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the State of Idaho

IN THE SUPREME COURT OF THE STATE OF IDAHO

In Re: Petition for Writ of Prohibition.

RECLAIM IDAHO, and the COMMITTEE
TO PROTECT AND PRESERVE THE
IDAHO CONSTITUTION, INC.,

Petitioners,

v.

LAWRENCE DENNEY, in his official
capacity as the Idaho Secretary of State, and
the STATE OF IDAHO,

Supreme Court Docket No. 48784-2021

**DECLARATION OF
DAMON CANN, Ph.D.**

Respondents,
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; SIXTY-SIXTH
IDAHO LEGISLATURE,

Intervenor-Respondents.

I, Damon Cann, Ph.D., declare as follows:

1. I am over the age of 18 years and competent to testify on the matters herein. I make this declaration based upon my own personal knowledge. This declaration is also made in my capacity as an expert witness on behalf of the Respondents in this matter.

2. I hold a Ph.D. in Political Science from the State University of New York (SUNY) at Stony Brook. I have taught Political Science at the Ph.D., Masters, and Bachelors levels during my career, which has included teaching assignments at SUNY-Stony Brook, the University of Georgia, and Utah State University. My areas of expertise include American politics broadly as well as research design and methodology. I have published scholarly work on the subject of ballot initiatives in publications that include *State & Local Government Review*, *Social Science Quarterly*, and the volume *Direct Democracy in the United States: Petitioners as a Reflection of Society*. I, along with a co-author, was awarded the 2016 Virginia Gray Book Award for the best book on state politics or policy published in the previous three years from the

American Political Science Association's State Politics and Policy section. My broader scholarly record includes three books and many articles in scholarly journals.

3. In forming my opinions offered in this declaration, I have reviewed the Verified Petition for Writ of Prohibition and Application for Declaratory Judgment filed in this matter and the declarations and associated exhibits filed in support, as well as the Brief in Support of Petition for Writ of Prohibition and Application for Declaratory Judgment filed by the Petitioners in this matter. I have also reviewed information from the National Conference of State Legislatures, a wide range of initiative and referendum laws from across the country, various scholarship on the initiative and referendum process, and spoken with John Sheldon. In the course of my professional life, I have spoken with many people involved in the political signature-gathering process; in specific reference to the matter at hand, I spoke with John Sheldon, former President of Treasure Valley Horse Racing. In so doing, I have formed expert opinions regarding Idaho Code § 34-1805(2), as amended by Senate Bill No. 1110, and Idaho Code § 34-1813(2)(a).

4. Many states offer some type of citizen-initiated policymaking process. The rules governing these processes vary across states. My assessment generally is that the diversity of implementations of plebiscitary power across states shows that there are a wide range of ways to provide citizens with the power to initiate state legislation independently of their state legislature and hold referenda. There are multiple metrics of signature-gathering difficulty that can be compared across states, such as: (1) the overall number of signatures required to qualify a petition for the ballot, (2) the metric that is used to calculate the required number of signatures,

(3) whether sponsors are required to gather signatures from any specific geographic distribution, and (4) the time allotted to gather the required signatures. Each of these metrics must be evaluated in forming any conclusion as to how a state's initiative and referendum process compares to other states.

5. Looking at the overall number of signatures required to qualify an initiative or referendum petition for the ballot, it is my conclusion that Idaho's requirement that signatures be gathered from 6% of the registered voters is less restrictive than the requirement imposed by some other states. The overall number of signatures of registered voters required by Idaho under Idaho Code § 34-1805(2) to qualify an initiative or referendum petition for the ballot may be higher than those required by some states, but Idaho's requirements are less stringent than a number of others. Nebraska, for example, requires signatures from 7% from registered voters for statutes to be created by initiative (and 10% for constitutional amendments).¹ Arkansas requires signatures from 8% of legal voters for statutory initiatives,² and Utah requires signatures from 8% of active registered voters for statutory initiatives.³

6. Another consideration in comparing signature-gathering requirements across states is the metric that is used to calculate the required number of signatures, whether it be the number of voters in a past election or the number of registered voters or some other metric.

