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Idaho Supreme Court
Melanie Gagnepain, Clerk of the Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

HAWKINS COMPANIES, LLC, an Idaho limited liability company; PACIFIC WEST COMMUNITIES, INC., an Idaho corporation; and FJ MANAGEMENT INC., a Utah corporation, Petitioners, v. STATE OF IDAHO, acting by and through its DEPARTMENT OF ADMINISTRATION, acting as the statutory agent for the STATE OF IDAHO TRANSPORTATION DEPARTMENT; and IDAHO STATE BOARD OF EXAMINERS, Respondents.	**Docket No. 51788-2024**

RESPONDENTS STATE OF IDAHO AND STATE BOARD OF EXAMINERS' BRIEF IN OPPOSITION TO PETITIONERS' VERIFIED PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDATE

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INTRODUCTION

The State does not want to sell the ITD Campus, and no law or contract requires a sale. Petitioners' demand has no legal merit and should be rejected.

Contrary to Petitioners' arguments, the Surplus Statute does not require the State to sell. It directed the Department of Administration to "commence" sale procedures, and the Department complied, but nothing in the text requires the Department to complete a sale it does not want to complete. And for good reason: the Surplus Statute does not apply to property that is no longer surplus.

Because deciding whether to sell the ITD Campus is a matter of discretion, the Petitioners cannot obtain a writ of mandate, and they cannot obtain a writ of prohibition because they have failed to identify any action by Respondents that the Court could prohibit. Even ignoring those obstacles, they are not entitled to any writ because they have not even attempted to show they lack an adequate remedy at law.

Finally, because the Petitioners are not entitled to any writs, the Court cannot consider Petitioners' request for a declaratory judgment about the constitutionality of the appropriation bills at issue. As the Court reiterated earlier this year, its original jurisdiction is limited by the Idaho Constitution, and it may not grant declaratory relief except where necessary to adjudicate a constitutionally authorized writ.

The Petition should be denied. The Court should not force the State to sell property it no longer wants to sell and is not obligated to sell.

BACKGROUND

I. Nature Of The Case.

In this original proceeding, Petitioners claim the State should be compelled under the Surplus Statute to sell them the ITD Campus. But the ITD Campus is no longer surplus, and even if it were, the Surplus Statute does not require a sale.

II. Statement Of The Case.

A. The State acquires the ITD Campus.

The State acquired the ITD Campus property in the late 1950s and appropriated $2 million to build a headquarters for the Department of Highways. Ans. Ex. 1. (authorizing acquisition of properties); 1959 Idaho Sess. Laws 193. The headquarters was completed in early 1961. *See* Ans. Ex. 2.

B. After damage to the headquarters, the Idaho Transportation Board declared the ITD Campus as surplus property.

In early 2022, the headquarters flooded. Ans. ¶ 8. The Idaho Transportation Department relocated its staff to the State's Chinden Campus, and the Idaho Transportation Board resolved "that staff should define and initiate the process of disposing of the ITD State Street Property [i.e., the ITD Campus] and work with the Department of Administration to sell the State Street Property with the contingency of a lease arrangement until complete relocation can be achieved." Ans. Ex. 3 (Resolution ITB22-34).

At a special meeting of the Idaho Transportation Board in August 2022, the Board approved a resolution designating the ITD Campus as surplus. The resolution, Resolution ITB22-52, provided, in relevant part,

> that the Idaho Transportation Board hereby declares the ITD HQ campus located at 3311 State Street in Boise, along with its 44 acres and other improvements, to be surplus property for the purpose of allowing the Department of Administration to transfer the property to the Idaho State Board of Examiners in preparation of disposal of the property in accordance with law.

Ans. Ex. 4.

Less than two weeks later, the State Board of Examiners assumed custody and control of the ITD Campus. The Board of Examiners then "in accordance with Idaho Code § 67-5709A, immediately transferred authority for its disposition to the Department of Administration as allowed by law for administrative facilities." Ans. Ex. 5.

C. The Department of Administration undertakes its actions under the Surplus Statute.

In August 2022, the Department of Administration sent a memorandum to "State Agency and Institution Leadership and Real Estate Managers" notifying the recipients that the ITD Campus was available for purchase. *See* Ans. Ex. 7. It gave interested agencies a week to respond. *Id.* No entity expressed interest. Ans. ¶ 14.

