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Seventh Judicial District, Bonneville County
Penny Manning, Clerk of the Court
By: Deputy Clerk - McGary, Nikki

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

RIDGELINE MEDICAL, LLC, an Idaho Limited Liability Company, **Plaintiff,** **vs.** **DAVID LYON,** **Defendant.**	**Case No. CV10-21-4497** **MEMORANDUM DECISION RE: MOTIONS FOR SUMMARY JUDGMENT**

This matter came before the court June 16, 2022, on competing motions for summary judgment. The plaintiff, Ridgeline Medical, LLC (hereinafter "Ridgeline"), appeared by and through its counsel of record Bryan Smith, Esq. The Defendant, David Lyon ("Lyon"), appeared by and through his attorney of record, Edward W. Dindinger, Esq. Following oral argument on the respective motions for summary judgment, the court requested supplemental briefing. Both parties filed supplemental briefs and the court heard additional oral argument on October 4, 2022. Following the oral argument, the court took the matter under advisement.

I. INTRODUCTION

This is a matter of first impression involving an alleged implied-in-fact contract for medical services, the application of the Idaho Patient Act codified in Chapter 3, Title 48 Idaho Code as written prior to the March 2022 amendments (hereinafter "IPA")[1], and ultimately a challenge to the constitutionality of the IPA both facially and as applied. Ridgeline originally filed a Complaint against Lyon for a debt of $777.00 owed for medical services provided on or about March 2, 2021. Lyon filed a Counterclaim arguing that he has suffered damages as a result of Ridgeline's failure to comply with the IPA and seeking statutory penalties under I.C. § 48-311. Both Ridgeline and Lyon have filed motions for summary judgment pursuant to IRCP 56. Ridgeline argues that there is no genuine issue of material fact that Lyon owes $777.00 on an implied-in-fact contract. Ridgeline further argues that the IPA is unconstitutional and unenforceable. Lyon argues that Ridgeline has not complied with the IPA and under the enforcement and civil penalties provision of the IPA, Ridgeline cannot prevail on its claim and actually owes Lyon a penalty for not complying with the IPA.

II. PROCEDURAL HISTORY AND STIPULATED FACTS

1. Ridgeline filed a *Complaint* on August 4, 2021, seeking $777.00 for unpaid medical services provided by Ridgeline on March 2, 2021.
2. Lyon responded and filed an *Answer and Counterclaim* on September 2, 2021. In the Counterclaim, Lyon argues that Ridgeline failed to comply with the IPA and therefore

[1] The Idaho Patient Act, codified at IC §§ 48-301 through 48-315 was initially enacted by the legislature in its regular 2020 session and became effective January 1, 2021. Subsequently, the legislature amended the IPA in March of 2022. The March 2022 amendments were applicable to all "extraordinary collection actions" commenced on or after March 25, 2022. The present collection action was commenced on August 4, 2021. As a result, this court is applying the IPA as applicable prior to the March 2022 amendments. Therefore, unless otherwise noted, all references to the IPA are to the 2021 edition.

owes him for his actual damages or one thousand dollars ($1,000) whichever is greater. Lyon further asserts that Ridgeline's conduct was willful and that under the IPA Lyon would be entitled to treble damages.

3. Ridgeline filed an *Answer to Counterclaim* on November 18, 2021.
4. Ridgeline filed its *Motion for Summary Judgment* on January 23, 2022, along with their *Brief in Support of Summary Judgement.*
5. Ridgeline and Lyon stipulated to a statement of facts. The Parties jointly submitted a *Stipulated Statement of Facts* on February 23, 2022, setting out the facts relevant to the issues before this court. No other declarations of fact have been submitted.
6. The parties agree on the following facts:

On March 2, 2021, David Lyon ("Lyon") went to Ridgeline Medical, LLC ("Ridgeline") in Idaho Falls for medical treatment. Ridgeline is a limited liability company engaged in the practice of medicine. While at Ridgeline, Lyon completed some patient paperwork and confirmed his address at 3956 N. Yellowstone, Highway, Idaho Falls, Idaho 83401. Lyon made no payment at the time of service, nor did he make any payment arrangements. On April 2, 2021, Ridgeline mailed Lyon a final statement to the 3956 N. Yellowstone Highway address. The final statement complied with Idaho Code § 48-308. Lyon never received the April 2, 2021, final statement.

On May 14, 2021, Ridgeline authorized the law firm of Smith, Driscoll & Associates ("SDA") to collect the debt Lyon owed to Ridgeline. On that same day, SDA, on behalf of Ridgeline sent Lyon a letter asking him to validate the debt. On June 18, 2021, SDA on behalf of Ridgeline sent Lyon a demand letter giving him 10 days to settle the claim or risk being sued. SDA sent both letters to the 3956 N. Yellowstone address. Lyon did not respond to either letter.

True and correct copies of these letters are attached the *Stipulated Statement of Facts* as Exhibit "A".

On August 4, 2021, Ridgeline initiated this civil action against Lyon. On the same day, Ridgeline reported adverse information about Lyon's unpaid bill in the amount of $777 to a consumer reporting agency. After leaving Ridgeline, Lyon knew he owed Ridgeline some amount for the medical treatment. Lyon agrees $777 is a reasonable charge and has paid nothing on his $777 medical bill with Ridgeline. Nobody else has paid anything towards Lyon's bill, and Lyon has never had any reason to believe his bill to Ridgeline has ever been paid. Ridgeline would have told Lyon what Lyon owed Ridgeline if Lyon had asked Ridgeline for this information.

III. STANDARD OF REVIEW

A. CONSTITUTIONALITY

The constitutionality of a statute or administrative regulation is a question of law. *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.,* 143 Idaho 862, 869, 154 P.3d 433, 440 (2007). There is a presumption in favor of the constitutionality of a challenged statute or regulation, and the burden of establishing that the statute or regulation is unconstitutional rests upon the challengers. *Id.* The judicial power to declare legislative action unconstitutional should be exercised only in clear cases. *Id.*

B. SUMMARY JUDGMENT

Pursuant to Idaho Rule of Civil Procedure 56(a):

> A party may move for summary judgment, identifying each claim or defense, or the part of each claim or defense, on which summary judgment is sought. The court must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

I.R.C.P. 56(a). A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

I.R.C.P. 56(c). Where a right to a jury trial exists and has been timely demanded, the court is to construe all disputed facts and make all reasonable inferences in favor of the non-moving party. *Seward v. Musick Auction, LLC*, 164 Idaho 149, 155, 426 P.3d 1249, 1255 (2018). However, if there has not been a timely demand for a jury trial or it has subsequently been waived, or otherwise does not apply because the claim or defense lies in equity:

> the trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences.

Id. (citing *Borley v. Smith*, 149 Idaho 171, 176–77, 233 P.3d 102, 107–08 (2010). As a general rule, a trial court does not make findings of fact when deciding a motion for summary judgment because it cannot weigh credibility and the court must construe the facts in favor of the non-moving party. *Seward* 164 Idaho at 157, 426 P.3d at 1257. See also *Baxter v. Craney*, 135 Idaho 166, 172, 16 P.3d 263, 269 (2000).

If a non-moving party shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

> (1) defer considering the motion or deny it;
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> (2) allow time to obtain affidavits or declarations or to take discovery; or
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> (3) issue another appropriate order.

I.R.C.P. 56(d). If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

> (1) give an opportunity to properly support or address the fact;
>
> (2) consider the fact undisputed for purposes of the motion;
>
> (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
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> (4) issue any other appropriate order.

I.R.C.P. 56(e). If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact, including an item of damages or other relief, that is not genuinely in dispute and treating the fact as established in the case. I.R.C.P. 56(f).

IV. DISCUSSION

Ridgeline seeks the Court's determination the IPA is unconstitutional on the grounds that it violates the following rights under the United States Constitution: (a) the right to petition, (b) the right to free speech, (c) equal protection, (d) due process, and (e) the right against excessive fines. Ridgeline argues that the IPA's unconstitutional provisions are not severable from the remainder of the act and is unenforceable in its entirety. It also seeks summary judgment on its claim for an implied-in-fact contract between it and Lyon.

Lyon, in turn, argues that the IPA is constitutional. He asserts that a genuine issue of material fact does not exist on the issue of Ridgeline's liability for statutory damages and fees. Lyon seeks judgment, awarding him statutory damages and fees.

