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**UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO**

**RECLAIM IDAHO**, an Idaho political  
action committee, and **LUKE  
MAYVILLE**,

Plaintiffs,

v.

**BRADLEY LITTLE**, in his official  
capacity as the Governor of Idaho, and  
**LAWRENCE DENNEY**, in his official  
capacity as Idaho's Secretary of State,

Defendants.

Case No. 1:20-cv-00268-BLW

**MEMORANDUM IN SUPPORT  
OF EXPEDITED MOTION FOR  
PRELIMINARY INJUNCTION**

**INTRODUCTION**

Reclaim Idaho is a grassroots organization that successfully navigated Idaho's citizens' initiative process in 2018 to get Medicaid expansion on the general election ballot. The initiative passed with overwhelming support and became law. Luke Mayville is a co-founder of Reclaim Idaho.

In 2019, Mayville and Reclaim Idaho started a new initiative drive – Invest in Idaho – with the goal of putting an initiative before the voters in the 2020 general election that would significantly increase funding in K through 12 education. The group was well on its way to collecting the requisite number of signatures, from the requisite number of legislative districts, when the COVID-19 pandemic and the Governor’s emergency orders shut down Idaho. State officials refused to allow an alternative path. After that, it was impossible to comply with Idaho law that required in-person signature gathering. This severely burdened Plaintiffs’ core First Amendment rights.

They seek injunctive relief from this Court restoring the time that was lost – 48 days – and permitting Reclaim Idaho to gather signatures electronically during that time. Reclaim Idaho stands ready to provide the Secretary of State with 10,593 signatures that the county clerks have already authenticated. It can also provide county clerks immediately with approximately another 20,000 raw signatures that are not yet authenticated. And it has developed a plan to contract with DocuSign, a company trusted by financial institutions with an impeccable tradition for reliability in gathering electronic signatures. The requested relief would not require the Court to rewrite any law and would not create a new burden on the State to set up an alternative system. This request is narrowly tailored, temporary, and necessary to remedy the violation.

#### **THE FUNDAMENTAL RIGHT OF THE PEOPLE TO INITIATE LEGISLATION**

The citizen initiative process has deep roots in Idaho. In Art. III, sec. 1, “[t]he people reserve to themselves the power to propose laws, and enact the same at the polls independent of the legislature.” Subject to “such conditions and in such manner as may be provided by acts of the legislature,” legal voters may initiate any legislation and cause it to be submitted to the people for a vote at a general election. Idaho Const. Art. III, sec. 1.

Through the years the Idaho Legislature has added conditions to this basic constitutional right. First, a petitioner seeking to get an initiative on the general election ballot must file the proposed petition with the Secretary of State and receive a ballot title. Idaho Code § 34-1801(a). Then the clock starts for circulating the petition and gathering signatures. That is, the petitioner must obtain enough signatures of legal voters within either 18 months, or by April 30 of the year in which the general election is set, whichever is earlier. Idaho Code § 34-1802.

There are also numerical and geographical requirements. Before the expiration of the deadline, the petitioner must compile signatures of not less than 6% of the qualified electors at the time of the last general election in each of at least 18 legislative districts. Idaho Code § 34-1805. The total number of signatures must also be no less than 6% of the qualified electors of the entire state at the time of the last general election. *Id.*

There is also a witness requirement: signature gatherers must be residents of the state of Idaho and must verify that they personally witnessed every person sign the petition in their presence. Idaho Code § 34-1807.

Finally, the petitioner must present the signatures to the county clerk, who verifies (1) that the signatures are authentic, (2) each signer's address matches their address on the county's voter registration roll, and (3) the legislative district in which the signer resides. Idaho Code §§ 34-1802, 1807. Once the county clerk has made that verification, he or she returns it to the petitioner, who then presents the petition with all signatures to the Idaho Secretary of State. Idaho Code § 34-1807. The Secretary of State's Office is not involved in verifying signatures. (Declaration of Luke Mayville, ¶ 42.) Its duties are limited to counting the signatures that have been verified by county clerks to determine whether the petition includes the proper number of signatures statewide and the requisite number of signatures in 18 districts. (*Id.*)

