commitment of a coordinate branch of government is given "special gravity," reasoning that not only are government promises "generally trustworthy," but they are also taken seriously "because affording a judicial remedy on top of one already promised by a coordinate branch risks needless inter-branch disputes over the execution of the remedial process and the duplicative expenditure of finite public resources." *Id*. The Tenth Circuit also noted a plaintiff who opposes dismissal has the burden of showing a "cognizable danger" that the remedial commitment will fail, and "must point [the court] to 'something more than the mere possibility' of failure." *Id*. at 1212 (quoting *W.T. Grant Co.*, 345 U.S. at 633). While the court recognized this is a modest hurdle, it must be a "cognizable" danger that is more than mere speculation on how "coordinate branches [of government] might fail." *Id*.

The plaintiff in *Winzler* urged the court not to dismiss the case, claiming in part that the statutory recall process was defective. *Id*. at 1213. The court dismissed these concerns, finding "[a] plaintiff cannot show a cognizable danger of failure merely by pointing out that the processes Congress and the Executive have chosen to effect a remedy differ from those a judicial decree might provide to reach the same result." *Id*. at 1214. The court acknowledged there are "many ways to provide an effective equitable remedy" and even if reasonable minds can disagree on a plan's specifics, there are multiple ways to provide effective results. *Id*. The recognition of this

reality "is one of the reasons courts of appeals review challenges to the mechanisms of district court equitable decrees simply for abuse of discretion." *Id*. The court went on to find the fact that different governmental branches may come to different solutions does not mean the other branches' method is incorrect, and finding so would "spell the end" of "the comity it is supposed to afford our coordinate branches."[21] The court found the plaintiff did not dispute that if the recall worked as it was supposed to, and the agency did its legislatively assigned job, she would achieve a complete remedy. *Id*. at 1215. The court found the plaintiff's worries that the agency would not do its job were based on speculation and conjecture and not evidence of a cognizable danger. *Id*.

Prudential mootness has also been used to refrain from entering declaratory relief. *Penthouse Int'l, Ltd.*, 939 F.2d at 1019. In *Penthouse Int'l*, the plaintiff sought, among other things, a declaratory judgment providing a government commission had violated the company's First Amendment rights. *Id*. at 1018–19. However, the court, after finding the plaintiff had received the equitable relief it sought, reasoned that "[w]here it is so unlikely that the court's grant of declaratory judgment will actually relieve the injury, the doctrine of prudential mootness—a facet of equity—comes into play." *Id*. at 1019. The court also noted discretion is advisable, "especially [] where the court can avoid the premature adjudication of constitutional issues." *Id*. at 1020. *See also A. L. Mechling Barge Lines, Inc.*, 368 U.S. at 331 (reasoning that when deciding whether to enter a declaratory judgment, "[w]e think that sound discretion withholds the remedy where it appears

[21] "After all, by asking us to proceed with her case only because differences exist between the Act's remedial processes and those that might be included in a judicial decree, [plaintiff] necessarily asks us to conclude that while Congress sought to provide consumers with an effectual recall regime, the legislation it enacted is actually pretty ineffectual. She also necessarily asks us to assume that while NHTSA is invested with considerable authority to police Toyota's recall effort, it is likely to abdicate that duty." *Id*.

that a challenged 'continuing practice' is, at the moment adjudication is sought, undergoing significant modification so that its ultimate form cannot be confidently predicted.").

Here, the District Court's actions were consistent with the legal principles discussed above. As in *W.T. Grant* and *Winzler*, the State has voluntarily addressed Appellants' alleged harms. The District Court, in its discretion, found future harm was unlikely. R. at 5574. The above-mentioned cases demonstrate the District Court's decision to use its discretion and dismiss the case under the prudential mootness doctrine was consistent with legal standards. Appellants' citations to cases that did not invoke the doctrine do not change this.

b. The District Court reached its decision by an exercise of reason.

In addition to finding that a trial court acted within the bounds of its authority and consistently with legal standards, a reviewing court applying an abuse of discretion standard must ask whether the trial court reached its decision by the exercise of reason. *Westover*, 164 Idaho at 388, 430 P.3d at 1287. In this case, to establish mootness, the District Court recognized the Respondents had the burden of showing "there is no reasonable expectation that the wrong will be repeated," which requires a showing "that future harm is *unlikely*." *Tucker II*, 168 Idaho at 582-83, 484 P.3d at 863-64. To prove their alleged harms, Appellants were required to "prove a likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law. Evidence of the 'likelihood of substantial and immediate irreparable injury' means Appellants must establish a likelihood of future systemic harm to members of the certified class." *Id*. at 583-84, 484 P.3d at 864–865. The District Court expressly found "[Respondents] have met their burden of showing future harm is not likely with the state-based system." R. at 5574. The District Court's decision was reached by an exercise of reason.

In this case, the District Court reasoned the new system is not likely to suffer from the specific harm at issue—widespread, persistent structural deficiencies likely to lead to the actual or constructive denial of counsel—for a number of reasons: the Office of the SPD will use the ABA Ten Principles of a Public Defense Delivery System; defending attorneys will now track their hours, which will provide a more accurate representation of workloads; there will be uniform defending attorney trainings; defending attorneys will have access to a statewide database, including memoranda and practice guides; institutional defending attorneys will be State, rather than county, employees—which the District Court reasoned should boost hiring and retention; the SPD will maintain independence; the contract indigent defense system will become uniform across Idaho; the SPD Act sufficiently addresses confidential meeting spaces; and the discretionary language of the SPD Act does not suggest the SPD will "shirk" its duties. R. at 5570-73.

Ultimately, the District Court found "[Respondents] have shown that the state-based system will likely be effective and there is no genuine issue of material fact to the contrary." R. at 5573. The District Court reached this conclusion through the careful exercise of reason. Appellants are merely asking the Court to second-guess the District Court's findings.

i. The State's history of commitment to indigent defense in Idaho confirms the SPD Act's passage was not a "mere statement of repentance."

The District Court recognized the passage of the SPD Act was not an "11th hour" attempt to defeat this lawsuit. R. at 5570. Rather, its passage showed the State's continued commitment to ensuring there is a system in place for indigent defendants in Idaho to receive constitutional representation. R. at 5574. The District Court acknowledged it had concerns with the prior county-based system but recognized "mere cessation of a challenged activity is not an admission or recognition of its illegality." R. at 5573 (citing *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 202-03 (1968)). The District Court also recognized Appellants had "not yet

actually proven" the prior county-based system (or new state system) was unconstitutional. *Id*. Instead, the District Court expressly found "the state-based [system] will likely be effective," and recognized the new system was a massive undertaking. *Id*.

