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

TRACY TUCKER, JASON SHARP, NAOMI MORLEY, and BILLY CHAPPELL, on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

vs.

STATE OF IDAHO; and DARRELL BOLZ, ANGELA BARKELL, ERIC LEHTINEN, REP. DAVID CANNON, HON. LINDA COPPLE TROUT, DAN DINNING, SEN. MELISSA WINTROW, and BEN ANDERSEN, in their official capacities as members of the Idaho State Public Defense Commission,

Defendants-Respondents.

Supreme Court Docket No. 51631-2024

District Court No. CV-OC-2015-10240

Appeal from the District Court of the Fourth Judicial District

The Honorable Samuel A. Hoagland, District Judge, Presiding

APPELLANTS' REPLY BRIEF

Richard A. Eppink, Emily Croston residing at Boise, Idaho; Robert B. Duncan, Joe Cavanaugh, Jimmy McEntee, Devin Urness, Alessandra Carozza, residing at Washington, D.C.; Elizabeth C. Lockwood, residing at Washington, D.C.; Emma Andersson, residing at New York, New York; Ashika Verriest, residing at Washington, D.C. for Plaintiffs-Appellants.

Joseph M. Aldridge, Slade D. Sokol residing at Boise, Idaho; for Defendants-Appellees the State of Idaho, Darrell Bolz, Angela Barkell, Eric Lehtinen, Rep. David Cannon, Hon. Linda Copple Trout, Dan Dinning, Sen. Melissa Wintrow, and Ben Andersen.

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INTRODUCTION

The State has a constitutional duty to ensure that indigent defendants receive adequate representation, and has been on notice for over a decade that it was systemically failing to meet this obligation. This has had real consequences for Idahoans: Plaintiffs' exhaustive evidence confirms that systemic deficiencies have caused countless members of Plaintiffs' certified class to suffer actual and constructive denials of counsel. This is also the harm that Plaintiffs' suit has always sought to remedy. The State, despite its various attempts to dismiss this case on justiciability grounds, has never carried its burden to show that Plaintiffs' injuries have dissipated or are unlikely to recur. This failure, coupled with Plaintiffs' clear need for additional relief, confirms that this case is not prudentially moot. None of the scant federal cases that the State relies on require a different result. And this systemic case of critical public interest is hardly an appropriate case to apply the prudential mootness doctrine for the first time in Idaho.

Nor do any of the State's remaining arguments provide an alternative basis to affirm the court's decision. The State is wrong that an abuse of discretion standard applies to the District Court's dismissal, and also wrong that it would create a different result, given the court's misapplication of the law, mischaracterization of the facts, and total disregard of record evidence. Ripeness, a doctrine that addresses whether a case is brought too early, obviously does not offer an alternative (or repackaged) avenue for dismissing Plaintiff's case on justiciability grounds, particularly because this Court already found Plaintiffs' claims ripe seven years ago. And the State's attempt to justify dismissal on lack of standing reflects an inaccurate understanding of both the law and the facts, and yet another attempt to revisit this Court's prior decisions in this case.

And because Plaintiffs' claims do not present any justiciability issues, this Court can and should reach the merits of those claims now. The Court's partial denial of Plaintiffs' summary judgment motion is reviewable, and should be reversed. Plaintiffs submitted extensive statistical

analyses—drawn from the State's data—that confirmed the many systemic deficiencies that Plaintiffs have alleged for years. And because the situation is now getting worse, not better—as laid out in more detailed in Plaintiffs' Motion to Modify Injunction and for an Order to Show Cause Why Further Relief on Decree Should Not Be Granted, also filed today—Plaintiffs urge the Court to take immediate action in this appeal.

ARGUMENT

I. This Case Is Not Moot and Declaratory and Injunctive Relief is Now More Urgent Than Ever.

A. The State Has Not Carried Their Burden.

This litigation has been pending for nearly 10 years, and Plaintiffs have amassed a mountain of data demonstrating widespread and persistent deficiencies in the delivery of public defense. *See* Pls.' Opening Br. at 6-10 (cataloguing the deficiencies). The recent administrative rearrangement of the system has not magically solved these problems, eliminated any of the long-persistent deficiencies, or left Idahoans any less likely to suffer actual or constructive denials of counsel. *See Tucker v. State*, 168 Idaho 570, 574-85, 484 P.3d 851, 855-66 (2021) (hereinafter "*Tucker II*").

To be clear, Plaintiffs have never sought rearrangement of the system simply for the sake of it—they have always sought widespread reform of the State's delivery of public defense to ensure that defendants receive constitutionally adequate representation. None of the State's restructuring to date has provided those assurances. For example, public defenders have long been overstretched by excessive caseloads and forced to go without basic defense resources, making it impossible to provide full and zealous representation. And the recent rearrangements to Idaho's system have only exacerbated these issues: The new system has less money, and though the State quibbles with the numbers, the SPD himself has now confessed to this Court that the SPD does

not even have enough money for basic expenses like court transcripts. *State v. Blazek*, No. 51842, 2024 WL 4982927, at *8 (Idaho Dec. 5, 2024) (noting the admission that "the SPD currently does not have an adequate budget to cover those expenses"). The State Public Defender Act (SPDA) also does not mandate professional standards, procedures for oversight and compliance, or reporting systems—all crucial mechanisms for ensuring consistent, adequate representation. Instead, the SPDA simply vests the Governor-appointed State Public Defender (SPD) with discretion to implement these things, leaving a core component of the system's structural deficiencies problem a complete question mark.

Given the glaring shortcomings of the SPDA, the need for court intervention to protect the constitutional rights of Idaho's indigent defendants remains urgent. Plaintiffs' claims are not moot, and the State has never carried its heavy burden to show that they are. Even if implementation of an SPDA was a step in the right direction—which already is far from the case, *see generally* Mot. to Modify Injunction and for an Order to Show Cause Why Further Relief on Decree Should Not Be Granted (Dec. 23, 2024)—that still would not be enough to satisfy the high bar for mootness.

The State cites a grand total of four cases where federal courts have applied prudential mootness in its 20-page argument on this topic, largely ignoring the ample case law cited by Plaintiffs which shows the narrow and distinguishable circumstances where courts have invoked the doctrine. *Compare* Defs.' Br. at 11-30 *with* Pls.' Opening Br. at 22-25. Nevertheless, as even the State's small set of cases makes clear, prudential mootness is reserved for cases where (i) the illegal conduct has ceased, or (ii) a court cannot offer any additional relief. Neither is true here.

The illegal conduct has not ceased. The first category of cases the State relies on includes instances where it is abundantly clear that the relevant harm has been eradicated. *See United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953) (explaining that, after "*discontinuance of the illegal*

conduct," a case may be moot if "defendant can demonstrate that there is no reasonable expectation that the wrong will be repeated" (emphasis added)); *see also United States v. Oregon State Med. Soc'y*, 343 U.S. 326, 333 (1952) ("When defendants are shown to have settled into a continuing practice . . . courts will not assume that it has been abandoned without clear proof."). In *W.T. Grant*, for example, the Court had no trouble finding that the illegal conduct had stopped. 345 U.S. at 633. The problem in that case was a particular individual serving on certain company boards. Because he then resigned from those boards, the illegal conduct that formed the basis of the claims had clearly ended.

