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BEFORE THE SUPREME COURT OF IDAHO

In Re: Petition for a Writ of Mandamus. ---------- MICHAEL STEPHEN GILMORE, a Qualified Elector of Ada County, Petitioner, v. LAWERENCE DENNEY, Idaho Secretary of State, in his official capacity, Respondent, and SCOTT BEDKE, in his official capacity as Speaker of the House of Representatives of the State of Idaho; CHUCK WINDER, in his official capacity as President Pro Tempore of the Idaho State Senate; and the SIXTY-SIXTH IDAHO LEGISLATURE, Intervenor-Respondents.	Docket No. 48760-2021

REPLY BRIEF IN SUPPORT OF PETITION FOR ISSUANCE OF A WRIT OF MANDAMUS an ORIGINAL PROCEEDING BEFORE THE SUPREME COURT OF IDAHO

Michael Stephen Gilmore
Boise, Idaho, for Himself as Petitioner

Brian Kane, Chief Deputy Attorney General
Steven Olsen, Division Chief, Civil Litigation Division
Megan A. Larrando, Deputy Attorney General
Robert A. Berry, Deputy Attorney General
Cory M. Carone, Deputy Attorney General
Boise, Idaho, for Respondent

William H. Myers, III, Holland & Hart LLP
Alison C. Hunter, Holland & Hart LLP
Christopher C. McCurdy, Holland & Hart LLP
Boise, Idaho, for Intervenor-Respondents

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This Reply refers to Respondent Secretary of State Denney as the SOS and his Opposition Brief as SOS Opp. It refers to the Intervenor-Respondents Speaker Bedke, Pro Tempore Winder, and the 66th Idaho Legislature as the Legislative Intervenors and their Opposition Brief as Leg. Opp. I address those Briefs' arguments in turn. When they make common points, I often adopt by reference my Reply to the SOS in my Reply to the Legislative Intervenors.

I. REPLY TO THE SECRETARY OF STATE'S OPPOSITION BRIEF

A. I Have Standing Because I Have an Injury Personal to Me Not Shared by All Voters Alike and Because My Injury Is Not Hypothetical

(1) My Petition does not pursue a generalized grievance shared by all Qualified Electors. See SOS Opp., pp. 4–7. The SOS's strawman is that supporters of Referenda or Initiatives who support the Act and supporters of Referenda or Initiatives who oppose the Act "face exactly the same obstacles regardless of their support for the Act. Voters who support the Act have the same chance of having an initiative or referendum they support placed on the ballot as voters who oppose the Act." *Id.* at 6.

These are not the proper classes to determine whether I have a generalized grievance. The proper classes are voters supporting Referenda and Initiatives and voters opposing Referenda and Initiatives. Supporters must organize to obtain signatures in all thirty-five Legislative Districts. Opponents can simply wait to see if enough signatures are obtained in all thirty-five districts; if not, they need do nothing. If success or failure to qualify for the ballot depends on a few districts, opponents can focus their opposition in those districts. Given this asymmetry, voters who support Referenda and Initiatives do not "have the same chance of having an initiative or referendum they support placed on the ballot," *id*. at 6, as opponents of Referenda and Initiatives have of preventing them from qualifying for the ballot. My grievance is not shared by all.

The SOS argues that under *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 852, 119 P.3d 624, 627 (2005), I must allege an invasion of voting booth privacy to show standing. SOS Opp., pp. 5–6. *Ameritel* explained that *Van Valkenburgh v. Citizens for*

Term Limits, 135 Idaho 121, 15 P.3d 1129 (2000), which I cited in my Opening Brief, relied upon three factors:

> (1) "The Petitioners allege the law violates their right to vote because the law will infringe on the rights of qualified voters to cast their votes effectively by 'greatly diminishing the likelihood the candidate of their choice will prevail in the election'"; (2) "[T]he Petitioners allege the law infringes on their right to vote because it constitutes a state invasion of the privacy and sanctity of the voting booth"; and (3) The challenged statute "adversely impacts only those registered voters who oppose the term limits pledge, or who support candidates who oppose the term limits pledge." [*Van Valkenburgh*,] 135 Idaho at 125, 15 P.3d at 1133. All three of those factors do not exist in this case.

Ameritel, 141 Idaho at 852, 119 P.3d at 627. None of the three *Van Valkenburgh* factors were satisfied in *Ameritel*. I satisfy the first and third factors because (a) the Supermajoritarian Signature Act makes it more difficult for Referenda and Initiatives to qualify for the ballot, greatly diminishing the likelihood that Referenda and Initiatives that I support will prevail in the next election, and (b) the Act adversely affects only people who wish to qualify Referenda and Initiatives for the ballot, not people who oppose them. *Ameritel* did not hold that the second factor — invading voting booth privacy — was a necessary element of voting rights standing rather than an additional point that bolstered standing in *Van Valkenburgh*. Neither did *Van Valkenburgh* itself. If invasion of voting booth privacy were a necessary element of voting rights standing, there could never be a challenge to a malapportioned Legislature; those challenges are based upon population variance among the districts or splitting counties among districts more than is necessary, not upon voting booth privacy. *E.g.*, *Twin Falls County v. Idaho Com'n on Redistricting*, 152 Idaho 346, 271 P.3d 1202 (2012). The second *Van Valkenburgh* factor is not a necessary factor of voting rights standing. Thus, I have shown individualized injury.

(2) The SOS argues that my injury is hypothetical because I state the obvious: I will sign petitions for Measures and vote for them "**if I support the Measure**." SOS Opp., pp. 7–8 (emphasis in SOS Opp). That does not make my injury hypothetical. Surely the SOS does not contend that I would have standing only if I commit to sign petitions for and vote for Measures that I do not support, but that seems to be the tenor of his position.

Regardless, my position is not hypothetical. "I oppose laws that restrict my ability to give expression and effect to my policy views by reducing or eliminating the efficacy of my signature in support of a Measure, especially laws that take into account the Legislative District in which I live in determining whether my signature in support of a Measure will or will not advance a Petition to qualify a Measure for a statewide ballot." Petition, ¶ 5. "I will join in organized groups' efforts to overturn the Supermajoritarian Signature Act by Referendum if it comes to that, but I contend that it should not come to that because the Act is unconstitutional." *Id.*, ¶ 6. Despite identifying a Referendum that I will support (one to repeal the Act), the SOS says that my support is hypothetical because I "did not even sign the initial petition … filed with the Secretary of State's Office on April 26, 2021 to start the process … to circulate a referendum petition on the Act." SOS Opp., p. 8. I have committed to support this Referendum if it becomes necessary. Petition, ¶¶ 5, 6. I contend it is not necessary because the Act is unconstitutional.

