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## The Right to Jury Trial in Idaho Civil Cases: Origins, Purpose, and Selected Applications

*John E. Rumel*

Idaho has long recognized the right to jury trial in civil cases. Indeed, the origins of the right are as old as the Gem State itself. But what are the purposes underlying the right? And how has the right been interpreted and applied by the Idaho Supreme Court over the years?

This article will explore the legal origins of the right to jury trial in Idaho and will delineate its laudatory purposes in both criminal and civil cases. It will then discuss selected decisions by the Idaho Supreme Court evaluating the jury trial right in civil cases, including (1) decisions predictably and non-controversially limiting the scope of the right by requiring jury trial demands to exercise the right and allowing courts to grant motions for new trial or directed verdict and judgment

notwithstanding the verdict (“JNOV”) without denigrating the right and (2) decisions on less stable legal terrain, alternatively, limiting the right concerning the Idaho legislature’s imposition of caps on noneconomic damages and expanding the right concerning the possible award of front pay.

The article will next evaluate the relatively scant case law on the effect of judicial COVID-19 related orders on the right to jury trial in civil cases, opining that delays caused by those orders will be permissible, but outright denial of, or prohibition on, the exercise of the right will not. The article will conclude by suggesting that, because the right to jury trial preserves one of our most democratic institutions, Idaho courts should vigorously further the right in future cases.

### Origins of and purpose underlying the right to jury trial in civil cases

Article I, Section 7 of the Idaho Constitution was adopted by Idaho’s Framers in 1890 and provides that “[t]he right of trial by jury shall remain inviolate ...”<sup>1</sup> In construing Idaho’s jury trial right provision, the Idaho Supreme Court has noted its historical origins, stating “[t]he right to trial by jury always has been salient to the American people. In no less a document than the Declaration of Independence, our nation’s founders grounded, in part, their dissolution of political ties with Great Britain on the King’s ‘depriving us, in many cases, of the benefits of trial by jury.’”<sup>2</sup> To be sure, the right to a jury trial has one of its most profound applications in criminal cases, where “the Framers of

both the federal and state constitutions interposed juries of citizens between governments and those persons the governments have accused of wrong in order to avert the abuse of authority.”<sup>3</sup>

However, the right to jury trial has long applied to civil cases – under both Article I, Section 7 in Idaho<sup>4</sup> and under the Seventh Amendment.<sup>5</sup> In civil cases, the right to a jury trial reflects the belief that decisions by average citizens drawn from the community will confer legitimacy on the civil litigation process.<sup>6</sup> Related, the United States Supreme Court made clear long

seen and heard, the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven, and draw a unanimous conclusion. This average judgment thus given it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man, that they can draw wiser and safer conclusions from admitted facts thus occurring than can a single judge.<sup>12</sup>

(b) On any issue triable of right by a jury, a party may demand a jury trial, stating in such demand whether the party will stipulate to a jury of less than 12 persons, but at least 6.

(d) A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

Related, Idaho Rule of Civil Procedure 39 provides in pertinent part as follows:

(a) When a jury trial has been demanded under Rule 38, the action must be designated on the register of actions as a jury action. The trial on all issues so demanded must be by jury, unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court on motion or on its own finds that on some or all of those issues there is no right to a jury trial.

(b) Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

Thus, under Rule 39(a), “once a proper and timely demand has been made, the trial is by jury...”<sup>15</sup> Conversely, “[f]ailure to make a timely demand under Rule 38(b) constitutes a waiver of the right to a jury trial.”<sup>16</sup> In sum, to perfect a right that the Idaho Constitution guarantees in-violate, litigants must satisfy the demand requirements of the Idaho Rules of Civil Procedure.

### Motions for new trial and the right to a jury trial

Arguably, any time a trial judge grants a motion for new trial after a jury has rendered a verdict an incursion on the right to a jury trial has occurred. However, Idaho appellate courts have made clear that a trial judge’s ability to grant a new trial – and the standards under which it may do so – do not violate the state constitutional right to a jury trial under Article I, Section 7, so long as the judge adheres to certain procedural requirements.