Here, however, the illegal conduct that is the focus of Plaintiffs' claims—the State's failure to fulfill its obligations to provide constitutional public defense—did not magically dissipate upon the SPDA's passage. Rather, the harm Plaintiffs have alleged is rooted in multiple issues pervading Idaho's delivery of public defense services, ranging from funding, staffing, and excessive workloads, to oversight, compliance, and reporting. A restructuring of the system falls far short of demonstrating that these long-standing issues have vanished—especially when the State's restructuring reforms have repeatedly failed in the past. The State makes no serious effort to establish that these long-standing problems have been corrected: the most it does is repeat the provisions of the SPDA and the SPD declaration in two short paragraphs. *Compare* Defs.' Br. at 18, 25 *with* Pls.' Opening Br. at 10-16. Clearly, this is not a case where the offending conduct is a discrete action or regulation that has obviously ceased, thereby mooting the case. *Cf. W.T. Grant*, 345 U.S. at 630, 633; *see also Winzler v. Toyota Motor Sales U.S.A., Inc.*, 681 F.3d 1208, 1210 (10th Cir. 2012) (explaining prudential mootness may apply where a plaintiff seeks injunction against enforcement of a regulation that the agency later offers to withdraw on its own). For all of

these reasons, the Court's mootness inquiry can and should stop here.[1]

It makes no difference that Plaintiffs claims against the State were brought at a time when the State's public defense services (and its attendant shortcomings) were delivered under the counties' and later also the Public Defense Commission's (PDC) oversight. As Plaintiffs have stated again and again, their claims are targeted at the State's constitutional failings—not the implementation of a particular system for delivering public defense. *See, e.g.*, Pls.' Opening Br. at 1-2, 18; R., p. 3875-78. The relevant question for this Court is therefore not whether the State has altered the system in some way, it is whether the harm Plaintiffs allege has ceased. *See Tucker II*, 168 Idaho at 574-85, 484 P.3d at 855-66 (adopting a standard based on likelihood of constitutional harm, not legislative amendment). In other words, the harm here was never simply the county-based system on its face, it was the State's widespread failure to provide constitutional public defense. The court's decision in *Wilbur* is instructive. The government defendants there similarly argued that a systemic public defense challenge should be dismissed on mootness grounds because they had "taken significant steps to change their system of public defense, including hiring additional public defenders and paying them more for their services." *Wilbur v. City of Mount Vernon*, No. C11-1100RSL, 2013 WL 1774624, at *1 (W.D. Wash. Apr. 25, 2013). The court disagreed, and denied their motion, explaining that the question was not whether the system had changed, but instead "whether the changes defendants made satisfy the constitutional requirements or whether indigent defendants continue to suffer the effects of intentional funding and monitoring choices attributable to defendants." *Id.*

[1] The State argues that it has met its burden to show that "there is no reasonable expectation that the wrong will be repeated" or "that future harm is *unlikely*." Defs.' Br. at 24-25. This argument puts the cart before the horse: this test applies only if the "conduct causing injury has been discontinued," and here, the State has made no such showing. *O'Boskey v. First Fed. Sav. & Loan Ass'n of Boise*, 112 Idaho 1002, 1007, 739 P.2d 301, 306 (1987).

The State has provided no proof that *that* harm has ended, much less with the degree of confidence required to moot a case. The State cannot satisfy the high burden to demonstrate mootness by hypothesizing (implausibly, based on the simple text of the SPDA and a speculative three-page declaration) that a system—which in many ways is the functional equivalent or even a step back from the prior system—will "likely" eradicate the long-standing issues Plaintiffs have demonstrated with extensive evidence.[2] *See* Defs.' Br. at 25. And this is no longer hypothetical: the new system has gone into effect, and it is already a disaster.

Plaintiffs still need relief. Nor is this like the other extremely rare cases cited by the State, where prudential mootness is appropriate because a court cannot offer any relief or add any value. The legal test for this branch of prudential mootness doctrine is whether "circumstances have changed since the beginning of litigation that forestall *any* occasion for meaningful relief." *Deutsche Bank Nat'l Trust Co. v. FDIC*, 744 F.3d 1124, 1135 (9th Cir. 2014) (emphasis added) (citation omitted).[3] The short list of cases where this version of the doctrine has been applied demonstrates how narrowly this standard is construed. In *Deutsche Bank National Trust Co.* (the *only case* in which the Ninth Circuit has ever applied prudential mootness, *see People Not Politicians Or. v. Clarno*, 826 F. App'x 581, 586 (9th Cir. 2020) (Nelson, J., dissenting)), the Ninth Circuit found a case prudentially moot where "no assets remained to satisfy the alleged breach of contract claims." *Deutsche Bank Nat. Trust Co.*, 744 F.3d at 1135. In other words, it was literally

[2] The State, as it must, agrees it has a high burden. *See, e.g.*, Defs.' Br. at 11 (describing the State's burden to show "no reasonable expectation that the alleged wrong at issue will be repeated"); *id.* at 12 (agreeing prudential mootness places "a significant burden on the State").

[3] *See also Oregon Nat. Res. Council v. U.S. Bureau of Land Mgmt.*, 470 F.3d 818, 820 (9th Cir. 2006) ("In deciding a mootness issue, the question is not whether the precise relief sought at the time the application for an injunction was filed is still available. The question is whether there can be *any* effective relief.") (quoting *Nw. Env't Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir.1988) (alterations omitted)).

impossible for the court to provide any material relief. In *Winzler*, a government agency had ordered the *exact* relief that the plaintiff was seeking from the court (notice, recall, and repair of a vehicle defect), and therefore there was nothing left for the court to do. 681 F.3d at 1211. Similarly, in *Penthouse Intern., Ltd. v. Meese*, 939 F.2d 1011 (D.C. Cir. 1991), a court declined to enter a declaratory judgment where the plaintiff had already obtained the precise relief it sought: withdrawal of an objectionable letter. *Id.* at 1018.[4]

Here, Plaintiffs seek relief fundamentally different than the voluntary actions that the State has undertaken. At bottom, Plaintiffs seek the cessation of widespread violations of the constitutional right to counsel. They have never sought a particular structure for the State's delivery of public defense services, but rather seek court intervention to ensure indigent defendants in Idaho are actually getting the constitutional representation they are entitled to receive. In particular, Plaintiffs have asked the court to appoint a monitor to require ongoing reporting on caseloads, funding, staffing, and other critical metrics that correspond to the ability of public defenders to provide adequate representation, and to otherwise ensure compliance with a court-approved plan to remedy the State's proven deficiencies. This is clearly not a situation where the government has already granted the exact relief Plaintiffs are seeking.