¹ Neb. CONST. art. III, § 2.

² Ark. CONST. Art. 5, § 1.

³ Utah Code § 20A-7-201(2)(a). In terms of what constitutes an "active" registered voter, Utah has a process to designate voters who have likely moved or died as "inactive" registered voters; those who are not designated as "inactive" are considered active, so this group represents most registered voters.

7. The Petitioners in this matter seem to suggest that a 1997 change that shifted the number of signatures required in Idaho from 10% of the most recent gubernatorial vote to 6% of registered voters increases the number of signatures required to qualify an initiative or referendum for the ballot. While it is *possible* for this change to result in a higher number of signatures required, this is not always the case. For example, in 2018 there were 605,131 votes cast for governor per the Idaho Secretary of State from among 917,612 registered voters.⁴ Were the former requirement in place (10% of votes cast in the governor's race), this would have required petition sponsors to obtain about 60,513 signatures for the 2020 election cycle. However, the requirement to gather signatures from 6% of the 917,612 voters registered in Idaho in 2018 results in only about 55,057 signatures required, a smaller number of required signatures than 10% of the votes cast for governor. In short, the change in the law does not guarantee an increase in the number of signatures and can even result in fewer signatures required in the wake of a particularly high-participation election.⁵

8. There are states that do not tie their signature requirements to the number of registered voters that have signature-gathering requirements that are, in my opinion, similar to

⁴ As per the historical statistics from the Idaho Secretary of State website at https://sos.idaho.gov/elect/results/2018/General/statewide_totals.html

⁵ While the Petitioners do not challenge the 6% requirement of registered voters requirement, it is worth noting that tying the number of required signatures to registered voters, as opposed to votes cast in a previous gubernatorial election, promotes greater stability and predictability in the number of signatures required because turnout in gubernatorial elections can fluctuate dramatically based on the competitiveness of the race, the level of campaign spending, and other campaign stimuli. See, for example Robert A. Jackson. (2002). "Gubernatorial and Senatorial Campaign Mobilization of Voters." *Political Research Quarterly* 55:825-44. The number of registered voters tends to be much more stable, allowing for a more direct and predictable change in the number of signatures required.

Idaho's. As we saw in the analysis above, in the wake of the 2018 election cycle, the 10% of voters in the last gubernatorial election standard that Idaho abandoned would have been a more stringent signature standard than 6% of registered voters. Alaska employs a 10% standard of all who voted in the preceding general election,⁶ Arizona uses a 10% standard of voters from the previous election for statutory initiatives and 15% of the same pool of voters for constitutional amendments,⁷ Maine uses a 10% standard,⁸ Mississippi requires signatures from 12% of votes for all gubernatorial candidates from the previous election to qualify an indirect constitutional amendment via initiative,⁹ and Wyoming requires 15% of votes in the preceding general election (from 2/3 of counties).¹⁰ The number of signatures required in these states is comparable to or more stringent than the number of signatures required in Idaho.

9. A third feature of the initiative and referendum process that varies across states is a geographic distribution requirement. Many states that allow for the use of the initiative have some type of geographic distribution requirement for where signatures must be gathered.¹¹

⁶ ALASKA STAT. §§ 15.45.140, 15.45.370.

⁷ ARIZ. CONST. Art. 4, Part 1 § 1.

⁸ ME. CONST. Art. 4, Part 3 § 18.

⁹ MISS. CONST. Art. XV, § 273(3).

¹⁰ WYO. CONST. Art. 3, § 52.