(3) The SOS argues in effect that the Supermajoritarian Signature Act can only be challenged by someone who attempts a petition drive to qualify a Measure for the ballot and fails because of the Act. SOS Opp., p. 9. In other words, the only challenges that are allowed are as-applied, after-the-fact challenges following failure to qualify for the ballot. By then, even a successful challenge may be too late to make the ballot. I contend that the thirty-five district requirement is facially unconstitutional. I do not need to wait for a failed attempt to qualify a Measure for the ballot to bring my facial challenge.

B. A Writ of Mandamus Is An Appropriate Remedy

The SOS says that "a writ of mandamus is seemingly unable to provide the relief sought" because I do not want the SOS to take "affirmative action." SOS Opp., pp. 10, 9. I want the SOS to take "affirmative action": I want him to ignore the district-by-district requirement for signatures to qualify a Referendum or Initiative for the ballot and to implement only a statewide signature requirement because I contend the district-by-district requirement is unconstitutional.

The SOS cites *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990) (*IFRA*), to argue that declaratory and injunctive relief at the District Court level

would provide an adequate remedy in the ordinary course of law, so mandamus should not issue. SOS Opp., pp. 9–11. *IFRA* involved a petition for a writ of mandamus to test the legality of a redevelopment agency's bonds. The writ was denied, although this Court had taken up similar petitions before, because the relief IFRA sought was available from the district court and IFRA had not shown an urgent need for a decision. 118 Idaho at 45–46, 794 P.2d 634–35. Footnote 3 of *IFRA* explicitly contrasted IFRA's circumstances with a case where the Court "accepted jurisdiction of original mandamus proceedings where an urgency existed for immediate determination of important election issues due to brevity of time for filing plaintiff's declaration of candidacy." *Id.* at 45, 794 P.2d 634, n.3.

My petition also presents an election issue requiring immediate determination due to the brevity of time for circulating a referendum petition: sixty days after the Legislature adjourns. Idaho Code § 34–1803. This court has continued to take up petitions for mandamus or prohibition for election challenges since *IFRA*, *e.g.*, *Van Valkenburgh* and *Henry v. Ysursa*, 148 Idaho 913, 231 P.3d 1010 (2008) (Court took up petition regarding whether candidate for United States Senate can appear on the ballot), among others. The Court should take up my Petition because of the urgency posed by the sixty-day requirement for obtaining signatures for a referendum. [1]

C. Original Jurisdiction Is Warranted Because of the Urgency of the Issue

The SOS says that "there is no urgency created by uncertainty about whether he needs to comply with the Act's requirements." SOS Opp., p. 11. But there is. If the Act is unconstitutional, no Referendum petition needs to be circulated and turned in within sixty days of the Legislature's adjournment. If the Act is constitutional, a Referendum petition must. There is an urgent need to know which path must be followed.

The SOS suggests that I can ask a district court for a temporary restraining order or a preliminary injunction. SOS Opp., pp. 11–12. That is not satisfactory. Different district courts might rule differently. More importantly, a TRO or PI from a District Court is not a final deci-

[1] The Court may take judicial notice that the Senate adjourned sine die at 11:00 p.m. on May 13, 2021, after the SOS had earlier filed his Opposition Brief. 2021 Idaho Senate Journal, pp. 303–04. See https://legislature.idaho.gov/sessioninfo/2021/journals/.

sion that litigants can take to the bank; only this Court can provide such finality. Even the expedited procedures of Idaho Code § 34–1808 are unlikely to result in a final decision by this Court before the deadline of sixty days after legislative adjournment. The need for finality is one reason why this Court addressed a petition for a writ in *Gibbons v. Cenarrusa*, 140 Idaho 316, 92 P.3d 1063 (2002), which decided whether the Legislature could repeal the Term Limits Initiative, even though another case presenting that issue was pending before a district court. *Id.* at 319, 92 P.3d at 1066. This Court took up the issue because, "A decision by the Court that will allow the electoral process to proceed with certainty is necessary." *Id.* at 317, 92 P.3d at 1064. A decision by this Court will tell everyone what they need to know: (1) Is the Supermajoritarian Signature Act unconstitutional?, and opponents need not circulate a Referendum petition to repeal it; or (2) is it constitutional?, and must opponents circulate a Referendum petition against it.

D. The Procedural Conditions and Manner for Referenda and Initiatives Must Be Consistent with Other Provisions of the Idaho Constitution

Pages 6–7 of the Opening Brief cited *Westerberg v. Andrus*, 114 Idaho 401, 403–04, 757 P.2d 664, 667–68 (1988), for the seemingly innocuous proposition that constitutional provisions are construed in *pari materia*, from which I concluded that the conditions and manner that the Legislature provides for Referenda and Initiatives under Article III, § 1, must comply with other provisions of the Idaho Constitution. The SOS does not even begrudge that point; he dodges whether the legislative conditions and manner of qualifying a Referendum or Initiative must be consistent with other provisions of the Idaho Constitution. SOS Opp., pp. 14–18.

The SOS cites *Dredge Mining Control — Yes!, Inc. v. Cenarrusa*, 92 Idaho 480, 484, 445 P.2d 655, 659 (1968) (*DMC*), to state that the process of qualifying a Referendum or an Initiative must be "reasonable and workable," which appears to be the standard that he proposes. SOS Opp., p. 16. The issue in *DMC* was whether the "only requirement for signing an initiative petition is that the person in fact have the constitutional qualifications to vote, whether registered or not," 92 Idaho at 482, 445 P.2d at 657, *i.e.*, whether a person must be a registered voter to sign an Initiative petition. There were no challenges based on other sections of the Idaho Constitu-

tion. In response to the petition circulators' contention that it was "impossible for the clerk to certify the signatures on the petition as genuine since he has only a typed list of names with which to compare them," rather than the signatures themselves, the Court concluded that the statutes were "reasonable and workable." *Id.* at 485, 445 P.2d at 659.

That was a practical, indeed a "reasonable and workable," standard to use in a challenge alleging that the county clerks did not have the information necessary to do what statute required them to do. My challenge is based upon the legal theory that the Supermajoritarian Signature Act's conditions and manner violate the Idaho Constitution, not that county clerks would find it impossible to administer. *DMC* did not address such constitutional issues and did not provide a standard to be applied in this challenge.[2] The standard to be applied comes from *Westerberg*: constitutional provisions are construed in *pari materia*, so the conditions and manner of qualifying for the ballot must comply with other constitutional provisions.