A. STANDING AND JUSTICIABILITY

1. As-Applied Challenges

As a general rule, a litigant only has standing to vindicate his/her own constitutional rights. *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 796, 104 S. Ct. 2118, 2124, 80 L. Ed. 2d 772 (1984). The Idaho Supreme Court has stated the standard for determining justiciability and standing as follows:

> "[i]t is a fundamental tenet of American jurisprudence that a person wishing to invoke a court's jurisdiction must have standing." *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002). Standing determines whether an injury is adequate to invoke the protection of a judicial decision. *Coeur D'Alene Tribe v. Denney, 161 Idaho 508, 513, 387 P.3d 761, 766 (2015)*, 161 Idaho at 513, 387 P.3d at 766. Standing is a threshold determination by this Court before reaching the merits of the case. *State v. Phillip Morris, Inc.*, 158 Idaho 874, 881, 354 P.3d 187, 194 (2015). "The inquiry 'focuses on the party seeking relief and not on the issues the party wishes to have adjudicated.'" Id. (quoting *Young*, 137 Idaho at 104, 44 P.3d at 1159). This Court has historically looked to the United States Supreme Court for guidance on issues of standing. Id. "'[T]he origin of Idaho's standing [rule] is a self-imposed constraint adopted from federal practice, as there is no "case or controversy" clause or an analogous provision in the Idaho Constitution as there is in the United States Constitution.'" *Regan v. Denney*, 165 Idaho 15, 21, 437 P.3d 15, 21 (2019) (quoting *Coeur d'Alene Tribe*, 161 Idaho at 513, 387 P.3d at 766) (citing U.S. CONST. art. III, § 2, cl. 1).
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> [T]o establish standing 'a plaintiff must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a like[lihood] that the injury will be redressed by a favorable decision.'" *Philip Morris*, 158 Idaho at 881, 354 P.3d at 194 (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157–58 (2014). C (quoting *Susan B. Anthony*, 573 U.S. at 157–58). The common phrase "allege or demonstrate" used by this Court "is an incomplete statement of the requirements for standing." *Id.* This Court clarified in *Young* that the standing phrase "allege or demonstrate" actually "requires a showing of a 'distinct palpable injury' and 'fairly traceable causal connection between the claimed injury and the challenged conduct.' " *Young*, 137 Idaho at 104, 44 P.3d at 1159 (emphasis added) (quoting Miles v. Idaho Power, 116 Idaho 635, 639, 778 P.2d 757, 761(1989). "Palpable injury" has been defined by this Court as "an injury that is easily perceptible, manifest, or readily visible." *Philip Morris*, 158 Idaho at 881, 354 P.3d at 194.
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> The bar for standing can vary with the circumstances of each individual case. *Id.* at 882, 354 P.3d at 195. It is admittedly "imprecise and difficult to apply." *Young*, 137 Idaho at 104, 44 P.3d at 1159. However, we have remained steadfast to the premise that "standing can never be assumed based on a merely hypothetical injury." *Philip Morris*, 158 Idaho at 882, 354 P.3d at 195 (citing *Young*, 137 Idaho at 104, 44 P.3d at 1159). Thus, bare allegations are insufficient. *Id.* Furthermore, "'a citizen and taxpayer may not challenge a governmental enactment where the injury is one

> suffered alike by all citizens and taxpayers of the jurisdiction'" (footnote omitted). *Noh v. Cenarrusa*, 137 Idaho 798, 800, 53 P.3d 1217, 1219 (2002) (quoting *Miles*, 116 Idaho at 641, 778 P.2d at 763). A petitioner must "'establish a peculiar or personal injury that is different than that suffered by any other member of the public.'" *Id.* (quoting *Selkirk-Priest Basin Ass'n v. State*, 128 Idaho 831, 834, 919 P.2d 1032, 1035 (1996)).

Reclaim Idaho v. Denney, 169 Idaho 406, 418, 497 P.3d 160, 172 (2021). This general rule is applicable to address his/her own constitutional rights. *Id.* at 796.

Ridgeline has standing in this instance. Ridgeline has demonstrated it has suffered an injury in fact. Specifically, the IPA operates to prohibit Ridgeline from suing or reporting Lyon's debt to a credit reporting agency before Lyon receives a final statement and the requisite waiting period has passed. In addition, Lyon has filed a counterclaim seeking to impose the penalties under the IPA against Ridgeline for initiating the lawsuit and reporting Lyon's debt to a credit reporting agency without Lyon first having received the final statement. Both of these instances demonstrate a distinct and palpable injury in fact that is fairly traceable to the IPA. Clearly there is a sufficient causal connection between the injury and the application of the IPA. And finally, if the court grants Ridgeline's legal challenge, it would redress Ridgeline's injuries. Each of the elements necessary for standing under the general rule are satisfied and Ridgeline has standing to contest the constitutionality of the IPA as it applies to these issues.

2. Facial Challenges

The United States Supreme Court has indicated "[t]here are two quite different ways in which a statute or ordinance may be considered invalid "on its face"—either because it is unconstitutional in every conceivable application, or because it seeks to prohibit such a broad range of protected conduct that it is unconstitutionally "overbroad." *Id.*

The overbreadth doctrine was first addressed in *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940). In that case, the Court determined that the very existence of a

broadly written statute may have such a deterrent effect of free speech expression that they should be subject to a challenge even by a party whose own conduct may be unprotected. Thereafter, the Supreme Court has repeatedly held that a statute may be challenged on its face even though a more narrowly drawn statute would be valid as applied to a party in the case before it. *Members of City Council*, 466 U.S. at 798-799. In *Broadrick v. Oklahoma*, the Court cautioned that there comes a point where the overbreadth doctrine goes too far and could be used to prohibit a State "from enforcing [a] statute against conduct that is admittedly within its power to proscribe." 413 US 601, 615, 93 S.Ct. 2908, 2918, 37 L.Ed.2d 830 (1973). "To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Id.*

The U.S. Supreme Court has recognized that the concept of substantial overbreadth is not readily reduced to an exact definition. *Members of City Council*, 466 US at 800. The Court summarized that "there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds." *Id.*

Courts "apply a two-part test to determine if a statute is unconstitutionally overbroad: (1) does the statute regulate constitutionally protected conduct, and (2) does the statute preclude a significant amount of that constitutionally protected conduct." *State v. Cartwright*, 168 Idaho 802, 808–09, 487 P.3d 737, 743–44 (2021). "Only if the statute intrudes upon a *substantial amount* of constitutionally protected conduct may it be struck down for overbreadth." *State v. Manzanares*, 152 Idaho 410, 423–24, 272 P.3d 382, 395–96 (2012) (emphasis in original). "The overbreadth claimant bears the burden of demonstrating, 'from the text of [the law] and from

actual fact,' that substantial overbreadth exists." *Virginia v. Hicks*, 539 U.S. 113, 122, 123 S. Ct. 2191, 2198, 156 L. Ed. 2d 148 (2003) (modification in original; quoting *New York State Club Assn., Inc. v. City of New York,* 487 U.S. 1, 14, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988).

The Idaho Supreme Court relied upon this approach to the overbreadth doctrine in *State v. Doe*, 148 Idaho 919, 924, 231 P.3d 1016, 1021 (2010). The Court stated:

> It is a key principle of constitutional law "that the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." *Broadrick v. Oklahoma,* 413 U.S. 601, 611–12 (1973). As a result, a litigant need not be prohibited from any constitutionally protected behavior in order to mount a facial challenge to a legislative measure in order to protect the rights of others not before the court. *Id.* at 612, However, because invalidating an ordinance based on a challenge of one who does not have standing in the traditional sense is "strong medicine," courts should use care in reviewing facial challenges. *Id.* at 613.

Id. 148 Idaho at 924 and 231 P.3d at 1021. The Idaho Supreme Court recognized that "[a]n ordinance may be facially overbroad if it: (1) seeks to regulate only constitutionally protected speech; (2) impermissibly burdens innocent associations; or (3) places regulations on 'the time, place, and manner of expressive or communicative conduct,' particularly where the restriction 'delegate[s] standardless discretionary power to local functionaries, resulting in virtually unreviewable prior restraints on First Amendment rights.'" *Id.* at 925, 231 P.3d at 1022. Further the court pointed out that the "review of an ordinance varies depending on the type of conduct prohibited." *Id.*

In this case, Ridgeline raises First Amendment issues on behalf of others relating to the IPA's prohibitions against commencing a lawsuit, filing or recording a lien, garnishment, attachment, execution, selling, transferring, and assigning debt, authorizing third parties to collect a debt in their own name, and reporting a debt to consumer reporting agencies. In general terms, each of these activities involves First Amendment protections. Ridgeline argues that there

is a realistic danger that the IPA will significantly compromise First Amendment protections for parties not before the court.