¹¹ For example, of states that allow for statute by initiative, Alaska, Arkansas, Idaho, Massachusetts, Missouri, Montana, Nebraska, Nevada, Ohio, Utah, and Wyoming have a distribution requirement currently in effect. ALASKA STAT. § 15.45.140; ARK. CONST. art. 5, § 1; IDAHO CODE § 34-1805(2); MASS. CONST. art. XLVIII, General Provisions, Limitation on Signatures; MO. CONST. art. III, § 50; MONT. CONST. art. III, § 4; NEB. CONST. art. III, § 2; NEV. REV. STAT. § 295.012; OHIO CONST. art. II, § 1g; UTAH CODE § 20A-7-201; WYO. CONST. art. 3, § 52(c). Colorado, which is discussed later, doesn't require a geographic distribution for statutory initiative but does have a distribution requirement for signatures in every state senate district for constitutional amendment initiatives.

There are at least two states with ballot initiative rules that require signatures to be gathered across all of a particular type of political geographies of the state. Nevada requires ¼ of the minimum number of signatures to be drawn from each of the state’s four congressional districts, ensuring geographic coverage of the entire state. This occurred with Nevada’s passage of SB 133 in 2011. Their total signature requirement is 10% of total voters in the last general election (which can be significantly more than 10% from the last *gubernatorial* election because Nevada, like Idaho, holds gubernatorial elections in midterm elections where there is no presidential candidate on the ballot). Since the adoption of these rules, multiple initiatives have qualified for the ballot, including initiatives with tax policy, energy, and health care themes.¹² Colorado requires the gathering of signatures in the amount of 2% of registered voters in all of Colorado’s 35 state senate districts for a constitutional amendment initiative. While the implementation of this requirement has only come recently, Colorado had two constitutional amendment measures qualify for the 2020 ballot in the first cycle after the 10th Circuit Court’s ruling upholding the statewide distribution requirement in 2019.¹³ It is also noteworthy that this geographic

¹² See https://ballotpedia.org/Nevada_2016_ballot_measures, https://ballotpedia.org/Nevada_2018_ballot_measures, https://ballotpedia.org/Nevada_2020_ballot_measures for details from Ballotpedia, or similar information at the Nevada Secretary of State’s site, <https://www.nvsos.gov/sos/elections/initiatives-referendums/2018-petitions>, <https://www.nvsos.gov/sos/elections/initiatives-referenda/2020-petitions>, <https://www.nvsos.gov/sos/elections/initiatives-referenda/2016-petitions>

¹³ See the Colorado Secretary of State’s press release on the qualification of these constitutional amendments here: <https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2019/PR20191212Initiative76.html>, <https://www.sos.state.co.us/pubs/newsRoom/pressReleases/2020/PR20200827Initiative257.html>. While some may argue that constitutional change does not constitute public policy, this is a

signature-distribution requirement was not wrought by the Colorado legislature, but by popular vote on Colorado Initiative 71 to amend the Colorado Constitution. While Idaho's percentage requirement of 6% of registered voters is higher than Colorado's 2% requirement, because Colorado's state senate districts are about four to five times larger in population than Idaho's legislative districts, the number of signatures that must actually be gathered in each legislative district will generally be higher in Colorado than for Idaho. It is my opinion that the demonstrated success of multiple initiatives with 100% geographic-distribution requirements in Nevada and Colorado demonstrates that 100% geographic-distribution requirements do not prevent the successful qualification of initiative and referenda petitions for the ballot.

10. Several additional states require signatures from nearly all legislative districts. For example, Utah requires signatures from 8% of active registered voters in 26 of 29 state senate districts (roughly 90% of districts). In other words, Utah's signature percentage requirement is substantially higher than Idaho's requirement (by about 1/3), but only relaxes the geographic distribution requirement by 10%. Alaska requires signature gathering in the amount of 8% of voters in the previous election in $\frac{3}{4}$ of their 40 legislative districts.

11. The state of Idaho's current law (following the enactment of Senate Bill No. 1110) requires gathering signatures of 6% of registered voters in each of 35 legislative districts to qualify initiative and referenda petitions for the ballot.¹⁴ The ability of individuals to

difficult and troublesome distinction to make in the context of state constitutions as many state constitutions contain provisions that are functionally policy provisions, including drug policy, immigration and labor policy, water policy, tax policy, and more

¹⁴ See IDAHO CODE § 34-1805.

successfully qualify ballot measures in other states with comparable or more difficult rules (like Nevada, Colorado, Utah and Alaska) strongly suggests that individuals will be able to qualify these types of measures for the ballot in Idaho under Idaho's signature-gathering requirements.