E. The Supermajoritarian Signature Act Violates Idaho's Equal Protection Clause

The SOS's n. 6, p. 18, says that while I initially identified "a classification in the form of rural voters versus urban voters," I appear "to disclaim this classification and theorize[] about other classifications of voters." I do not disclaim that challenge and repeat what I said before:

> These stated reasons for the Act's passage — to prevent an identified set of voters from losing political influence —are inconsistent with the Idaho Equal Protection and Suffrage Guarantee Clauses because they select one set of voters among the People for favored treatment as the People attempt to exercise their right of Referendum and Initiative and impair the right of other voters to organize and to give expression and effect to their political or policy goals. The constitutional violation is not that a purpose of the Act is to favor rural voters when the People exercise their political rights by trying to qualify a Referendum or an Initiative for the ballot; it is that ***any*** class of voters is favored when it comes to exercising these political rights. It would also be unconstitutional to favor urban voters; or voters who prefer one political philosophy to another; or voters who are aligned with a political party or who are independent of all political parties; or any other subset of voters

[2] The SOS recites the history of Article III, § 1, and calls the Referendum and Initiative provisions an "afterthought," citing *Luker v. Curtis*, 64 Idaho 703, 707, 136 P.2d 978, 980 (1943). So do the Legislative Intervenors. Leg. Opp., p. 1. Afterthoughts can be important. The Bill of Rights to the United States Constitution was also an "afterthought," not being included in the original.

smaller than the People of Idaho as a whole.

Opening Brief, p. 8.

I agree with the SOS that there is a three-step Equal Protection analysis under the Idaho Constitution: (1) identify the classification under attack, (2) identify the level of scrutiny to be applied, and (3) determine whether the applicable standard has been satisfied. SOS Opp., p. 18. There are two more classifications that I identified for Equal Protection analysis:

> (a) groups of citizens who organize themselves to put initiatives or referenda on a state-wide ballot versus those who organize themselves to put candidates, new political parties, or recall elections on a statewide ballot, and
>
> (b) individual Qualified Electors whose signature on an initiative or referendum petition contribute toward the measure qualifying for the ballot versus those whose signatures on a petition do not contribute toward the measure qualifying for the ballot.

SOS Opp., pp. 18-19. I disagree with the SOS on how to apply the Equal Protection Analysis.

(1) I contend that groups organizing to obtain statewide ballot access are the proper class in the first step of Equal Protection Analysis. Before addressing that, I must first clear up some confusion shown on SOS Opp., p. 20. I am not a comparator against myself. I am arguing that the group of which I am a part — persons who will organize to place a Referendum or an Initiative on the statewide ballot — is treated differently from ***other*** groups — persons who will organize to place a candidate, political party, or recall election on the statewide ballot.

(2) The SOS notes that Article III, § 1, allows the Legislature to set the manner and conditions for Referenda and Initiatives, that Article VI, § 6, provides that the Legislature shall pass necessary laws for recall elections, and that no constitutional provisions address qualifying candidates or new political parties for the ballot. SOS Opp., p. 20. From this he concludes that the Idaho Constitution's differing treatment (or no treatment) of these categories of qualifying for the statewide ballot "disposes of Petitioner's effort to treat all individuals seeking statewide ballot access as similarly situated." *Id*. It does not. The SOS's argument ignores the principle that Article III, § 1, and Article VI, § 6, are to be construed in *pari materia* with other provisions

of the Idaho Constitution and that implementing legislation under them, as well as implementing legislation for elections not addressed in the Constitution, must be consistent with other provisions of the Idaho Constitution like its Equal Protection Clause and Suffrage Clauses.

(3) Despite the Idaho Constitution reserving all political power in the People and providing for Referenda and Initiatives, the SOS reveals his view of the heart of the issue at p. 21. "The initiative and referendum process allows ***any pet policy*** to be placed on the ballot, where it could become law, without any of the compromise, negotiation, or give-and-take that is part of the representative legislative process." *Id.* at 21 (emphasis mine). There it is; he implies that the People cannot be trusted to make law. He says that candidates, recall elections, and political parties do not make law; Referenda and Initiatives do. According to him, this difference justifies different treatment among groups trying to qualify for the statewide ballot: "The initiative and referendum process is the only time when the ability to make law bypasses the representative democratic process — ***which is based on the input of 35 legislative districts*** — and goes straight to the people." *Id.* (emphasis mine). Except, of course, this is not necessarily what happens in the representative democratic process. Legislation in the House and the Senate is not required to be based on input from every legislative district because the Legislature has no formal process for obtaining input from each legislative district. These disparaging and inaccurate premises lead into the SOS's argument at SOS Opp., pp. 22–31, which I next address.

The SOS acknowledges that the right of Suffrage is a fundamental right under the Idaho Constitution. SOS Opp., p. 22. But his view of the right of Suffrage is cramped indeed, being primarily based upon a case to which the right of Suffrage did not apply: *Rudeen v Cenarrusa*, 136 Idaho 560, 38 P.3d 598 (2001). Let's see where *Rudeen* fits into this Court's jurisprudence.

I start with two cases that preceded *Rudeen*. In *American Independent Party in Idaho, Inc. v. Cenarrusa*, 92 Idaho 356, 358, 442 P.2d 766, 758 (1968) (*AIP*), this Court said: "The right of citizens to organize, and give expression and effect to their political aspirations through political parties is inherent in, and a part of, the right of suffrage," and held that citizens had the right to place a new political party on the statewide ballot. In *Van Valkenburgh v. Citizens for*

Term Limits, 135 Idaho 121, 126, 15 P.3d 1129, 1134 (2000), this Court considered a ballot legend that referred to a candidate's compliance or lack of compliance with a term limits pledge and held that it "infringes on the fundamental right to vote, and undermines the integrity of the ballot because it will interfere with the voters' right to cast their ballots, free from government interference," internal punctuation omitted, and held that citizens had a right to remove term limits designations from the ballot. Both cases allowed citizens to shape what was on the ballot as part of their exercise of the right of Suffrage free from government interference, *i.e.*, Suffrage included not only the right to cast a vote, but also a right of input to determine what will be voted on.

Rudeen, on the other hand, involved incumbent office holders who wished to remain on the ballot (and in office) contrary to the Term Limits Initiative of 1994. *Rudeen* held that the right of Suffrage does not include the right to hold office. 136 Idaho at 566–67, 38 P.3d at 604–05. But in doing so it said that, "There is Idaho case law indicating that the right of suffrage is broader than just the right to vote," quoted the passage from *AIP* that I quoted in the previous paragraph, and cited to the part of *Van Valkenburgh* that I quoted in the previous paragraph. 136 Idaho at 566, 38 P.3d at 604. In short, *Rudeen* left intact and did not undercut the People's right of Suffrage enunciated in *AIP* and *Van Valkenburgh*.