The IPA is a statutory scheme that regulates litigating medical debt and other free speech related conduct. Specifically, the IPA sets restrictions and requirements on a health care provider's right to file a lawsuit. A health care provider cannot commence a lawsuit unless and until the patient has received a consolidated summary of services and the final statement. In addition, and as discussed below, if the patient does not receive the charges or a consolidated summary of services within specific timelines, a health care provider may be forever barred from pursuing legal action—a significant and substantial prohibition of First Amendment activity. Therefore, this court finds that in addition to standing under the general rule which permits Ridgeline to address their own constitutional rights, Ridgeline also has standing to pursue a facial challenge to the IPA on behalf of others not before the court.

B. SECTION 48-304(2) OF THE IPA IS UNCONSTITUTIONAL ON ITS FACE BECAUSE IT IMPERMISSIBLY BURDENS HEALTH CARE PROVIDERS' RIGHT TO PETITION.

1. The right to petition is a fundamental right.

The right to petition is a fundamental constitutional right. The First Amendment to the United States Constitution reads, "Congress shall make no law respecting . . . the right of the people. . . to petition the Government for redress of grievances." *U.S. Const. Amend. I.* In *United Mine Workers of Am., Dist. 12 v. Illinois State Bar Ass'n,* 389 U.S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426 (1967), the United States Supreme Court stated:

> We start with the premise that the rights to assemble peaceably and to petition for a redress [of] grievances are among the most precious of the liberties safeguarded by the Bill of Rights. These rights, moreover, are intimately connected both in origin and in purpose, with the other First Amendment rights of free speech and free press. "All these, though not identical, are inseparable." The First Amendment would, however, be a hollow promise if it left government free to destroy or erode

> its guarantees by indirect restraints so long as no law is passed that prohibits free speech, press, petition, or assembly as such. *We have therefore repeatedly held that laws which* actually *affect the exercise of these vital rights cannot be sustained merely because they were enacted for the purpose of dealing with some evil within the State's legislative competence, or even because the laws do in fact provide a helpful means of dealing with such an evil.*

Id. at 222, 88 S.Ct. at 356, 19 L.Ed.2d at 430–31 (emphasis added; citations omitted). Subsequently, in *California Motor Transport Co. v. Trucking Unlimited,* 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972), the U.S. Supreme Court, recognized that "the right to petition extends to all departments of the government" and that "[t]he right of access to the courts is ... but one aspect of the right of petition." *See also Sosa v. DIRECTV, Inc.,* 437 F.3d 923, 929 (9th Cir. 2006).

The United States Supreme Court has more recently stated:

> This Court's precedents confirm that the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes. The right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government.

Borough of Duryea, Pa. v. Guarnieri, 564 U.S. 379, 387, 131 S. Ct. 2488, 2494, 180 L. Ed. 2d 408 (2011) (citations omitted). "The right to petition is in some sense the source of other fundamental rights, for petitions have provided a vital means for citizens to request recognition of new rights and to assert existing rights against the sovereign." *Id.* at 397, 131 S. Ct. 2500.

2. The IPA imposes a burden on the right to petition.

A review of IPA requirements reveals that it imposes some burden on a health care provider's right to petition the courts for redress. Specifically, health care providers like Ridgeline are prohibited from engaging in "extraordinary collection actions" unless they comply with specific requirements and strict timelines established by the statute. Extraordinary collection actions are defined by IC § 48-303(3) which provides:

(3) "Extraordinary collection action" means any of the following actions done in connection with a patient's debt:

(a) Prior to sixty (60) days from the patient's receipt of the final statement, selling, transferring, or assigning any amount of a patient's debt to any third-party, or otherwise authorizing any third-party to collect the debt in a name other than the name of the health care provider;

(b) Reporting adverse information about the patient to a consumer reporting agency; or

(c) Commencing any judicial or legal action or filing or recording any document in relation thereto, including but not limited to:

(i) Placing a lien on a person's property or assets;

(ii) Attaching or seizing a person's bank account or any other personal property;

(iii) Initiating a civil action against any person; or

(iv) Garnishing an individual's wages.

I C§ 48-303(3) (2020). This definition implicates a health care provider's right to petition. *See Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 933-39 (9th Cir. 2006) (explaining that the Petition Clause provides "breathing space" to protects pre-litigation activities necessary to an "effective exercise of the right[]" and discussing the scope of the breathing space).

For a health care provider to begin any extraordinary collection action they must comply with five conditions precedent stated in IC § 48-304 as follows:

No person shall engage, directly or indirectly, in any extraordinary collection action against a patient unless:

(1) Within forty-five (45) days from the date of the provision of goods or the delivery of services to the patient or from the date of discharge of the patient from a health care facility, whichever is later, a health care provider submits its charges related to the provision of goods or services to the third-party payor or payors of the patient, identified by the patient to the health care provider in connection with the services, if any, or, in the event no third-party payor was identified, to the patient;

(2) Within sixty (60) days from the date of the provision of goods or services to the patient or from the date of discharge, whichever is later, the patient

> receives from the health care facility that the patient visited, a consolidated summary of services, free of charge, unless the health care facility is exempted from providing a consolidated summary of services pursuant to section 48–309, Idaho Code;
>
> (3) The patient receives, free of charge, a final statement from the billing entity of the health care provider;
>
> (4) The health care provider does not charge or cause to accrue any interest, fees, or other ancillary charges until at least sixty (60) days have passed from the date of receipt of the final statement; and
>
> (5) At least ninety (90) days have passed from receipt of the final statement by the patient and final resolution of all internal reviews, good faith disputes, and appeals of any charges or third-party payor obligations or payments.

IC § 48-304 (2020).

Idaho code § 48-306 extends a health care provider's right to engage in extraordinary collection actions when a health care provider has failed to meet the timing requirements of Section 48-304(1) or (2), provided the health care provider satisfies the requirements of those sections within an additional forty-five (45) or ninety (90) days, respectively. However, late compliance with the initial timing requirements of § 48-304(1) and (2) results in the health care provider being barred from pursuing costs, expenses, and fees. Idaho Code §§ 48-304 and 48-306 impose a burden on a health care provider's right to petition.

In addition, under the IPA if a health care provider takes any extraordinary collection action other than as provided by I.C. §§ 48-304 and 48-306, it is strictly liable for actual damages sustained by the patient for its failure to comply or $1,000, whichever is greater. I.C. § 48-311(2). If the violations of Sections 48-304 and 48-306 are willful and intentional, the court can award treble damages or $3,000, whichever is greater and the patient shall be entitled to the reasonable attorney fees, costs and expenses associated with the action as determined by the court. I.C. § 48-311(3). Clearly, the creation of statutory liability for exercising a First

Amendment right to petition burdens a health care provider's right to petition. *Sosa v. DIRECTV, Inc.*, 437 F.3d 923 (9th Cir. 2006).

3. Fundamental rights may invoke different levels of judicial scrutiny.

The right to petition is not absolute. *McDonald v. Smith*, 472 U.S. 479, 484, 105 S. Ct. 2787, 2790–91, 86 L. Ed. 2d 384 (1985). Although review of legislation impacting a fundamental right generally requires a strict scrutiny standard of review, the United States Supreme Court has recognized that it is erroneous to assume all laws imposing a burden on a fundamental right "must be subject to strict scrutiny." *Burdick v. Takushi*, 504 U.S. 428, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992). In *Burdick*, the Supreme Court considered the constitutionality of statutory restraints on the right to vote—a fundamental right under the U.S. Constitution. *Id.* at 433, 112 S.Ct. at 2063 ("It is beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'"); *accord Packingham v. North Carolina*, 198 L. Ed. 2d 273, 137 S. Ct. 1730, 1738 (2017) ("The right to vote is a fundamental right under the U.S. Constitution."). Despite its fundamental nature, "the right to vote in any manner" is not absolute. *Id.*

The Supreme Court recognized that the fundamental right to vote, by its very nature, requires "substantial regulation" and accordingly, "[e]lection laws will invariably impose some burden upon individual voters." *Id.* (emphasis added). The Court explained that the "rigorousness" of its "inquiry into the propriety of a state . . . law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Id.* at 434, 112 S.Ct. at 2063-64. "[W]hen those rights are subjected to severe restrictions, the regulation must be narrowly drawn to advance a state interest of compelling importance." *Id.* (internal quotes omitted). But when state law "imposes only reasonable, nondiscriminatory restrictions . . . the

State's important regulatory interests are generally sufficient to justify the restrictions." *Id.* (internal quotes omitted).

Similar to the right to vote, the right to petition, by its very nature, requires substantial regulation. For example, statutes of limitations place customary restrictions on the right to petition. While statutes of limitations impact the right to petition and to seek redress from the courts, they are generally accepted as valid and appropriate limitations on the right. *See Guzman v. Piercy*, 155 Idaho 928, 940, 318 P.3d 918, 930 (2014) ("[A] statute of limitations may bar a constitutional right.").