In May 2023, the Department of Administration issued a call for offers for the potential purchase of the ITD Campus. Ans. ¶ 17. After multiple rounds of bidding, Petitioners ultimately made the largest bid: $51,750,000. Ans. ¶ 18. In September 2023,

the Department of Administration issued a letter to Petitioners informing them that its offer "was selected by the State as the winning proposal for the purchase of" the ITD Campus. Pet. Ex. D. The Department of Administration informed Petitioners that it would send a draft purchase and sale agreement to them for their review, and that the Department "look[ed] forward to working through the purchase and sale agreement with [Petitioners] in the near future." *Id.*

The letter closed with an important caveat:

> Please note that the delivery of this letter and a draft purchase and sale agreement does not constitute a formal offer to sell the property. The sale of the property is subject to a fully executed purchase and sale agreement.

Id. As contemplated by the letter, the parties began negotiating the sale terms and exchanged several versions of draft purchase and sale agreements, but it is undisputed that they never reached an agreement. *See* Pet. ¶ 21; Ans. ¶ 21. During the negotiations, the Department of Administration informed Petitioners that the sale may not occur if the Idaho Transportation Department did not receive the requested $50 million appropriation to relocate its headquarters. Ans. ¶ 34.

D. The 2024 legislative session.

In response to the negotiations, the Legislature included the following language in HB 726, the appropriation bill for the Department of Administration:

> SECTION 4. DISPOSAL OF PROPERTY. Notwithstanding any other provision of law to the contrary, the authority of the Department of Administration to dispose of the state administrative facility and property at 3311 W State Street, Boise, Idaho, 83703 is revoked. Notwithstanding

> any other provision of law to the contrary, custody and control of the state administrative facility and property at 3311 W State Street, Boise, Idaho, 83703 shall be transferred to the Idaho Transportation Board.

H.B. 726, 67th Leg., 2d Reg. Sess. § 4 (Idaho 2024). HB 726 passed both houses and became law on April 10, 2024. House Journal at 373 (Apr. 10, 2024).

The Legislature also added relevant language to § 7 of HB 770, the appropriation bill for the Idaho Transportation Department. First § 7 gave the Idaho Transportation Board custody and control of the ITD Campus:

> SECTION 7. STATE STREET PROPERTY. Notwithstanding any provision of law to the contrary, the authority of the Department of Administration to dispose of the state administrative facility and property at 3311 W State Street, Boise, Idaho 83703 is revoked. Notwithstanding any provision of law to the contrary, custody and control of the state administrative facility and property at 3311 W State Street, Boise, Idaho 83703 shall be transferred back to the Idaho Transportation Board.

H.B. 770, 67th Leg., 2d Reg. Sess. § 7 (Idaho 2024). Then § 7 gave the Idaho Transportation Department funds to remodel the ITD Campus:

> Of the amount appropriated in Section 1 of this act, $32,500,000 shall be used for the purpose of rehabilitating the state administrative facility at 3311 W State Street, Boise, Idaho 33 83703. Funds designated under this section may be used only for the purpose identified in this section. This appropriation is contingent on custody and control of the state administrative facility and property at 3311 W State Street, Boise, Idaho 83703 returning to the Idaho Transportation Board.

Id. HB 770 likewise became law on April 10, 2024. House Journal at 373 (Apr. 10, 2024).

III. Course Of Proceedings.

Petitioners filed their Petition and Brief with the Idaho Supreme Court on April 25, 2024. On May 1, 2024, the Court ordered Respondents to respond to the Petition and Brief with a verified answer and brief within 14 days of the Court's order. Respondents State of Idaho and State Board of Examiners offer this brief and the accompanying verified answer, along with its supporting exhibits.

LEGAL STANDARD

Petitioners invoke this Court's original jurisdiction. IDAHO CONST. art. V, § 9; Idaho App. R. 5(a). They seek a writ of mandate, a writ of prohibition, and declaratory relief. Pet. at 15–16.

A writ of mandate issues to "any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and the enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person." Idaho Code § 7-302; *see also Hepworth Holzer, LLP v. Fourth Jud. Dist. of State*, 169 Idaho 387, 393, 496 P.3d 873, 879 (2021) (citing Idaho Code § 7-302).

