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**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FREMONT**

<p>STATE OF IDAHO,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>LORI NORENE VALLOW AKA LORI NORENE DAYBELL,</p> <p style="text-align: center;">Defendant.</p>	<p>CASE NO.: CR22-21-1624</p> <p>RESPONSE TO DEFENDANT’S MOTION TO DECLARE IDAHO’S CAPITAL PUNISHMENT SCHEME UNCONSTITUTIONAL</p>
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The defendant argues “the prosecutors in this instant case have not narrowed the death penalty eligibility” therefore this court should declare the death penalty in this case to be unconstitutional.” (*Defendant’s brief page 4*).

I. Defendant’s death penalty challenge is not ripe.

“A claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all’.” *Texas v. U.S.*, 523 U.S. 296, 300, 118 S.Ct. 1257, 1259, 140 L.Ed.2d 406 (1998). “Eighth Amendment claims of ‘cruel and unusual punishment’ are not ripe when raised prior to the actual, or immediately pending, imposition of the challenged form of punishment.” *Cheffer v. Reno*, 55 F.3d 1517, 1523 (11th Cir. 1995).

Because the Defendant has not yet been convicted, any challenge to a potential sentence is premature.

- II. The State Legislature has complied with the “narrowing requirement” that is set out by the U.S. Supreme Court.

Capital punishment cases under the Eighth Amendment address two different aspects of the capital decision making process: the eligibility decision and the selection decision.” *Tuilaepa v. California*, 512 U. S. 967, 971 (1994). States must comply with requirements for each decision. See *Kansas v. Marsh*, 548 U. S. 163, 173– 174 (2006). U.S. Supreme Court decisions in *Furman v. Georgia*, 408 U. S. 238 (1972) (per curiam), and *Gregg v. Georgia*, 428 U. S. 153 (1976) establish that a state capital sentencing scheme must “comport with requirements for each decision. In respect to the first, the “eligibility decision,” court precedent imposes what is commonly known as the “narrowing” requirement. “To pass constitutional muster, a capital sentencing scheme must ‘genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder.’” *Lowenfield v. Phelps*, 484 U.S. 231, 244 (1988) (quoting *Zant v. Stephens*, 462 U. S. 862, 877 (1983)). To satisfy the “narrowing requirement,” a state legislature must adopt “statutory factors which determine death eligibility” and thereby “limit the class of murderers to which the death penalty may be applied.” *Brown v. Sanders*, 546 U. S. 212, 216, (2006).

The U.S. Supreme Court specifically ruled on “the lack of a narrowing function” when it denied a petition for a writ of certiorari in *Hidalgo v. Arizona* 138 S. Ct. 1054 (2018). The current precedent makes clear that the legislature may satisfy the “narrowing function . . . in either of . . . two ways.” *Id.* First, the legislature may itself narrow the definition of capital offenses. Second, the legislature may more broadly define capital offenses,” but set forth by statute “aggravating

circumstances” which will permit the “jury . . . at the penalty phase” to make “findings” that will narrow the legislature’s broad definition of the capital offense. *Id.*; see also *Tuilaepa*, supra, at 972.

The State Legislature has complied with the narrowing requirement through the second method. Under Idaho law, a broad class of murderers are eligible for capital punishment. *Arave*, 507 U.S. at 475, 113 S.Ct. at 1542-43. However, the Idaho legislature has limited imposition of the death penalty to only those cases where the State establishes a statutory aggravator beyond a reasonable doubt. Idaho Code §19-2515(9). See *Dunlap*, 159 Idaho at 299, 360 P.3d at 308. The Idaho Legislature has set forth a list of eleven statutory aggravating factors that the jury could consider “in determining whether to impose a sentence of death.” Idaho Code § 19-2515(3)(b). Here, the state has alleged four of eleven statutory aggravating factors against the defendant.

Defendant has cited to a law review article from a law professor that the “aggravating circumstances” in “the aggregate” do not functionally act as a narrowing requirement in Idaho. (*Defendant’s brief page 3*). Yet, the State Legislature has precisely adhered to precedent set by the U.S. Supreme Court which requires that States perform the “constitutionally necessary” narrowing function “at the stage of legislative definition.” *Zant v. Stephens*, 462 U.S. 862, 103 S. Ct. 2733, 77 L. Ed. 2d 235 (1983). This Court cannot grant the Defendant’s motion based upon an opinion found in a law review article when the State Legislature has complied with the requirements set by the United States Supreme Court and the prosecution has complied with the relevant Idaho Law.

DATED this 12th day of January, 2023

/s/Rob H. Wood
Rob H. Wood
Prosecuting Attorney

/s/Lindsey A. Blake
Lindsey A. Blake
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CERTIFICATE

I HEREBY CERTIFY that on this 12th day of January, 2023, that a copy of the foregoing RESPONSE was served as follows:

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