4. The United States Supreme Court has looked to free speech precedent to determine the appropriate test applied to the Petition Clause.

The framework for considering Petition Clause claims has evolved over time. The United States Supreme Court has explained that the "basis of the constitutional right of access to courts" is "unsettled." *Christopher v. Harbury*, 536 U.S. 403, 415, 122 S. Ct. 2179, 2186, 153 L. Ed. 2d 413 (2002). The Supreme Court has "grounded the right of access to courts" in the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, the Fourteenth Amendment Equal Protection Clause, and the Fourteenth Amendment Due Process Clause. *Id.* at n. 12.

As recently as 2021, the Idaho Supreme Court considered access to the courts under an equal protection framework. *Gomersall v. St. Luke's Reg'l Med. Ctr., Ltd.*, 168 Idaho 308, 318, 483 P.3d 365, 375 (2021). In *Gomersall,* plaintiffs argued the district court erred by not applying the strict scrutiny test to their claim Idaho Code § 5-230 was unconstitutional "because the right to access courts is fundamental." *Id.* The Idaho Supreme Court rejected plaintiffs' argument, explaining that it "generally employs the rational basis test when examining statutes concerning economic interests—including statutes of limitations." *Id.*

Recently, right to petition precedent more frequently focuses on consideration of the right under the First Amendment. The United States Supreme Court has explained that just as the right to free speech may be subject to differing standards of review depending on the type of speech burdened, the right to petition may be similarly subjected to differing standards. *Borough of Duryea, Pa. v. Guarnieri,* 564 U.S. 379, 389, 131 S. Ct. 2488, 2495, 180 L. Ed. 2d 408 (2011). In *Borough of Duryea,* the Supreme Court recognized the right to petition and right of free speech to be "cognate rights" with "extensive common ground" that might justify the application of Speech Clause precedent to the Petition Clause. Although the Court warned not to "presume there is always an essential equivalence in the two Clauses or that Speech Clause precedents necessarily and in every case resolve Petition Clause claims," it found sufficient similarity to justify applying the public concern test developed under Speech Clause precedent to right to petition cases involving government employees and invoking a lesser standard of review. *Id.* at 388, 131 S.Ct. at 2495.

Both *Gomersall* and *Borough of Duryea* demonstrate that the fundamental right to petition does not automatically invoke the strict scrutiny standard of review. Just as different standards of review are applied to constitutional questions involving free speech, depending on the nature of the speech, differing standards are analogously applied to questions involving the right to petition.

5. Because the IPA invokes time, place, and manner regulations on the right to petition, the Court applies an intermediate level of scrutiny.

Under Speech Clause precedent, the government may "constitutionally impose reasonable time, place, and manner regulations" on content-neutral speech. *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2346, 207 L. Ed. 2d 784 (2020) (quoting *Hudgens v. NLRB*, 424 U.S. 507, 520, 96 S.Ct. 1029, 47 L.Ed.2d 196 (1976)).

The IPA's regulation of extraordinary collection actions is designed to be temporary. The requirements imposed by IC §48-304 and extended by IC §48-306 impose prerequisites to petitioning activities and, in essence, regulate the time and manner in which one may pursue an extraordinary collection action. If health care facilities or providers promptly provide charges, a consolidated summary of services, and a final statement, they may undertake extraordinary collection actions after a brief waiting period.

Under Speech Clause precedent, the United States Supreme Court subjects restrictions on the time, place, and manner of content-neutral speech to intermediate scrutiny:

> [W]e reaffirm today that a regulation of the time, place, or manner of protected speech must be *narrowly tailored to serve the government's legitimate, content-neutral interests but that it need not be the least restrictive or least intrusive means of doing so.* Rather, the requirement of narrow tailoring is satisfied "so long as the ... regulation promotes a substantial government interest that would be achieved less effectively absent the regulation." *United States v. Albertini,* 472 U.S. 675, 689, 105 S.Ct. 2897, 2906, 86 L.Ed.2d 536 (1985); see also *Community for Creative Non–Violence, supra,* 468 U.S., at 297, 104 S.Ct., at 3071. To be sure, this standard does not mean that a time, place, or manner regulation may burden substantially more speech than is necessary to further the government's legitimate interests. Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals.

Ward v. Rock Against Racism, 491 U.S. 781, 798–99, 109 S. Ct. 2746, 2757–58, 105 L. Ed. 2d 661 (1989) (emphasis added). "[O]ur cases quite clearly hold that restrictions on the time, place, or manner of protected speech are not invalid 'simply because there is some imaginable alternative that might be less burdensome on speech.'" *Id.* at 797, 109 S. Ct. at2757 (quoting *United States v. Albertini,* 472 U.S. 675, 689, 105 S.Ct. 2897, 2906, 86 L.Ed.2d 536 (1985)). "The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry Educ. Ass'n v. Perry Loc. Educators' Ass'n*, 460 U.S. 37, 45, 103 S. Ct. 948, 955, 74 L. Ed. 2d 794 (1983).

The United States Supreme Court has acknowledged government has a "legitimate interest in protecting consumers from commercial harms." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 579, 131 S. Ct. 2653, 2672, 180 L. Ed. 2d 544 (2011) (internal quotations omitted). One of the IPA's express purposes is to minimize medical debt collection abuses—a commercial harm. I.C. § 48-302. This purpose presents a legitimate governmental interest. The legislature purports to accomplish this goal through another legitimate interest—ensuring the visibility and transparency of medical billing. The IPA promotes these interests by imposing deadlines by which health care providers must adequately inform patients of their medical debts and of all health care providers to whom the patient owes a debt. The IPA's notice requirements (requiring the timely provision of charges, consolidated summaries of services, and final statements) ensure patients are timely and clearly informed of their medical debts. These requirements promote the government's legitimate interest in medical billing transparency. Without such requirements to ensure notice and transparency in medical charges, the government's interest would be achieved less effectively.

Similarly, the IPA's waiting period to pursue extraordinary collection actions empowers medical consumers with knowledge of their debts, ultimately minimizing their vulnerability to abuses from unknown health care providers. A health care facility which complies with the IPA's time constraints, does not face an outright bar to the pursuit of an extraordinary collection action. For such facilities the IPA is narrowly tailored to achieve the goal of ensuring transparent communication of medical debts and time for patients to authenticate or challenge the debt. The IPA does not place limits on a health care facility's ability to communicate with patients/debtors before or after the waiting period has run. At all times, it leaves open "ample

alternative channels of communication" and, likewise, leaves open ample opportunity for extraordinary collection action within a reasonable time.

Ridgeline argues that health care facilities can be completely barred from pursuing their right to petition if they comply with the notice requirements of Section 48-304 but the patient disputes receipt of the final payment. It maintains that health care providers are powerless to counter a patient's contention that he or she never received a final statement. This latter contention is unpersuasive. Section 48-308 creates a presumption that consolidated summaries of services and final statements, sent by first class mail to the last address provided by the patient, are received three days after mailing. While this presumption is rebuttable, the Court disagrees that a patient's conclusory assertion that he or she did not receive the notice(s), without more, is sufficient to overcome the presumption. *See* I.R.E. 301 ("[T]he party against whom a presumption is directed has the burden of producing evidence to rebut the presumption."). The IPA's presumption is sufficiently strong and narrowly tailored to further the government's interests. Health care facilities are also free to communicate with patients to verify timely receipt of a final statement prior to initiating an extraordinary collection action.

Additionally, a final statement is not under the same time ceiling as a consolidated summary of services. Even if a patient disputes receipt of the final statement, the health care facility is not cut off from providing a new copy of the final statement. *Compare* § 48-304(2) and (3) (the former imposing a limitation period by which a consolidated summary of services must be provided and the latter imposing no limitation period by which a final statement must be provided). If a patient credibly and successfully rebuts a presumption that he or she received the final statement, the health care facility can "correct" the non-receipt by providing the patient with a new copy of the final statement. As applied to health care facilities, the IPA's time

restrictions are narrowly tailored to serve the State's legitimate interest in maximizing medical billing transparency and minimizing medical debt collection abuse.

Although the Court finds the IPA to be sufficiently narrowly tailored as to the rights of health care *facilities*, the same cannot be said for all health care *providers*. A health care facility, burdened with the obligation of ensuring a patient timely receives a consolidated summary of services may fail in that task. The facility's failure may justly bar the facility itself from pursuing extraordinary collection actions, but it also *unjustly* bars a separate health care provider who rendered services at the facility from pursuing any extraordinary collection actions to recover debts. For example, a patient undergoing a knee replacement surgery at a hospital may receive services not just from the facility/hospital, but from a contracting surgeon, anesthesiologist, and radiologist. If the hospital fails to ensure timely receipt of the required consolidated summary of services, the surgeon, anesthesiologist, and radiologist are foreclosed, through no fault of their own, from pursuing their debts through protected petitioning activities which fall within the scope of an extraordinary collection action. The IPA does not consider, address, or correct for this scenario and, consequently, cannot be said to be narrowly tailored to further the State's interest in minimizing medical debt collection abuses. Accordingly, on its face, Section 48-304(2) unconstitutionally violates health care providers' right to petition.