## FACTS

Reclaim Idaho is a grassroots movement designed to protect and improve the quality of life of working Idahoans. (Mayville Decl. ¶ 3.) It organizes to pass citizens' initiatives and to elect candidates who believe in strengthening public schools, protecting public lands, and extending healthcare to working families. (*Id.*)

### Creating a Successful Initiative Model: Reclaim Idaho's "Medicaid for Idaho" Initiative in 2018

Reclaim Idaho was formed in 2017 by a few Idaho citizens, including Luke Mayville, committed to advocating for Medicaid expansion. (Mayville Decl. ¶¶ 2, 5-6.) That summer, they drove a bright green 1977 Dodge camper, emblazoned with "Medicaid for Idaho," around the state. *See* Reclaim Idaho, *Our Story*, at <https://tinyurl.com/y8zkv7eu>. (accessed 6/5/2020). They made in-person appeals to local voters and communities. (*Id.*) The group grew into a grassroots movement with over 2,000 volunteers in over 25 counties. (*Id.*) Ordinary Idahoans, from every part of the state, came together to accomplish through the citizen initiative process what the Idaho legislature had failed to do. (*Id.*)

Reclaim Idaho was successful getting the initiative on the ballot. Idaho volunteers easily surpassed the legal requirements for geographic distribution. (Mayville Decl. ¶ 7.) Well over the threshold of 56,000 signatures of registered voters were gathered by the April 30, 2018 deadline. (*Id.*) In November of 2018, Idaho citizens voted overwhelmingly – with 61% in favor – to pass the initiative into law. *See* Ballotpedia, *Idaho Proposition 2, Medicaid Expansion Initiative (2018)*, at <https://tinyurl.com/yxsf2bs>. (accessed 6/5/2020).

Through that process, Reclaim Idaho developed a highly successful and labor-intensive organizing model. (Mayville Decl. ¶ 8.) In the early stages of the effort, members of a statewide team visited over 20 counties and worked to recruit volunteers and organize those volunteers into

county-based teams. (*Id.* at ¶ 9.) While that model did not yield large numbers of signatures in the early months, it did build strong, well-trained teams capable of scaling up the operation exponentially during the final few months before the deadline. (*Id.*) That is exactly what happened; between scaling up of the teams and the motivation of an approaching deadline, in the last month Reclaim Idaho doubled the number of signatures. (*Id.* at ¶¶ 9-11.)

Reclaim Idaho intended to apply its successful organizing model to a new initiative for the 2020 ballot that would increase school funding for Idaho schools. (Mayville Decl. ¶ 5.) But its attention was temporarily diverted by acts in the Idaho Legislature. (Declaration of Rebecca Schroeder, ¶ 3.) In early 2019, bills were introduced that would dramatically restrict the process for qualifying a citizen’s initiative. (*Id.*) Reclaim Idaho focused its work in that session on defeating the effort. Though bills advanced to Governor Little, he vetoed them. (*Id.*)

Replicating the Model:  
The “Invest in Idaho” Initiative for 2020

By the fall of 2019, Reclaim Idaho had started its new initiative drive. (Mayville Decl. ¶ 4.) It filed an “Invest in Idaho” K-12 funding initiative with the Secretary of State. (*Id.*) If put on the ballot and passed, this initiative would invest \$170 million annually in education. (*Id.*) Reclaim Idaho was operating on the model of organizing that it had successfully used during the Medicaid expansion drive. (*Id.* at ¶¶ 5, 14.)

In September of 2019, the organization began its first volunteer organizing tour across the state for the “Invest in Idaho” initiative. (Schroeder Decl., ¶ 4.) Between then and early November, it had held 18 separate meetings at communities large and small across the state. (*Id.* at ¶ 5.) These events were often covered by local media. They laid the groundwork for the signature drive. (*Id.* at ¶ 6.)

The first big signature gathering event was in early November of 2019. (Schroeder Decl. ¶ 9.) That process helped Reclaim Idaho identify more supporters who often converted to volunteering. (*Id.* at ¶ 10.) The more signatures they gathered, the more their local volunteer teams grew. (*Id.* at ¶ 11.) The deadline to gather qualified signatures from 6% of registered voters in at least 18 legislative districts was April 30, 2020. Based on the enthusiasm generated to that point and based on their successful experience with the previous initiative, staff believed that they had more than enough time to get it done. (*Id.* at ¶ 8.)