Appellants have consistently failed to acknowledge the systemic changes that demonstrate the State's ongoing commitment to indigent defense. *See supra* Section I.B.2.[22] In a relatively short time, the State went from a purely county-based system to a county-based system with state oversight under the PDC Act, and now to an entirely state-run system with the enactment of the SPD Act. These ongoing and substantial actions demonstrate the State's commitment to ensuring constitutionally adequate indigent defense in Idaho. The District Court, having presided over this litigation for the better part of a decade, correctly concluded the State's efforts in this regard are indeed significant and are not a "mere statement of repentance."

ii. The District Court correctly found the language of the SPD Act and the Declaration by the State Public Defender supported the State's commitment to providing constitutionally adequate indigent defense.

The District Court was quick to recognize the massive scope of the State's undertaking, and to dismiss Appellants' attempts to characterize the SPD Act as a mere "reorganization" of public defense, finding:

> Throughout more than 8 years of this litigation, the State has in fact studied, analyzed, and created a new state-based system that has dramatically changed the entire system and addressed the deficiencies complained of, without the desired declarations, injunctive relief, and orders from this Court. . . . It is, however, undeniable that the state-based system in law is completely different in every aspect previously complained of.

[22] Appellants attempt to cast any action the State has undertaken regarding indigent defense during the life of this lawsuit as "evidence" the system is unconstitutional. App. Br. at 26. Yet if the State had not taken any action, Appellants would no-doubt be claiming the State was shirking its constitutional responsibilities. The Court should not punish the State for the actions it took during this lawsuit to address, amend, and continually work to provide a constitutionally adequate indigent defense system.

R. at 5575-76. The District Court was equally unpersuaded by Appellants' concerns over whether the language of the SPD Act was "mandatory" or "discretionary," finding the "mere fact that discretion exists does not presume that such discretion will be abused or otherwise ignored." R. at 5572. Appellants are not challenging the constitutionality of the SPD Act, and the fact Appellants take issue with the statutory language is not evidence of "a cognizable danger of failure." *See Winzler*, 681 F.3d at 1212.

Likewise, the District Court did not abuse its discretion by relying on the declaration of Mr. Fredericksen.[23] It noted, as the new State Public Defender, Mr. Fredericksen intends to:

> (1) adopt as internal policies, the PDC IDAPA rules, (2) follow the guidance of the 2023 ABA Ten Principles of Public Defense Delivery System, including tracking defending attorney workloads rather than using caseload standards, (3) require defending attorneys to use new time and workload tracking, (4) implement other changes, including uniform training sessions for all defending attorneys similar to annual judge and prosecutor trainings, (5) create a statewide database, and (6) provide access to statewide investigators and experts.

R. at 5559. The District Court also found "[t]he SPD is an experienced public defense attorney who appears to have the intent and capabilities to protect the constitutional rights of Idaho's indigent defendants." R. at 5570. Ultimately, Appellants' request to have this Court second-guess the District Court's factual findings does not show abuse of discretion.

iii. The District Court properly recognized Appellants' claims relate to indigent Idahoan's constitutional right to criminal defense.

Appellants claim the District Court erred by improperly characterizing their claims as based on the supposed inadequacies of the county-based system, rather than the delivery of indigent defense. App. Br. at 31-32. In doing so, Appellants mischaracterize the District Court's decision. The

[23] Mr. Fredericksen's Declaration was attached in support of Respondents' Opposition to Plaintiffs' Motion for Summary Judgment. R. at 3963-88. Governor Brad Little named Mr. Fredericksen the SPD effective September 25, 2023, and Mr. Fredericksen signed his declaration on October 20, 2023. *Id.*

District Court recognized the State will always have a constitutional requirement to provide indigent defense, which is the basis of Appellants' claims. R. at 5569. It also understood Appellants are asking the State to create "a plan to fix" the alleged deficiencies. R. at 5574-75. Given this, the District Court understood it must, in exercising its discretion, decide whether ruling on the merits would be the "prudent choice, given the enactment of the new state-based system." *Id*.

With that framework, the District Court found such a decision was not the prudent course of action. The District Court understood and performed the required analysis to make its decision, including reviewing how the new state-system addressed each of Appellants' claimed constitutional deficiencies, and whether there was any evidence of *future harm*. *See* R. at 5571-72. Appellants claim this analysis was in error because the District Court did not properly address their current "evidence" of systemic constitutional deficiencies. App. Br. at 27, 31-32. While the District Court acknowledged the serious nature of Appellants' claims, R. at 5573, it correctly recognized when a court analyzes whether a claim has become moot based on government action, "the *risk* of future harm takes on greater importance than proof of past or present actual harm." *Tucker II*, 168 Idaho at 583, 484 P.3d at 864 (emphasis in original). And looking forward, the District Court found the future harm at issue was unlikely under the SPD Act. R. at 5574.

The District Court, in its discretion, found the Respondents met their burden. R. at 5574. The District Court recognized the new state-system was a massive undertaking designed to provide constitutional indigent defense in Idaho—the exact relief requested by Appellants. *Id*.

iv. The threat of recurrent litigation due to the District Court's decision is not evidence of an abuse of discretion.

Appellants claim the District Court's decision will lead to recurrent litigation because it did not provide which aspects of the county-based system were "unconstitutional" when entering its injunction. App. Br. at 33-34. However, the District Court was not required to make a finding that

the prior county-based system (or certain parts of the system) was unconstitutional. *See W.T. Grant Co.*, 345 U.S. at 633 (providing injunctive relief is meant to prevent future harm and may be granted "without a showing of past wrongs"). And the District Court expressly chose not to do so, finding "Plaintiffs have not yet actually proven the county-based system, or the state-assisted system, truly had 'widespread, persistent structural deficiencies' and was therefore unconstitutional." R. at 5573.

As the District Court was careful to point out, its decision to enjoin the State from returning to one of its prior public defense models was based solely on its inherent remedial discretion to shape its decree to what it perceived as the necessities of the case. R. at 5573-74. The District Court issued the injunction to deter the State from returning to a system it had concerns with, not to punish the State for allegedly providing constitutionally inadequate public defense. Regardless, the District Court's decision to issue injunctive relief is not relevant to whether it abused its discretion when dismissing Appellants' claims under the prudential mootness doctrine.

The District Court was under no illusions regarding the threat of recurrent litigation. It noted that if the state-based system does not work as promised, a new action may be filed challenging the system if there is evidence of widespread, persistent structural deficiencies that are likely to result in indigent defendants suffering actual or constructive denials of counsel at critical stages of criminal proceedings. R. at 5576. But as the District Court noted, it will take time before enough cases make their way through the new system to make this determination. R. at 5574. Nevertheless, such future litigation does not speak to the District Court's reasoning as to potential harm under the new state-system.[24]

[24] Likewise, Appellants' claim that there will be a renewal of litigation due to the new state-based indigent defense system is entirely speculative and assumes the SPD Act will not provide constitutional representation. The District Court found the exact opposite was likely. R. at 5574-76. Appellants also claim the District Court should have provided guidance as to "parameters of a

v. The District Court did not rely upon the separation of powers doctrine in dismissing Appellants' claims.