*More recently, however, the right to a jury trial in a civil case has shifted from a right not readily waived to a right that must be asserted and preserved by litigants to be enjoyed.*

ago that decisions by those same average citizens from the community can be more informed and thoughtful than decisions by a single individual or judge.<sup>7</sup>

Thus, in a personal injury case in the 1870s, a six-year old boy was injured while playing on an unguarded turntable owned and operated by a railroad company.<sup>8</sup> The jury awarded \$7,500 for the boy’s injuries and the railroad company appealed.<sup>9</sup> The Supreme Court rejected the railroad company’s contention that, because the facts were undisputed, the district judge, rather than the jury, should have decided the negligence issue in the case.<sup>10</sup> Specifically, the Court held that, where reasonable deductions and inferences could be drawn from undisputed facts on the issue of negligence, the jury was the appropriate decisionmaker.<sup>11</sup>

In so holding, the Court laid out the rationale for its decision in stirring terms:

Twelve men of the average of the community, comprising men of education and men of little education, men of learning and men whose learning consists only in what they have themselves

Over the years, these vaunted purposes have not prevented predictable limitations on the right to jury trial in civil cases but have played out in mixed results in cases where plaintiffs have sought to have jurors as the final decision in the remedial aspect of civil cases.

### Three predictable and noncontroversial limitations

Given the importance of the right to jury trial in civil cases, the Idaho Supreme Court held a number of years ago that “[a] waiver of a jury trial will not be implied in doubtful cases”<sup>13</sup> and a few years later that “[w]e will not indulge in any presumption that a litigant has waived such a fundamental right.”<sup>14</sup>

More recently, however, the right to a jury trial in a civil case has shifted from a right not readily waived to a right that must be asserted and preserved by litigants to be enjoyed. Thus, Idaho Rule of Civil Procedure 38 imposes the following demand and waiver requirements concerning the right to jury trial in civil cases:

The Idaho Court of Appeals, addressing a constitutional challenge to the abuse of discretion standard for reviewing a trial judge's decision to grant a new trial, has held as follows:

Agro-West next argues that the “manifest abuse of discretion” standard violates Article I, Section 7 of the Idaho Constitution .... As to the alleged violation of the state constitution, we note that the power to grant new trials is not claimed to be unconstitutional; rather it is the wide discretion given to the district court under the “manifest abuse of discretion” standard of review, which Agro-West claims “disturbs” and “infringes” upon the jury’s role as factfinders, and allegedly violates the state constitution.

The constitutional right of trial by jury has been interpreted to secure that right as it existed at common law when the Idaho Constitution was adopted. ... Before Idaho became a state, our territorial Supreme Court had recognized the trial court’s discretionary function in ruling upon new trial motions. .... After statehood, the court later enunciated the “abuse of discretion” standard of review. .... Thus the constitutional right to trial by jury in civil cases, under the state constitution, is subject to the trial court’s discretionary power to grant a new trial. The limits of this power are defined by the “abuse of discretion” standard of review. Because the discretionary power to grant a new trial does not contravene the state constitution, the abuse of discretion appellate standard is also free from constitutional infirmity.<sup>17</sup>

The Idaho Supreme Court has likewise held that, where the trial judge discloses his or her reasoning for granting or denying a motion for a new trial and/or remittitur or additur (unless those reasons are obvious from the record itself), that statement of reasons allows for “adequate review of the decision of the trial court [and thereby] ... insure[s] the right to trial by jury guaranteed by Art. 1, § 7 of the Idaho Constitution.”<sup>18</sup>

Thus, given trial courts’ pre-Statehood ability to grant a new trial after a jury had rendered its verdict, it is not surprising

that trial courts have continued to be able to exercise such discretion as long as both appellate courts and trial courts adhere to certain safeguards designed to protect the right to jury trial guaranteed by the Idaho Constitution.