6. The Court does not need to rely on the *Noerr-Pennington* doctrine to construe the IPA.

Ridgeline argues that to determine whether the IPA is constitutional, the Court must first apply the *Noerr-Pennington* doctrine. It contends the *Noerr-Pennington* doctrine demonstrates the IPA is unconstitutional on its face because its prohibition of extraordinary debt collection activities ("filing suit . . . , placing a lien, attaching or seizing personal property, garnishing

wages, or otherwise commencing any judicial or legal action") specifically burden the fundamental right to petition. Br. in Support of M. for Summ. J. at 10.

"Under the *Noerr–Pennington* doctrine, those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct." *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 929 (9th Cir. 2006). The doctrine is not, however, applied to determine the constitutionality of a statute. Instead, it presents a rule of statutory construction, requiring courts to interpret statutes "so as to avoid burdening conduct that implicates the protections afforded by the Petition Clause unless the statute clearly provides otherwise." *Id.* at 931. "In this sense, *Noerr–Pennington* is a specific application of the rule of statutory construction known as the canon of constitutional avoidance, which requires a statute to be construed so as to avoid serious doubts as to the constitutionality of an alternate construction. *Id.* at 931, n. 5.

In *Sosa,* the Ninth Circuit identified a three-step process for considering application of the Noerr-Pennington doctrine. *Id.* at 930. The Court first identifies the burden the statute imposes on petitioning rights. Second, the Court "examine[s] the precise petitioning activity at issue, to determine whether the burden on that activity implicate[s] the protection of the Petition Clause." *Id.* Third, the Court analyzes the statute "to see whether it could be construed so as to preclude such a burden on the protected petitioning activity." *Id.* "Where . . . the burdened conduct could fairly fall within the scope of the Petition Clause *and a plausible construction of the applicable statute is available that avoids the burden*, we must give the statute the reading that does not impinge on the right of petition." *Id.* at 932 (emphasis added).

When considering the third step of the *Noerr-Pennington* analysis in *Sosa,* the Ninth Circuit found that it *could* interpret the relevant RICO statutes in a manner that did not include

the pre-petitioning activities at issue. Because it *could* interpret the statutes that way, it did so to avoid considering the constitutionality of the statutes at issue. *Id.* at 939-42.

In this case, the language of Sections 48-304 and 48-311 *unavoidably* imposes burdens on petitioning activity. Ridgeline does not present any alternative interpretation of the IPA. In fact, Ridgeline notes the "IPA cannot be interpreted to avoid imposing a burden on medical creditors' petitioning rights . . . ." Br. in Support of M. for Summ. J. at 11. Neither does the Court perceive of an alternative interpretation, which does not burden petitioning activity. To the contrary, the IPA is specifically designed to burden petitioning activity. When a statute "clearly provide[s] for the burden posed by the lawsuit" a Court must then consider "whether the statute may be applied to the petitioning conduct *consistently with the Constitution*." *Sosa,* 437 F.3d. at 932. In other words, when, as in this case, the statute clearly impacts the right to petition *and no alternative construction is available*, the Court considers the constitutionality of the statute itself, and cannot resort to the *Noerr-Pennington* rule of avoidance.

D. THE IPA IS CONSTITUTIONAL AS APPLIED TO RIDGELINE'S RIGHT TO PETITION.

As discussed above, the IPA's time restrictions are constitutional as applied to health care facilities. Ridgeline is a health care facility. I.C. § 48-303(5).

Ridgeline argues that because the parties have stipulated to Lyon's non-receipt of the final statement, it is unconstitutionally barred from pursuing extraordinary collection actions in violation of its First Amendment right to petition. Ridgeline's argument is unconvincing. First, Ridgeline stipulated that Lyon did not receive the final statement despite the lack of any affirmative evidence to that effect. Ridgeline's stipulation does not weaken the IPA's presumptive protections, as drafted under Section 48-308.

Finally, Ridgeline may still take measures to provide Lyon with a copy of the final statement. Ridgeline would be prohibited from collecting any collection costs, expenses and fees, including attorney's fees and prejudgment and post judgment interest. Nevertheless, provided it has otherwise complied with "all other requirements of section 48-304," it "may commence an extraordinary collection action." I.C. § 48-306.

E. SECTION 48-303(3)(b) VIOLATES HEALTH CARE PROVIDERS' FIRST AMENDMENT RIGHT TO FREE SPEECH ON ITS FACE.

Ridgeline argues that the IPA unconstitutionally limits content-based speech on its face. More specifically, Ridgeline argues that "[s]elling, transferring, reporting, and assigning debt are all forms of speech" that "convey the message that a medical debt is owed." Br. in Support of M. for Summ. J. at 28 (internal quotations and modifications omitted). Ridgeline cites *Barr v. American Association of Political Consultants,* 140 S. Ct. 2335, 2346, 207 L. Ed. 2d 784 (2020), in support of its position.

In *Barr*, the United States Supreme Court considered the constitutionality of 47 U.S.C. § 227(b)(1)(A)(iii). As enacted in 1991, the statute prohibited most robocalls made to cell phones. In 2015, Congress amended the provision to permit robocalls "made solely to collect a debt owed to or guaranteed by the United States." 47 U.S.C. § 227(b)(1)(A)(iii). The Supreme Court held that the government-debt exception constituted a content-based restriction. It explained:

> Ratified in 1791, the First Amendment provides that Congress shall make no law "abridging the freedom of speech." Above "all else, the First Amendment means that government" generally "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972).
>
> The Court's precedents allow the government to "constitutionally impose reasonable time, place, and manner regulations" on speech, but the precedents restrict the government from discriminating "in the regulation of expression on the basis of the content of that expression." *Hudgens v. NLRB*, 424 U.S. 507, 520, 96 S.Ct. 1029, 47 L.Ed.2d 196 (1976). Content-based laws are subject to strict

> scrutiny. See *Reed v. Town of Gilbert*, 576 U.S. 155, 163–164, 135 S.Ct. 2218, 192 L.Ed.2d 236 (2015). By contrast, content-neutral laws are subject to a lower level of scrutiny. *Id.*, at 166, 135 S.Ct. 2218.

Barr, 140 S. Ct. at 2346, 207 L. Ed. 2d 784. As held in *Reed, supra,* a content-based restriction arises when "a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed,* 576 U.S. at 163, 135 S.Ct. at 2227.

> This commonsense meaning of the phrase "content based" requires a court to consider whether a regulation of speech "on its face" draws distinctions based on the message a speaker conveys. . . . Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Id. at 163–64, 135 S. Ct. at 2227.

The *Barr* Court held that under the statute, the legality of a call turned entirely on whether it was made to collect a federal debt or guarantee:

> A robocall that says, "Please pay your government debt" is legal. A robocall that says, "Please donate to our political campaign" is illegal. That is about as content-based as it gets. Because the law favors speech made for collecting government debt over political and other speech, the law is a content-based restriction on speech.

Barr, 140 S. Ct. at 2346, 207 L. Ed. 2d 784.

1. The IPA's restriction on reporting of adverse information is a content-based restriction that is not narrowly tailored to further a compelling interest.

In this case, the IPA governs the "collection of debts owed to health care providers." I.C. § 48-302. It restricts, for a time, the reporting of any "adverse information about [a] patient to a consumer reporting agency." I.C. § 48-303(3)(b). A health care provider may, however, freely report non-adverse information. Likewise, a person may freely report adverse information regarding debts not owed to health care providers, including consumer debt and medical debts accrued on a credit card. The IPA "applies to particular speech," favoring speech related to debt

owed to non-medical providers over that of debt owed to medical providers. The IPA restriction on adverse debt reporting constitutes a content-based restriction.

"Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163, 135 S. Ct. 2218, 2226, 192 L. Ed. 2d 236 (2015). Because the IPA's prohibition on adverse reporting to consumer credit agencies is a content-based restriction, the Court applies strict scrutiny to determine whether the law is justified.

Section 48-302 of the IPA outlines the legislative intent in adopting the act:

> The Idaho legislature finds that medical billing practices have little visibility to Idaho citizens. As a result, consumers often find themselves in collection actions for debts they were unaware of, from health care providers whom they do not recognize. Once in collections, current Idaho law enables excessive attorney's fees and fails to provide judges with clear guidance to combat abuses of the collections process. This chapter shall govern the fair collection of debts owed to health care providers.