The SOS misapplies *Rudeen* to Referenda and Initiatives, which *Rudeen* did not consider. *Rudeen* "look[ed] at the issue from the perspective of candidates, rather than voters." SOS Opp., p. 23. But, the SOS quotes *Rudeen* as if it applied to voters to reach an unwarranted conclusion:

> *Rudeen* makes it clear that there is no fundamental right for initiative supporters to qualify an initiative for the ballot based on its related conclusions that (1) the right of suffrage does not include "the right to access the ballot," *Rudeen*, 136 Idaho at 566, 38 P.3d at 604, and (2) "being listed on a ballot is not a fundamental right." *Id.* at 570, 38 P.3d at 608; *see also Lansdon v. State Bd. of Canvassers*, 18 Idaho 596, 111 P. 133, 137 (1910) ("no man has any vested right … in the right to run for office"). If it is not a fundamental right for an individual to have their name listed on a ballot, it certainly cannot be a fundamental right for an initiative sponsor to have their initiative listed on the ballot.

SOS Opp., p. 24. *Rudeen's* references to lack of a right of ballot access and to being listed on the ballot not being a fundamental right referred to incumbent candidates' lack of a fundamental

right to continue to appear on the ballot, not to the People's fundamental right of Suffrage and access to the ballot recognized in *AIP* and *Van Valkenburgh*.

The SOS muddies the analysis by citing *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938), for the proposition that the right of Suffrage does not include the right to vote for a candidate of one's choice. SOS Opp., p. 24. *Fisher* held that candidates must meet legal qualifications for office to be listed on the ballot, *i.e.*, unqualified persons were not listed because fewer than 100 persons in the judicial district met the constitutional requirements to be a district judge. 59 Idaho at —, 83 P.2d at 218. But *Fisher* does not compel the conclusion that the right of Suffrage does include the right to qualify Referenda and Initiatives for the ballot and certainly does not compel the conclusion that the right of Suffrage does not include "a right to have one's signature on a petition help qualify that measure for the ballot." SOS Opp., p 25.

The SOS contends that Article I, § 19's right of Suffrage was not "intended to encompass signing an initiative or referendum petition or qualifying an initiative or referendum petition for the ballot," because Referenda and Initiatives were not part of the original Constitution. SOS Opp., p. 25, citing Proceedings & Debates of the Constitutional Convention of Idaho (1889).[3]

I agree that the Constitutional Convention did not anticipate Referenda and Initiatives. Neither did it anticipate that Suffrage would be extended to women, see original Article VI, § 2 (franchise extended to "male citizens"), to the LDS, see original Article VI, § 3 (franchise denied to those who teach, advise, counsel, aid, or encourage celestial marriage), to the Chinese and Mongolians, see original Article VI, § 3 (franchise denied to Chinese or persons of Mongolian descent not born in the United States), or to Indians, see original Article VI, § 3 (franchise denied to Indians who are not taxed and who have not severed tribal relations).

Thankfully, these stains on Idaho's public policy have been repealed. Does anyone doubt that as the Constitution was amended to remove these disqualifications from voting that Article I, § 19's right of Suffrage extended to those newly enfranchised voters? Of course not. Likewise,

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[3] The SOS courteously provided a link to this document, which is found at: https://legislature.idaho.gov/statutesrules/idconst/

when Referenda and Initiatives were added to the Constitution, Suffrage rights extended to citizens' using Referenda and Initiatives "to organize, and give expression and effect to their political aspirations". *AIP*, 92 Idaho at 358, 442 P.2d at 758.

The SOS ignores *AIP* and *Van Valkenburgh* by citing a 1910 case, *Adams v. Lansdon*, 18 Idaho 483, 110 Pac. 280, which the SOS says confined the right of suffrage to the act of voting at the polls. SOS Opp., p. 26. *AIP* and *Van Valkenburgh* and their more expansive reading of the right of Suffrage are still on the books. *Rudeen* did not overrule them. *Adams* is not controlling.

The SOS would leave issues of suffrage and of equal protection in elections to federal decisions, citing federal case after federal case whose common thread seems to be suffrage means voting and nothing more. See federal cases cited at SOS Opp., pp. 26–27. Idaho's jurisprudence is not so stingy with the right of Suffrage. *Van Valkenburgh* shows that the Idaho Constitution's right of Suffrage is not the same as the federal right; it is more. For example: "*Burdick* [*v. Takushi*, 504 U.S. 428, 112 S.Ct. 2059 (1992)] is, however, distinguishable from the present case. First, *Burdick* did not deal with the Idaho Constitution and instead was decided under the United States Constitution." *Van Valkenburgh*, 135 Idaho at 126, 15 P.3d at 1134, providing a prelude to overturning a ballot designation on term limits by applying State law, not Federal law.

Citizens' rights of Suffrage are fundamental rights that can be abridged only to serve a compelling state interest. *Van Valkenburgh*, 135 Idaho at 126–28, 15 P.3d at 1134–36. Citizens' rights of Suffrage include the right "to organize, and give expression and effect to their political aspirations." *AIP*, 92 Idaho at 358, 442 P.2d at 758, "free from government interference," *Van Valkenburgh*, 135 Idaho at 126, 15 P.3d at 1134. Citizens' rights to organize and give expression to their political aspirations by putting Referenda and Initiatives on the ballot should not be any different than their rights to organize and give expression to their political aspirations by putting new political parties on the ballot, or for that matter, to put independent candidates or recall elections on the ballot. Different rules regarding which Qualified Electors must sign petitions to do so do not serve a compelling state interest.

The SOS argues that there is a legitimate State interest in requiring Referenda and Initi-

atives to show support throughout the State to be placed on the Statewide ballot. "This protects the State from localized legislation. … [The Act] creates a check on the will of the majority, because it ensures sufficient statewide support before an initiative or referendum petition is put to the majoritarian test of showing support at the polls." SOS Opp., p. 28. What, pray tell, is the legitimate purpose of checking the majoritarian legislative will of the People by making it more difficult to qualify a Measure for the ballot?, especially when constitutions, courts, and the Legislature itself already can check the will of the majority.

The SOS adds that the Majoritarian Signature Act "prevents voter confusion and inefficiency by preventing the ballot from being cluttered with prospective statewide laws that are of primarily local interest." Has that ever happened? If so, what makes the SOS think that the State as a whole will support Measures of primarily local interest? The SOS gives no examples.