"A writ of prohibition arrests the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." *Re Petition for Writ of Prohibition*, 168 Idaho 909, 917, 489 P.3d 820, 828 (2021) (cleaned up). In other words, a petitioner

must show that an entity is acting in excess of its power or authority conferred by law. *Wasden ex rel. State v. Idaho State Bd. of Land Comm'rs*, 150 Idaho 547, 552, 249 P.3d 346, 451 (2010) (citation omitted).

With respect to declaratory relief, the Idaho Supreme Court's original jurisdiction is limited to the enumerated writs in Article V, section 9 of the Idaho Constitution. *Idaho State Athletic Comm'n ex rel. Stoddard v. Office of Admin. Rules Coordinator*, 173 Idaho 310, ___, 542 P.3d 718, 726 (2024) ("*State Athletic Comm'n*"). The Court may only "issue a declaration of law when necessary to adjudicate a claim for one of the enumerated writs." *Id.*

ARGUMENT

I. The State No Longer Wants To Sell The ITD Campus, And The Surplus Statute Does Not Force It To Sell Property It Does Not Want To Sell.

The State no longer wants to sell the ITD Campus, and no law or contract says it has to.[1] Petitioners do not allege the State ever entered a binding purchase agreement.

Instead Petitioners rely entirely on the Surplus Statute, Idaho Code § 67-5709A, which establishes a procedure for disposing of unwanted administrative facilities:

[1] The State of Idaho decided to keep the property when the Idaho Legislature has appropriated funding to rehabilitate the ITD Campus and its appropriation bill, HB 770, was not vetoed by the Governor. *Rich v. Williams*, 81 Idaho 311, 325, 341 P.2d 432, 440 (1959) ("By our Constitution the power to make and determine policy for the government of the State is vested in the Legislature, Idaho Const. Art. 2, § 1, and Art. 3, § 1."); *see also* IDAHO CONST. art. IV, § 11.

- first, a state agency declares that property "is not needed or is unsuitable for its purposes";
- then the agency transfers control of the property to the Board of Examiners;
- then the Board authorizes the Department of Administration to dispose of the property;
- and then the Department of Administration notifies "all state agencies and institutions that the property is available for other state use."

Idaho Code § 67-5709A. "If no state agency or institution is interested," then the statute directs the Department to "obtain an appraisal and commence procedures to sell the property for the highest price possible." *Id.*

The State complied with every one of these requirements. After the Idaho Transportation Board declared the property to be surplus, control was transferred to the Board of Examiners, and the Board of Examiners authorized the Department of Administration to dispose of the property. Ans. ¶ 13; Ans. Exs. 4, 5. Then the Department of Administration notified other agencies, obtained an appraisal, and commenced procedures to sell the property—everything the Surplus Statute requires. Pet. Ex. C; Pet. Ex. E; Pet. ¶¶ 17–21.

Petitioners would add a further requirement: a command not only to commence procedures to sell the property, but actually to sell it. They argue, "There is no method

provided to rescind a sale once property has been surplused." Br. at 17. They insist that, once a willing bidder has offered the "highest price possible," the Department of Administration has no choice but to proceed onward to sale. *Id.*

But Petitioners' argument adds terms to the text that are not there. *Cf. Skeban v. Idaho State Police,* 173 Idaho 247, ___, 541 P.3d 679, 691 (2024) (citation omitted) ("We will not add to or alter the language of a statute that the Legislature has drafted."). The statute says the Department must *commence* sale procedures, but it does not say the Department must *complete* a sale.

Further, while the statute requires the Department of Administration to commence "procedures," it leaves the Department free to determine what "procedures" it will follow. If the Department decides to hold out for a better price, to break off negotiations with a particular buyer, or to withdraw a property from the market because of changed circumstances, it can do so without violating a single word of the statutory text.

Take Petitioners' arguments to their logical conclusion. A property is declared surplus, no agency expresses interest, and the Department obtains an appraisal and advertises the property for sale. But the appraisal estimates the property is worth $100 million, and despite lengthy and expensive advertising only a single bid arrives—a bid for $15 million. In the meantime, a public outcry begins, petitions circulate, and the Legislature identifies wildly popular new public uses for the land.

