

BOISE, IDAHO, DECEMBER 6, 2023, AT 2:00 P.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**IDAHO STATE ATHLETIC COMMISSION,)
acting by and through Lewis N. Stoddard, in)
his official capacity as Commissioner, and)
IDAHO DIVISION OF OCCUPATIONAL)
AND PROFESSIONAL LICENSES, acting by)
and through Russell Barron, in his official)
capacity as Administrator,)**

Docket No. 51211-2023

Petitioners,)

v.)

**OFFICE OF THE ADMINISTRATIVE)
RULES COORDINATOR, and BRAD HUNT)
in his official capacity as Rules Coordinator,)**

Respondents,)

and)

IDAHO STATE LEGISLATURE,)

Intervenor-Respondent.)

Original proceeding seeking a declaratory ruling and writ of mandamus.

Elam & Burke, P.A., Boise, for Petitioners.

Naylor & Hales, P.C., Boise, for Respondents.

Smith + Malek, PLLC, Boise, for Intervenor-Respondent.

In December of 2022, the Idaho Division of Occupational and Professional Licenses (“DOPL”) submitted the Idaho State Athletic Commission’s (“the Commission”) draft administrative rules, including its fee rules, for approval by the legislature via concurrent resolution as required by the Idaho Administrative Procedure Act (“the APA”). On April 6, 2023, the legislature adjourned *sine die* without having adopted a concurrent resolution approving the Commission’s rules. As a result, and pursuant to the APA, the Commission’s 2023 rules did not

become effective and the Administrative Rules Coordinator did not publish them in the Idaho Administrative Code.

On September 15, 2023, DOPL wrote to the Rules Coordinator to request that he publish the Commission's 2023 rules in the Idaho Administrative Code. The Rules Coordinator responded that he was bound by statute and was unable to publish the Commission's rules because the legislature adjourned *sine die* without approving them.

The Commission and DOPL filed this original proceeding, seeking a declaratory ruling that "the legislative pre-approval" requirements of the APA are in violation of the Idaho Constitution because they: (1) violate the separation of powers provision of Article II, section 1; (2) violate Article III, section 29, which limits legislative review to final administrative rules; and (3) violate Article III, sections 1 and 15, and Article IV, section 10 of the Idaho Constitution by creating law through a concurrent resolution instead of the passage of a bill by both the Senate and the House of Representatives and presentment to the governor. Petitioners also seek a Writ of Mandamus directing the Office of the Administrative Rules Coordinator to publish the Commission's 2023 rules in the Idaho Administrative Code. The Rules Coordinator has taken no position on the legality of the challenged provisions of the APA.

The Idaho State Legislature filed a petition to intervene, which the Court granted. The Idaho State Legislature argues that (1) a writ of mandamus is not an appropriate remedy and the Commission and DOPL do not have standing because the Commission could have sought temporary rules pending the next legislative session; (2) the "legislative pre-approval" requirements of the APA do not violate the separation of powers provision; and (3) Article III, section 29 of the Idaho Constitution does not limit the Legislature's ability to review administrative rules.