12. It is my understanding that the stated purpose of the requirement that petition sponsors gather signatures in all 35 legislative districts is to increase voter involvement and inclusivity in the voter initiative and referendum process. It is my opinion that Idaho Code § 34-1805(2) achieves this purpose. My experience in talking with individuals involved in the signature-gathering process suggests that, in the absence of a geographic-distribution requirement, most signature-gathering campaigns focus solely on populous areas where people congregate in larger groups and homes are closer together, making the signature-gathering process simpler. The result, though, can be that individuals in less populous areas of a state have fewer opportunities to engage in the signature-gathering phase of these campaigns. Also, as discussed further below, the documents I have reviewed suggest that petition sponsors would likely target districts that they believe are likely to hold more individuals whose beliefs are favorable to the proposed measure if no geographic-distribution requirement were in place. The 35 district requirement requires petition sponsors to engage with and educate voters throughout the state of Idaho.

13. The Petitioners raise claims about whether volunteer-based initiative and referenda efforts can gather signatures in various geographic regions because of concerns about those organizations' ability to support and coordinate the necessary signature-gathering effort. The Petitioners offer Luke Mayville's declaration setting out his opinions about Reclaim Idaho's

organizational capacity in the context of the 2018 effort to qualify the Medicaid Expansion initiative petition for the ballot. But the need for organizational capacity is heavily context-dependent. Several contexts are particularly relevant. One is the state of political practice. Over time, strategies and practices for signature-gathering have been refined and improved. Technology is of particular import here. Today, signature gatherers (either volunteer or paid) can be deployed with smartphones and apps that enable more efficient door-to-door campaigns by directing gatherers only to the homes of registered voters. Additional data analytics could be employed to target voters probabilistically more receptive to the ballot campaign's message in a manner analogous to microtargeting in election campaigns. Empirically-informed practices have refined the ability of campaigners to select efficacious public locations for successful signature gathering. Rules for signature gathering that may have been challenging in previous contexts are made simpler due to innovations in technology and practice. When applied, these technological and strategic aids, along with remote conferencing technologies that have been refined through the COVID-19 pandemic, substantially reduce the burdens of organizational strength needs in a variety of areas across a state where a signature-gathering campaign is being waged.

14. It is my opinion that this would likely be demonstrated in any subsequent effort by Reclaim Idaho or others to qualify an initiative or referendum petition for the ballot. I would expect groups to use more technological aids and to therefore be more efficient and effective at gathering signatures in subsequent initiative efforts than the sponsors were with Medicaid Expansion. At the least, without a detailed understanding of the technical aids that Reclaim Idaho actually employed and how it employed them during its effort to qualify the Medicaid

Expansion petition for the ballot, it is difficult to know how to interpret Mr. Mayville's opinions about organizational capacity.

15. Another relevant context is the popularity of the initiative in a variety of statewide contexts. It can be difficult, even in the presence of strong organizational capacity, to acquire the necessary signatures when an initiative is unpopular. In reviewing the Mayville Declaration, I observed that Mr. Mayville's classification of "organizational potential" for Reclaim Idaho appears to be strongly correlated with the partisanship of the legislative district. Consider the table below, which shows the average percentage of registered Republicans and Democrats in each of Mr. Mayville's 3 tiers of organizational potential as well as the districts in which the initiative in question did not qualify under the former standards according to Mr. Mayville. Mr. Mayville's tier of counties that he identified as having the highest level of "organizational potential" (districts 1, 4, 5, 16, 17, 18, and 19) have an average of 20.26% of registered voters who affiliate with the Democratic Party, a figure twice the statewide average. Tier 1 districts have an average of 38.19% of registered voters who affiliate with the Republican Party, about 13 points lower than the statewide figure. In contrast, Tiers 2 and 3 have figures much closer to statewide averages in terms of party registration. The remaining counties in which the initiative failed to qualify for the ballot were overwhelmingly Republican, with 60.58% as the average Republican affiliation rate, while less than 8% of voters in these districts affiliate with the Democratic Party. It is striking that Mr. Mayville's "organizational potential" measure for the Medicaid Expansion initiative tracks very closely with partisanship.