If Petitioners' arguments are correct, then the Surplus Statute requires the State to sell the $100 million property for $15 million, no matter what else the State might want to do with it. After all, as Petitioners argue here, there would be a "ready, willing, and able buyer," and, after commercially reasonable marketing, it is clear that $15 million is the "highest price possible." Br. at 17. And once the property is on the market, according to Petitioners, "[t]he process is mandatory. There are no 'off-ramps.' . . . There is no mechanism to 'un-surplus' property once the Surplus Statute process has commenced." *Id.* Even if the price is grossly inadequate, Petitioners would say, in effect, "Too bad. I guess you shouldn't have said the property was surplus."

The Legislature passed a Surplus Statute, not a Fire-Sale Statute. It did not mean to deny the State the flexibility assumed by every ordinary real estate seller.

II. Because No Statute Or Contract Requires The State To Sell, This Court Cannot Issue A Writ Of Mandate.

Petitioners want a writ directing the Department of Administration "to conclude the sale of the ITD Campus pursuant to the Surplus Statute." Pet. at 16. They are not entitled to one.

The writ of mandate "is not a writ of right and the allowance or refusal to issue a writ of mandate is discretionary." *Regan v. Denney*, 165 Idaho 15, 20, 437 P.3d 15, 20 (2019) (citation omitted). This Court will only grant a writ of mandate if the defendant "has a clear legal duty to perform and if the desired act sought to be compelled is ministerial or executive in nature, and does not require the exercise of discretion."

Cowles Pub. Co. v. Magistrate Ct. of the First Jud. Dist. of State, Cnty. Of Kootenai, 118 Idaho 753, 760, 800 P.2d 640, 647 (1990) (citations omitted). The party seeking the writ must have "a clear legal right to have the act performed." *Kolp v. Bd. Of Trs. of Butte Cnty. Joint Sch. Dist. No. 111*, 102 Idaho 320, 322–23, 629 P.2d 1153, 1155–56 (1981). A writ of mandate does not "compel the performance of a discretionary act." *Brady v. City of Homedale*, 130 Idaho 569, 571, 944 P.2d 704, 706 (1997) (citation omitted). As the Court of Appeals has phrased it, "[w]rits of mandate are not tools to control matters of discretion." *Total Success Invs., LLC v. Ada Cnty. Highway Dist.*, 148 Idaho 688, 691, 227 P.3d 942, 945 (Ct. App. 2010) (citation omitted).

A. There is no clear legal duty to sell the property.

Petitioners must show that the Department of Administration has a clear legal duty to sell them the ITD Campus. They cannot. The Surplus Statute contains no such requirement.

This Court cannot create in a statute something that does not exist, even in the context of a request for a writ of mandate. *See Idahoans for Open Primaries v. Labrador*, 172 Idaho 466, ___, 533 P.3d 1262, 1287 (2023) (rejecting requested writ to extend time to submit signatures to the Secretary of State because the statute did not provide for this). This is out of respect for the separation of powers. *Ybarra v. Legislature by Bedke*, 166 Idaho 902, 906, 466 P.3d 421, 425 (2020); *see also* IDAHO CONST. art. II, § 1. To create something not existing in statute would be to usurp the power properly belonging to the Legislature. *See Mead v. Arnell*, 117 Idaho 660, 664, 791 P.2d 410, 414

(1990) ("of Idaho's three branches of government, only the legislature has the power to make 'law.'") (citations omitted), overruled on other grounds by *State Athletic Comm'n*, 173 Idaho 310, 542 P.3d 718.

For this reason, Petitioners cannot satisfy the first element of a writ of mandate. *E.g., Brady*, 130 Idaho at 571, 944 P.2d at 706 (citation omitted).

B. Any sale of the property is discretionary.

Petitioners also cannot satisfy the first element of a writ of mandate because they seek to compel a discretionary act. Idaho Code § 67-5709A vests total control over a *potential* sale in the Department of Administration. The Department of Administration made clear its discretion to Petitioners. In the September 2023 letter sent to Petitioners, the Department of Administration wrote, "Please note that the delivery of this letter and a draft purchase and sale agreement *does not* constitute a formal offer to sell the property. The sale of the property is *subject to* a fully executed purchase and sale agreement." Pet. Ex. D (emphasis added). Petitioners were also told that the sale may not occur if the Idaho Transportation Department did not get a $50 million appropriation to relocate its headquarters. Ans. ¶ 34.

The Department of Administration retains full authority, up and through the signing of a fully executed purchase and sale agreement to cancel a sale (and maybe even beyond depending on the terms of an agreement). Maybe the sale is no longer in the best interests of the State. Maybe the parties cannot agree on crucial sale terms.