The legislature thereby demonstrates an interest in (1) increasing the visibility and transparency of medical billing, (2) minimizing excessive attorney fees resulting from medical debt collection actions, and (3) providing clear guidance to Idaho judges to help minimize medical debt collection abuses.

Assuming, without deciding, that these three interests are compelling, the IPA's prohibition on reporting adverse information to a consumer reporting agency does not advance these interests. A prohibition on adverse reporting does not increase the visibility or transparency of medical billing, it does not affect the attorney fees charged in debt collection actions, and does not, in any way, provide clarity to the judiciary on how to minimize debt collection abuses. To put it simply, the restriction on reporting to consumer reporting agencies is

not tailored, narrowly or otherwise, to serve any compelling state interests. Therefore, the prohibition on adverse reporting is unconstitutional on its face.

2. The IPA's restrictions on the selling, transferring, and assigning of debts does not implicate the Free Speech clause.

Although the IPA's prohibition against reporting medical debt plainly amounts to a content-based restriction on free speech, it is less clear whether its restrictions on selling, transferring, and assigning debts restricts free speech. The U.S. Supreme Court has "extended First Amendment protection only to conduct that is inherently expressive." *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 66, 126 S. Ct. 1297, 1310, 164 L. Ed. 2d 156 (2006). "[R]estrictions on protected expression are distinct from restrictions on economic activity or, more generally, on nonexpressive conduct." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567, 131 S. Ct. 2653, 2664, 180 L. Ed. 2d 544 (2011). The Court has rejected the proposition "that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." *Texas v. Johnson*, 491 U.S. 397, 404, 109 S. Ct. 2533, 2539, 105 L. Ed. 2d 342 (1989) (quoting *United States v. O'Brien,* 391 U.S. 367, 376, 88 S. Ct. 1673, 1678–79, 20 L. Ed. 2d 672 (1968)). On the other hand, if conduct is "sufficiently imbued with elements of communication" it may "fall within the scope of the First and Fourteenth Amendments.'" *Id.* (quoting *Spence v. Washington,* 418 U.S. 405, 409, 94 S.Ct. 2727, 2730, 41 L.Ed.2d 842 (1974)). "In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we have asked whether '[a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it.'" *Johnson,* 491 U.S. at 404, 109 S. Ct. at 2539 (quoting *Spence v. Washington,* 418 U.S. 405, 418, 94 S.Ct. 2727, 2730, 41 L.Ed.2d 842 (1974); modifications in original).

"[W]hen 'speech' and 'nonspeech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." *O'Brien*, 391 U.S. at 376, 88 S. Ct. at 1678–79. "[I]t has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed." *Rumsfeld*, 547 U.S. at 62, 126 S. Ct. at 1308 (quoting *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502, 69 S.Ct. 684, 93 L.Ed. 834 (1949)). In *Rumsfeld,* the Court held that the statutory regulation at issue only had an incidental impact on speech. At issue was the impact of the Solomon Amendment, which withheld federal funds from educational institutions that denied military recruitment on campus on a basis unequal to that of other recruiters. The Court concluded that the statutory regulation's impact on speech was incidental because it did "not focus on the *content* of a school's recruiting policy . . . . Instead, it looks to the *result* achieved by the policy." *Id.* at 57, 126 S. Ct. at 1305.

Ridgeline argues that the sale, transfer, or assignment of a debt conveys the message that a "debt is owed." While the transactions may document such a message, the message is incidental to the transaction's financial purpose. A buyer, transferee or assignee would presumably know and understand the message that a "debt is owed" prior to agreeing to and engaging in the transaction. The transaction is not one for the sale of information but for rights to the debt. *Cf. Sorrell,* 564 U.S. at 557, 131 S. Ct. at 2659 (holding unconstitutional a statute restricting "the sale, disclosure, and use of pharmacy records" for marketing purposes because it imposed a burden based on content and the speaker's identity). The transactional restrictions do not "prohibit[] a speaker from conveying information that the speaker already possesses." *Sorrell*, 564 U.S. at 568, 131 S. Ct. at 2665. The IPA does not restrict health care providers from

freely communicating to a potential buyer, transferee, or assignee the fact that a debt is owed. It merely forestalls, for a time, the transfer of a *right* to collect on the debt, i.e. an economic activity. The fact that the financial transactions are carried out through the means of written or printed documents does not convert the IPA's temporal restraints on the transactions into an abridgement of free speech. The IPA does not focus on the content of transactional documents but on the result—forestalling the transaction until certain acts have been completed. Any impact on speech because of the transactional restrictions is incidental.

The IPA's provisions related to the selling, transferring, or assigning of medical debt constitute regulation on non-expressive conduct and does not fall within the scope of Free Speech clause protections.

F. THE IPA DOES NOT VIOLATE EQUAL PROTECTION.

Ridgeline additionally argues that the IPA's limitations on petitioning activity also violates equal protection. When addressing equal protection claims, the Idaho Supreme Court has identified a three-step analysis: "(1) identifying the classification under attack; (2) identifying the level of scrutiny under which the classification will be examined; and (3) determining whether the applicable standard has been satisfied." *Nelson v. Pocatello*, 170 Idaho 160, 508 P.3d 1234, 1241 (2022). See also *Gomersall v. St. Luke's Reg'l Med. Ctr., Ltd.*, 168 Idaho 308, 318, 483 P.3d 365, 375 (2021) (citing *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 395, 987 P.2d 300, 307 (1999)). If the claims arise under the U.S. Constitution, the court implements one of "three levels of scrutiny: strict scrutiny, intermediate scrutiny, or rational basis." *Id.* "[E]qual protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or

operates to the peculiar disadvantage of a suspect class." *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 312, 96 S. Ct. 2562, 2566, 49 L. Ed. 2d 520 (1976).

In the present case, it is clear that no authority has found that health care facilities or health care providers are members of a suspect class. Suspect classes are those classes which have historically been encumbered with disabilities or have been subjected to unequal treatment or have been excluded from the majoritarian political process. *State v. Beam*, 115 Idaho 208, 211, 766 P.2d 678, 681 (1988) (citing *Mathews v. Lucas,* 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651 (1976); *San Antonio Ind. School Dist. v. Rodriguez,* 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed.2d 16, *reh'g denied* 411 U.S. 959, 93 S.Ct. 1919, 36 L.Ed.2d 418 (1973)). Suspect classes which invoke special scrutiny have been based on race or national origin, religion, alienage, sex, non-residency and wealth. *Id.* Clearly health care facilities and/or health care providers are not members of a suspect class.

Ridgeline argues that the IPA's limitations on petitioning activity violate equal protection because they interfere with the exercise of a fundamental right and therefore strict scrutiny applies. However, as stated above, as recently as 2021, the Idaho Supreme Court has considered access to the courts (a subset of the right to petition) under an equal protection framework. *Gomersall, v. St. Luke's Reg'l Med. Ctr., Ltd.*, 168 Idaho 308, 318, 483 P.3d 365, 375 (2021). In *Gomersall,* plaintiffs argued the district court erred by not applying the strict scrutiny test to their claim Idaho Code § 5-230 was unconstitutional "because the right to access courts is fundamental." *Id.* The Idaho Supreme Court rejected plaintiffs' argument, explaining that it "generally employs the rational basis test when examining statutes concerning economic interests—including statutes of limitations." *Id.* Therefore, in the context of this case, because we are examining a statute concerning economic interests, the rational basis test applies.

Under the rational basis test, a classification will survive scrutiny if there is "any conceivable state of facts which will support it." *Id.* (quoting *Bint v. Creative Forest Prods.*, 108 Idaho 116, 120, 697 P.2d 818, 822 (1985)). The legislative intent of the act is to "govern the fair collection of debts owed to health care providers." Idaho Code § 48-302. It is well within the legislature's right to regulate the medical debt collection practice. Requiring transparency in billing and the practice of collection is a legitimate purpose to protect the interests of debtors. Debtors have the right to know about the debt and to have the opportunity to pay their debt. Finally, there is a legitimate government interest in controlling the medical collection litigation process.

Ridgeline and other health care providers can still file suit. They simply have to abide by the timing that the legislature sets out, and ensure the debtor receives notice of their debt. The Plaintiff alleges that the IPA completely bars health care providers from receiving due process at all. As discussed previously, that is not what the act does. The act merely places some responsibility on the health care providers to ensure their billing systems are accurate and to provide consumers with timely, accurate information. It is rational and legitimate for the legislature to require the debtor has the knowledge of their debts and the opportunity to pay before the medical collection process begins.