The District Court's dismissal was not based on the prohibitions of the separation of powers doctrine. *See* App. Br. at 34-35. Rather, the District Court recognized it could still decide the case on its merits but determined dismissal was proper under the prudential mootness doctrine. R. at 5567. In doing so, District Court was merely recognizing other branches of the government had addressed Appellants' claims. *See Winzler*, 681 F.3d at 1211–12. As such, the District Court's decision does not invoke the separation of powers doctrine.

vi. Appellants' requested relief—that the State be ordered to come up with a plan for constitutional indigent defense—further highlights why the prudential mootness doctrine was properly applied by the District Court.

Appellants continue to (apparently) ask for a new indigent defense system. App. Br. at 45 (requesting the appointment of an independent monitor "to review and oversee the State's implementation of a plan . . . ."); C.R. 292. However, they do not elaborate or explain how ordering the State to create a new plan to address indigent defense would not be duplicative of the very recently enacted SPD Act—a State-created plan to address indigent defense. *See generally* App. Br. at 45. Ultimately, the very nature of Appellants' requested relief further highlights the District Court did not abuse its discretion by dismissing the case under the prudential mootness doctrine, and its decision should be affirmed.

B. Alternatively, the Court Should Affirm the District Court's Dismissal on Justiciability Grounds.

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constitutionally adequate system," in order to avoid delays and confusion as to what an indigent defense system requires. App. Br. at 34. The Court should not consider such argument. *See Winzler*, 681 F.3d at 1214 ("A plaintiff cannot show a cognizable danger of failure merely by pointing out that the processes Congress and the Executive have chosen to effect a remedy differ from those a judicial decree might provide to reach the same result.").

When a judgment on appeal reaches the correct result but employs reasoning this Court does not accept, this Court may affirm the judgment on alternative grounds. *See Syringa Networks, LLC*, 159 Idaho at 827, 367 P.3d at 222. "The Court 'will uphold the decision of a trial court if any alternative legal basis can be found to support it.'" *Id*. (quotation omitted). Likewise, "justiciability doctrines can be raised *sua sponte* at any time." *Tucker I*, 162 Idaho at 18 n.4, 394 P.3d at 61.

Here, if the Court does not accept the District Court's decision to dismiss the case on prudential mootness grounds, the Court should still affirm the decision because Appellants' case is not ripe and they do not have a class representative who meets the standing requirement.

1. Appellants' Claims Are Not Ripe for Judicial Review as the State Is Still in the Initial Stages of Its Transition to a State-Based Indigent Defense System.

Appellants' claim that indigent defense under the SPD Act will be constitutionally deficient is premature and entirely speculative. At this early stage no one can claim the new state-based system suffers from "widespread, persistent structural deficiencies" likely to result in the actual or constructive denial of counsel at critical stages. *See Tucker II*, 168 Idaho at 585, 484 P.3d at 866.

"Ripeness asks whether there is any need for court action at the present time." *Miles v. Idaho Power Co.*, 116 Idaho 635, 642, 778 P.2d 747, 764 (1989). When a court is persuaded that they presently are in position to decide an issue, a case will be ripe for adjudication. *Id*. at 643, 778 P.2d at 765 (citation omitted). "The purpose of the ripeness requirement is to prevent courts from entangling themselves in purely abstract disagreements." *Tucker I*, 162 Idaho at 27, 394 P.3d at 70 (quoting *State v. Manley*, 142 Idaho 338, 342, 127 P.3d 954, 958 (2005)). Under the ripeness test, "a party must show (1) the case presents definite and concrete issues; (2) a real and substantial controversy exists (as opposed to hypothetical facts); and (3) there is a present need for adjudication." *Id*. at 27–28, 394 P.3d at 70.

In *Tucker I*, the Court found Appellants' claims against the State were ripe because they had alleged actual and constructive denials of counsel "at critical stages of the prosecution," based on "deficiencies in Idaho's public defense system." 162 Idaho at 28, 394 P.3d at 70. But now that system is in the midst of being overhauled. As such, Appellants' case does not currently present definite and concrete issues, and they cannot show a real and substantial controversy exists.

Appellants seek forward-looking relief, and they must therefore establish "a likelihood of future systemic harm to members of the certified class." *Tucker II*, 168 Idaho 570, 584, 484 P.3d at 865. Their claim that indigent defendants are facing a likelihood of future constitutional harm based on how indigent defense will be provided under the SPD Act is entirely speculative. As the District Court recognized, the State's indigent defense system under the SPD Act "is completely different in every aspect previously complained of." R. at 5575-76.

Likewise, there is no need for court action at this time. Appellants are asking for the State to implement a new constitutional indigent defense system, App. Br. at 45-46, which is precisely what the State did. As the District Court found, "[i]t will take at least a few years before sufficient cases move through the judicial process before any determination could be made whether there are any 'widespread, persistent, structural deficiencies' in existence." R. at 5574. No court could declare the new state-based system constitutionally deficient at this stage without engaging in speculation.

Ultimately, the Court should affirm the District Court's dismissal of this matter because the issue of whether the new state-based system suffers from widespread persistent structural deficiencies is not ripe for review. Such dismissal does not leave individual indigent defendants without adequate remedies if they are harmed, as they can bring ineffective assistance of counsel claims. If Appellants still believe structural issues persist with indigent defense in Idaho after the SPD Act is fully implemented and sufficient cases have moved through the new system, they can refile their lawsuit.

2. Appellants Do Not Have Standing As They Have Not Provided Evidence to Prove at Least One Class Representative Was Harmed as Alleged in Their Complaint.

The Court has established Appellants must prove at least one named class representative has suffered the injuries alleged in their Complaint to have standing to proceed to their class action claims. *See Tucker II*, 168 Idaho at 575, 484 P.3d at 856. Because Appellants are seeking injunctive relief, they must "demonstrate a likelihood of repeated injury or future harm to the plaintiff in the absence of the injunction." *Id*. at 574, 484 P.3d at 855 (quotation omitted). Appellants must do so by meeting the traditional standing analysis, which requires a plaintiff to show "(1) an 'injury in fact,' (2) a sufficient 'causal connection between the injury and the conduct complained of,' and (3) a 'like[lihood]' that the injury 'will be redressed by a favorable decision.'" *Id*. at 19, 394 P.3d at 62 (quotation omitted). Appellants do not have a class representative that satisfies these requirements.

"[W]hen standing is challenged, mere allegations are not sufficient, and the party invoking [a] court's jurisdiction must demonstrate facts supporting" the allegations that form the basis for standing. *State v. Philip Morris, Ina*, 158 Idaho 874, 882 (2015).

> Because standing is not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation.

Camp Easton Forever, Inc. v. Inland NW Council Boy Scouts of Am., 156 Idaho 893, 898 (2014) (cleaned up) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). "At summary judgment the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts." *Id*. (cleaned up) (quoting Fed. Rule Civ. Proc. 56(e)).