Maybe the price is insufficient. Whatever the reason, the Surplus Statute grants the Department of Administration discretion when it conducts a potential sale.

Such discretion in the Surplus Statute is also consistent with how the Department of Administration conducts itself in other aspects of the purchase and sale of goods and services. Under the State Procurement Act, "[p]rior to the issuance of a contract, the purchasing authority reserves the right to reject all bids, proposals or quotes or to cancel a formal or informal solicitation." IDAPA 38.50.01.092. This can be when "cancellation is in the best interest of the state." *Id.*[2]

Because any sale by the Department of Administration is a discretionary act, Petitioners are not entitled to a writ of mandate. *McCuskey v. Canyon Cnty.*, 123 Idaho 657, 663, 851 P.2d 953, 959 (1993) ("It is well-established that a writ of mandate will not issue to compel the performance of a discretionary act.") (citation omitted).

C. Petitioners do not address the second element.

Petitioners do not address the second element of a writ of mandate claim. "The party seeking the writ of mandamus has the burden of proving the absence of an adequate, plain, or speedy remedy in the ordinary course of law." *Leavitt v. Craven*, 154

[2] The fact that Idaho Code § 67-5709A contains the clause that the Department of Administration "shall obtain an appraisal and commence procedures to sell the property for the highest price possible" does not limit the discretion of the Department of Administration in whether to proceed with a sale or not. The State Procurement Act directs that the "[purchasing] administrator shall award contracts to, and place orders for property with, the lowest responsible bidder." Idaho Code § 67-9210(1). But that does not force the purchasing administrator to purchase property when doing so would not be in the best interest of the State. IDAPA 38.05.01.092.

Idaho 661, 665, 302 P.3d 1, 5 (2012) (quoting *Edwards v. Indus. Comm'n*, 130 Idaho 457, 460, 943 P.2d 47, 50 (1997)). Nowhere in the Petition or the Brief do Petitioners discuss this second prong as it relates to a writ of mandate. *See generally* Pet. ¶¶ 1–47; Br. at 11–20. Petitioners have forfeited (or waived) this argument, by not supporting it with argument or authority, or even an allegation in the pleading. *Cf. Eldridge v. West*, 166 Idaho 303, 313, 458 P.3d 172, 182 (2020) (noting a party cannot fix its failure to address an issue by addressing it in its reply brief).

III. The Court Cannot Issue A Writ Of Prohibition Because There Is Nothing To Prohibit.

Petitioners seek writs of prohibition against the State Board of Examiners, the Department of Administration, and the Idaho Transportation Department. But they do not allege that any of these entities is contemplating any action the Court could prohibit.

The Court issues a writ of prohibition only when a petitioner shows that "(1) the tribunal, corporation, board, or person is proceeding without or in excess of the jurisdiction of such tribunal, corporation, board, or person; and (2) there is not a plain, speedy, and adequate remedy in the ordinary course of law." *Re Petition for Writ of Prohibition*, 168 Idaho at 919, 489 P.3d at 830 (cleaned up). The petitioner bears the burden to prove both elements, *id.*, and a writ of prohibition does not control discretionary acts. *See State v. District Ct. Fourth Jud. Dist.*, 143 Idaho 695, 698, 152 P.3d 566, 569 (2007); *Balderston v. Brady*, 17 Idaho 567, 575, 107 P. 493, 495 (1910) ("It is

obvious that if the contemplated action of the Board . . . involves the exercise of a judgment or discretion vested in them by law, then this Court cannot and will not attempt to control that discretion, or in any manner interfere with or direct the action of the [B]oard.").

A. Petitioners have not shown that the entities will exceed their jurisdiction.

Petitioners do not allege in their Petition that any of the entities will exceed their jurisdiction. *See generally* Pet. ¶¶ 29–47. Similarly, Petitioners do not explain in their Brief how any of three entities would exceed their jurisdiction. *See generally* Br. at 11–21. The lack of cogent argument dooms Petitioners' claim for writs of prohibition. *Cf.* Idaho App. R. 35(a)(6); *Wood v. Idaho Transp. Dep't*, 172 Idaho 300, ___, 532 P.3d 404, 411 (2023) (rule "requires appellants to do more than point to background facts underlying their position; it requires 'reasons' those facts constitute legal error").