And even if the government had guaranteed the precise relief that a plaintiff seeks (which again, here, it has not), caselaw dictates that a court take into account "the reliability of [a] party's past promises" in determining whether those guarantees are sufficient to moot a case. *Winzler*, 681 F.3d at 1211. Here, that factor strongly counsels against finding the case moot. After the extreme

[4] The State also cites *A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324 (1961), but that case is far afield of this one. *See* Defs.' Br. at 23. There, the Court found the underlying dispute constitutionally moot, because the lawsuit challenged an order which had been withdrawn. The issue for the Court was the availability of declaratory relief after the dispute has become moot—a far different question than that at issue here, where the dispute is not constitutionally moot.

inadequacies in the public defense system were first documented over a decade ago, the State has now twice restructured the system, claiming each time—as they do now—that the changes would fix all the problems. And yet, Plaintiffs' undisputed evidence shows that the problems persisted and, in some instances, even got worse. The State's past remedial promises have consistently fallen short.[5]

The State relies heavily on *Winzler* on this score, *see* Defs.' Br. at 21-23, but that case highlights how inappropriate prudential mootness is here. In *Winzler*, the Tenth Circuit held that the non-party federal government had "committed to ensure Ms. Winzler precisely the relief she seeks," 681 F.3d at 1211, which, in that case, was a narrow, specific remedy: notice, recall, and repair of a defective vehicle. The problem was simple, the fix was simple, and the court could clearly see that the appropriate fix had already been delivered. This case, in contrast, is orders of magnitude more complex, and the relief promised by the State (not a third-party, as in *Winzler*) is inadequate in numerous dimensions. Even if it were a step in the right direction, it is not "*complete* relief," and not "precisely the relief [the Plaintiffs] seek[]." *See id.* (emphasis added). As *Winzler* makes very clear, if there is a chance that a plaintiff will be left without a complete remedy, a court is to "continue with the case even in the face of a simultaneous remedial commitment from another branch." *Id.* at 1212; *see also Western Watersheds Project v. U.S. Fish & Wildlife Serv.*, No. 4:10-cv-229-BLW, 2012 WL 369168, at *10 (D. Idaho Feb. 2, 2012) (declining to apply doctrine of prudential mootness because plaintiffs were seeking "quicker relief" than the relief defendant

[5] For similar reasons, the District Court was wrong to place undue weight on the State's "adoption of the state-based system" as an attempt to "satisfy its constitutional obligation." R., p. 5570; *see also* Defs.' Br. at 25-26 (arguing the SPDA was not a last-minute attempt to defeat the lawsuit). It makes no difference if the State intended to meet its constitutional obligations through a repackaged public defense system—what matters is whether the State has remedied Plaintiffs' harms, and carried its burden to show those harms will not recur. It has not done either.

agreed to in settling another lawsuit). This is crucial because of the danger of prematurely accepting a defendant's promise of repentance and erroneously dismissing a case as moot, leaving plaintiffs who have been and continue to be harmed without a remedy. "In seeking to avoid one set of wrongs (needless duplication and inter-branch disputes) we cannot ignore the possibility of inviting what may be even a greater one (leaving the plaintiff without a remedy in a meritorious case)." *Winzler*, 681 F.3d at 1212.

Finally, it is telling that the State ignores the *Idaho* case that is most closely analogous to the situation presented here: *Idaho Schools for Equal Educational Opportunity v. Idaho State Board of Education*, 128 Idaho 276, 912 P.2d 644 (1996) ("*ISEEO II*"); *see also* Pls.' Opening Br. at 21-22. The plaintiffs in *ISEEO II* challenged the constitutionality of the state's public school system, and during the pendency of the lawsuit, the state argued the case had become moot due to legislative enactments regarding funding and standards. 128 Idaho at 280, 912 P.2d at 648. This Court disagreed. It held that the legislative changes—though they clearly were targeted at the issues the plaintiffs challenged, and included additional budgetary appropriations—"[did] not answer the question whether a constitutionally 'thorough' education is provided." 128 Idaho at 283, 912 P.2d at 651. The case was therefore very much alive. And the *ISEEO II* Court relied on another case which reached the same conclusion, finding an action not moot in the face of a legislative amendment to a challenged state public school system. *Id.* (citing *Coal. for Equitable Sch. Funding, Inc. v. State*, 311 Or. 300, 811 P.2d 116 (1991)). *Coalition for Equitable School Funding* held that even where there is "a potential for legislation to alter the factual predicate"—in other words, to alter the precise contours of the state system being challenged—that is not enough to moot a case. *Coal. for Equitable Sch. Funding, Inc.*, 311 Or. at 306, 811 P.2d at 118.

The exact same reasoning applies here. The State may have altered the factual predicate by altering the system (though even that is dubious), but the core constitutional issue remains: whether indigent defendants are getting constitutionally adequate legal representation. What's more, as in *ISEEO II*, the public interest strongly favors continuing the case here. 128 Idaho at 284, 912 P.2d at 652. The issue of constitutionally adequate public defense is also a "matter of great fundamental importance," *id.*, and urgently needs the attention of the courts, more so now than ever given that conditions on the ground are increasingly dire. *See generally* Br. of *Amici Curiae* Contract Defense Attorneys (discussing shortcomings in the SPDA's implementation); Br. of *Amici Curiae* NACDL and IACDL (discussing the risk of harm to defendants from the District Court's decision); Mot. to Modify Injunction and for an Order to Show Cause Why Further Relief on Decree Should Not Be Granted (Dec. 23, 2024) (discussing the SPDA's implementation).

This case plainly demonstrates the dangers of the prudential mootness doctrine and why courts have applied it so sparingly. The district court abruptly truncated nearly a decade of litigation and threw the case out solely on the basis that the State has changed, yet again, who is in charge of delivering their public defense services. If that were all it took to moot a case, then not only would plaintiffs be deprived of a remedy, but the State could continually kick the can down the road and never have to answer in court purely by making periodic changes to its system. For all of these reasons, even if this Court were to consider a doctrine never before applied in Idaho courts—and a doctrine that the federal courts employ with extreme hesitancy—it should not find Plaintiffs' case prudentially moot.

B. This Court Should Decline To Adopt the Prudential Mootness Doctrine.

The State does not dispute that it appears that no Idaho court has ever dismissed a case based on prudential mootness. *See generally* Defs.' Br. at 13-18. As discussed in Plaintiffs' opening brief, Pls.' Opening Br. at 18-22, the doctrine stands in conflict with this Court's mootness

jurisprudence and the Idaho Constitution's clear command that the State's courts "shall be open to *every person*," and shall provide a "speedy remedy . . . for *every injury* of person, property or character" without "delay[] or prejudice." Idaho Const. Art. I, § 18 (emphasis added); *see* Pls.' Opening Br. at 18-22. *See generally* Br. of Idaho State Law Scholars as Amici Curiae Supporting Appellant & Reversal (discussing why the prudential mootness doctrine has no place in Idaho courts).

The State responds by asserting that the doctrine is "widely accepted" and has been implicitly endorsed by this Court. Neither is true. Though several federal courts have adopted some version of prudential mootness, they have done so in extremely narrow and idiosyncratic fact patterns that look nothing like this case. *See supra* § I.A; Pls.' Opening Br. at 22-25. The State cites no case that looks remotely like this one. In fact, federal courts have been very wary of the doctrine because it is in tension with the federal judiciary's mandate to hear cases within their jurisdiction. *See Meland v. Weber*, 2 F.4th 838, 849 n.7 (9th Cir. 2021) (noting a federal court's "virtually unflagging obligation to hear and decide cases within its jurisdiction") (internal quotation marks and citation omitted). It is also telling that the sole case the State cites for the principle that the doctrine is widely accepted among federal courts, *see* Defs.' Br. at 13, 15 n.12, is a dissenting opinion that recognized that the Ninth Circuit "has addressed the doctrine of prudential mootness rarely," and "applied it in *just one case*." *People Not Politicians Oregon,* 826 F. App'x at 586 (Nelson, J., dissenting) (emphasis added).