### **Motions for directed verdict or judgment notwithstanding the verdict (JNOV) and the right to a jury trial**

A trial judge’s unwillingness to allow a case to be resolved by a jury or to reverse a jury’s verdict once it has been rendered and direct a verdict or enter judgment for one party over the other raises similar issues regarding possible incursion on jury trial rights as granting a motion for a new trial. Indeed, the effect on the parties’ right to a jury trial is even more pronounced in the directed verdict or JNOV contexts, since a trial court’s granting a motion for new trial merely sets aside a verdict and leaves open the possibility that either party may obtain a jury verdict in a subsequent trial, while granting a motion for directed verdict or JNOV enters judgment in favor of one party by either bypassing or overriding a jury’s verdict.

These considerations notwithstanding, the Idaho Supreme Court has made clear that, so long as the trial judge applies a standard of review deferential to the non-moving party on a motion for directed verdict (or JNOV), the court will not offend the non-moving parties’ jury trial rights if it grants the motion.<sup>19</sup> Thus, the Idaho high court, quoting federal case law, has stated as follows:

If the court grants it (a motion for directed verdict) no findings of fact are necessary and upon review the evidence must be viewed in the light most favorable to the party against whom the motion is made. . . .

We will therefore . . . disregard the findings of fact of the trial court, reviewing the entire evidence in the light most favorable to the plaintiff and giving him the benefit of all reasonable inferences which may be deduced from the evidence in his favor . . . . To adopt any other view in a jury case is to risk the deprivation of a plaintiff’s right to trial by jury under the Seventh Amendment.<sup>20</sup>

As with the Idaho Supreme Court’s decision on motions for new trials, its decision recognizing the power of trial court – guided and constrained by standards favorable to the nonmoving party (typically, the plaintiff) – to either grant a directed verdict or reverse a jury’s verdict by granting JNOV is consistent with the jury’s and judge’s rightful roles in our civil litigation system. As such, the decision is not surprising.

### **Caps on non-economic damages and the right to a jury trial**

In *Kirkland v. Blaine County Medical Center*,<sup>21</sup> the Idaho Supreme Court was faced with several Idaho state constitutional challenges, including a right to jury trial challenge, to the Idaho legislature’s enactment of monetary caps on the ability of personal injury plaintiffs to recover non-economic damages from defendant tortfeasors.<sup>22</sup> Specifically, the legislature limited the amount of noneconomic damages a plaintiff prevailing under a negligence theory could receive from defendants to a sum certain even though a jury might have awarded the plaintiff economic damages in an amount vastly exceeding the capped amount.<sup>23</sup>

In resolving the right to jury trial challenge, the Idaho Supreme Court recognized that, although Art. I, Section 7 provides that the right to trial by jury was to remain “inviolable” and plaintiffs’ right to recover noneconomic damages from tortfeasors existed at the time of adoption of the Idaho Constitution, the legislature had “the power to ... modify common law rights and remedies” at that time as well.<sup>24</sup> As such, the Idaho legislature’s subsequent imposition of caps on noneconomic damage awards did not violate Art. I, Section 7 generally.<sup>25</sup>

In addition, given the effect of caps on a plaintiffs’ right to fully recover noneconomic damages, the Court made the dubious statement that the legislature’s imposition of caps “does not violate the right to a jury trial because the statute does not infringe upon the jury’s right to decide cases.”<sup>26</sup> In this regard, the Court stated that “[t]he jury is still allowed to act as the fact finder in personal injury cases” and “[t]he statute simply limits the legal consequences of the jury’s find-



ing.”<sup>27</sup> Disagreeing with the statement made by other courts that the procedure for administering caps “plays lip service to the form of the jury but robs the institution of its function,” the Court held that the legislature’s adoption of caps limiting plaintiffs’ recovery of noneconomic damages “does not violate the right to jury trial as guaranteed by Article I, § 7 of the Idaho Constitution.”<sup>28</sup>