	Average Percent of Registered Voters who Affiliate with Republicans	Average Percent of Registered Voters who Affiliate with Democrats
Mayville Tier 1 Leg. Dist.	38.19%	20.26%
Mayville Tier 2 Leg. Dist.	49.7%	11.53%
Mayville Tier 3 Leg. Dist.	46.49%	12.68%
Districts where the initiative did not qualify according to Mr. Mayville	60.58%	7.95%
Statewide average	51.60%	11.90%

This suggests to me that Mr. Mayville’s “organizational potential” measure could vary significantly based on the popularity of the subject matter of the initiative petition. In short, Mr. Mayville’s “organizational potential” measure is not a valid measure by which one could determine whether an organization would have difficulty complying with the 35 district requirement. It is also worth noting that it furthers the purpose of increasing voter involvement and inclusivity in the voter initiative/referendum process for a state legislature to take steps to ensure voters who live in legislative districts whose predominant partisanship does not align with a particular measure be involved in the question of whether a statewide ballot measure qualifies for the ballot.

16. A more accurate measure of organizational strength (that is to say, the ability to organize and gather signatures in all legislative districts) than that offered by Mr. Mayville would need to at least touch on two criteria. First, the criteria would need to be based on more

than one initiative campaign. The reason for this is that the scope of a campaign and its popularity in varied constituencies could differ significantly across issues and coalitions. The struggle of a single campaign to organize and succeed isn't sufficient evidence to say that the provisions of Idaho Code § 34-1805(2) will prevent initiative and referenda petitions from qualifying for the ballot.

17. There is reason to believe that other initiative or referendum petition sponsors could meet the 35 district requirement. For example, I had the opportunity to talk with John Sheldon. Mr. Sheldon, who at the relevant time was the President of Treasure Valley Horse Racing, was a central player in the Historical Horse Racing initiative that qualified for the ballot in the same 2018 election cycle as the Medicaid Expansion initiative. Mr. Sheldon indicated that the carefully orchestrated strategy his group employed allowed them to qualify for the ballot in scarcely over two months. His group hired a paid signature-gathering company to gather signatures to qualify the Historical Horse Racing initiative for the ballot. Mr. Sheldon expressed confidence that, with the signature-gathering company's good strategy, the technological aids the signature-gathering company employed, the data they had access to regarding voter preferences, and combination of signature-gathering efforts at public places and door-to-door gathering, they could have qualified in all of Idaho legislative districts if they had been required to do so. While Mr. Sheldon's group used paid signature gathers, their experience is also informative as to the ability of volunteer-based efforts to qualify petitions for the ballot if they are well-organized, employ technological aids, and are strategic in their efforts.

18. I note that the experience of Historical Horse Racing too is a single case. My goal here isn't to claim that one or the other of these 2018 Idaho initiatives is "correct" in their assertions about the ability or inability to qualify for the ballot if they were required to gather signatures in all 35 legislative districts. The point is that no single experience in qualifying an initiative for the ballot can comprehensively provide the data or information that one would need in order to determine whether the geographic distribution requirement in Idaho Code § 34-1805(2) will prevent initiative and referendum petition sponsors from qualifying for the ballot.