Nor is it the case that this Court has previously endorsed or "adopted the reasoning" of prudential mootness, as the State suggests. *See* Defs.' Br. at 14. Citing *W.T. Grant* does not equate to endorsing prudential mootness, especially because much of *W.T. Grant* is about ordinary constitutional mootness principles. In both *O'Boskey v. First Federal Savings & Loan Association*

of Boise, 112 Idaho 1002, 739 P.2d 301 (1987), and *Nelson v. Marshall*, 94 Idaho 726, 497 P.2d 47 (1972), this Court cited *W.T. Grant* for the basic principle that voluntary cessation does not moot an action, before concluding that both cases were *not moot*. Neither came close to suggesting that the Court could or should dismiss a case involving a *live* controversy such as the one in this case.[6] Even if this Court had prudential mootness in mind when it cited *W.T. Grant* in *Tucker II*, then it is even more clear that the law of the case is that the State must provide clear proof that the harm has ended and "there is no reasonable expectation that the wrong will be repeated," which it has utterly failed to do. *Tucker II*, 168 Idaho at 582-83, 484 P.3d at 863–64 (citation omitted); *see also id.* (quoting *United States v. Oregon State Med. Soc'y*, 343 U.S. 326, 333 (1952)). There is no support for using this case—which involves a matter of substantial public importance and the State's track record of failed promises of reform—as the case to adopt a new doctrine and then vastly expand its application to a context unprecedented even in courts outside Idaho.

II. None of the State's Remaining Arguments Justify Affirmance on Alternative Grounds.

A. Even Under an Abuse of Discretion Standard—Which Does Not Apply—the District Court's Decision Should Be Reversed.

The State's argument that the District Court acted within the bounds of its discretion when it dismissed the case as prudentially moot mischaracterizes both the applicable legal standard and the District Court's opinion.

Start with the legal standard. As a general matter, this Court enjoys free review of dismissals and summary judgment determinations. *Paslay v. A&B Irrigation Dist.*, 162 Idaho 866,

[6] The State cites Idaho Code § 10-1206 for the principle that Idaho courts have discretion whether to grant declaratory relief. True, but irrelevant. The fact that Idaho courts may refuse a particular remedy if it would not actually have any effect on the underlying dispute says little about if or when a court may dismiss an action entirely on prudential mootness grounds where the controversy remains very live.

868, 406 P.3d 878, 880 (2017); *Syringa Networks, LLC v. Idaho Dept. of Admin.*, 159 Idaho 813, 367 P.3d 208 (2016). More specifically, "[i]ssues related to justiciability, such as mootness and standing, are questions of law, over which this Court exercises free review." *A.C. & C.E. Invs., Inc. v. Eagle Creek Irrigation Co.*, 173 Idaho 178, 540 P.3d 349, 357 (2023) (internal quotation marks and citation omitted). *See also State v. Manley,* 142 Idaho 338, 342, 127 P.3d 954, 958 (2005) ("The justiciability issues of ripeness and mootness may be freely reviewed."); *Storm v. Spaulding*, 137 Idaho 145, 148, 44 P.3d 1200, 1203 (Idaho Ct. App. 2002) ("Whether a case should be dismissed for mootness is a question of law, subject to free review."). The same standard applies to the threshold legal question of whether prudential mootness is even available under Idaho law. *See Syringa*, 159 Idaho at 823, 367 P.3d at 218 ("This Court exercises free review over the trial court's conclusions of law.").

Although Plaintiffs cited all of this authority in their opening brief, the State does not address any of it, nor does it cite a single case that supports application of an abuse-of-discretion standard here. Instead, they cite a decades-old Tenth Circuit decision (*Fletcher v. United States*, 116 F.3d 1315 (10th Cir. 1997)) that is directly in conflict with this Court's precedent (and that of this Court's sister jurisdiction)[7], and two inapposite cases about appellate review of a trial court's discretion to grant injunctive relief (*O'Boskey* and *Harris v. Cassia Cnty.*, 106 Idaho 513, 681 P.2d 988 (1984)). *See* Defs.' Br. at 10. And because it applies the wrong legal standard throughout its brief, the State does not even attempt to argue that the district court's decision can withstand *de novo* review. It cannot. *See generally id.* at 18-35.

[7] *See Deutsche Bank Nat. Trust Co.*, 744 F.3d at 1124-38 (whether a claim is prudentially moot is subject to de novo review).

In any event, even under an abuse of discretion standard, reversal is still appropriate because the district court's opinion rests on a manifestly incorrect understanding and application of the prudential mootness doctrine, *see supra* § I.A, and a wholesale misunderstanding of the factual record. The District Court never grappled with whether Plaintiffs' *constitutional harms* have ceased and are unlikely to recur under the new iteration of Idaho's public defense system. *See supra* § I.A. And there was ample evidence in the record showing a risk of ongoing current and imminent future harm, which the District Court never acknowledged. *See generally* Pls.' Opening Br. at 32-33, 35-49.

The State tries to sidestep these deficiencies by arguing that the court "review[ed] how the new state-system addressed each of Appellants' claimed constitutional deficiencies, and whether there was any evidence of *future harm*." Defs.' Br. at 28 (citing R., p. 5571-72). No, it did not. The two pages cited by the State contain drive-by references and mischaracterizations of Plaintiffs' alleged harms followed by mismatched comparisons to provisions of the SPDA and the SPD's declaration—hardly a thorough review of whether there was any evidence of future harm.

For example, the District Court stated that the SPDA "codifies the ABA Ten Principles of a Public Defense Delivery System" (when it actually made those standards permissive) and asserted that the SPD "will follow the guidance of those principles including tracking defending attorney's workloads instead of using caseload standards" and will use "software to track [attorney's] hours and show their workloads." R., p. 5571. This SPDA provision and two-paragraph excerpt from the SPD declaration do not, of course, address or grapple with *how* or *when* the State will finally—after years of documented and worsening caseloads—reduce defenders' caseloads which are excessive as a matter of law and causing ongoing harm to Plaintiffs. *See* Pls.' Opening Br. at 36-39 (collecting evidence the District Court ignored regarding ongoing

harm related to excessive caseloads); *see also* Br. of *Amici Curiae* NACDL and IACDL at 14-26 (discussing the risk of harm that remains under the SPDA).

Similarly, the District Court claimed there "will be statewide investigators and experts, accessible to public defending attorneys throughout the state," again by pointing to two paragraphs of the SPD declaration. R., p. 5572. Plaintiffs have long alleged constitutional harms that are tied to the insufficient usage of investigators and experts due to inadequate funding and staffing, *see* Pls.' Opening Br. at 39-41, issues that the mere "accessibil[ity]" of investigators and experts does not address. There was also no basis for the District Court to conclude that the SPD will "boost hiring and retention" simply because all "defending attorneys will be State employees," particularly when the system has inadequate funding (an issue the court also did not address) that has predictably caused mass departures. *See generally* Brief of *Amici Curiae* Contract Defense Attorneys in Support of Plaintiffs-Appellants (describing mass departure of contract attorneys due to inadequate funding). And Plaintiffs have alleged harms tied to, among other things, the Governor's unchecked involvement in structuring and overseeing the SPD, which creates inherent conflicts of interest that cannot be absolved simply because the SPD does not believe he will be unduly influenced while in office. *Compare* Pls.' Opening Br. at 41-44 *with* R., p. 5572. Finally, Plaintiffs' issue with attorney contracts is not whether they are "uniform," R., p. 5572, but whether they contain disincentives that create inherent conflicts of interest, *see* Defs.' Br. at 45, as the SPD contracts now do. *See generally* Br. of *Amici Curiae* Contract Defense Attorneys (describing problematic SPD contract provisions).[8]

[8] It also is not clear what the District Court meant when it claimed that "a mix of oversight, hiring/retaining attorneys, and funding" will address "confidential meetings, including time and space." R., p. 5572. Nothing in the SPDA or the SPD declaration adequately addressed Plaintiffs' alleged harms related to these issues. *See* Defs.' Br. at 44. Moreover, the District Court failed to

For all of these reasons, even if this Court determines that an abuse of discretion standard applies, the District Court's misapplication of the law and its disregard of record evidence are reversible error. *See Kirkham v. 4.60 Acres of Land in Vicinity of Inkom, Bannock Cnty.*, 100 Idaho 781, 785, 605 P.2d 959, 963 (1980) (trial court abuses its discretion when it fails "to properly apply the law"); *Ingenco Holdings, LLC v. Ace Am. Ins. Co.*, 921 F.3d 803, 808 (9th Cir. 2019) (trial court "abuses its discretion if it bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence") (internal quotation marks and citation omitted); *Briseño v. Henderson*, 998 F.3d 1014, 1022 (9th Cir. 2021) (trial court abuses its discretion when it fails to apply the correct legal standard or bases its decision on unreasonable findings of fact).