The Petitioners argue that the Legislature's enactments regarding the ITD Campus violate the single-subject rule, but neither challenged sentence commands any of the Respondents to do anything. Neither mentions the State Board of Examiners or the Idaho Transportation Department. *See* Pet. ¶¶ 39, 41 (identifying two challenged sentences). One of the sentences says, "custody and control . . . shall be transferred back to the Idaho Transportation [B]oard." Pet. ¶ 41; *see also* H.B. 770, 67th Leg., 2d Reg. Sess. § 7 (Idaho 2024). But the Idaho Transportation Board is its own entity, Idaho Code § 40-309, which supervises the Idaho Transportation Department, Idaho Code § 40-301, and which possesses its own powers and duties, Idaho Code §§ 40-310, -317.

For the Department of Administration, the closest Petitioners get to an argument is in paragraph 43 of the Petition. Petitioners allege the two sentences in section 4 of HB 726 and section 7 of HB 770 require the Department to contravene its obligation under the Surplus Statute. Pet. ¶ 43. But this assertion is wrong because (1) neither HB 726 nor HB 770 require the Department of Administration to take any action; (2) the plain language of Idaho Code § 67-5709A does not mandate the sale; and (3) the ITD Campus is no longer surplus property. Moreover, the Court cannot use a writ of prohibition to compel a certain discretionary decision belonging to the Department of Administration. *E.g., District Ct. Fourth Jud. Dist.*, 143 Idaho at 698, 152 P.3d at 569; *Balderston*, 17 Idaho at 575, 107 P. at 495.

For the Idaho Transportation Department, the closest Petitioners near an argument is their point that an unchallenged sentence in section 7 of HB 770 provides that $32.5 million of an appropriation "shall be used for the purpose of rehabilitating the state administrative facility at 3311 W State Street." *See* Br. at 19; *see also* H.B. 770, 67th Leg., 2d Reg. Sess. § 7 (Idaho 2024). But it is perfectly valid for an appropriation bill to contain such a condition, as it is appropriate for an appropriation to be made contingent, and for an agency to carry through on an appropriation. *See Leonardson v. Moon*, 92 Idaho 796, 804, 451 P.2d 542, 550 (1969) (noting an appropriation is "(1) authority from the legislature, (2) expressly given, (3) in legal form, (4) to proper officers, (5) to pay from public monies, (6) a specified sum, and no more, and (7) for a

specified purpose, and no other.").[3] There can be no doubt that the $32.5 million appropriation here is valid.

B. Petitioners did not address the second element.

Petitioners also fail to address the adequate-remedy-at-law element. They do not discuss it in their Brief. *See generally* Br. at 11–20. In fact, the word "remedy" appears only once in the brief in a quote about standing, Br. at 8, and the word "adequate" does not appear at all—the word "inadequate" appears in discussing an assertion about the Legislature. Br. at 4. The Petition also does not discuss whether an adequate remedy at law exists, (or allege that one does not exist) and the Petition does not use the words "remedy" and "adequate." *See generally* Pet. at 1–16. Petitioners have forfeited (or waived) this argument by not supporting it with argument or authority, even an allegation in the pleading itself. *Cf. Eldridge*, 166 Idaho at 313, 458 P.3d at 182 (noting a party cannot fix its failure to address an issue by addressing it in its reply brief). Petitioners' failure to address the second prong means they have not met their burden to seek a writ of prohibition. *Re Petition for Writ of Prohibition*, 168 Idaho at 919, 489 P.3d at 830.

[3] *Leonardson* also holds that an appropriation from a special fund, and not the general fund, is not subject to the specificity (sixth) prong. *Leonardson*, 92 Idaho at 804, 451 P.2d at 550.

IV. The Court Cannot Issue Declaratory Relief Because It Cannot Issue Any Writ.

Finally, Petitioners request declaratory relief. They argue that two sentences in HB 726 and HB 770 violate Article III, section 16 of the Idaho Constitution. Pet. ¶¶ 39–44. But the Court lacks jurisdiction to grant such relief.