The SOS also says that the Act "promotes grassroots legislative efforts, and promotes an informed and engaged electorate statewide as to initiative and referenda petitions." Requiring signature gathering from six percent of the Qualified Electors of every legislative district is hardly necessary, and surely not the least restrictive method available, to promote grass roots efforts and an informed citizenry. In short, although the SOS has posited some reasons for requiring a certain number of Qualified Electors from each legislative district to sign a petition for a Referendum or an Initiative, when nothing of the like is required for statewide ballot access for candidates, political parties, or recall elections, the SOS has not shown that such interests are compelling or that the statute is a necessary or the least restrictive method to further those interests.

The SOS returns to Federal law to argue: "The Ninth Circuit has recognized the State's interest in ensuring an initiative petition has support distributed throughout the State before being placed on the ballot and subjected to a straight majority vote is an 'important regulatory interest,'" citing *Angle v Miller*, 673 F.3d 1122, 1134–36 (2012). SOS Opp., p. 29. Federal law may elevate the State's interest over the People's, but Idaho places the People's interests in Suffrage above the State's. Be that as it may, if the Supermajoritarian Signature Act had done what was done in *Angle* — require signature gathering in each of Idaho's two congressional district, not in

each of it thirty-five legislative districts — I would not be here. Despite my theoretical objections to such a scheme, it would not be worth the candle to challenge a two-congressional-district signature requirement.[4] I filed my Petition because the Supermajoritarian Signature Act has fractured the Qualified Electors of Idaho into thirty-five camps, not into two.

Idaho Coalition United for Bears v. Cenarrusa, 342 F.3d 1073 (9th Cir. 2003) (*ICUB*), did not "recognize[that] by requiring that initiative and referendum sponsors obtain signatures from six percent of the qualified electors in each of Idaho's 35 legislative districts, the Act is narrowly tailored to achieve these interests." SOS Opp., p. 29. As I explained in my Opening Brief, p. 13, n.5, *ICUB* involved a previous version of § 34–1805 in which "signatures in support of the initiative must be collected from six percent of the qualified voters in each of at least half of the state's counties." The Court held that statute unconstitutional because county populations varied so widely. *Id*. at 1076–79. In *dicta* the Court suggested that basing a signature requirement on legislative districts would not violate the Federal Equal Protection Clause. *Id.* at 1078. But that was in the context of a signature requirement based on half the counties; there was no suggestion that the Ninth Circuit was basing its *dicta* on a signature requirement for all the legislative districts rather than half of them. In fact, the Legislature took up the Ninth Circuit's suggestion in 2013 Idaho Session Law, Chapter 214, when it amended § 34–1805 to require signatures of six percent of the Qualified Electors in eighteen (just over one-half) of Idaho's thirty-five Legislative Districts. *ICUB* did not address a thirty-five district signature requirement.

The SOS adds: "As Petitioner demonstrates, absent the Act, highly populous areas of the State ***could*** get their policy preferences on a statewide ballot, where they ***could*** become law with the support of only those highly populous areas." SOS Opp., pp. 29–30 (emphasis added; two "coulds" sound like the description of a hypothetical problem, not a real one). The result that the SOS describes takes place in many legislative bodies; it is called majority rule and is not considered a problem. There is no legitimate, let alone compelling, state interest in preventing majority rule when the People are exercising their right to Referendum or Initiative.

[4] Likewise, in response to Leg. Opp., p. 2, I did not consider it to be worth the candle to challenge the eighteen-legislative district requirement, even though I also posit that it is unconstitutional.

Further, what facts show that a Referendum or an Initiative has become law with the support of only highly populated areas? If the SOS knows of any, he has not identified them.[5] Solving nonexistent "problems" is not a compelling state interest. The Majoritarian Signature Act is not reasonably tailored, let alone narrowly tailored, to achieve that or other goals.

F. There Is Nothing Permissible About Some Petition Supporters' Signatures Advancing Qualification for the Ballot and Others' Not

The SOS acknowledges that the Supermajoritarian Act does not provide for "one voter, one signature" in the following sense: When a Qualified Elector signs a Petition to place a Referendum or an Initiative on the ballot, the signature will advance the Measure's qualification for the ballot if the Qualified Elector is in a legislative district in which fewer than six percent of the voters in that district have already signed a Petition, but will not advance the Measure's qualifi-

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[5] For example, the 2018 Medicare Expansion Initiative, Proposition 2, carried thirty-five of Idaho's forty-four counties, including many of the least populous. Counties in which Proposition 2 passed are in black font; those in which it failed are red, italicized font.

Proposition 2 Vote, 2018 General Election

County	Yes	No	Diff	Pct
Ada	131,918	57,475	74,443	69.65%
Adams	1,126	739	387	60.38%
Bannock	19,239	9,884	9,355	66.06%
Bear Lake	1,104	1,042	62	51.44%
Benewah	*1,783*	*1,935*	*-152*	*47.96%*
Bingham	6,905	6,290	615	52.33%
Blaine	8,348	2,098	6,250	79.92%
Boise	1,937	1,526	411	55.93%
Bonner	9,867	8,717	1,150	53.09%
Bonneville	20,243	15,030	5,213	57.39%
Boundary	*1,935*	*2,313*	*-378*	*45.55%*
Butte	549	490	59	52.84%
Camas	311	226	85	57.91%
Canyon	35,973	27,321	8,652	56.83%
Caribou	1,240	1,009	231	55.14%
Cassia	*3,037*	*3,145*	*-108*	*49.13%*
Clark	137	113	24	54.80%
Clearwater	1,686	1,480	206	53.25%
Custer	1,070	1,068	2	50.05%
Elmore	4,081	2,894	1,187	58.51%
Franklin	*1,603*	*2,199*	*-596*	*42.16%*
Fremont	*2,299*	*2,490*	*-191*	*48.01%*

County	Yes	No	Diff	Pct
Gem	3,743	3,356	387	52.73%
Gooding	2,445	1,969	476	55.39%
Idaho	*2,933*	*4,101*	*-1,168*	*41.70%*
Jefferson	*3,589*	*5,176*	*-1,587*	*40.95%*
Jerome	3,073	2,321	752	56.97%
Kootenai	28,374	27,875	499	50.44%
Latah	11,269	4,661	6,608	70.74%
Lemhi	1,960	1,496	464	56.71%
Lewis	718	669	49	51.77%
Lincoln	919	534	385	63.25%
Madison	*4,086*	*4,761*	*-675*	*46.19%*
Minidoka	2,688	2,453	235	52.29%
Nez Perce	9,138	5,315	3,823	63.23%
Oneida	*735*	*804*	*-69*	*47.76%*
Owyhee	1,751	1,654	97	51.42%
Payette	4,262	3,272	990	56.57%
Power	1,306	878	428	59.80%
Shoshone	2,473	1,772	701	58.26%
Teton	3,396	1,368	2,028	71.28%
Twin Falls	14,205	10,225	3,980	58.15%
Valley	3,488	1,694	1,794	67.31%
Washington	2,165	1,729	436	55.60%
Total	365,107	237,567	127,540	60.58%