To establish the injury in fact requirement, the Court provided Appellants must prove at least one class representative suffered from an actual or constructive denial of counsel as alleged in their Complaint. *See Tucker II*, 168 Idaho at 575, 484 P.3d at 856. The Court explicitly found

Appellants must prove at least one class representative was harmed under the presumed prejudice standard of *United States v. Cronic*.[25] *Id*. That standard defines the injury in fact—actual or constructive denial of counsel—as follows:

> (1) "A criminal defendant who is entitled to counsel but goes unrepresented at a critical stage of prosecution suffers an actual denial of counsel and is entitled to a presumption of prejudice"; and
>
> (2) "[a] constructive denial of counsel occurs when 'although counsel is available to assist the accused during the trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.'"

Id. (quoting *Tucker I*, 162 Idaho at 20, 394 P.3d at 63).

In *Tucker I*, the Court found the Appellants had alleged their class representatives had suffered an actual denial of counsel based on Tracy Tucker, Jason Sharp, and Jeremy Payne not being represented at their initial appearances. 162 Idaho at 20, 394 P.3d at 63. The Court also found Appellants had alleged constructive denials of counsel based on Naomi Morley, Tracy Tucker, and Jason Sharp's allegations related to their representation.[26]

Following *Tucker I*, Idaho counties—overseen at the time by the PDC—worked to ensure there was a system and structure in place to ensure that indigent defendants are represented at in-custody initial appearances, a fact which Appellants do not dispute. *See* R. 3978.[27] Appellants do not allege actual denial of counsel for any of the class representatives outside of the in-custody initial appearance allegations concerning Tucker, Sharp, and Payne. This specific harm has been remedied and, therefore, is not likely to be repeated. As such, the injury-in-fact analysis in this

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[25] 466 U.S. 648 (1984).
[26] The Court also analyzed Appellants' allegations related to Jeremy Payne. However, Mr. Payne no longer appears to be a class representative.
[27] Appellants instead argue some Idaho counties did not consistently provide representation at out-of-custody initial appearances, C.R. at 244-45, which is not a constitutional requirement, *see* R. 3994.

litigation is necessarily focused on Appellants' allegations of *constructive* denial of counsel. And Appellants cannot meet the "injury in fact" requirement because they have not shown that *any* of the class representatives' cases presented circumstances where the likelihood a lawyer could provide effective assistance was so small that a presumption of prejudice would be appropriate.

a. Appellants have not shown a class representative was constructively denied counsel.

Proving constructive denial of counsel is a high burden.[28] The Supreme Court has illustrated that finding a presumption of prejudice under *Cronic* should be applied "infrequently," *Fla. v. Nixon*, 543 U.S. 175, 190 (2004), and only applies where a defendant has shown "the attorneys' failure [was] complete." *Bell*, 535 U.S. at 697. Put another way, "the circumstances leading to counsel's ineffectiveness [must be] so egregious that the defendant was in effect denied any meaningful assistance at all." *United States v. Griffin,* 324 F.3d 330, 364 (5th Cir.2003) (quoting *Gochicoa v. Johnson,* 238 F.3d 278, 284 (5th Cir.2000)).

Constructive denial of counsel requires a complete failure on the part of a defending attorney rather than mere complaints about the representation. *See United States v. Bell*, 795 F.3d 88, 97 (D.C. Cir. 2015). In Appellants' summary judgment briefing, they claim they have standing for their constructive denial of counsel claims because they "proved what they alleged." C.R. at 264. As with many of Appellants' claims in this case, their allegations are not evidence—and they

[28] The Sixth Amendment right to effective assistance of counsel is violated by actual or constructive nonrepresentation. *See Bell v. Cone*, 535 U.S. 685, 696 n.3 (2002). The Supreme Court found three situations qualify. The first—an actual denial of counsel—is the absence of counsel at a critical stage of the proceeding. *Id*. at 695 (quoting *Cronic*, 466 U.S. at 658-59). Second is when defense counsel "entirely fails" to subject a case to "meaningful adversarial testing." *Cronic*, 466 U.S. at 659-660. The third is when counsel is available, but the circumstances are such that even a competent attorney could not provide effective assistance. *Id*.

certainly have not been proven. Rather, the uncontested evidence shows each class representative was afforded some meaningful assistance—and often much more than this minimal requirement.

Appellants' claims:	**Actual representation provided:**
Naomi Morley: • "[P]ublic defender lacked time to speak with her at initial appearance and could not gather information to secure her release from jail." R. at 3896. • "[She] felt pressured to plead guilty, repeatedly resisting coercion to take plea offers that would have put her in prison for years—and holding out by her own sheer persistence until the State ultimately dismissed most of the charges against her in exchange for a misdemeanor with no jail time." *Id*. • Ms. Morley was represented by multiple attorneys during her case. C.R. at 229-30.	• Ms. Morley was represented by counsel at her first appearance and had her bond successfully reduced from $15,000 to $10,000. 2019 C.R. at 002594, 014308-09. • Her defending attorney had an investigator contact an expert witness and laboratory service to challenge the blood sample in her case. *Id*. at 002594-95, 014309-10. • Her defending attorney conducted his own investigation, developed a defense for the heroin and methamphetamine found in Ms. Morley's blood, and had an extensive case file. *Id*. at 002595, 005675 at ¶ 11, 007540-008531, 014314-15. • Ms. Morley's defending attorney provided and reviewed discovery with her, and in preparation of trial, prepared a witness list and submitted jury instructions. *Id*. at 002595, 014311, 014315. • Her defending attorney negotiated a favorable plea deal on her behalf. *Id*. at 002595, 013234 at 9:5-13; 013240 at 39:5-40:3.
Tracy Tucker: • "[W]as only able to meet with his public defender for 20 minutes total before entering a guilty plea." R. at 3896. • Mr. Tucker alleged his attorney was "overburden and under-resourced" and was unable to contact the alleged victim. C.R. at 228. • He allegedly attempted to contact his attorney "at least" 50 times. *Id*.	• Mr. Tucker spoke with his defending attorney multiple times, including at jail, before court, and over the phone. 2019 C.R. at 014293-94. • Mr. Tucker sent his defending attorney three letters regarding his case, and the information from the letters was used to cross-examine a witness. *Id*. at 002594, 013229 at 86:16-25, 87:20-88:2. • Mr. Tucker's defending attorney successfully argued for a reduced bond. *Id*. at 002594, 014294. • His attorney negotiated a favorable plea deal on his behalf. *Id*. at 002594, 013225 at 34:1-4, 36:20-23.