From early November through the end of the year, Reclaim Idaho continued to gather signatures, and the momentum continued to build. By early January of this year, it had built relationships and had maintained consistent communications with established local teams. (Schroeder Decl. ¶¶ 13-14.) Staff had conducted countless phone calls, Zoom calls, and emails in between their in-person visit to support volunteer efforts and help set local goals for signature collection. (*Id.*)

Like the group's Medicaid initiative experience, their collection of signatures started slow but grew exponentially as the deadline approached. (Mayville Decl. ¶ 15.) By February 15, Reclaim Idaho had about 15,000 signatures. (*Id.*) By March 12, it had doubled that number to 30,000. (*Id.* at ¶ 17.)

They had also progressed from zero legislative districts qualified to five districts qualified and seven additional districts within a few hundred signatures of qualification. (Mayville Decl. ¶ 17.) They were well ahead of their collection effort in the Medicaid expansion initiative drive at the same point. (*Id.* at ¶ 18.)

Reclaim Idaho was moving full steam ahead. Staff were confident that they would gather the 55,057 signatures that they needed, with the proper geographical distribution from over 18 districts, by April 30.

Then the world suddenly shut down.

The COVID-19 Pandemic, Associated Stay-at-Home Orders,  
and the Severe Burden on Reclaim Idaho

On March 13, President Trump declared that the country was in a state of emergency because of the rapidly spreading coronavirus. *See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, at <https://tinyurl.com/yx3z9jip>. (accessed 6/5/2020). The virus was much more contagious than the common flu and much more deadly. States and localities quickly shut down. Idaho reported its first case on March 13. (Mayville Decl. ¶ 19.) That same day, Governor Little declared a state of emergency for Idaho. *See Press Release: Governor signs proactive emergency declaration to further prevent coronavirus spread in Idaho*, at <https://tinyurl.com/y8j75vrv>, (accessed 6/5/2020).

Also, on that same day, Reclaim Idaho emailed all supporters with guidelines for continuing to gather signatures. (Mayville Decl. ¶ 20.) These included, in part, avoiding shaking hands, using sanitizer, wiping down clipboards before and after a signature gathering shift, allowing signers to keep disposable pens. (*Id.*)

That week, the Centers for Disease Control issued guidelines for individuals and community organizations operating under conditions of “minimal to moderate” spread of COVID-19. (Mayville Decl. ¶ 22.) The CDC recommended reducing in-person activities, especially for organizations with individuals at increased risk of severe illness, cancelling large gatherings of 250 or more people, implementation of personal protection measures such as

staying home when sick, respiratory etiquette, and frequent handwashing and cleaning of touched surfaces. (*Id.*) When around others, it recommended maintaining six feet of separation. (*Id.*)

Leaders of Reclaim Idaho started to receive emails from volunteers expressing concern with continuing. (Mayville Decl. ¶ 24.) In an illustrative example, on March 13 retired Court of Appeals Judge Karen Lansing, an especially dedicated and active volunteer, indicated that “[a]s important as the initiative is, I reluctantly conclude that it is outweighed by my responsibility to avoid possibly putting others at risk.” (*Id.*)

Public spaces for signature gathering quickly closed. The Meridian Public Library shut down on March 14. (Mayville Decl. ¶ 26.) The Boise Public Library followed suit on March 16. (*Id.*) The next day, the DMV closed. (*Id.*) Libraries and DMVs had proven to be the most promising public locations for volunteers to collect signatures. (*Id.*)

By then, it was clear that the virus posed a particularly dangerous risk to people over the age of 60. *See* Centers for Disease Control, *Coronavirus Disease 2019 (COVID-19), Older Adults*, at <https://tinyurl.com/r9fsgvx>. (accessed 6/5/2020). Reclaim Idaho’s most active volunteers are retirees in that age group. (Mayville Decl. ¶ 25.)