B. Plaintiffs' Claims Have Been Ripe For Over a Decade.

Nor can Defendants salvage the district court's opinion with their alternative argument—which they made, and this Court rejected, in *Tucker v. State*, 162 Idaho 11, 394 P.3d 54 (2017) (hereinafter "*Tucker I*)—that Plaintiffs' claims are not ripe. Most obviously, ripeness is measured at the time the suit is filed, not nearly a decade later. *A.C. & C.E. Invs., Inc.*, 173 Idaho 178, 540 P.3d 349 at 358 ("[T]he ripeness doctrine concerns the timing of a suit and asks whether a case is brought too early."); *see also Lockary v. Kayfetz*, 917 F.2d 1150, 1154 (9th Cir. 1990). But even if that were not the case, the State's ripeness argument rests on a fundamental mischaracterization of the nature of Plaintiffs' claims and the relief they seek. As already explained, *see supra* §§ I.A, II.A, this suit has never challenged any particular structural approach to the State's provision of

address Plaintiffs' allegations regarding lack of counsel at out-of-custody initial appearances, *compare id.* at 44-45 *with* R., p. 5571-72, a constitutional obligation that we now know is unfulfilled with respect to in-custody initial appearances, too. *See* Mot. to Modify Injunction and for an Order to Show Cause Why Further Relief on Decree Should Not Be Granted at 2-17 (Dec. 23, 2024).

public defense. Instead, Plaintiffs challenge Idaho's decades-long denial of constitutionally adequate counsel to indigent defendants across the State. As this Court found in *Tucker I*:

> Appellants suffered ascertainable injuries by being actually and constructively denied counsel at critical stages of the prosecution, which they allege are the result of deficiencies in Idaho's public defense system . . . These allegations establish ripeness by illustrating that "(1) the case presents definite and concrete issues; (2) a real and substantial controversy exists (as opposed to hypothetical facts); and (3) there is a present need for adjudication.

Tucker I, 162 Idaho at 28, 394 P.3d at 70. Nothing has changed on that score in the intervening seven years. Plaintiffs' claims today are the same as they were when they filed this suit, this Court's decision in *Tucker I* is the law of the case, and there is no basis to revisit it. *See Swanson v. Swanson*, 134 Idaho 512, 515, 5 P.3d 973, 976 (2000) ("The doctrine of 'law of the case' is well established in Idaho and provides that 'upon an appeal, the Supreme Court, in deciding a case presented states in its opinion a principle or rule of law necessary to the decision, such pronouncement becomes the law of the case, and must be adhered to throughout its subsequent progress, both in the trial court and upon subsequent appeal'") (citations omitted). The Court can stop there.

The State's argument that the State's public defense system "is in the midst of being overhauled," Defs.' Br. at 32, is a red herring, and does not change the result. The supposed "overhaul" that the State trumpets does nothing to address many of the core systemic deficiencies Plaintiffs have been challenging since this suit was first filed. Plaintiffs identified myriad problems with the repackaged system. *See* Pls.' Opening Br. at 10-16; *supra* §§ I & II.A. And Plaintiffs adduced significant evidence showing that indigent defendants are currently being denied adequate counsel and that the new system is set up to fail and therefore will not cure that constitutional injury. *See id.* Just as in *Tucker I*, therefore, because the changes to the system "leave in place the key parts of the" prior system, which are "at the heart of many of Appellants' allegations . . . there

is a present need for adjudication." *Tucker I*, 162 Idaho at 28, 394 P.3d at 71 (rejecting ripeness argument based on prior overhaul of public defense system). There is nothing "abstract" about Plaintiffs' claims, and the State's unilateral attempt to render previously ripe claims unripe should be rejected.

C. The State's Argument That The Class Representatives Lack Standing Is Both Wrong And a Distraction.

The State's final argument for affirmance, that Plaintiffs lack standing, also fails, for two reasons.

First, there is no basis for the Court's standing analysis to ignore Tracy Tucker and Jason Sharp's actual denials of counsel at their initial appearances. Nothing in *Tucker I* or *Tucker II* stands for the proposition that the named Plaintiffs must suffer the exact same harm (*i.e.*, the exact same type of actual or constructive denial of counsel) to have standing. *See* Defs.' Br. at 34-35. As this Court has already recognized, in "certifying a class, the district court has already determined that the named plaintiffs' claims are typical of the class," such that it makes no difference if certain class members (or named Plaintiffs) have "different injuries." *Tucker II*, 168 Idaho at 583, 484 P.3d at 864. Because the named Plaintiffs' claims are already "common to—and representative of—the class as a whole," *id.*, the State cannot set aside Mr. Tucker and Mr. Sharp's lack of counsel at their in-custody initial appearances simply because it believes these exact harms are "not likely to be repeated." Defs.' Br. at 34. This argument that the named Plaintiffs "no longer have standing based on policy changes enacted by the State" is more appropriately addressed (and set aside) through the lens of mootness—not standing. *Tucker II*, 168 Idaho at 582, 484 P.3d at 863.

Second, Plaintiffs have presented ample evidence to "prove what they alleged in their complaint" with respect to each of the named Plaintiffs, which is all this Court found was required "to establish standing" at this stage. *Tucker II*, 168 Idaho at 583, 484 P.3d at 863. The State bases

its central standing argument on this score on a "(cleaned up)" quote from the U.S. Supreme Court's decision in *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992): At summary judgment "the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts" regarding the alleged injury. Defs.' Br. at 33. Notably, the full sentence adds that such evidence, "for purposes of the summary judgment motion will be taken to be true." *Id*. (internal quotation marks and citation omitted). Each of the four named Plaintiffs has given declaration and deposition testimony that "prove[s] what they alleged in their complaint" as to constructive denial of counsel. *Tucker II*, 168 Idaho at 582, 484 P.3d at 863. For example:

- Tracy Tucker and Jason Sharp were unrepresented at initial appearance, where bail was set. *See* C.R., p. 228-29 ¶¶ 24-25.[9]
- Naomi Morley's public defender lacked time to speak with her at initial appearance and could not gather information to secure an appropriate bond, she remained in jail until her bond was reduced three weeks later. *See* C.R., p. 229-30 ¶ 26.
- Despite repeated phone calls, Tracy Tucker was only able to meet with his public defender for 20 minutes total before entering a guilty plea that he later sought to withdraw. *See* C.R., p. 228 ¶ 24.
- Jason Sharp was unable to get discovery materials from his defending attorney for months, and his defending attorney was likewise unable to interview potential witnesses and arrange for forensic testing in his case. *See* C.R., p. 228-29 ¶ 25. [10]

[9] All cites herein to the April 25, 2024 Record ("R.") and June 20, 2024 Supplemental Confidential Exhibits ("C.R.") refer to the record for Case No. 51631-2024. To the extent that Plaintiffs cite to the record contained in a prior appeal in this case, Plaintiffs have included the relevant year, case number, and record cite of that prior appellate record for clarification.