19. The second criterion for a better measure of organizational capacity would be directly related to the mechanism of gathering signatures independent of a particular policy. Were I to go about developing such a measure of organizational strength, I would consider availability of a labor force to gather signatures (paid and unpaid),¹⁵ the presence of locations where people can gather or congregate where signature gatherers might conduct campaigns (retail complexes, state motor vehicle service locations, social capital indicators¹⁶ that suggest the presence of social networks through which signature-gathering efforts could be promoted), and even potentially survey evidence on whether a reasonable number of people in each legislative district would sign a petition for a ballot initiative or referendum that they agreed with. The Petitioners have not produced any such evidence. This is the kind of measurement I

¹⁵ The fact that Idaho legislative districts are roughly equivalent in size suggests that the availability of a general labor force should be generally comparable across districts aside from fluctuations in the number of voting-age population vs. overall population.

¹⁶ These include factors like community organizations, volunteerism, engagement in public affairs, and the like; see Putnam, Robert. 2000. *Bowling Alone: The Collapse and Revival of American Community*, New York: Simon & Schuster

see as essential to making a judgment regarding the workability of a geographic-distribution requirement in terms of organizational capacity in each district that wouldn't be specific a single policy question.

20. Similarly, I would need to review additional data that is not provided in the briefs for this case to determine whether Idaho's signature removal process makes it difficult or impossible for an initiative or referendum petition to qualify for the ballot. Specifically, I do not have information on the rates at which signatures are removed from petitions on a range of issue areas from a range of different areas on the state. The Petitioners have not provided any such data. In the absence of more detailed data about signature removal, it is impossible for me to form a professional opinion on the workability of the geographic distribution requirements of Idaho Code § 34-1805(2) in light of signature removal.

21. An additional parameter of interest in evaluating a state's initiative/referendum process is the time in which signatures must be gathered. Idaho allows up to 18 months for petitioners to gather signatures.¹⁷ In contrast, Alaska allows at most 1 year,¹⁸ Colorado allows only at most 6 months,¹⁹ and Utah allows at most 316 days.²⁰ For referenda, Idaho allows 60 days after the legislature adjourns.²¹ While some neighboring states allow slightly more time with 90 day thresholds, Utah allows at most only 40 days after the adjournment of the legislative

¹⁷ IDAHO CODE § 34-1802

¹⁸ ALASKA STAT. § 15.45.140

¹⁹ Colorado Revised Statutes § 1-40-108

²⁰ UTAH CODE § 20A-7-206(1)(a)

²¹ IDAHO CODE § 34-1803

session where the bill was passed.²² It is also interesting to note that because Idaho's House of Representatives is yet to adjourn *sine die* this year (per the declaration of Jason Hancock) the 60-day time period to collect signatures to qualify a referenda petition has not yet begun for this year's legislature.

22. In my opinion, the purpose of the referendum is to quickly remove a law that has been passed by a legislative body that is clearly and widely unpopular. Because legislators have strong electoral incentives to be responsive to citizens' preferences, the need to use the referendum is rare. Idaho has had a relatively small number of referenda over the years; the same is true nationally. For example, for the thousands of bills passed in state legislatures across the U.S. in 2020, notably with varied requirements for referendum ballot access, the 2020 election cycle had only four veto referenda on the ballot, only two of which passed.²³ In reviewing Petitioners' brief and accompanying declarations, especially the declaration of Robin Nettinga (Exhibit 5 to the Petition), my opinion is that they express concern about the process being more difficult because of Idaho Code § 34-1805(2)'s geographic-distribution requirement than under previous law. However, for me to be confident that this increased difficulty prevents referenda petitions from qualifying for the ballot I would need to see evidence of more than one (likely several) well-organized referendum efforts with strong use of appropriate technologies, clear-cut political strategy, and widespread support for the referendum exhibited through polling. In the

²² Utah Code § 20A-7-306(1)(a)

²³ See <https://ballotpedia.org/2020>. Note that Ballotpedia is not a "crowd-sourced" wiki, but a staffed and funded nonprofit organization producing a digital encyclopedia of American Politics.