Reclaim Idaho explored all alternative avenues between March 13 and March 18 that would allow it to continue collecting signatures. (Mayville Decl. ¶¶ 23, 28.) But it struggled over those five days to adapt to rapidly changing circumstances. (*Id.* at ¶ 28.) It considered “drive through” signature collection stations, but that conflicted with the six-foot distance recommendation and simply posed too much risk. (*Id.*)

On March 16, Executive Director Rebecca Schroeder emailed Andrew Mitzel, a member of Governor Little’s staff, to inquire whether Reclaim Idaho could gather signatures



electronically. (Schroeder Decl. ¶ 32.) Mitzel twice referred her to the Secretary of State's Office, which responded that "there is no statute allowing electronic signatures for petitions in Idaho Statutes 34, Title 18." (Mayville Decl. ¶ 33.) Schroeder then turned back to Mitzel, who informed her that the Governor would not be taking any executive action to allow for electronic signatures. (Schroeder Decl. ¶ 37.) Reclaim Idaho also drafted a bill to temporarily modify the signature collection requirements considering the pandemic, and approached leadership in the Legislature, who expressed no interest in it. (Mayville Decl. ¶ 35.)

By March 18, Reclaim Idaho had exhausted all possibilities for moving forward under the unprecedented conditions. (Mayville Decl. ¶ 36; Schroeder Decl. ¶ 42.)

On March 25, Governor Little issued another emergency proclamation. *See Press Release: Governor Little issues statewide stay-home order, signs extreme emergency declaration*, at <https://tinyurl.com/u9dyjwm>. (accessed 6/5/2020). He also issued a stay-at-home order, which required all non-essential workers throughout the state to remain in their homes. *Id.* It also closed all non-essential businesses. *Id.* A violation of this order was a misdemeanor. *See Order to self-isolate for the State of Idaho*, at <https://tinyurl.com/ybey6n9x>. (accessed 6/5/2020). There were no exceptions for initiative gathering or other First Amendment activities. *Id.* Governor Little later extended the order through April 30, which would have been the deadline for Reclaim Idaho to have turned over all signatures to county clerks for verification. *See Press Release: Governor Little charts path to prosperity, extends statewide stay-home order to April 30 with exceptions*, at <https://tinyurl.com/y7uhfjsc>. (accessed 6/5/2020).

The extreme conditions caused by the coronavirus pandemic, coupled with the Governor's stay-at-home orders, prevented Reclaim Idaho from complying with the requirements for in-person signature gathering under Idaho law.

Plaintiffs now seek a preliminary injunction from this Court immediately reopening the time for Reclaim Idaho to gather signatures by the 48 days that it lost (from the state of emergency declarations on March 13 to the April 30 deadline). They further seek an order permitting Reclaim Idaho to collect signatures electronically. Reclaim stands ready to provide the Secretary of State with the 10,593 signatures that the county clerks had already verified. (Mayville Decl. ¶ 43.) It has another 20,000 that it can immediately provide to the county clerks. (Id. at ¶ 41.) And it has contracted with DocuSign, a national well established and well-known signature verification firm, which also stands ready to provide its service immediately.

### **LEGAL STANDARD**

Plaintiffs seeking a preliminary injunction must establish that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Under the Ninth Circuit's "sliding scale" approach, "the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another." *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017) (quoting *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012)).

### **DISCUSSION**

#### **A. Plaintiffs are likely to succeed on the merits**

The Governor's emergency orders shutting down all non-essential contact and travel, and his and the Secretary of State's refusal to grant any exceptions to Reclaim Idaho for signature gathering, violated Plaintiffs' fundamental First Amendment right to core political speech. This is a challenge to those orders, in combination with the requirement of in-person signature

gathering and the April 30 deadline in Idaho Code Idaho Code § 34-1802 and § 34-1807, as applied in these unique circumstances.

“[G]overnment must play an active role in structuring elections,” but any election system “inevitably affects—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). Courts apply a balancing test “to resolve the tension between a plaintiff’s First Amendment rights and the state’s interest in preserving the fairness and integrity of the voting process.” *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1014 (9th Cir. 2002). The more severe the burden, the more compelling the state’s interest must be. *Ariz. Green Party v. Reagan*, 838 F.3d 983, 988 (9th Cir. 2016) (quoting *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 729–30 (9th Cir. 2015)). Election regulations that impose a “severe burden” on a plaintiff’s First Amendment rights trigger strict scrutiny. *Prete v. Bradbury*, 438 F.3d 949, 961 (9th Cir. 2006).