Jason Sharp:[29] • "[W]as unable to get discovery materials from his defending attorney for months, and his defending attorney was likewise unable to interview potential witnesses and arrange for forensic testing in his case." R. at 3896. • Mr. Sharp alleged his attorney was unable to interview potential witnesses. C.R. at 228-29. • He alleged his attorney did not timely provide him discovery material and was thus unable to meaningfully develop his defense. *Id*.	• Mr. Sharp met with his defending attorney shortly after his arrest, and his attorney argued for a bond reduction. While initially unsuccessful, he was able to obtain work release and later successfully negotiated for his release. 2019 C.R. at 002595-96, 007477, 007466-67, 014326-27. • His defending attorney conducted discovery and provided information to Mr. Sharp produced during discovery. *Id*. at 002596, 014330-31. • His defending attorney met with Mr. Sharp on multiple occasions and in multiple locations—and provided him with his cell phone number to facilitate contact. *Id*. at 002596, 013434 at 105:14-24, 013420-24. • His attorney indicated he had extensive knowledge of the facts of Mr. Sharp's case, and had spent over 40 hours initially working up the case. *Id*. at 002596, 013420-24. • Mr. Sharp expressed satisfaction with the quality of his representation. *Id*. at 002596-97, 013427 at 8:24-9:14.
Billy Chappell: • Mr. Chappell's defending attorney moved to continue his preliminary hearing multiple times. R. at 5331. • Mr. Chappell claimed called his defending attorney multiple times without a response, she failed to attend a meeting with him, and when they met, she was unfamiliar with his case. R. at 5331-32. • His defending attorney made discovery requests a year after she was appointed as counsel. R. at 5332. • In discovery requests, his defending attorney used the wrong client's name in the case heading. *Id*. *See also* C.R. at 230-31.	• Mr. Chappell was represented at his out-of-custody initial appearance. R. at 3454. • Mr. Chappell acknowledged there was an investigator who investigated his case. R. at 3457, 39:19-40:3; R. at 3991-92. • Both of Mr. Chappell's defending attorneys were under the PDC's FCE guideline.[30] R. at 3548. • Mr. Chappell was given his defending attorneys' phone number so they could communicate. R. at 5331-32. • *See also* R. at 3846-3851.

[29] Appellants also claim they have standing based on Jason Sharp's subsequent arrest in 2023. R. at 3897-3898. However, these claims should not be considered as the allegations are not in Appellants' Complaint, and the information related to the arrest was disclosed for the first time at in Appellants' Motion for Summary Judgment briefing—an issue which the District Court did not address. *See* R. at 3956-61.

[30] Ms. O'Brien had an FCE of 106 and Mr. Rockstahl had an FCE of 41.68. R. at 3548.

See R. at 3846-51, 3895-99, 5330-33; 2019 C.R. at 002593-99.

The undisputed evidence shows the defending attorney(s) for each class representative subjected the prosecution's case to meaningful adversarial testing, and each class representative received meaningful assistance. To the extent the individual class representatives believe their representation was deficient, their claims would be more appropriately brought under a *Strickland* challenge.[31] But there is no evidence to suggest any of the class representatives faced circumstances where the likelihood that any lawyer could provide effective assistance was so small that a presumption of prejudice would be appropriate without inquiry into the actual conduct of the proceedings. As the Court has clarified, the Appellants must prove at least one class representative was constructively denied counsel under *Cronic*. The undisputed evidence demonstrates they cannot meet their burden for any of their class representatives.

C. The District Court Properly Declined to Declare Idaho's Transitioning Indigent Defense System Unconstitutional.

Appellants contend the District Court erred in declining to grant their Motion for Summary Judgment in full despite expressing "serious concerns" over the adequacy of Idaho's old county-based system. The argument is rooted in Appellants' insistence the new state-based system really does not change anything, despite overwhelming evidence to the contrary. Regardless, the District Court did not err when it declined to issue forward-looking injunctive relief based on backward-looking evidence. Appellants' arguments in this regard require the illogical leap of concluding the

[31] As the Supreme Court has noted, the "[f]or purposes of distinguishing between the rule of *Strickland* and that of *Cronic,* this difference is not of degree but of kind." *Bell*, 535 U.S. at 697. Challenges to "specific attorney errors" such as failing to present mitigating evidence or waiving closing argument are "held subject to *Strickland's* performance prejudice components." *Id*. at 697–98.

District Court's concerns over the adequacy of the old system required it to declare the new system inadequate before it had even started. The District Court correctly declined to do so.

1. The Court Should Decline to Review the District Court's Denial of Appellants' Motion for Summary Judgment.

As an initial matter, the District Court only partially granted Appellants' Motion for Summary Judgment by enjoining the State from returning to a prior indigent defense model. R. at 5576. The District Court denied the remainder of Appellants' motion, and did not make a ruling on the merits of the factual issues they have raised in this appeal.[32] *Id*. "It is well settled in Idaho that '[a]n order denying a motion for summary judgment is an interlocutory order from which no direct appeal may be taken.'" *Garcia*, 144 Idaho at 542, 164 P.3d at 822 (quoting *Dominguez ex rel. Hamp,* 142 Idaho at 13, 121 P.3d at 944). "This rule is not altered by the entry of an appealable final judgment." *Id*. As such, the Court should decline to review the District Court's denial of Appellants' Motion for Summary Judgment.

Likewise, in addition to the parties' cross Motions for Summary Judgment, there were multiple pending motions before the District Court which would need to be decided before a decision on the merits can be reached.[33] The District Court explicitly did not decide these pending motions. R. at 5575. The case would need to be remanded and the motions ruled on before the Appellants could even potentially be granted the relief they request.

"The admissibility of evidence contained in affidavits and depositions in support of or in opposition to a motion for summary judgment is a threshold matter to be addressed" before a court may rule on a motion for summary judgment. *Fragnella v. Petrovich*, 153 Idaho 266, 271, 281

[32] A fact which Appellants acknowledge. App. Br. at 17 ("The District Court partially denied Plaintiffs' motion for summary judgment.").
[33] *See* R. at 1147-49 (Defs.' Motion to Decertify Future Class Members); R. at 3953-55 (Defs.' Motion to Strike); R. at 5367-69 (Apps.' Motion to Strike Decl. of Mark LaSalle).

P.3d 103, 108 (2012) (citing *Gem State Ins. Co. v. Hutchison,* 145 Idaho 10, 13, 175 P.3d 172, 175 (2007)). A trial court is given discretion when determining "the admissibility of testimony offered in connection with a motion for summary judgment." *Id*.

The District Court's denial of Appellants' motion for summary judgment is an interlocutory order from which no direct appeal may be taken. And because the District Court did not rule on the other pending motions and evidentiary issues, if this Court does not affirm the dismissal, it should remand the case to the District Court to rule on the remaining pending motions.

2. The Evidence Submitted by Appellants at Summary Judgment Is Neither Competent nor Sufficient to Demonstrate Widespread and Persistent Structural Deficiencies That Are Likely to Result in Actual or Constructive Denials of Counsel.

Even if the Court were inclined to rule on the Appellants' summary judgment motion at the appellate level, the evidence submitted by the Appellants would not warrant granting their motion. By contrast, the evidence submitted by the Respondents at summary judgment demonstrates the prior system did not suffer from widespread persistent structural deficiencies. At the very least, the evidence presents questions of fact that preclude summary judgment. *See* R. at 3802-3827; 3828-70; 3963-84; 3989-4019; 5324-5366.

a. Caseload standards are not a litmus test of whether an indigent defendant faces a future risk of harm.