[10] Notably, Jason Sharp's experience upon a more recent arrest demonstrated similar failures with the State's public defense system, in an undisputed declaration that this Court can and should consider under *de novo* review, despite the State's protestations to the contrary. *See* Defs.' Br. at 37 n.29. That declaration showed that:

- His public defender could only speak with him briefly at initial appearance, without any time for Sharp to get his questions answered. R., p. 3374 ¶¶ 3-4; C.R., p. 228-29 ¶ 25.
- He was shuffled between multiple attorneys, with different ones appearing for him on different days. R., p. 3374-75 ¶¶ 5-6; C.R., p. 228-29 ¶ 25.

- Naomi Morley felt pressured to plead guilty, repeatedly resisting coercion to take plea offers that would have put her in prison for years—and holding out by her own sheer persistence until the State ultimately dismissed most of the charges against her in exchange for a misdemeanor with no jail time two years after she was arrested. *See* C.R., p. 229-30 ¶ 26.

Since then, this Court has also certified Plaintiff Billy Chappell as a class representative. *See* R., p. 109-22. Over the State's opposition, the Court found that:

- Chappell could not speak with a defender before his first court appearance and could only speak with an attorney for 30 seconds at initial appearance. R., p. 118.
- He did not learn who his actual, assigned public defender was until days later. *Id.*
- His attorney asked him to investigate his own case, because of the public defender office's lack of investigative resources. *Id.*
- His attorney lacked time to review discovery with him, and communication was difficult. *Id.*

These facts, the Court observed, were supported by both declaration and deposition testimony. R., p. 119. The record evidence outside of Mr. Chappell's testimony further supports his allegations:

- [redacted]
- [redacted]
- [redacted]

- He had difficulty communicating with his attorneys throughout his case, due both to their excessive workloads and inadequate communication facilities at the jail. R., p. 3374-75 ¶¶ 5, 7-8; C.R., p. 228-29 ¶ 25. As the indisputable FY 2022 caseload statistics show, one of his defending attorneys carried over 328 FCEs under the PDC's FCE standard, while the other defending attorney carried over 550 FCEs under that standard. *See* R., p. 2821-42.

[redacted]

- [redacted]

In short, each of the class representatives clearly have proven through declarations and other evidence that they suffered harm, including from extended incarceration, unwanted pressure to plead, inadequate communications, insufficient preparation and unwanted delays, among other things. These injuries, which were the direct result of deficiencies in the State's public defense services, clearly are sufficient to establish that one or more of the named plaintiffs have standing to pursue claims on behalf of the class.

III. This Court Can and Should Consider the Merits of Plaintiffs' Claims Now.

All forward-looking injunctive relief that any court has ever issued is of course based on backward looking evidence to predict the harm that may occur or persist in the future. *Oregon State Med. Soc'y*, 343 U.S. at 332-33 ("Of course, present events have roots in the past, and it is quite proper to trace currently questioned conduct backwards to illuminate its connections and meanings."). The State nevertheless urges this Court to leave persistent, statewide constitutional harm unresolved and unremedied, on the theory that the District Court's failure to address the merits of Plaintiffs' claims is an unreviewable interlocutory order. But this appeal reviews not a summary judgment denial, but instead a partial—but not complete—grant of summary judgment. The State's only attempt to refute Plaintiffs' overwhelming evidence of persistent deficiencies consists entirely of conclusory promises unsupported by any data at all. Thus, at this point independent and judicial oversight is necessary to ensure the systemic crisis ends.

A. The District Court Partially Granted Summary Judgment to Plaintiffs, Rather Than Denying It Altogether.

The District Court ruled on Plaintiffs' motion for summary judgment only to the extent it *granted* their requested relief as to Idaho's public defense system at the time. *See* R., p. 5576. Given that the State's new approach to public defense was not yet in place at the time, this means either that the District Court only ordered partial relief even though it found in favor of Plaintiffs, or that it issued partial relief while not deciding the remaining merits of Plaintiffs' motion. Either way, the Order and Memorandum do not constitute a *denial* of summary judgment. Plaintiffs simply ask this Court to reach a final judgment on the merits of their demand for injunctive relief as the District Court failed fully to do when it instead dismissed the case on flawed grounds.

Doing so makes sense given that the "rationale" for the "general rule" upon which the State relies is to assure the finality of a trial judgment that the District Court's order itself circumvents.

> [B]y entering an order denying summary judgment, the trial court merely indicates that the matter should proceed to trial on its merits. The final judgment in *a case* can be tested upon the record made at trial, not the record made at the time summary judgment was denied. Any legal rulings made by *the trial court* affecting that final judgment can be reviewed at that time in light of the full record.

Garcia v. Windley, 144 Idaho 539, 542, 164 P.3d 819, 822 (2007) (citation omitted). "A final judgment is one that ends the lawsuit, adjudicates the subject matter of the controversy, and represents a final determination of the rights of the parties." *Dominguez ex rel. v. Evergreen Resources, Inc.*, 142 Idaho 7, 13, 121 P.3d 938, 944 (2005) (quoting *Econ. Dev. Council v. Lockwood*, 139 Idaho 492, 495, 80 P.3d 1093, 1096 (2003)).

The district court's decision and judgment do just exactly that. The "general rule" was never intended to constrain this Court's authority to consider fully a motion for summary judgment that a lower court simply erroneously avoided deciding on a full record before it. The State's argument that this Court does not have this power should be rejected.

B. Evidence of the Persistent Deficiencies in the State's Approach to Public Defense Over Many Years is Overwhelming, and the State's New Approach Offers No Confidence that Remedies are Imminent.

The State's next effort to avoid Plaintiffs' claims consists of self-serving assurances and mischaracterizations of the massive amount of accumulated evidence showing that the State has understaffed and underfunded its public defense services for years, resulting in persistent systemic deficiencies around the State that create ongoing substantial risks of actual and constructive denial of counsel. The SPDA and SPD declaration do not specify how these deficiencies will be remedied, *see supra* §§ I.A, II.A, and the State has no other evidence to show that the recent administrative rearrangements have, or will, result in any improvements on the ground.[11] In contrast, Plaintiffs have repeatedly laid out extensive analyses of the vast data and information the State itself has provided in discovery demonstrating defenders' excessive workloads, the lack of adequate support staff, the glaring opportunities for (and incidents of) governmental influence, and the limited availability of confidential meeting spaces, among other issues. *See* Pls. Opening Br. at 6-16, 35-46. Because the State's arguments here largely rehash issues Plaintiffs have already addressed in their briefing, Plaintiffs will only highlight the most glaring errors in the State's brief.

First, Plaintiffs' expansive caseload analysis—which reveals that most indigent defendants in Idaho have been represented by defenders who were handling too many cases by any objective measure—relies on extensive data that the PDC collected through 2023 (to include Fiscal Year 2022). *See* Pls. Opening Br. at 6-8, 36-39. The State has never produced (or even made available) any data or plan to show how the repackaged state system could address these soaring caseloads.

[11] Notably, Respondents assertion that "overwhelming evidence" refutes "Appellants' insistence the new state-based system really does not change anything," Defs.' Br. at 38, is supported by exactly no such evidence. Again, for an *actual* comparison of the old and new statutes, and the pervasive change from mandatory statutory language to discretionary authority, *see* Plaintiffs' Opening Brief at 12-16.