Certainly, the Idaho Supreme Court’s decision rejecting a constitutional jury trial right challenge to caps on noneconomic damages can be supported by decisions on similar issues in other jurisdictions.<sup>29</sup> However, a near equal number of decisions outside of Idaho have concluded that such caps violate jury trial right guarantees.<sup>30</sup> Moreover, although the Idaho high court attempts to suggest otherwise, imposition of caps on noneconomic damages reducing the amount of damages a plaintiff may recover from a higher amount of damages awarded by a jury fails to respect the jury’s decision on the matter, alters the outcome of the case when a jury has fairly performed the duties assigned to it, and, as such, does infringe on the jury’s right to decide cases. For these reasons, the Idaho Supreme Court’s decision on the jury trial right issue in *Kirkland* was regrettable.

## Front pay in employment cases and the right to a jury trial

Approximately two years ago, in *Smith v. Glens Ferry Highway Dist.*,<sup>31</sup> the Idaho Supreme Court addressed and resolved the issue of whether a plaintiff had a right to a jury trial concerning her request for an award of front pay in lieu of reinstatement in a Whistleblower Act case.<sup>32</sup> In concluding that plaintiff Joanie Smith did have such right, the Court first “recognized that the constitutional right to a jury trial applies only to legal claims and not equitable claims.”<sup>33</sup> The Court went on to categorize front pay as a legal remedy, distinguishing statutory schemes (such as Title VII) treating front pay as equitable relief and holding as follows:

Much has been made by the District and the trial court of “front pay” being a remedy in lieu of reinstatement. Clearly reinstatement is an equitable remedy over which the court alone holds control. However,

allowing an award of front pay as an *alternative* to reinstatement does not somehow transform front pay into an equitable remedy. Front pay is an alternative to reinstatement “where reinstatement is made unreasonable by hostility between the parties[.] ... The impracticality of forcing parties back into a fractured employment relationship does not somehow transform front pay—money damages—into an equitable remedy rather than a legal remedy. Front pay is offered as a legal alternative, not as an equitable replacement.

Accordingly, the trial court erred as a matter of law in holding that Smith was not entitled to have the jury decide the issue of front pay. The issues of front and back pay should have been left in the hands of the jury as a matter of state constitutional law and statutory interpretation.<sup>34</sup>

Unlike the Idaho Supreme Court’s decision in *Kirkland*, the Idaho high court’s decision in *Smith* gives full vitality to Idaho’s constitutional jury trial right guarantee and, indeed, did so in the face of contrary authority under other statutory schemes taking the issue of front pay away from the jury. For this, the Court should be lauded.

## Delays in civil jury trials caused by the COVID - 19 pandemic

The Idaho judicial system, like so many of its counterparts in other states, has been greatly affected by the COVID-19 pandemic, which began in March 2020.<sup>35</sup> Although Idaho appellate decisions recount the various pandemic-related health and safety orders prohibiting in the near term or delaying jury trials issued by the Idaho Supreme Court<sup>36</sup> and Idaho trial courts,<sup>37</sup> Idaho courts have had no occasion to address the issue of whether delays in civil jury trials caused by those orders violated a litigant’s constitutional right to a jury trial.<sup>38</sup> This author has not been able to locate any decisions by courts in other jurisdiction that have addressed the issue either, although one court held that a 13-month delay in civil commitment due to a pause on jury trials to protect public health during the COVID-19 pandemic did not

shock the conscience and, therefore, did not violate plaintiff’s substantive due process rights.<sup>39</sup>

Appellate courts outside of Idaho have made clear, however, that complete denial of or prohibition on (as opposed to a delay concerning) the right to jury trial in civil cases is a bridge too far, holding that “emergency orders issued by the ... [state] Supreme Court in response to natural disasters such as the pandemic that result in jury trial delays and juror shortages [in civil cases] may not support denial of a party’s constitutional right to a jury trial.”<sup>40</sup> Applying this standard, those same appellate courts have granted petitions for writs of mandamus requiring jury trials when trial courts have relied on pandemic-related orders delaying trials issued by the state Supreme Court to justify denying a litigant’s jury trial right altogether.<sup>41</sup>

Although several of the Idaho Supreme Court’s pandemic-related orders speak of “prohibiting” jury trials, most (but not all) of the prohibitions specify end dates concerning the duration of the orders.<sup>42</sup> Thus, the Supreme Court’s orders should be properly understood as delaying, rather than prohibiting, civil and criminal trials.<sup>43</sup> Certainly, delaying civil jury trials can be injurious to litigants — for reasons beyond delaying resolution of the case by a jury.