Caseload standards can serve a useful purpose and provide helpful information when examining a defending attorney's overall workload. Caseload standards are not, however, a pass/fail test for constitutional representation. It cannot seriously be contended that every attorney whose caseload exceeded the PDC's prior 210 FCE standard by any amount was *per se* subjecting their clients to constructive denial of counsel. Yet this is precisely the type of binary analysis the Appellants and their experts employ when they tout their "undisputed" evidence of constitutional

inadequacy. Under Appellants' framework, a defending attorney with an FCE of 211 is lumped into the category of being so overworked that the likelihood they can provide effective assistance of counsel is small enough to warrant a presumption of prejudice.[34] *See* App. Br. at 38. This approach is misleading and ignores the realities and limitations national experts recognize in analyzing caseload standards.[35] *See* R. at 3855-60.

The statistical analysis relied upon by Appellants makes no attempt to account for recognized caseload issues not tied to systemic inadequacies. Each case is not the same, and varies by a defending attorney's experience, the client, the evidence, the prosecutor, etc. Likewise, Respondents' expert Professor John Gross, who visited and observed Idaho courts and interviewed defending attorneys and institutional chiefs (prior to the SPD Act),[36] opined that indigent defenders in Idaho were not being overwhelmed by caseloads. *See* R. at 3732-38. This sentiment was echoed by institutional chiefs in three of Idaho's most populous counties. R. at 3636-40; 3667-73; 3760-64. Conversely, while Appellants rely on their 30,000-foot view, they have never provided evidence actually linking a defending attorney over their FCE limit to actual or constructive denials of counsel.[37]

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[34] Appellants do not explain how data from 2022, from the county-based system, is at all probative of how indigent defense will be provided under the new state-based system.

[35] "The standard serves as a canary in a coal mine, a warning to supervisors to review and assess the attorney's caseload more closely." R. at 3219 (Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, *National Public Defense Workload Study* (2023)). *See also* R. at 3192, 3217-18.

[36] Appellants' expert, Mr. Monahan, relied on the data analysis of FTI Consulting, yet failed to visit Idaho, review Idaho criminal statutes, or speak with Idaho defending attorneys to formulate his opinions. R. at 3857.

[37] Instead, Appellants have claimed in their briefing below that their statistical analysis shows "that the State is failing in its constitutional obligations, even if every single indigent defendant in Idaho is not being failed in their particular case." R. at 3917. As Respondents have pointed out, it is difficult to imagine how such evidence shows a likelihood of future systemic harm if *no* indigent defendants are being "failed in their particular case." Likewise, and even if Appellants were not required to do so, if defending attorneys having a caseload over 210 FCE *per se* establishes

Further, Respondents' data analytics experts dispute that Appellants' statistical analysis supports their conclusions. R. at 3855-60; R. at 3974-76; R. at 3777-87; R. at 3797-801. Specifically, former PDC Senior Research Analyst Mark LaSalle discussed how Appellants' binary approach to case load numbers was misleading. R. at 3783-85. Appellants cite statistics that group counties together with widely varying populations—and thus widely varying numbers of total indigent defenders—and treat them the same for purposes of their analysis. *Id.* As Mr. LaSalle explained, this approach caused skewed results, leading to misleading percentages which did not provide a reasonable representation of the county-based indigent defense system. R. at 3777-87. Dr. William England undertook a similar analysis and concluded Appellants' evidence did not establish systemic deficiencies. R. at 3858-59; R. at 3797-4018, ¶¶ 6, 10, 13, 18, 19, 42. Appellants' binary approach to caseload numbers is ultimately misleading and ignores the realities and limitations national experts recognize—and does not establish that indigent defendants face a likelihood of future systemic harm.[38]

b. Indigent defenders have access to support staff.

Under the SPD Act, indigent defenders will continue to have adequate access to support staff, as was the case under the county-based system. In arguing otherwise, Appellants cite the National Association for Public Defense's "recommended" staffing ratios—which are not based on empirical studies[39] and do not establish a constitutional requirement—to claim some Idaho counties did not

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indigent defendants face a likelihood of substantial harm, it is telling they have not actually provided any "three-foot" level evidence of such harm occurring.

[38] Likewise, Mr. Fredericksen has provided that under the SPD Act defending attorneys will be required to track their time, which will provide a more accurate representation of defending attorneys' workloads. R. at 3987, ¶ 8.

[39] The NAPD's Policy Statement on Public Defense Staffing acknowledges it is making its recommendations "[u]ntil empirical studies are further able to determine the number of staff necessary to support the lawyer . . . ." R. at 2897.

spend adequate money on support staff such as investigators, social workers, or experts in fiscal year 2022. App. Br. at 41. In doing so, Appellants confuse "access" with "utilization." Defending attorneys necessarily exercise their professional judgment when determining whether a given case would benefit from support services. Even if Appellants believe this judgment was being exercised incorrectly and support services were underutilized in some counties, it is not a matter of access.[40] Appellants' claims in this regard are thus meritless and are not evidence of "a likelihood of future systemic harm to members of the certified class." *See* R. at 3976-77, R. at 4003-05.

As the evidence shows, defending attorneys under the county-based system had access to support services through the PDC, the counties, and the courts—and will continue to have access under the new state system. R. at 4003-05. *See* Idaho Code § 19-6005(1). And courts will maintain the power to provide indigent defendants access to support services through Idaho Criminal Rule 12.2.

Appellants' reliance on prior county expenditure reports to show a lack of spending is misplaced. As Kathleen Elliot, the former Director of the PDC, recognized, there was not a mechanism in place under the prior county-based system for ensuring counties were accurately reporting their expenditures in a consistent manner across the State. R. at 4005, ¶ 22. This is a prime example of one of the key benefits of the new state-based system—centralized and uniform record keeping and data reporting requirements that will take the guesswork out of tracking things like expenditures and workloads and will allow the SPD to allocate resources where needed.

Ultimately, Appellants rely on incomplete data and do not explain why alleged deficiencies under the prior county-based system show a likelihood of *future* systemic harm under the new state-based system.

[40] The Chief Public Defenders for Canyon, Ada, and Bonneville opined that their offices had adequate access to support staff. R. at 3643; R. at 3676-77; R. at 3768.

c. Indigent defenders do not face political or judicial influence.

The District Court rejected Appellants' speculative claims that indigent defenders will face independence issues under the SPD Act. R. at 5572. Specifically, the District Court noted Eric Fredericksen had "maintained independence in his former role as State Appellate Public Defender, as did the attorneys working under him," and found "[Appellants]' have not raised an issue of material fact that his statements were untrustworthy." *Id*.