Sources:
https://sos.idaho.gov/elect/results/2018/General/ada_through_fremont.html
https://sos.idaho.gov/elect/results/2018/General/gem_through_washington.html

cation for the ballot if more than six percent already have. SOS Opp., p. 32. It is true that "Respondents have not found a single case where Idaho's Equal Protection guarantees or the right of suffrage have been invoked to protect against initiative or referendum petition signature dilution." SOS Opp., p. 32. That is because this is the first one; there is a first time for everything.

Rather than look to Idaho law for guidance on how to decide this issue, the SOS again proposes federal law and its watered-down protection of suffrage. Excluding constitutional amendments proposed by initiative, the best the SOS can come up with are cases requiring signatures from all of a State's Congressional districts to put an initiative on the ballot, *Angle*, *supra* (initiative petitions must have signatures from ten percent of voters in each of Nevada's Congressional district); from half of a State's Congressional districts to put a political party on the ballot, *Libertarian Party v. Bond*, 764 F.2d 538, 544–45 (8th Cir. 1985) (between 1978 and 1985 three political parties were able to gather signatures from one percent of the voters in at least half of Missouri's congressional districts and thus qualify for the ballot); or half of a State's legislative districts, *Isbelle v. Denney*, 2020 WL 2841886, (D. Idaho 2020) (signatures can be required from six percent of voters in eighteen of Idaho's thirty-five legislative districts to put a referendum or initiative on the ballot). *Semple v. Griswold*, 934 F.3d 1134 (10th Cir. 2019), also cited with these other cases, needs additional attention. The Colorado Constitution, Article 5, § 1, does not require any geographic distribution for signatures for ordinary initiatives or for referenda, just five percent of registered voters statewide; it requires two percent of the voters in each of the thirty-five Senate districts and five percent statewide for constitutional amendments proposed by an initiative. No federal court cited by the SOS has yet approved requirements as high as at least six percent of voters in every legislative district.

Even if a federal court had approved an every-legislative-district signature requirement, Idaho has its own constitution; I filed my Petition based upon Idaho's more robust protection of Suffrage in cases like *AIP* and *Van Valkenburgh*. At some point enough is enough: Under the Supermajoritarian Signature Act, once twenty-five out of thirty-five legislative districts cross the six percent threshold, only $^{10}/_{35}$ of the Qualified Electors' signatures count to advance the Petition

across the line; when thirty districts reach six percent, only $^{5}/_{35}$ of the Qualified Electors' signatures count; when thirty-four districts reach six percent, only $^{1}/_{35}$ of the Qualified Electors' signatures count. That result is not narrowly tailored to achieve any State interest other than preventing Referenda or Initiatives from qualifying for the ballot, which is not a legitimate state interest.

G. The Supermajoritarian Signature Act Interferes with the Right of Organized Citizens to Give Expression and Effect to Their Political Aspirations

The Supermajoritarian Signature Act does not interfere with citizens' right to organize, SOS Opp., p. 36; it interferes with their right to accomplish something as a result of their organization — in the words of *AIP*, it interferes with their right, once they have organized, "to give expression and effect to their political aspirations." In *AIP*, citizens had organized a new political party; it was their inability to get ballot access for the party — to give expression and effect to their political aspirations — that violated their right of Suffrage.

The Supermajoritarian Signature Act interferes with the rights of organized citizens to place Referenda or Initiatives on the ballot by imposing additional signature-gathering hurdles not imposed on other groups trying to qualify for the statewide ballot. It places hurdles in front of them as they try to give expression and effect to their political aspirations by qualifying for the statewide ballot that are not placed in front of other organized groups trying to put candidates, political parties, or recall elections on the statewide ballot. That not only violates their Equal Protection rights; it also violates their right of Suffrage.

H. The Legislature Cannot Do What the Constitution Itself Does Not — Divide the People Among Legislative Districts as Part of the Referendum and Initiative Process

I do not "claim[] that the conditions and manner set forth in the Act constitute a legislative act binding the 'future exercise of the legislative power.'" SOS Opp., p. 38. Rather, in recognition of the principle that a statute cannot prevent a future legislature from exercising the legislative power to repeal or amend a statute, I added that a legislature cannot do indirectly by procedural hurdles what it cannot do directly:

> By similar logic, the legislative power does not include the power for one statute to set up special procedures for repealing it or amending it that are not generally applicable to all statutes. For example, the legislative power

> would not include the power for Statute B to provide that it could not be repealed or amended unless the repeal or amendment were supported in writing by at least one Legislator from every Legislative District.

Opening Brief, p. 19. My point in that quotation and in my following discussion at pp. 19-22 was that the legislative power does not include the power to tell future legislatures which legislators must agree or that a supermajority of legislators must agree to enact, repeal, or amend a statute before they vote to enact, repeal, or amend. I likewise argued that the legislative power does not include the power to tell the People which of them must sign a petition to place a Referendum or Initiative. That position is based upon the following Constitutional provisions.

Article III, § 1, divides the legislative power between two different corpuses: (1) the general legislative power is vested in the Idaho Legislature, consisting of a House of Representatives and a Senate, and (2) the specific legislative power of Referendum and Initiative is reserved by the People, as embodied by Qualified Electors, *i.e.*, registered voters. Article III, § 2, divides the State into thirty-five legislative districts, each of which elects one Senator and two Representatives, for purposes of electing the Legislature. No provision of the Idaho Constitution divides the People into smaller groupings for purposes of Referendum or Initiative or, for that matter, for voting for executive officers, appellate judges, or recall elections.

Neither the Legislature by statute nor the People by Initiative can tell the Legislature which legislators must support the enactment, repeal, or amendment of a statute in order for a bill enacting, amending, or repealing a statute to be voted upon. By the same token, neither the Legislature by statute nor the People by Initiative can tell the People which Qualified Electors must support (by signing a Petition) a Referendum or an Initiative before it can be placed on the ballot to be voted upon. The Supermajoritarian Signature Act cannot do what the Constitution itself does not do — divide the People among legislative districts for purpose of qualifying a Referendum or an Initiative for the ballot. That is the limitation on the legislative power that I posit — the inability of one legislative corpus (the Legislature) to tell another legislative corpus (the People) which of them must participate in qualifying a Referendum or an Initiative for the ballot (by signing a Petition) when the Constitution itself does not so divide the People among legis-

lative districts while exercising their reserved right of Referendum and Initiative.