There are two ways that restrictions on the initiative process can severely burden a plaintiff’s First Amendment rights. First, they can restrict one-on-one communication between petition circulators and voters. *Angle v. Miller*, 673 F.3d 1122, 1132 (9th Cir. 2012) (citing *Myer v. Grant*, 486 U.S. 414, 422-23, (1988)). Second, they can make it less likely that proponents will be able to garner the signatures necessary to place the initiative on the ballot, which limits “their ability to make the matter the focus of statewide discussion.” *Id.* That is because ballot restrictions may “reduc[e] the total quantum of speech on a public issue.” *Id.*

There can be no doubt that Plaintiffs ability to engage in “one-on-one communication” with voters was restricted from mid-March through April of 2020. But more to the point, the State’s orders in this case severely burdened their ability to get this initiative on the ballot.

The State should not be heard to argue that it was the pandemic, and not state action under color of law, that impacted these rights.

The Governor, through his emergency declarations and stay-at-home orders, made compliance with the signature-gathering and deadline requirements in the statute impossible. His orders did not carve out any exceptions for constitutionally expressive activity. *Compare Thompson v. Dewine*, Slip Op. No. 20-3526 (6th Cir. May. 26, 2020) (granting a stay of a district court’s injunctive relief for initiative proponents, in part, because Ohio had exempted First Amendment activity from its stay-at-home order). Violations of the Governor’s orders were subject to misdemeanor penalties.

Reclaim Idaho also went directly to the Governor and the Secretary of State asking for an exception to continue signature gathering by other means. On March 16, Executive Director Rebecca Schroeder emailed a member of the Governor’s staff. In that email, she noted that “Idahoans are no longer able to exercise their constitutional right to bring forward a ballot initiative.” (Schroeder Decl. ¶ 32.) She was referred to the Secretary of State’s office, where she asked whether Reclaim Idaho could gather signatures electronically. That office’s response was a resounding “no.” (*Id.*) She returned to the Governor’s office, who shut her down with a message that the Governor had “no intention of taking executive action.” (*Id.* at ¶ 37.) These are clear examples of acts taken by state officers “exercising their authority or appearing to exercise their authority.” *See Fair Maps Nevada v. Cegavske*, Case No. 3:20-cv-00271-MMD-WGC, 2020 WL 2798018, at \*8 (D. Nev. May 29, 2020) (finding, in a similar initiative case affected by COVID-19, for this to be “under color of law” for purposes of a § 1983 claim).

\* \* \*

This Court should next look to *Angle v. Miller* for the proper test to determine the level of scrutiny to be applied. There, the Ninth Circuit held that for a burden on an initiative proponent's ability to gather the signatures to be severe, and thus to be subject to strict scrutiny, the proponent must have been "reasonably diligent" and that the restrictions must "significantly inhibit the initiative's proponents' ability to place initiatives on the ballot." *Angle*, 673 F.3d at 1133.

Both parts of the test are met here. Reclaim Idaho has been extraordinary diligent. It followed and built on its successful initiative drive from 2018. It started with 18 open meetings for volunteers and others across the state in September through early November of 2019. (Schroeder Decl. ¶ 5.) The meetings and signature drives added yet more volunteers in all parts of the state. From experience, staff knew that momentum built on momentum. (*Id.*) They knew that the project would scale up rapidly, which is exactly what happened. Reclaim Idaho continued to collect signatures through the holidays. The number of signatures doubled from February to March 2020. By the time the drive was shut down, it had about 30,000 combined verified and raw signatures, over half of what was needed. Based on their experience in the earlier initiative process, Reclaim's leaders knew that most signatures come in the last month or so. (Mayville Decl. ¶¶ 12-13.) They were ahead of the number that they had for the Medicaid expansion drive at the same point in 2018. (*Id.* at ¶18.) They had raised about \$115,000 in donations for the campaign. (Declaration of Deborah Silver, ¶ 20.)