As just one example, the parties — particularly, a defendant (or its insurer) — will be reluctant to part with dollars to settle a case without the prospect of a jury trial immediately hanging over the parties’ heads.<sup>44</sup> However, given the strong and countervailing judicial interest in protecting the health and safety of all stakeholders involved in the jury trial process during the pandemic, pandemic-related orders delaying the parties’ exercise of the right to a jury trial in a civil case almost certainly does not rise to the level of violating that inviolable right. Only complete prohibition concerning enjoyment of the right itself would cross the state constitutional line under Article I, Section 7.

## Conclusion

The right to jury trial guaranteed by the Idaho Constitution preserves one of our most democratic institutions. Although several Idaho Supreme Court decisions making incursions on the right to

jury trial in civil cases have been predictable and justified, other decisions have led to mixed results concerning enforcement of the right and were not preordained. And, of course, the COVID-19 pandemic has led to new challenges impacting the preservation of the jury trial right, delaying (but not denying) the exercise of the right based on legitimate health and safety concerns. Hopefully, going forward, the Idaho high court will give a robust interpretation to the constitutional guarantee and err on the side of furthering the right in close cases.



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John moved to Idaho in 1993, where he initially practiced law with a firm emphasizing products liability, professional malpractice, education, and employment law. John joined the University of Idaho College of Law as a full-time faculty member in 2011. John received tenure at the College of Law in 2016 and was promoted to full Professor in 2018. He has received the University of Idaho Alumni Award for Excellence three times. In 2015, he received the Distinguished Lawyer Award.

## Endnotes

1. Official Website of the Idaho Legislature, Idaho Constitution, <https://legislature.idaho.gov/statutesrules/idconst/>. Similarly, Idaho Rule of Civil Procedure 38(a) provides that "[t]he right of trial by jury as declared by the Constitution ... of the state of Idaho is preserved to the parties inviolate."
2. State v. Bennion, 112 Idaho 32, 36, 730 P.2d 952, 956 (1986).
3. *Id.*
4. See, e.g., Neal v. Drainage Dist. No. 2, 42 Idaho 624, 248 P. 22, 23-24 (1926). Article I, Section 7 references jury trials in civil matters, when it states, "in civil actions, three-fourths of the jury may render a verdict ... ." See Gary Porter, Constituting America, <https://constitutingamerica.org/july-3-1890-we-the-people-of-the-state-of-idaho-guest-essayist-gary-porter/#:~:text=Congress%20approved%20the%20ratified%20constitution,time%2C%20a%20populatio%20of%2088%2C548> (describing Article I, Sec-