Lastly, I do not contend that the Idaho Constitution requires that all persons, not just Qualified Electors, must be able to sign petitions for or to vote on a Measure. See SOS Opp., p. 40. Article VI itself divides the People between those who are Qualified Electors and those who are not. The Constitution does not provide for dividing the People among legislative districts when they exercise their reserved legislative power of Referendum or Initiative, including the right to qualify a Referendum or Initiative for the ballot. This Court should hold that the contrary requirement of Supermajoritarian Signature Act is unconstitutional.

II. REPLY TO THE SPEAKER, PRO TEMPORE AND 66TH LEGISLATURE'S OPPOSITION BRIEF

Perhaps nothing is more telling in the Legislative Intervenors' review of the history of the referendum and initiative statutes, Leg. Opp., pp. 4–9, than their candid comment that Idaho Code § 34–1805 has been amended "to remedy abuses to the initiative process,"[6] Leg. Opp., p. 5. The "abuses" that had to be remedied were that Initiatives or Referenda qualified for the ballot so that the voters could vote upon and approve them, thereby reversing Legislative action or inaction. That is the perspective of the 66th Legislature: It is an "abuse" when the People qualify a Referendum or Initiative for the ballot and vote to overturn the Legislature.[7]

A. The Constitutionality of the Conditions and Manner that the Legislature Provides for Referenda and Initiatives Is Justiciable

Like the SOS, the Legislative Intervenors resist the principle that the allowable conditions and manner in statutes that implement the People's right of Referendum and Initiative un-

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[6] One "remedy" for "abuse" was the 1997 amendment to § 34-1805, which did not, as the Legislative Intervenors contend, "reduce the signature requirement" to qualify Referenda and Initiatives. 1997 Idaho Session Law, Chapter 759, amended § 34-1805 to expand the base of voters against which required signatures would be measured from "the aggregate vote cast for Governor at the [preceding] general election" to the number of "qualified electors at the time of the last general election" and lowered the signature percentage from ten percent of the votes for Governor to six percent of all registered voters. Thus, if turnout in the previous gubernatorial election was less than sixty percent of registered voters, the signature requirement increased; if turnout was more than sixty percent, the signature requirement decreased.

[7] The Legislative Intervenors can be Orwellian in their "newspeak" and "doublethink" about Referenda and Initiatives. For example, they say: "Idaho voters, through their representatives in the 66th Legislature, ***enhanced*** the democratic use of initiatives and referenda" when they made it more difficult to qualify them for the ballot. Leg. Opp., p. 1 (emphasis added). See *1984*, George Orwell (1948).

der Article III, § 1, must be exercised in *pari materia* with other provisions of the Idaho Constitution. Leg. Opp., pp. 11–18. They say that the "primary question … is whether Idaho Code § 34-1805 places conditions on those processes that wholly eliminate the People's power to 'initiate any desired legislation' or 'demand a referendum vote on any act or measure passed by the legislature.'" Leg. Opp., p. 11. Apparently, in their view the rest of the Idaho Constitution does not apply because "Article III, Section 1 does not limit the conditions the Legislature can place on the initiative or referendum processes." Leg. Opp., p. 12. "The question of whether the Legislature is authorized to create statutory conditions for the exercise of the initiative process is one of constitutional interpretation that is squarely within the purview of this Court. The Legislature's chosen method of exercising that power is, however, not." *Id*. Hence, they say that my Petition "presents a nonjusticiable political question." Leg. Opp., p. 13.

It cannot be the case that the constitutionality of a statute providing conditions and manner for Referenda and Initiatives is never justiciable. Two examples show why. Suppose a statute required all votes on Referenda and Initiatives to be orally stated to a tally keeper at the polls and not marked on the ballot. That would violate Article VI, § 1's guarantee of a secret ballot, although it would not violate anything in Article III, § 1. Or another statute required all persons who sign a Referendum or Initiative petition to renounce certain specified religious beliefs. That would violate Article I, § 4's guarantee of religious liberty, although it would not violate anything in Article III, § 1. This Court has held that constitutional provisions are construed in *pari materia*. *Westerberg*, *supra*, 114 Idaho at 403–04, 757 P.2d at 667–68. The issue of whether the Supermajoritarian Signature Act violates any other provisions of the Idaho Constitution or violates Article III, § 1, itself is justiciable and must be addressed.

Before addressing the larger issues, I wish to clarify some points discussed in Leg. Opp., pp. 11–18. I do not concede "that 18 districts are constitutional" and do not "only ask[] this Court to return the statute to the status quo ante. Petition, Prayer for Relief, ¶¶ 1, 2." Leg. Opp., p. 16. Nor do I ask the Court to draw a line on how many legislative districts' signatures may be required. Leg. Opp., p. 19. On the contrary, my Prayer for Relief asks the Secretary of State to

ignore legislative districts altogether when counting Petition signatures. I pray that this Court:

> (2) issue a Writ of Mandamus to Respondent Secretary of State Denney in his official capacity that orders the Secretary of State not to implement the Act's requirement that a certain number of qualifying signatures for a Referendum or an Initiative Petition must come from each of Idaho's thirty-five Legislative Districts.

Petition, p. 7. When the thirty-five district requirement is done away with, the only thing left in the statute is the statewide requirement of signatures from six percent of registered voters.

I am not "in effect, now asking this court to read into the Constitution something that is not, either expressly or by implication, therein." Leg. Opp., p. 17 (citation and internal punctuation omitted). It is the Supermajoritarian Signature Act, not Article III, § 1, that fractures the People thirty-five ways in the Referendum and Initiative process — a fracturing that is nowhere provided in the Constitution. There is no line to be drawn; the Constitution does not divide the People in the Referendum and Initiative process, and neither should the Legislature.

B. The Supermajoritarian Signature Act Violates the Idaho Constitution

(1) The Legislative Intervenors say that I "offer[] no evidence or argument that the 35 legislative district signature requirement is unworkable as a practical matter." Leg. Opp., p. 18. I believe that the thirty-five district signature requirement is unworkable, but, as I said on page 3, mine is a facial challenge, so I have not provided evidence that the Act is unworkable. The Petition of Reclaim Idaho and the Committee to Protect and Preserve the Idaho Constitution, Inc., Case No. 48784-2021, brought by two organizations with more resources than I have, lays out a factual basis for claims that the Act is unworkable. Different and distinct Constitutional challenges are raised in that Petition. I urge the Court to hear oral argument on both Petitions on the same day to better explore all of the issues involved. There is too much at stake to treat these two Petitions as first come, first served.