A snapshot of the work on the ground bears out this extraordinary effort. Field Director Ashley Prince notes "that there were always a portion of our volunteers who collected signatures at a relatively high and frequent rate." (Prince Decl. ¶ 3.) By March 10, they had "grown to 546 volunteers statewide with 150 being highly active, each with an average of 50 signatures per

week.” (*Id.* at ¶ 5.) In Bonner County, for example, volunteer leader Linda Larson set a goal of 100 signatures a week and easily exceeded it most weeks. (Declaration of Linda Larson, ¶ 7.) She and her team helped qualify District 1 and were helping to get more signatures. (*Id.* at ¶ 2.) Volunteer Deborah Silver was “door-knocking five-seven days a week.” (Silver Decl., ¶ 4.) She would go “until total darkness ... [and] adjusted the start time as the sun set later and later.” (*Id.* at ¶ 4.) She and her companion volunteers had a high success rate over the winter months, when they “went in snow, wind, and cold.” (*Id.* at ¶ 14.)

When the pandemic hit, leadership considered all alternatives and could think of nothing that would work. Ms. Schroeder went to the Governor and the Secretary of State requesting an exception that would allow the initiative drive to continue, a request that was denied. Reclaim even tried to introduce legislation. All to no avail.

Absent the pandemic and shut-down orders, therefore, Reclaim Idaho would have reached the threshold that it needed by the deadline of April 30. It was more than “reasonably diligent” in moving toward that goal.

The restrictions also significantly inhibited Reclaim Idaho’s ability to get its initiative on the ballot. Reclaim Idaho could not comply with the in-person signature gathering requirement from mid-March to the end of April, a critical time. They were given no exception. The deadline for circulating and gathering petitions had expired before the Governor’s phased reopening plan started in May. Put simply, the Governor’s orders, and his and the Secretary of State’s strict interpretation of the challenged statutes allowing no exceptions, means that without relief the Invest in Idaho initiative will not be on the ballot this fall. This important issue, backed by thousands of voters, will not become “the focus of statewide discussion” in this election season, thereby “reduc[ing] the total quantum of speech on a public issue.” *Meyer*, 486 U.S. at 423.

For these reasons, the restrictions in this case severely burdened Reclaim Idaho's First Amendment rights. Strict scrutiny applies.

Reclaim Idaho does not dispute that the State has an important interest supporting its regulatory scheme to prevent fraud and to conduct free and fair elections. But the State has not narrowly tailored the application of that scheme on the facts presented here. Yet a narrowly tailored solution exists. Reclaim Idaho requested to continue circulating the petition and collecting signatures electronically. That is still its requested relief, with an extension of the deadline to complete the process.

By the time the campaign shut down, it had already collected over half of the signatures that it needs, combing those already verified and raw signatures yet to be verified. It just needs a final push with electronic signature collection.

This is not a novel idea. Electronic signatures offer a secure and verifiable manner of signing documents. Financial institutions all over the world conduct business with billions of dollars at stake on the strength of electronic signatures. Mortgages are signed electronically. Taxpayers sign tax returns electronically. This Court accepts electronic signatures. The state courts in Idaho rely on electronic signatures. For 20 years, Idaho has had on its books the Uniform Electronic Transactions Act. Idaho Code § 28-50-101, *et seq.* That Act allows for electronic signatures and electronic transactions to be legally binding. In the second decade of the 21st century, this is a reliable and commonplace means of signing legally binding documents.

Nor would permitting Reclaim Idaho to gather signatures electronically as a one-time, temporary fix in these unprecedented times add significantly to the State's burden. The State would not need to come up with its own plan. It would not need to seek out contracts for service providers. Reclaim Idaho has already done that.