This Court finds that there is legitimate government interest in controlling medical collection litigation. Therefore, the IPA is constitutional on its face under the equal protection clause.

G. THE IPA DOES NOT VIOLATE THE DUE PROCESS CLAUSE ON ITS FACE.

Ridgeline asserts two bases demonstrating the IPA violates procedural due process on its face. First, it argues the IPA violates due process by precluding medical creditors from

undertaking extraordinary collection actions if a patient does not first receive a final statement or consolidated summary of services. Second, it asserts the IPA fails to "give medical creditors a reasonable opportunity to know" whether they may pursue extraordinary collection activities. Br. in Support of M. for Summ. J. at 34.

The Idaho Supreme Court has explained that the "right of access to courts has been grounded in the Due Process Clause of the United States Constitution." *Evensiosky v. State*, 136 Idaho 189, 191, 30 P.3d 967, 969 (2001). The Idaho Supreme Court applies a rational basis test to determine whether a prisoner's due process rights are infringed. *Id.* Under that standard, a "regulation is valid if it is reasonably related to legitimate [State] interests." *Id.* (quoting *Turner v. Safley,* 482 U.S. 78, 89, 107 S.Ct. 2254, 2261, 96 L.Ed.2d 64 (1987)).

Similarly, in *Sosna v. Iowa*, the United States Supreme Court considered whether a statutory one-year residential requirement prior to petitioning for divorce was unconstitutional under the Due Process Clause for infringing on the right of access to courts. 419 U.S. 393, 95 S. Ct. 553, 42 L. Ed. 2d 532 (1975). In finding the statute to be constitutional, the Court noted that petitioner "was not irretrievably foreclosed from obtaining some part of what she sought . . . . Iowa's requirement delayed her access to the courts, but, by fulfilling it, she could ultimately have obtained the same opportunity for adjudication which she asserts ought to have been hers at an earlier point in time." Id. at 406, 95 S. Ct. at 561 (emphasis added). The Court applied the rational basis test, finding the statute furthered the State's two-fold interests in requiring petitioners have some minimal attachment to the State and in minimizing risk of collateral attack. Id. at 407, 95 S. Ct. at 561. Because "the gravamen of . . . Sosna's claim is not total deprivation . . . but only delay," the statute was constitutional. *Id.* at 410, 95 S. Ct. at 563.

Similarly, in this case, with the exception of Sections 48-304(2) and 48-303(3)(b), which the Court has determined to be unconstitutional, the IPA merely delays but does not deprive health care providers from pursuing extraordinary collection actions. As discussed above, the remaining provisions of the IPA rationally further a legitimate state interest and do not violate Due Process.

Finally, Ridgeline's argument the IPA neglects to give health care provider's reasonable opportunity to know whether they may pursue extraordinary collection activities fails. The IPA does not preclude health care providers from undertaking steps to determine whether a patient has received the required documents before commencing an extraordinary collection action. Health care providers may use the U.S. Postal Services return receipt, phone calls, or similar protocol to verify receipt.

H. AS APPLIED TO RIDGELINE SECTION 48-311(2) IMPOSES A DISPROPORTIONAL PENALTY IN VIOLATION OF THE EIGHTH AMENDMENT.

Ridgeline argues the civil penalties imposed by Section 48-311(2) and (3) are excessive in violation of the Eighth Amendment of the U.S. Constitution as applied to Ridgeline. Ridgeline argues that Lyon is seeking to enforce Section 48-311 to punish Ridgeline for its initiation of an extraordinary collection action without first ensuring Lyon's receipt of the final notice. Ridgeline more specifically contends that the $1,000 fine imposed by § 48-311(2) and the award of attorney fees imposed by § 48-311(3) are punitive in nature and disproportionate to the gravity of the offense.

The United States Constitution proclaims that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." U.S. Const., Amend. VIII. "[T]he Excessive Fines Clause [] "limits the government's power to extract payments, whether in

cash or in kind, as punishment for some offense." *Pimentel v. City of Los Angeles*, 974 F.3d 917, 921 (9th Cir. 2020) (quoting *Austin v. United States*, 509 U.S. 602, 609–610, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993)). The question is not whether a statutory fine "is civil or criminal, but rather whether it is punishment." *Austin v. United States*, 509 U.S. 602, 610, 113 S. Ct. 2801, 2806, 125 L. Ed. 2d 488 (1993). The Excessive Fines Clause applies to the states through the Fourteenth Amendment's Due Process Clause. *Timbs v. Indiana*, 203 L. Ed. 2d 11, 139 S. Ct. 682, 687 (2019).

"[A] civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term." *Austin*, 509 U.S. at 610, 113 S. Ct. at 2806 (quoting *United States v. Halper,* 490 U.S. 435, 448, 109 S.Ct. 1892, 1901, 104 L.Ed.2d 487 (1989).

> The Supreme Court has held that a fine is unconstitutionally excessive under the Eighth Amendment if its amount "is grossly disproportional to the gravity of the defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 336–37, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998). To determine whether a fine is grossly disproportional to the underlying offense, four factors are considered: (1) the nature and extent of the underlying offense; (2) whether the underlying offense related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of the harm caused by the offense. *See United States v. $100,348 in U.S. Currency*, 354 F.3d 1110, 1122 (9th Cir. 2004) (enunciating the "*Bajakajian* factors"). While these factors have been adopted and refined by subsequent case law in this circuit, *Bajakajian* itself "does not mandate the consideration of any rigid set of factors." *United States v. Mackby*, 339 F.3d 1013, 1016 (9th Cir. 2003).

Pimentel, 974 F.3d at 921. The Ninth Circuit applies the *Bajakajian* factors not just to criminal forfeitures but also to civil penalties. *Id.* at 922.

Because Section 48-311(2) permits an award the greater of actual damages *or* $1,000, the penalty "cannot fairly be said solely to serve a remedial purpose." *Austin*, 509 U.S. at 610. The penalty serves a retributive or deterrent purpose and is a punishment whenever $1,000 is the

greater of the two measures of damages. The Court must, therefore, consider whether the penalty under Section 48-311(2) is grossly disproportional to the gravity of Ridgeline's offense.

1. Nature and extent of the underlying offense

Under the first *Bajakajian* factor, the Court looks to the nature and extent of the underlying offense. "Courts typically look to the violator's culpability to assess this factor." *Pimentel*, 974 F.3d at 922. "[I]f culpability is low, the nature and extent of the violation is minimal." *Pimentel*, 974 F.3d at 923. "[B]enign actions may still result in some non-minimal degree of culpability." *Id.* "Even if the underlying violation is minor, violators may still be culpable." *Id.*

In this instance, Lyon claims damages of $1,000, based on Ridgeline's undertaking of an extraordinary collection action without ensuring his receipt of the final statement. Answer and Counterclaim at 6, ¶ 15; D's Mem. in Support of M. for Summ. J. at 7. It is undisputed that Ridgeline mailed Lyon a final statement on April 2, 2021, to the address he provided prior to receiving medical treatment at Ridgeline. Three days later, Lyon was presumed to have received the final statement. I.C. § 48-308. Ridgeline commenced extraordinary collection actions on August 4, 2021. However, after the commencement of the lawsuit the parties stipulated that Lyon did not receive the final notice. Because Ridgeline did not have notice of Lyon's lack of receipt until after initiating an extraordinary collection action, the Court finds no culpability on Ridgeline's part. Ridgeline attempted to comply with the IPA's notice prerequisites and reasonably relied on the statutory presumption.

2. Other illegal activities

The parties do not identify any other illegal activities involved in this case. The Court concludes this factor bears no weight in its consideration. *See Pimentel,* 974 F.3d at 923 ("This

factor is not as helpful to our inquiry as it might be in criminal contexts.").

3. Other penalties

Section 48-311(2) presents two alternatives for penalizing non-compliant behavior. A patient debtor may be awarded either their actual damages or $1,000, whichever is greater. The record does not reveal what actual damages Lyon incurred. Additionally, Section 48-311(1) forecloses a non-compliant health care provider from collecting costs, attorney fees, and prejudgment and postjudgment interest. Ridgeline does not assert the latter penalty is disproportional in violation of the Eighth Amendment.