(2) The Legislative Intervenors argue: "The Idaho Constitution does not forbid Legislative District-based signature requirements for initiatives or referenda, and it would be improper for this Court to unilaterally add such a requirement." Leg. Opp., p. 21. The People are a legislative body for Referenda and Initiatives and should not be divided in a manner not set out

in the Constitution. I further incorporate by reference my argument to that effect beginning at page 17. *Cf. Evans v. Andrus*, 124 Idaho 6, 855 P.2d 467 (1993) (it was unconstitutional for the Legislature to divide the Board of Education, a constitutional body, into "councils" to carry out its various duties for higher education and K-12).

(3) The Legislative Intervenors cite to other States whose Courts (or Federal Courts) have upheld requirements to obtain signatures from some or all of a state's geographic or political subdivisions. Leg. Opp., pp. 21–22. They lead with *Semple v. Griswold*, 934 F.3d 1134 (10th Cir. 2019), in which Colorado's ***constitution*** required constitutional amendments proposed by initiative to gather signatures of two percent of registered voters from every Senate district and five percent statewide, but did not require any geographical distribution of signatures for initiatives that proposed statutes. See p. 15, *supra*. Of course, a state constitutional amendment would pass state constitutional muster; it also passed federal constitutional muster. The Idaho Constitution has not been amended like Colorado's or Wyoming's, see Leg. Opp., p. 22, to require a percentage of signatures be gathered from every or many legislative districts or counties.

The Legislative Intervenors also cite *Count My Vote, Inc. v. Cox*, 452 P.3d 1109 (Utah 2019), and *Utah Safe to Learn–Safe to Worship Coalition, Inc. v. State*, 94 P.3d 217 (Utah 2004), as cases that "twice upheld" Utah's requirement to gather signatures from twenty-six of twenty-nine senate districts. In *Count My Vote* the Utah Supreme Court held, consistently with many federal courts, that the twenty-six-legislative-district signature requirement did not violate Equal Protection under Federal law. 452 P.3d at 1115. The Utah Court also held that disparate treatment of initiative supporters and opponents, who had thirty days to persuade signers to remove their names from an initiative petition during which supporters could not obtain additional signatures, did not violate Utah's Uniform Operation of Laws Clause. *Id.* at 1115–17. However, the Court declined to decide whether the Utah statutes put an undue burden on proponents of initiatives, *id.* at 1117–21, in particular, whether "the net effect of the range of statutory provisions … here is sufficiently greater than that at issue in our prior cases, such as *Safe to Learn*, to allow them to satisfy the undue burden test," *id.* at 1121. These two Utah cases are hardly ringing

endorsements of Idaho's thirty-five-legislative-district statute. Further, it is not necessary to look to another State's or Federal case law; Idaho has case law under its Equal Protection and Suffrage Clauses. I adopt by reference my discussion of Federal case law that begins on page 13 and extends through page 15 in further response. Despite some Legislative Intervenors' well-known distaste for Federal law,[8] they prefer it here.

(4) The Legislative Intervenors cite and quote *Rudeen* and say: "Gilmore fails to adequately explain how the act of voting is analogous to the collection of signatures." Leg. Opp., p. 23. I adopt by reference my argument beginning at page 8's discussion of *Rudeen* in response. I add that the central points under my Equal Protection and Suffrage Clause analysis are that

(a) citizens who organize and wish to "give expression and effect to their political aspirations," *AIP*, 92 Idaho at 358, 442 P.2d at 758,

(b) by putting candidates, political parties, recall elections, or Referenda and Initiatives on the ballot,

(c) are similarly situated for Equal Protection purposes and have a Suffrage right to do so,

(d) "free from government interference," *Van Valkenburgh*, 135 Idaho at 126, 15 P.3d 1134, and, in the case of Initiatives, "independent of the legislature," Article III, § 1,

(e) so the Supermajoritian Signature Act cannot tell them which Qualified Electors' signatures advance a Measure for the ballot and which do not.

As for the Federal cases cited at Leg. Opp., pp. 24–25, I adopt by reference my reply to the SOS beginning on page 12.

C. The Need for a Decision Is Urgent

I adopt by reference my argument beginning on page 3 in response to the Legislative In-

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[8] 2021 House Bill No. 322, provided, among other things, for nullifying federal action:

> Legislation may then be introduced proclaiming that the federal action is outside the scope of federal authority and, if it is enacted into law, such federal actions shall not be recognized by the state of Idaho and are null and void and of no force and effect in this state, ….

This bill passed the House, was held in Senate Committee, and never became law. See https://legislature.idaho.gov/sessioninfo/2021/legislation/H0322/

tervenors' position at Leg. Opp., pp. 25–25, that the issue presented by my Petition is not urgent. I also respond to the contention that "Gilmore provides no reason why the referendum process could not proceed in parallel with this Petition," Leg. Opp., p. 26, with the following: The Senate has adjourned *sine die*, n. 1, p. 4, the clock is ticking on the sixty-day referendum deadline, and it is urgent for opponents of the Supermajoritarian Signature Act to know whether the Act (1) is unconstitutional and will not govern their future Referenda and Initiatives, or (2) is constitutional and they must complete gathering the necessary signatures on a Referendum petition within the sixty-day deadline.

III. Conclusion

The Court should grant my Petition for a Writ of Mandumus and provide the relief prayed for in my Petition.

DATED THIS 20th day of May, 2021.

/s/ Michael Stephen Gilmore
Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that on May 20th, 2021, I e-mailed this Reply Brief to the following attorneys at the following e-mail addresses:

Chief Deputy Attorney General Brian Kane, brian.kane@ag.idaho.gov
Chief of Civil Litigation Steven Olsen, steven.olsen@ag.idaho.gov
Deputy Attorney General Megan A. Larrondo, megan.larrondo@ag.idaho.gov
Deputy Attorney General Robert A. Barry, robert.berry@ag.idaho.gov
Deputy Attorney General Cory M. Carone, cory.carone@ag.idaho.gov
Attorneys for Respondent

William G. Myers III, wmyers@hollandhart.com
Alison C. Hunter, achunter@hollandhart.com
Christopher C. McCurdy, ccmccurdy@hollandhart.com
Attorneys for Intervenor-Respondents

DATED THIS 20th day of May, 2021.

/s/ Michael Stephen Gilmore
Petitioner