- tion 7's less than unanimous verdict requirement in civil cases as "unique and interesting").
5. *Slocum v. New York Life Ins. Co.*, 228 U.S. 364, 376-382 (1913).
6. Victoria A. Farrar-Myers & Jason B. Myers, *Echoes of the Founding: The Jury in Civil Cases as Conferrers of Legitimacy*, 54 SMU L. Rev. 1857 (2001). Of course, juries, in their zeal to protect those in their communities from perceived or actual abuses of power, occasionally have done so by disregarding the court's instructions and the evidence. See, e.g., McDonald v. Great Northern Ry. Co., 5 Idaho 8, 46 P. 766, 767 (1896) (Idaho Supreme Court, in a late-Nineteenth Century decision, reversed jury's verdict in favor of personal injury plaintiffs, concluding that plaintiffs were barred from recovery due to their contributory negligence where jury ignored instructions and evidence in case against defendant railroad corporation which jury likely viewed as having "vast and multitudinous rights, powers, and privileges" concerning which it had "no rights ... to respect").
7. *Sioux City & Pacific Railroad Co. v. Stout*, 84 U.S. 657, 664-665 (1873).
8. *Id.* at 657-659.
9. *Id.* at 659.
10. *Id.* at 659 and 664.
11. *Id.* at 663-664.
12. *Id.* at 664. The gender bias of the above-quoted language is palpable. From the Supreme Court's decision in *Sioux City & Pacific Railroad*, it took the Court slightly over one hundred years to hold that prohibiting women from serving on juries constituted a violation of the right to an impartial jury drawn from a cross-section of the community under the Sixth and Fourteenth Amendments. Taylor v. Louisiana, 419 U.S. 522 (1975).
13. Neal, 42 Idaho 624, 248 P. at 24.
14. Farmer v. Loofbourrow, 75 Idaho 88, 94, 267 P.2d 113 (1954).
15. Savage Lateral Ditch Water Users Ass'n v. Pulley, 125 Idaho 237, 247, 869 P.2d 554, 564 (1993) (emphasis in original).
16. Parrott v. Wallace, 127 Idaho 306, 310, 900 P.2d 214, 218 (1995); see also City of Pocatello v. Anderson, 106 Idaho 370, 372, 679 P.2d 647, 649 (1984). As quoted above, Rule 39(b) allows the trial court, in its discretion, to order a jury trial on issues that could have been tried by jury even though a party has not made a timely demand. Idaho appellate courts have characterized this provision as a "limited 'safety valve' against unduly harsh application of the waiver rule." Viehweg v. Thompson, 103 Idaho 265, 269, 647 P.2d 311, 316 (Ct. App. 982), quoted in Hayden Lake Protection Dist. v. Alcorn, 141 Idaho 388, 398, 111 P.3d 73, 83 (2005), overruled on other grounds, Farber v. Idaho State Ins. Fund, 152 Idaho 495, 272 P.3d 457 (2012), and have uniformly held that trial courts did not abuse their discretion in refusing to grant motions under Rule 39(b) when the party seeking relief has failed to explain why it failed to demand a jury trial in the first instance. KDN Management, Inc. v. Winco Foods, LLC, 164 Idaho 1, 6, 423 P.3d 422, 427 (2018) (collecting cases).
17. Sheets v. Agro-West, Inc., 104 Idaho 880, 884, 664 P.2d 787, 791 (Ct. App. 1983) (citations omitted). The Seventh Amendment to the United States Constitution also provides that, in certain civil cases, "the right to trial by jury shall be preserved ... ." "However, it is well settled that the Seventh Amendment does not apply to the states in so far as the right to a jury trial in civil cases is concerned." *Sheets*, 104 Idaho at 884, 664 P.2d at 791, citing Pearson v. Yewdall, 95 U.S. 294; *Walker v. Sauvinet*, 92 U.S. 90, (1875); see cases cited in 47 Am. Jur.2d Jury § 9 (1969).
18. Smallwood v. Dick, 114 Idaho 860, 867, 761 P.2d 1212, 1219 (1988).
19. Gmeiner v. Yacte, 100 Idaho 1, 4, 592 P.2d 57, 60 (1979). The legal standard applicable to a court's decision to grant a directed verdict or grant JNOV is the same. Polk v. Larrabee, 135 Idaho 303, 311, 17 P.3d 247,