Instead, the SPD has made clear that he no longer plans to collect such "30,000 foot" data, preferring instead to have defenders complete "three-foot" level time reports of their individual workloads. Even if well done, of course, such reporting will provide little information to the SPD or the public on whether sufficient time is being devoted to individual defendants absent corresponding information on how many cases they were handling.

Moreover, Plaintiffs' detailed, and damning, analysis of the State's own caseload data is far from "misleading," as the State now asserts. Defs.' Br. at 42. The State's expert's objection to a so-called "binary" assessment of the data misunderstands the very point of caseload standards. *Id.* Both the State's PDC and the NAC caseload standards established maximum thresholds, based on average time needed per case type, to assure public defenders had adequate time to devote to each client. Plaintiffs merely conducted an objective analysis of whether and to what extent Idaho defenders exceeded those caps. *See* R., p. 3385. Plaintiffs do not contend, and need not prove, that "every attorney whose caseload exceeded the . . . standard by any amount was *per se* subjecting their clients to constructive denial of counsel." Defs.' Br. at 40. And this Court has already recognized that Plaintiffs are not required to provide any "individual instances of deficient performance" due to excessive caseloads. *Tucker II*, 168 Idaho at 583, 484 P.3d at 864; *cf.* Defs.' Br. at 41-42 n.37 (criticizing Plaintiffs for not providing " 'three-foot' level evidence" of harm to specific indigent defendants).

The results of Plaintiffs' statistical analysis are not "skewed," as the State's PDC staff analyst opined, simply because the degree of defender overextension in *some* counties is somewhat less egregious than in others, because *some* indigent defendants are being served by attorneys who may not be overextended, or because *some* overextended defenders may be providing adequate representation to *some* clients. Defs.' Br. at 42. Similarly, the opinion of State's expert John Gross

that defenders were not being "overwhelmed by caseloads" was based only on the reported views of chief defenders in just five of Idaho's 44 counties. *Id.* at 41. This is precisely the kind of subjective three-foot level perspective that caseload standards are intended to guard against.

Plaintiffs' objective statistical analysis of Idaho's caseload data, by contrast, shows that on a consistent basis: (1) a substantial number of Idaho counties have had at least one attorney exceeding the maximum annual caseload standards that Idaho's PDC put in place, (2) a substantial number of Idaho counties have had cases handled by attorneys exceeding those standards, (3) 57% of Idaho counties have had at least one overextended attorney year, and (4) nearly half of all indigent defendants in Idaho are being represented by overextended public defenders. *See* R., p. 3386. This is exactly the sort of "structural evidence" that this Court has recognized can be "probative of the existence of systemic denials of counsel." *Tucker II*, 168 Idaho at 585, 484 P.3d at 866.

Second, Plaintiffs' analysis of the State's data regarding investigation and expert resources shows that public defenders in Idaho have not received anywhere near the staff support that the National Association for Public Defense deems appropriate. This analysis rests on all of the available information reported by counties and defenders on very clear PDC forms over the course of several years. And it shows more than just a lack of access. It shows that defenders are routinely failing to utilize investigators, support staff and experts at alarming rates, creating a significant risk that defendants are not receiving adequate representation. *See* Pls.' Opening Br. at 39-41. While the State wants this Court to believe that "indigent defenders will continue to have adequate access to support staff, as was the case under the county-based system," they offer zero objective evidence to support this claim at either the three- or 30,000-foot level. Defs.' Br. at 42.

Third, as the State does with every other long-running deficiency in its approach to public defense, the State characterizes Plaintiffs' concern about "independence issues" going forward as

"speculative." Defs.' Br. at 44. The State cites only Erik Fredericksen's self-interested claim that he maintained his independence in his former role and their expert's view that he "believe[s]" the process for the selection of Idaho's chief public defender "satisfies . . . the ABA requirement that the public defense function be independent." *Id.* But even their expert acknowledges that "[i]deally, an independent commission would select a chief public defender," rather than the Governor, as in Idaho. *Id.* That is because, obviously, however well-intentioned, not every chief public defender will be *this* public defender, however uncompromising, and not every governor will be *this* governor, however acquiescent. Moreover, not every defender is going to trust that their independence is unconstrained by the political reality that public defense is now a virtual offshoot of the State office with the most direct impact on law enforcement. As with caseloads and support staff recommendations, it is a truism that every given situation is not "per se" problematic, but the likelihood that some situations will be so is high. *See also* Pls.' Opening Br. at 41-44 (summarizing Plaintiff's evidence of the risk of undue political influence).

Fourth, similar flaws riddle the State's efforts to play down the evidence that, for years, confidential meeting spaces have not been available in some instances, not all indigent defendants have been represented at initial appearances, and some contract attorney arrangements have been poorly delineated, all to the likely detriment of indigent defendants. Plaintiffs have produced facts. *See id.* at 6-16, 44-45. The State has responded with conclusory promises about the future, unsupported by any data. For the same reasons that such promises of reform do not moot Plaintiffs' claims, they do not refute Plaintiffs' concerns that the new structure offers no comfort that indigent defendants are any less likely to suffer these exact same problems under the State's revamped—but vague and overwhelmingly discretionary—"plan."

C. Plaintiffs Seek Ongoing Judicial Oversight to Ensure that the Unsupported Promises of Reform Will Actually End Idaho's Public Defense Crisis.

Finally, the State contends that the judicial branch's hands are tied because "the State has already created what Appellants are requesting in their prayer for relief: a state-funded and state-administered indigent defense system that is consistent with the United States and Idaho constitutions." Defs.' Br. at 19. But this contention rests on the same misunderstanding that the District Court expressed regarding the relief Plaintiffs seek. Plaintiffs have never—not once in the near-decade since this case was filed—sought relief requiring that the State impose a specific public defense structure, much less one with the particular administrative and funding structure adopted in the 2023 legislative amendments, s*ee, e.g.*, *Tucker I*, 43922-2016, R., p. 000058; *Tucker II*, 46882-2019, R., p. 002134-35. From the very beginning, Plaintiffs have sought independent and judicial supervision to ensure the problems that have persisted (no matter the system in place) over the nine years since this case was filed are eliminated, including most notably excessive workloads, inadequate investigation and expert resources, political and judicial influence, inadequate confidential meeting space, lack of continuous representation, and lack of defense counsel at all at initial appearances.

Plaintiffs therefore have always sought a system, no matter how it is structured, that will provide constitutionally adequate public defense. To date, the State has offered no evidence that its restructured SPD system has or will accomplish that fix any more the State did when it attempted to empower the PDC for that purpose more than ten years ago, or when it made iterative changes to funding and administering that system during the pendency of this litigation. The State's history of failing to ensure that public defense is adequate, combined with the lack of specificity in the resourcing, independence and funding of the new system, make the drawing of an inference that the problems will continue anything but "illogical," as the State claims. Defs.' Br. at 38.

Plaintiffs therefore seek relief that includes ongoing judicial oversight in conjunction with an independent monitor to ensure that an adequate plan is developed and implemented to resolve the constitutional failures that have plagued Idaho's public defense delivery for over a decade. The State itself has acknowledged that "Idaho's judiciary has already played a significant role in shaping the statewide indigent defense system over the past years." R., p. 5364. Both the rights of indigent defendants and the credibility of Idaho's criminal legal system hang in the balance of whether the transition to a constitutionally adequate system is actually accomplished. Judicial involvement in the process at this stage is both appropriate and vital to finish the job.