4. The extent of the harm caused by the offense

The Ninth Circuit has explained that the "most obvious and simple way to assess" the fourth factor "is to observe the monetary harm resulting from the violation," but that the analysis "is not limited to monetary harms alone." *Pimentel,* 974 F.3d at 923. "Courts may also consider how the violation erodes the government's purposes for proscribing the conduct." *Id.* "[L]egislatures . . . retain 'broad authority' to fashion fines." *Id.* at 924 (quoting *Bajakajian,* 524 U.S. at 336, 118 S. Ct. at 2028). *Id.* "[J]udgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Bajakajian,* 524 U.S. at 336, 118 S. Ct. at 2037. "Reviewing courts ... should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes." *Id.* (quoting *Solem v. Helm,* 463 U.S. 277, 290, 103 S.Ct. 3001, 3009, 77 L.Ed.2d 637 (1983)). "[S]trict proportionality between the amount of a punitive forfeiture and the gravity of a criminal offense" is not required. *Bajakajian,* 524 U.S. at 336, 118 S. Ct. 2028. The "amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Id.* at 334, 118 S. Ct. 2028.

Idaho Code § 48-302 identifies three purposes behind the IPA: (1) increasing the visibility and transparency of medical billing, (2) minimizing excessive attorney fees resulting from medical debt collection actions, and (3) providing clear guidance to Idaho judges to help minimize medical debt collection abuses.

Under the stipulated facts of this case, Ridgeline commenced extraordinary collection actions after a presumption arose that Lyon had received the final statement. The State's purpose of increasing visibility and transparency was furthered when Ridgeline produced and mailed a final statement, providing that visibility and transparency. The State's purpose in minimizing attorney fees resulting from collection actions was also furthered when Ridgeline waited the required 90-days after presumed receipt to commence an extraordinary collection action. Ridgeline's reliance on the Section 48-308 presumption does not erode the State's purposes but furthered them.

The Court recognizes inherent power to determine the types and limits of punishments for crimes. However, the Court is left with the conclusion that under the facts of this case, the gravity of Ridgeline's offense is minimal in light of the fact it acted in compliance with the statutory presumption and in furtherance of the IPA's purposes.

5. Conclusion

Because Ridgeline reasonably relied on the Section 48-308 presumption, the Court does not find any culpability on its part. Ridgeline did what the legislature asked it to do. Considering all four *Bajakajian* factors in light of the facts of this case, the penalty provision under Section 48-311(2) is excessive and disproportional to the offense and, therefore, violates the Eighth Amendment. Because Lyon was not successful in enforcing Section 48-311,[2] the

[2] *See* severability discussion in Section I.3. below.

Court does not consider the constitutionality of an award of attorney fees under Section 48-311(3).

I. Sections 48-303(3)(b) and 48-304(2) should be stricken from the IPA. Section 48-311(2) is stricken as applied to Ridgeline.

The final issue before this court is whether the IPA is unenforceable in its entirety due to the alleged constitutional violations.

> Whether portions of a statute which are constitutional shall be upheld while other portions are eliminated as unconstitutional involves primarily the ascertainment of the intention of the legislature. *Electric Bond & Share Co. v. Securities & Exchange Com.*, 303 U.S. 419, 58 S.Ct. 678, 82 L.Ed. 936 (1938); *Carter v. Carter Coal Co.*, 298 U.S. 238, 56 S.Ct. 855, 80 L.Ed. 1160 (1936). *See also In re SRBA Case No. 39576,* 128 Idaho 246, 912 P.2d 614 (1995). When part of a statute or ordinance is unconstitutional and yet is not an integral or indispensable part of the measure, the invalid portion may be stricken without affecting the remainder of the statute or ordinance. *In re SRBA Case No. 39576, supra,* 128 Idaho at 263–64, 912 P.2d at 631–32. However, if an unconstitutional portion of a statute is integral or indispensable to the operation of the statute as the legislature intended, the provision is not severable, and the entire measure must fail. *Boundary Backpackers v. Boundary County,* 128 Idaho 371, 913 P.2d 1141 (1996).

State v. Nielsen, 131 Idaho 494, 497, 960 P.2d 177, 180 (1998); *accord Barr*, 140 S. Ct. at 2352, 207 L. Ed. 2d 784 ("Before severing a provision and leaving the remainder of a law intact, the Court must determine that the remainder of the statute is 'capable of functioning independently' and thus would be 'fully operative' as a law.").

In 2022, the Legislature added Section 48-314 to the IPA, declaring the provisions of the IPA to be severable. In 2021, however, the IPA did not contain any severability provisions. When the legislative intent cannot be determined from the inclusion of a severability or non-severability clause, a "strong presumption of severability" applies. *Barr,* 140 S. Ct. at 2350, 207 L. Ed. 2d 784. "Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem, severing any problematic portions while leaving the

remainder intact." *Id.* (quoting *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U.S. 477, 508, 130 S.Ct. 3138, 177 L.Ed.2d 706 (2010)).

1. 48-303(3)(b)

Section 48-303(3) defines "Extraordinary collection actions." Subsection (b) includes the reporting of "adverse information about the patient to a consumer reporting agency" within that definition. The Court has concluded the prohibition of adverse reporting to be an unconstitutional content-based restriction. Subsection (b) is not integral or indispensable to the remainder of the definition or to the Act as a whole. Accordingly, Section 48-303(3)(b) can be cleanly stricken without impact on the remainder of the IPA.

2. § 48-304(2)

The Court has found § 48-304(2) unconstitutional. That portion of the IPA precludes a person from engaging in extraordinary collection actions unless a patient had received a consolidated summary of services from the health care facility visited within sixty days of services or discharge. This portion is not integral or indispensable to the remainder of the Act. Without subsection (2), Section 48-304 outlines constitutional restrictions and time requirements prerequisite to undertaking extraordinary collection actions, furthering the Legislature's purposes. Consequently, the Court strikes Section 48-304(2).

3. § 48-311(2)

Section 48-311 is entitled "Enforcement and civil *penalties*." (Emphasis added). Section 48-311(2) demonstrates that *at a minimum*, the Legislature felt a party should be fined $1,000 as penalty for undertaking any extraordinary collection action without full compliance with Sections 48-304 and 48-306. Even though a party's actual damages, awardable under Section 48-311(2) are not in and by themselves punitive, the fact the Legislature required a minimum $1,000 fine regardless of whether a patient incurred minimal actual damages, demonstrates a

punitive intent. Accordingly, the Court finds the $1,000 fine provision to be an integral and indispensable part of Section 48-311(2) in its entirety. Because the fine is integral and unconstitutional, as applied to Ridgeline, the Court may not simply strike the $1,000 penalty and leave the actual damages portion of the subsection. Both penalties are intertwined and intended to impose a minimum fine as punishment—not simply to allow recovery of actual damages alone.

The Court strikes Sections 48-303(3)(b) and 48-304(2). In addition, the court strikes 48-311(2) as applied to this case. The court finds no reason to disturb the remaining portions of the IPA.

V. CONCLUSION

For the reasons stated above, this court finds that Ridgeline has standing. I.C. § 48-304(2), which requires that a patient receive a consolidated summary of services within sixty (60) days, is unconstitutional on its face because it burdens the First Amendment right to petition and does not meet the intermediate scrutiny standard. Similarly, § 48-303(3)(b)'s prohibition against reporting adverse information about the patient to a consumer reporting agency violates the First Amendment right to free speech.

Under the stipulated fact of this case the court further finds that as applied to Ridgeline, I.C. § 48-311(2) is unconstitutional under the Eighth Amendment. As a result, Ridgeline is not subject to the penalty imposed by I.C. § 48-311(2). Lyon's counterclaim regarding the application of I.C. 48-311(2) is dismissed.

The Court grants Lyon's motion for summary judgment, holding that a genuine issue of material fact does not exist that Ridgeline violated I.C. § 48-304 by commencing an extraordinary collection action without Lyon having received the final statement. Because

Ridgeline reasonably relied on the presumption under Section 48-308, a genuine issue of material fact does not exist that Ridgeline's non-compliance was willful or knowing under Section 48-311(3). Lyon's motion for summary judgment on the issue of damages pursuant to Section 48-311(3) is, therefore, denied and the claim dismissed.

This court further finds that the unconstitutional provisions addressed by this court are severable and that the remaining provisions of the IPA remain valid. As a result, Ridgeline's Complaint should be dismissed without prejudice because Lyon did not receive a final statement within the timelines required by I.C. 48-304 and/or 48-306. Under I.C. 48-304, receipt of a final statement by the patient is a prerequisite to the commencement of an extraordinary collection action.

The court need not address the merits of the remaining issues posed by the respective motions because they are not properly before the court.

IT IS SO ORDERED.

DATED this 27th day of October 2022.

10/27/2022 5:05:44 PM

JASON D. WALKER
Magistrate Judge

7TH JUDICIAL DISTRICT COUNTY OF BONNEVILLE STATE OF IDAHO DISTRICT COURT

CERTIFICATE OF SERVICE
10/27/2022 05:25 PM

I hereby certify that on this 27th day of October 2022, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; or by electronic delivery.

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Clerk of the District Court
Bonneville County, Idaho

By NM
Deputy Clerk