It has developed a detailed plan with DocuSign, a leading national firm for electronic signing of legal documents. (Mayville Decl. ¶ 46.) DocuSign is known for its reliability and security, and the plan has been developed specifically to comply with Idaho’s requirements for state initiative petitions, with additional safeguards to ensure that signatures are those of the persons whom they purport to be. (*Id.* at ¶ 45.) More than 775,000 documents are signed using DocuSign each day, yet only in 2-3 instances have DocuSign documents been challenged in court. (*Id.*) The details of the Idaho plan are set out in the declaration of Luke Mayville, with an illustrative example, attached as an exhibit, of what the dedicated website, security, verification, and signature collection would look like. (*Id.* at ¶¶ 45-46.) It is sufficient to note here that the plan contains state-of-the-art protections to ensure accuracy and verification. This proposed solution differs materially from an analogous case from Nevada, where the plaintiffs asked *the State* to “set up a system for collecting and verifying” electronic signatures. *See Fair Maps Nevada*, 2020 WL 2798018 at \*17 (concluding that the deadline for signature-gathering should be extended but declining to adopt an electronic signature requirement because “rolling out and testing a new electronic system for signature collection and verification ... will take some time.”)

After it collected the electronic signatures, Reclaim Idaho would turn that record over to the county clerks, as required by Idaho Code §§ 34-1802, 1807. There would be no need for the clerks to compare a handwritten signature, as the signatures would already be verified as authentic. But the other clerk duties – cross-checking for the accuracy of the voter’s address and assigning the correct legislative district – would remain. The Secretary of State’s role would also remain the same; counting the total number of verified signatures and ensuring that the petitioner had satisfied the geographic distribution requirement.



Reclaim Idaho has set forth a strong First Amendment claim. Its proposed remedy is narrowly tailored and would not impose any new burdens on the State. It respectfully contends that it is likely to succeed on the merits of this claim.

B. Plaintiffs will be irreparably harmed without preliminary injunctive relief

As it currently stands, there is no chance that the Invest in Idaho initiative will be on the ballot. The current deadline has expired and Reclaim Idaho does not yet have the necessary number of signatures. Plaintiffs have been, and will continue to be, deprived of their core right to speech on a matter of great public concern.

The “deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation omitted). That Reclaim Idaho and Luke Mayville will suffer irreparable harm absent relief “is demonstrated by a long line of precedent establishing that the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Cuviello v. City of Vallejo*, 944 F.3d 816, 833 (9th Cir. 2019) (citation omitted); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”) This factor is in Plaintiffs’ favor.

C. The balance of the equities

Here, the Court must identify the possible harm caused by the preliminary injunction against the possible harm by not issuing it. *University of Hawaii Prof. Asm. v. Cayetano*, 183 F.3d 1096, 1108 (9th Cir. 1999).

If the Court does not grant preliminary relief extending the deadline and permitting the collection of electronic signatures, Plaintiffs will suffer an irreparable injury. If relief is granted, though, the State would not be significantly harmed. It can’t argue that it would have a heavy

burden of setting up a system to capture electronic signatures in a short period; Reclaim Idaho has already done that work. Nor could it reasonably argue that Reclaim Idaho's proposed solution would increase opportunities for fraud. To the contrary, the verification of electronic signatures by DocuSign will decrease the potential that a signature is fraudulent. It is a superior method over fly-specking signatures and applying a vague "you-know-it-when-you-see-it" test.

If the deadline is extended to collect signatures, it is true that the State would have a compressed timeline to review the petition and the signatures. But not by much. Reclaim Idaho is asking that his matter be expedited, and if this Court were to grant its requested relief after a reasonable period for briefing and argument, the State would still have four months or more to complete its tasks. That may not be ideal, but it is sufficient.

In any case, under the Ninth Circuit's sliding scale, the likelihood of success on the merits of the constitutional claim significantly outweighs any weaker showing, to the extent that there is one, on this element. *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017).

D. The public interest weighs in favor granting relief

It is in the public interest to allow Idaho citizens an opportunity to engage in a robust debate on a matter of public importance. More to the point, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002.

### CONCLUSION

The right of Idaho citizens to initiate legislation is an historic and fundamental one. The pandemic created an unprecedented crisis, but orders and decisions made by Idaho state officials violated Reclaim Idaho's First Amendment rights. To remedy that violation, this Court should order the deadline for gathering signatures to be extended and it should allow Reclaim Idaho to

circulate the petition and gather signatures, safely and accurately, by electronic means. The Court should grant the motion for a preliminary injunction.

RESPECTFULLY SUBMITTED on this 6th day of June 2020.

/s/Craig H. Durham  
Deborah A. Ferguson

Attorneys for Plaintiffs