IV. Plaintiffs Are Entitled to Fees and Costs for Their Success, Whether Partial or Complete.

The State's arguments against awarding attorneys' fees fail because they misinterpret the standards for prevailing party fees awards under 42 U.S.C. § 1988 and because they inaccurately minimize the necessity of Plaintiffs' tireless private enforcement activities and devalue the broad societal impact of their efforts.

A. A Fees Award is Justified Under 42 U.S.C. § 1988 Because Plaintiffs Prevailed At Least In Part.

As Plaintiffs explained in their opening brief, they obtained at least a "partial victory" and were granted "some relief on the merits" (Pls.' Opening Br. at 47) in the District Court, which agreed that "each party has prevailed in part." R., p. 5576. The District Court's decision to dismiss the remainder of the case on prudential mootness grounds does not alter the fact that it granted Plaintiffs that partial relief, which both benefited Plaintiffs and altered the relationship between the parties. This squarely meets the standards articulated in *Farrar v. Hobby*, 506 U.S. 103, 111-13 (1992) and *Hewitt v. Helms*, 482 U.S. 755, 759-60 (1987) (forward-looking relief can establish prevailing party status).

Rather than seriously contesting this fact, the State instead argues that fees are unwarranted because Plaintiffs prevailed against the wrong party to the litigation. But the Court's order clearly encompasses any State actor "overseeing" the public defense system. At the time of the Order, the State actors with responsibility for overseeing public defense in Idaho were unquestionably the PDC Defendants. So, before dismissing the remainder of the case against both the State and the members of the PDC, the District Court expressly forbade both the State and the Commissioners from ever reviving Idaho's county-based system. R., p. 5576.[12] *Will v. Michigan Department of State Police*, does not help the State's case. 491 U.S. 58, 64, 71 (1989). The United States Supreme Court in *Will* made it clear that prospective injunctive relief against state officials in connection with federal claims *is* available under § 1983. *Id.* at 71; *see also Hutto v. Finney*, 437 U.S. 678, 693-94 (1978), *abrogated on other grounds by Dep't of Agric. Rural Dev. Hous. Serv. v. Kirtz*, 601 U.S. 42 (2024) (holding that § 1988 authorizes fee awards in such cases). And even if this was not the case, Plaintiffs are entitled to fees under § 1988 because their state and federal claims arise out of a "common nucleus of operative fact." *Maher v. Gagne*, 448 U.S. 122, 132 n.15 (1980) (citation omitted); *Gerling Global Reinsurance Corp. of Am. v. Garamendi*, 400 F.3d 803, 807-09 (9th Cir. 2005); *Westmark Dev. Corp. v. City of Burien*, 504 Fed. App'x 560, 561 (9th Cir. 2013).

[12] Notably, the State Public Defender, who is now the State official directly overseeing the Idaho public defense system under the direction of the Governor, as was the PDC, should be substituted in replace of the Commissioners. Idaho Appellate Rule 7. In his official capacity, the SPD is the current state official who bears the burden of the State's long-persisting constitutional failings. I.C. § 19-6008(3) ("Upon termination of the public defense commission on July 1, 2024, all property and full-time positions at the commission shall transfer to the office of the state public defender.").

B. Fees Are Justified Under the Private Attorney General Doctrine Because, Even Though Vindication of Plaintiffs' Constitutional Claims Benefits Everyone in Idaho, Those Claims Could Not Have Been Brought by Any Public Official.

The State's arguments against the applicability of the private attorney general fees doctrine are equally unconvincing. First, this Court expressly rejected the State's contention that the American Rule precludes the award of fees under the private attorney general doctrine in the very case they cite. *Heller v Cenarrusa*, 106 Idaho 571, 578, 682 P.2d 524, 531 (1984) (recognizing that although the American Rule has been codified in Idaho law, "the limitation does not apply where . . . the award of attorney fees is under the Private Attorney General Doctrine").

In fact, the doctrine has been sanctioned and applied by this Court for precisely this purpose since the Idaho Code change upon which the State relies. *See Reclaim Idaho v. Denny*, 169 Idaho 406, 440, 497 P.3d 160, 194 (2021). The circumstances of that case, where the Court concluded that attorney fees were appropriate under the doctrine, are clearly similar: (1) Plaintiffs' goal was to uphold constitutional rights, (2) no public sector officials were in a position to challenge the state action because "the Attorney General's Office was charged with advising and representing the state officials," (3) "private enforcement was [Plaintiffs'] only alternative," and (4) Plaintiffs' efforts in "vindicating the people's constitutional right [here, to public defense] potentially benefits every citizen of Idaho." *Id.*.

The State's assertion that the doctrine "cannot be used against government entities" both ignores the contrary outcome in *Reclaim Idaho* and misconstrues this Court's other prior rulings concerning the applicability of the private attorney general doctrine. The State cites *Idahoans for Open Primaries v. Labrador*, 172 Idaho 466, 491, 533 P.3d 1262, 1287 (2023), for its proposition that fees may only be awarded against "government entities" pursuant to I.C. § 12-117, which would require a finding that "the nonprevailing party acted without a reasonable basis in fact or

law." I.C. § 12-117(1). In fact, however, that section applies by its text only to fee awards in cases involving a "state agency or a political subdivision" as a party. *Id.*

As noted above, Plaintiffs here partially prevailed against the State and the Commissioners of the PDC, neither of which are state agencies or political subdivisions.[13] Both *Idahoans for Open Primaries*, 172 Idaho 466, 533 P.3d 1262, and *Citizens Against Linscott/Interstate Asphalt Plant v. Bonner Cnty. Bd. of Comm'ns*, 168 Idaho 705, 721, 486 P.3d 515, 531 (2021), upon which it relies, rest on this Court's prior decision in *City of Osborn v. Randel*, 152 Idaho 906, 909, 277 P.3d 353, 356 (2021). *City of Osborn* more accurately describes Idaho Code Section 12-117's exclusivity as limited to "the entities to which it [the statute] applies." *City of Osborn*, 152 Idaho at 910, 277 P.3d at 357. By its own express terms, therefore, Idaho Code Section 12-117 simply has no application in the case before the Court.

Finally, there is no merit to the State's absurd argument that "private enforcement was not necessary." While the State paints its small steps over nearly a decade to reform its public defense services as demonstrative of its "continued commitment," their implication that any of these steps would have been taken in the absence of this lawsuit flies in the face of reality. The legislature itself expressly identified this litigation, and this Court's ruling in it, as *the* impetus for the legislation. *See* SPDA § 40, 2023 Idaho Sess. Laws 689 ("The Legislature is creating a new model of indigent defense because the Idaho Supreme Court declared in *Tucker v. State of Idaho*, 162 Idaho 11 (2017), that the state can be liable for the inadequate provision of public defense . . . ."). Private enforcement to date in this case has served *precisely* its intended—albeit unfinished—purpose. If the State is not let off the hook by the District Court's unearned faith in its

[13] Nor is the State Public Defender, who, as noted above, should have substituted himself for the Commissioners of the PDC upon that entity's dissolution.

"commitment" going forward, it will continue to do so. Fees should be awarded under the Private Attorney General Doctrine.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reverse the District Court's dismissal, grant Plaintiffs' motion for summary judgment in full, award Plaintiffs' costs and attorneys' fees, and remand the case to the District Court for further proceedings, including the appointment of an independent monitor.

Dated: December 23, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2024, a true and correct copy of the foregoing document was filed using the E-File system, which sent a Notice of Electronic Filing to the following:

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