For over 100 years, this Court has recognized that its original jurisdiction "is fixed by the Constitution and cannot be broadened or extended by the Legislature." *Neil v. Public Utils. Comm'n of Idaho*, 32 Idaho 44, ___, 178 P. 271, 273 (1919). At one time, the Court appeared to suggest "that the Declaratory Judgment Act authorized th[e] Court to award declaratory relief in an original action." *State Athletic Comm'n*, 173 Idaho at ___, 542 P.3d at 726 (characterizing *Mead*, 117 Idaho 660, 791 P.2d 410). The *Mead* Court did so, however, without "address[ing], distinguish[ing], or overrul[ing]" precedent dating at least to 1904. *Id.*

Earlier this year the Court took the "opportunity to reaffirm [its] prior holdings that Article V, section 9 of the Idaho Constitution limits [the] Court's original jurisdiction to the issuance of the writs enumerated therein." *Id.* The *State Athletic Commission* Court overruled *Mead* to the extent it was inconsistent with that principle. *Id.* And the decision made clear that the Idaho Constitution grants the Idaho Supreme Court "original jurisdiction to issue the writs enumerated in Article V, section 9 and only grants this Court original jurisdiction to issue a declaration of law when necessary to adjudicate a claim for one of the enumerated writs." *Id.*

Here, a declaration is unnecessary regarding whether the two challenged sentences appearing in HB 726 and HB 770 violate Article III, section 16 of the Idaho Constitution. The writs are resolved without the need to issue declaratory relief regarding the two sentences' constitutionality for the reasons discussed above. *Id.*

Where the Court can address an issue on a ground other than a constitutional basis, the Court will avoid constitutional issues. *E.g., Miller v. Idaho State Patrol*, 150 Idaho 856, 864, 252 P.3d 1274, 1282 (2011); *State ex rel. Kempthorne v. Blaine Cnty.*, 139 Idaho 348, 350, 79 P.3d 707, 709 (2003). Avoiding an unnecessary declaration of constitutionality accords proper respect to the legislative department of the State. This Court presumes "that legislative acts are constitutional, that the state legislature has acted within its constitutional powers, and any doubt concerning interpretation of a statute is to be resolved in favor of that which will render the statute constitutional." *Babe Vote v. McGrane*, ___ Idaho ___, 546 P.3d 694, 707–08 (2024) (quoting *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 439, 522 P.3d 1132, 1197 (2023)). The Court, in examining a legislative enactment assumes the Legislature "did not overlook the provisions of the constitution in designing the legislation." *Kempthorne*, 139 Idaho at 350, 79 P.3d at 709 (citing *Johnson v. Diefendorf*, 56 Idaho 620, ___, 57 P.2d 1068, 1075 (1936)). The Court should avoid the constitutional question framed by Petitioners.

To the extent that Petitioners contend that application of the relaxed standing doctrine permits the Court to reach Petitioners' declaratory relief claim, they are wrong. Standing in Idaho's courts is a judicially self-imposed construct. *See Coeur*

d'Alene Tribe v. Denney, 161 Idaho 508, 513, 387 P.3d 761, 766 (2015). The relaxed standing doctrine must give way to the Court's constitutionally limited original jurisdiction. Even the Court cannot expand its original jurisdiction. *Cf. State Athletic Comm'n*, 173 Idaho at ___, 542 P.3d at 726. Because declarations of law regarding the constitutionality of the challenged sentences are unnecessary, the Court lacks jurisdiction to issue such relief.

V. Petitioners Lack Standing.

Petitioners must show standing to bring this action. *See id.*, 173 Idaho at ___, 542 P.3d at 728. Generally, a petitioner "must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision." *Id.* (quoting *Zeyen v. Pocatello/Chubbuck Sch. Dist. No. 25*, 65 Idaho 690, 698, 451 P.3d 25, 33 (2019)).

According to Petitioners, their injury is that they have been denied the ITD Campus because the Department of Administration has not signed the draft purchase and sale agreement. *See* Pet. ¶¶ 21, 44–46. Because nothing permits the Court to order a sale, their injury is not redressable, and they thus lack standing.

CONCLUSION

Nothing in Idaho Code § 67-5709A requires the State to sell a property it has chosen not to sell. The ITD Campus is no longer a surplus property subject to the Surplus Statute, and the Surplus Statute only requires the State to commence procedures for a sale, not to complete them.

The petition should be denied.

DATED: May 15, 2024

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: */s/ Alan Hurst*
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Lead Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 15, 2024, I filed the foregoing electronically through the iCourt E-File system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notification of Service:

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