absence of this type of evidence, it is impossible for me to draw a firm conclusion that the 35 district requirement prevents referenda petitions from qualifying for the ballot. It is also noteworthy that in the event a concern about legislation arises *after* the 60-day time period (or even just later in the 60-day time period), citizens are not left without options to change the legislation as they could simply pursue an initiative campaign to change the law, where they would have up to 18 months to educate other Idahoans in regards to the issues they see with the law, gather signatures, and effect the same change in the law

23. Overall, there is a tendency for us to assume that easier access to ballot initiatives is good for democracy. This is not necessarily true. As David Magleby writes, “The idea that the voters should decide important issues strikes a responsive chord for most Americans because it is consistent with our notions of government by the people. But the most powerful people in the initiative and referendum process are the people who set the agenda for the voters to decide at the next election, and that agenda typically reflects the narrow goals of the proponents of initiatives and referendums. The claim that more democratic government results from direct legislation rests on the assumption that the issues placed on the ballot by initiative or popular referendum reflect the issues that people think are important.”²⁴ To that end, a robust and careful process that requires a significant show of citizen interest and support from a wide area of the state becomes an important check on the power of groups that seek to control the political agenda

²⁴ Magleby, David B. “Let the Voters Decide—An Assessment of the Initiative and Referendum Process, 66 *University of Colorado Law Review* 35 (1994).

through initiative sponsorship. Indeed, such checks preserve the power of the people rather than diminishing it.

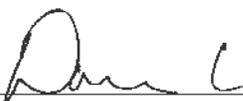
24. With regard to Petitioners' concerns about the statute setting the effective date for an initiative, some initiatives require time to adapt, set up, and implement policy changes created by initiative. For example, initiatives have led some states to transition from an outright state-level prohibition of marijuana to allowing medical use of marijuana. To make an orderly policy transition, it seems best to have regulations to be issued on who can grow marijuana and where they can grow it, technical agricultural standards for pesticide use in legal grows, the establishment of processes for the distribution of marijuana use cards/prescriptions, and more. Initiatives do not always contain the full set of details needed and administrative rule-making processes can be necessary. Program expansions can require hiring and training of additional personnel to implement programs. In order to implement policies passed by citizens via the initiative with fidelity requires time for the state to transition and implement. An effective date doesn't restrict the ability of citizens to set policy, it simply ensures sufficient time for an orderly change in the law.

25. Legislative involvement with an initiated law does not necessarily subvert the will of the people. Legislatures can and do make changes to statutes adopted by initiatives in jurisdictions, like Idaho, where this is permitted. There are important reasons to allow for legislative changes of an initiative. The exact verbiage of an initiative is not written as a perfect amalgamation of the preferences of voters. Instead, it is written by the individuals proposing the initiative based on their own goals. This gives voters only two choices—the status quo, by

voting against the initiative, and the alternative policy regime created by the exact wording crafted by the individual or group proposing the initiative. An initiative that passes proves that a majority of those who vote in a particular election prefer the initiative to the status quo. However, it does not prove that a majority of all citizens would prefer the exact language of the initiative versus an altered or amended form of the initiative at the present time or at a subsequent time. Therefore, the notion that the exact language of an initiative is sacrosanct and should not be subject to subsequent legislative changes is problematic and could ultimately subvert the preferences of a majority of voters rather than support it. This is particularly evident where technical problems emerge, implementation struggles, or unintended consequences of an initiative manifest themselves. At these times, it is appropriate for the legislative branch to make adjustments rather than to require another statewide campaign to implement simple changes. This power already exists in Idaho; in my opinion, the implementation date change does not make a fundamental change in the balance of power between the legislature and the people of Idaho.

I declare under penalty of perjury pursuant to Idaho Code § 9-1406 that the foregoing is true and correct.

DATED this 2 of JUNE, 2021.

By:  _____
Damon Cann, Ph.D.

CERTIFICATE OF SERVICE

I certify that on this 2nd day of June, 2021, I served the foregoing document electronically through the iCourt E-File system, which caused the following iCourt-registered counsel to be served by electronic means, as more fully reflected on the Notification of Service.

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