This Court should come to the same conclusion. The Respondents' expert, Professor John Gross, addressed Appellants' claim regarding the appointment process of the SPD:

> Ideally, an independent commission would select a chief public defender, but I believe that the process that will be used in Idaho satisfies . . . the ABA requirement that the public defense function be independent. In almost every other way, the new system conforms to recognized best practices for indigent defense delivery systems.

R. at 3742. *See also* R. at 4013-14, ¶ 34 (providing that indigent defenders will have employment protections). Ultimately, Appellants' claims of political and judicial influence are entirely speculative and are not evidence that indigent defendants face a likelihood of future systemic harm.

d. Appellants' alleged additional "deficiencies" do not show indigent defendants face a future likelihood of harm.

Appellants conclude by claiming a variety of other "failures" show Idaho's deficiencies in providing indigent defense, which Respondents have already refuted. Regarding confidential meeting spaces, the evidence shows Idaho counties worked to ensure indigent defendants had access to confidential meeting spaces under the prior system. *See* R. at 3996-97, ¶ 11; 4009, ¶ 29. And Appellants have submitted no evidence to suggest the new state-based system will not continue to provide access to confidential meeting space. *See* R. at 5572. Any references in the record to isolated concerns of less-than-optimal client meeting spaces in specific counties is not evidence of widespread, persistent structural deficiency.

Next, it is undisputed that under the county-based system, each county had a system and structure in place to ensure in-custody indigent defendants were represented by counsel at initial appearances.[41] Again, there is no evidence to suggest the new state-based system will not continue to provide counsel at initial appearances for indigent defendants facing the possibility of incarceration.[42]

Finally, Respondents have also refuted Appellants' claims regarding indigent defender contracts under the county-based system. *See* R. at 3996-98, ¶¶11-12; 4011-13, ¶¶ 30-32. Appellants' claims misrepresent the SPD Act, which allows the SPD Office, in counties without an institutional office, to contract for primary indigent defense services through 2029 with defending attorneys who comply with the standards set by the SPD Act. Idaho Code §§ 19-6019(2), (3).[43]

Ultimately, Appellants' claims of additional "deficiencies" are a collection of isolated grievances, misrepresented data, and speculation. Their claims do not amount to evidence establishing "a likelihood of future systemic harm to members of the certified class." Appellants cite 2022 data from the county-based system which does not provide any evidence of how indigent defense will be provided under the new state-run system. For these reasons, the District Court did not err in declining to award Appellants' requested relief, and this Court should affirm the dismissal of this action.

V. ATTORNEYS' FEES ON APPEAL

The Respondents do not seek attorneys' fees on appeal. Appellants request attorneys' fees under 42 U.S.C. § 1988 as a prevailing party and under the private attorney general doctrine. App.

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[41] Similarly, Appellants' claim that indigent defendants did not receive vertical representation is not substantiated by the record. *See* R. at 4009, ¶ 28.

[42] Likewise, Appellants continue to misrepresent what is constitutionally required regarding out-of-custody initial appearances, a point which Respondents have previously addressed. *See supra* p. 35. *See also* R. at 3994, ¶ 8; 4008-09, ¶ 26; 3972 n.24; 3978.

[43] Contracting attorneys will have uniform contracts across Idaho. Idaho Code § 19-6005(7).

Br. at 49-50. The Court should affirm the District Court's denial of attorneys' fees and deny attorneys' fees on appeal.

1. Appellants Are Not Entitled to Attorneys' Fees Under 42 U.S.C. § 1988 Because They Were Not a Prevailing Party Against the PDC.

The District Court correctly declined to award Appellants attorneys' fees and costs because they did not prevail against the PDC and cannot have prevailed in their Section 1983 claims against the State. In arguing otherwise, Appellants claim they should have been awarded attorneys' fees under 42 U.S.C. § 1988 as a "prevailing party," App. Br. at 46-47,[44] because the District Court granted Appellants future injunctive relief against the State, enjoining the State from ever reviving the "old county-based system in any materially similar form." R. at 5576.

Initially, the State is not a "person" against whom attorneys' fees may be awarded under Section 1988 because it is not a person that can be sued and prevailed against under 42 U.S.C. § 1983. *Will v. Michigan Dep 't of State Police*, 491 U.S. 58, 64, 71 (1989). As such, attorneys' fees cannot be awarded against the State under Section 1988, and Appellants must prove they should be considered a prevailing party for their claims against the PDC—which they cannot show because the District Court's injunction did not enjoin the PDC.

Section 1988 gives a trial court discretion to award attorneys' fees to a prevailing party in an action brought under Section 1983. 42 U.S.C. § 1988(b). To be considered a prevailing party under Section 1988, a plaintiff must (1) "obtain at least some relief on the merits" of the claim, such as an enforceable judgment or consent decree; (2) the relief on the merits must "materially alter the legal relationship between the parties by modifying the defendant's behavior in a way that

[44] Even if the Appellants were the prevailing party, which they were not for purposes of Section 1988, such a finding would not automatically entitle them to attorneys' fees. *See Cunningham v. Waford*, 131 Idaho 841, 843, 965 P.2d 201, 203 (Ct. App. 1998) ("Achieving prevailing party status does not, however, automatically entitle a litigant to an award of attorney fees.").

directly benefits the plaintiff;" and (3) the relief "must directly benefit [the plaintiff] at the time of the judgment or settlement." *Farrar v. Hobby*, 506 U.S. 103, 111–12 (1992) (quotations omitted).

First, the District Court granted future injunctive relief enjoining the State—*not* the PDC.[45] R. at 5574. Appellants acknowledge this point, providing the District Court's injunction "prohibited the State from reverting back" to the prior county-based indigent defense system. App. Br. at 47. Even if the PDC had not been dissolved, the relief granted by the District Court is not an enforceable judgment against the PDC because the agency cannot decide the indigent defense system used in Idaho.

Second, the District Court's injunction did not materially alter the legal relationship between the PDC and Appellants. Again, the District Court ultimately dismissed the claims against the PDC (a now dissolved agency) and enjoined the State—not the PDC—from reviving the county-based system of indigent defense. R. at 5574.

Third, Appellants did not secure any relief that benefited them "at the time of the judgment," *see Farrar*, 506 U.S. at 111, against the PDC—or the State. The District Court's decision expresses that the injunction *may* provide relief for Appellants "in the future" if the State ever sought to return to the prior county-based system. R. at 5574. Therefore, as a matter of law, Appellants were not the prevailing parties against the PDC. The District Court's decision denying attorneys' fees should be affirmed, and the Court should deny fees on appeal.

2. Appellants Are Not Entitled to Attorneys' Fees Under the Private Attorney General Doctrine.

[45] The District Court dismissed Appellants' claims against the PDC because at the time of the decision the agency would "cease to exist in 5 months and its members will no longer be tasked with overseeing public defense in Idaho." R. at 5569-70.