- 255 (2000).
20. *Id.*, quoting *O'Brien v. Westinghouse Elec. Corp.*, 293 F.2d 1, 9-10 (3d Cir. 1961).
21. 134 Idaho 464, 4 P.3d 1115 (2000).
22. *Id.* at 465-466, 4 P.3d at 1116-1117.
23. See generally, *Id.* at 466, 4 P.3d at 1117.
24. *Id.* at 467-469, 4 P.3d at 1118-1120.
25. *Id.*
26. *Id.* at 469, 4 P.3d at 1120.
27. *Id.*
28. *Id.*
29. See, e.g., *McClay v. Airport Management Services, LLC*, 596 S.W.3d 686, 693 (S. Ct. Tenn. 2020); *Gourley ex rel. Gourley v. Nebraska Methodist Health Systems, Inc.*, 663 N.W.2d 43, 75 (S. Ct. Neb. 2003).
30. See, e.g., *Hilburn v. Enerpipe Ltd.*, 449 P.3d 509, 524 (S. Ct. Kan. 2019); *Atlanta Oculoplastic Surgery, PC v. Nestlehurst*, 691 S.E.2d 218, 224 (S. Ct. Ga. 2010).
31. 166 Idaho 683, 462 P.3d 1147 (2020).
32. *Id.* at 695, 462 P.3d at 1159.
33. *Id.* at 694, 462 P.3d at 1158.
34. *Id.* at 695, 462 P.3d at 1159. Relying on the Idaho Supreme Court's decision in *Smith*, United States Magistrate Judge Candy Dale has twice held that the issue of front pay under the Idaho Human Rights Act must be determined by a jury. *White v. Oxarc, Inc.*, Case No. 1:19-cv-00485-CWD, 2021 WL 4233883, \*5 (D. Idaho Sept. 16, 2021); *Hilliard v. Twin Falls County Sheriff's Office*, Case No. 1:18-cv-00550-CWD, 2021 WL 1950015, \*4 (D. Idaho May 14, 2021).
35. Hon. G. Richard Bevan, *The Pandemic and the Courts*, 64-APR Advocate (Idaho) 38 (2021).
36. State v. Prano, 2021 WL 5977238, \*1 (Idaho Ct. App. 2021); see Bevan, *supra* note 35 at 39.
37. *Frost v. Gilbert*, 169 Idaho 250, 494 P.3d 798, 816 (2021).
38. The Idaho Court of Appeal held that a pandemic-induced delay, among other reasons, in a criminal trial did not violate a defendant's constitutional and statutory rights to a speedy trial. *Prano*, 2021 WL 5977238 at \*\*3-4. In so holding, the Idaho Court of Appeal joined a legion of courts in other jurisdictions holding that, because the government could not be held responsible for delaying criminal trials due to the pandemic, trial delays attributable to that reason did not violate a criminal defendant's speedy trial rights. See *Labbee v. State*, A22A0246, 2022 WL 412829, \*7 n.5 (Ga. Ct. App. 2022) (collecting cases); *Commonwealth v. Murphy*, No. 0197-21-2, 2021 WL 3501732, \*5 n.5 (Va. Ct. App. 2021) (same).
39. *LeSage*, 171 N.E.3d 1158, 1170 (Mass. S. J. C. 2021).
40. In re Willis, 2021 WL 2006317, \* 5 (Tex. Ct. App. 2021), citing In re Jetall Companies, Inc., No. 14-20-00690-CV, 2021 WL 1420950, \*5 (Tex. App. Ct. App. 2021).
41. *Id.*
42. *Prano*, 2021 WL 5977238 at \*1.
43. See Bevan, *supra* note 35 at 39 ("the largest negative effect of COVID-19 precautions on the courts has been delayed jury trials") (emphasis added). The author is not aware of any circumstance in Idaho where a trial court entirely prohibited, rather than delayed, a litigant from exercising her or his jury trial right based on an Idaho Supreme Court order delaying civil jury trials because of pandemic-related health and safety concerns.
44. Hon. Ed Spillane, *The End of Jury Trials: Covid-19 and the Courts: The Implications and Challenges of Holding Hearings Virtually and In Person During a Pandemic from a Judge's Perspective*, 18 Ohio St. J. Crim L. 537, 549 (2021) ("When both or either side realizes that the jury trial is not going to take place, the settlement of the case also may not occur. This same stalling of other dockets due to the shutdown of jury trials would in theory affect civil courts as well in terms of settlements slowing down.").