Appellants also claim they are entitled to attorneys' fees under the private attorney general doctrine. "Idaho follows the 'American Rule' of attorney fees," meaning fees may only be awarded if a statute authorizes fee shifting. *Mortensen v. Stewart Title Guar. Co.*, 149 Idaho 437, 447, 235 P.3d 387, 397 (2010). The Supreme Court previously held the private attorney general doctrine was authorized by Idaho Code § 12-121. *Hellar v. Cenarrusa*, 106 Idaho 571, 578, 682 P.2d 524, 531 (1984). However, it did so only because at the time, § 12-121 allowed fees to be granted in the court's discretion. But in 2017 the statute was amended. Now the statute permits fees only where a case is "brought, pursued or defended frivolously, unreasonably or without foundation." 2017 Idaho Sess. Laws Ch. 47 (H.B. 97). It can no longer be used to award fees on the grounds that a party's lawsuit vindicated the public interest.[46] And it *certainly* cannot be used against government entities. *Idahoans for Open Primaries v. Labrador*, 172 Idaho 466, 491, 533 P.3d 1262, 1287 (2023) (Section "12-117 is the exclusive basis for awarding fees" in such cases).

Even if the Court were to determine the private attorney general doctrine to be available, Appellants would not be entitled to fees under the doctrine in this case as the District Court did not come to a resolution on the substantive issues and private enforcement was not necessary. As this Court noted in *Tucker I*, a court considers a three-factor test under the private attorney general doctrine:

> "(1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, (3) the number of people standing to benefit from the decision."

Tucker I, 162 Idaho at 30, 394 P.3d at 73 (quoting *Idaho Sch. for Equal Educ. Opportunity v. Idaho State Bd. of Educ.*, 128 Idaho 276, 285, 912 P.2d 644, 653 (1996)). The Court also provided that

[46] In the only case invoking the doctrine since 2017, the parties did not raise, and the Court did not analyze, the doctrine's continued viability in light of the statutory amendment. *See Reclaim Idaho v. Denney*, 169 Idaho 406, 439, 497 P.3d 160, 193 (2021).

"[*t*]*hese factors indicate that there must be some resolution of the substantive issues before a decision on attorney fees can be reached.*" *Id*. (emphasis in original). *See also Zeyen v. Pocatello/Chubbuck Sch. Dist. No. 25*, 165 Idaho 690, 701, 451 P.3d 25, 36 (2019) ("[A]ttorney's fees [under the doctrine] cannot be awarded before a final decision on the merits of the case.").

In the present case, there is no dispute the District Court did not come to a resolution on the substantive issues, a point Appellants acknowledge. *See* App. Br. at 34 ("The District Court's refusal to reach a decision on the merits . . . ."). Therefore, because the case was dismissed as prudentially moot, and the substantive issues were not decided, the Court should affirm the District Court's decision to deny awarding attorneys' fees.

Even if the Court considers the private attorney general doctrine applicable, Appellants are not entitled to attorneys' fees because private enforcement was not necessary.[47] The continued actions by the State—which started well before this lawsuit—show its continued commitment to indigent defense absent private enforcement. In 2007, the State commissioned NLADA to review trial level indigent defense in Idaho. *See* R. at 5555-56. Following the study's results, in 2014 the Idaho legislature created the PDC to transition to a state-assisted county-based indigent defense system. R. at 5556; Idaho Code § 19-849 (repealed). From 2014 until its dissolution in 2024, the State continually increased funding for the PDC—and thus indigent defense. In a short span, the State has gone from a county-based indigent defense system with no State oversight, to an entirely State funded and controlled system—which was done without judicial prompting.[48] *See* Idaho Code § 19-6001 *et seq*.

The fact that Appellants filed their lawsuit in the midst of this State-initiated transition does not entitle them to an award of attorneys' fees. This structural change could not be completed

[47] The Respondents concede the first and third factors are met.
[48] Facts which the District Court recognized. R. at 5570-71, 74-76.

overnight, and the State's sustained efforts in working to improve indigent defense in Idaho should be recognized. Because private enforcement was not necessary, the Court should affirm the District Court's denial of attorneys' fees, and deny fees on appeal.

VI. CONCLUSION

No system can guarantee indigent defendants will always receive adequate or effective representation in every case. A state meets its constitutional obligation when it implements and funds an indigent defense delivery model designed to facilitate the adequate representation of indigent defendants by qualified attorneys at key stages of the prosecution. The purpose of the SPD Act is to provide constitutionally adequate representation to indigent defendants—which is precisely the relief Appellants sought in this case. The District Court recognized this, and in its discretion, declined to decide the case on the merits, noting judicial intervention at this juncture would not help, and could in fact harm, the efforts to achieve a shared objective. The District Court did not abuse its discretion by recognizing the State's commitment to indigent defense and finding future harm under the new state-system was unlikely.

Appellants have never proven their claims, despite their repeated mantra that the system is broken. The Respondents maintain that even under the prior county-based system, indigent defendants did not face a "likelihood of substantial and immediate irreparable injury." Still, the State recognized a state-funded and state-administered system is the preferred model for ensuring the State continues to meet its constitutional obligations to indigent defendants. The District Court agreed, and its decision should be affirmed.

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DATED November 25, 2024.

SCANLAN GRIFFITHS + ALDRIDGE

By: /s/ Joseph M. Aldridge
Joseph M. Aldridge
Special Deputy Attorney General

DATED November 25, 2024

PARSONS BEHLE & LATIMER

By: /s/ Slade D. Sokol
Slade D. Sokol
Special Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 25, 2024, I electronically filed the foregoing document using the iCourt E-File system, which sent a Notice of Electronic Filing to the following persons:

Richard Eppink
Emily Croston
AMERICAN CIVIL LIBERTIES UNION OF IDAHO FOUNDATION
P.O. Box 1897
Boise, ID 83701
Telephone (208) 742-6789 Ext. 3

☐ U.S. Mail, Postage Prepaid
☐ Facsimile
☒ iCourt/Email
reppink@acluidaho.org

Robert B. Duncan
Joe Cavanaugh
Jimmy McEntee
Devin Urness
Alessandra Carozza
HOGAN LOVELLS US LLP
555 Thirteenth Street NW Washington, D.C. 20004
Telephone (202) 637-5600

☐ U.S. Mail, Postage Prepaid
☐ Facsimile
☒ iCourt/Email
robert.duncan@hoganlovells.com
joe.cavanaugh@hoganlovells.com
jimmy.mcentee@hoganlovells.com
devin.urness@hoganlovells.com
alessandra.carozza@hoganlovells.com

Elizabeth C. Lockwood
ALI & LOCKWOOD LLP
300 New Jersey Ave, N.W., Suite 900
Washington, D.C. 20001
Telephone (202) 651-2475

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
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☒ iCourt/Email
liz.lockwood@alilockwood.com

Emma Anderson
Ashika Verriest
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street 18th Fl.
New York, New York 10004
Telephone (347) 931-6337

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Facsimile
☒ iCourt/Email
eandersson@aclu.org
averriest@aclu.org

/s/ Joseph M. Aldridge
Joseph M. Aldridge