From the earliest days of statehood, the Idaho Supreme Court has addressed questions of citizens’ standing to sue in state courts. 1 But in the 1980s, nearly a century after statehood, the Idaho Supreme Court began applying federal standing doctrine to its own state courts. What started with resorting to federal doctrine for “instructive” examples 2 turned into embracing a “case or controversy” limitation, 3 then “look[ing] to decisions of the United States Supreme Court for guidance,” 4 and finally asserting that “Idaho has adopted the constitutionally based federal justiciability standard,” 5 including the three-part framework for standing set forth in Lujan v. Defenders of Wildlife. 6 But throughout this period, “[t]he appellate courts of Idaho . . . never based their standing holdings on constitutional requirements of the Idaho constitution,” 7 nor did they explain why they specifically looked to federal standing principles for guidance. 8 Recently, in Reclaim Idaho v. Denney, 9 the Idaho Supreme Court continued to apply federal standing doctrine to its state courts, holding that an individual plaintiff did not have standing to challenge a statute restricting the citizen initiative power. 10 The court’s application of the federal standing doctrine in the case shows why the common practice of mirroring federal doctrines in state courts is particularly inapt in the context of standing.

---

1 See, e.g., Orr v. State Bd. of Equalization, 28 P. 416, 417–18 (Idaho 1891); Dunn v. Sharp, 35 P. 842, 844 (Idaho 1894); Nuckols v. Lyle, 70 P. 401 (Idaho 1902).
9 497 P.3d 160 (Idaho 2021).
10 Id. at 176.
In 1912, twenty-two years after statehood, Idahoans “reserve[d] to themselves”\textsuperscript{11} through constitutional amendments the powers to demand referenda and to propose initiatives for popular vote, restricted only by the Legislature’s ability to prescribe the “conditions” and “manner” of these powers.\textsuperscript{12} But over the past century, the State Legislature has set many onerous requirements for getting a measure onto the ballot, each time after contentious ballot measures and bitter disputes with the Governor.\textsuperscript{13} For example, the Legislature imposed more requirements in 1907 after an initiative to establish term limits for legislators passed,\textsuperscript{14} and again in 2013 after the people used referenda to repeal a series of education reform laws the Legislature had enacted.\textsuperscript{15} In 2021, in the wake of two controversial ballot initiatives in 2018,\textsuperscript{16} the Legislature imposed yet another onerous restriction.\textsuperscript{17} Previously, to get on the ballot, an initiative needed the signatures of six percent of voters in eighteen districts.\textsuperscript{18} The new law required signatures from six percent of voters in \textit{every} district.\textsuperscript{19}

\textsuperscript{11} See S.J. Res. 12, 1911 Leg., 11th Sess. (Idaho 1911) (referendum power); S.J. Res. 13, 1911 Leg., 11th Sess. (Idaho 1911) (initiative power); see also Reclaim Idaho, 497 P.3d at 167.

\textsuperscript{12} IDAHO CONST. art. III, § 1 (“[V]oters may, under such conditions and in such manner as may be provided by acts of the legislature, initiate any desired legislation . . .”).

\textsuperscript{13} See Reclaim Idaho, 497 P.3d at 167–69.


\textsuperscript{17} See S.B. 1110, 66th Leg., 1st Reg. Sess. (Idaho 2021). Similar legislation had been proposed previously, and after extensive legislative debate and several vetoes by the Governor, the Legislature passed this narrower bill, which was signed into law by the Governor. See Betsy Z. Russell, Governor Has Signed SB 1110 on Future Voter Initiatives, IDAHO PRESS (Apr. 17, 2021), https://www.idahopress.com/news/local/governor-has-signed-sb-1110-on-future-voter-initiatives/article_ce2a1bf6-c82b-5e24-bb0e-5d6f6f129760.html [https://perma.cc/J3C7-Z67F].

\textsuperscript{18} Idaho S.B. 1110.

\textsuperscript{19} \textit{Id.} The decision to expand the geographic distribution requirement was driven in part by the concern that initiative proponents could focus exclusively on gathering signatures in the population centers of the state, whereas the new law forced gatherers to travel to more remote regions. See Minutes from Idaho Senate State Affs. Comm. 5 (Feb. 17, 2021) (statement of Sen. Steve Vick),
In response, Idaho voter Michael Gilmore petitioned for a writ of mandamus in the state supreme court, urging the court to declare the new geographic distribution requirement unconstitutional and to enjoin its implementation. Two organizations — Reclaim Idaho and the Committee to Protect and Preserve the Idaho Constitution (“the Committee”) — filed a similar challenge, arguing that the increased signature requirement, along with a new limitation that initiatives could only take effect on or after July 1 of the subsequent year, exceeded the Legislature’s authority to prescribe the “conditions” and “manners” of initiative elections. The Legislature intervened to oppose the petitions. The two cases were then consolidated for the court’s decision.

Justice Moeller wrote the opinion for the court, holding that the Legislature’s laws were unconstitutional. But he first addressed questions of justiciability for each plaintiff. He noted that “[t]he origin of Idaho’s standing [rule] is a self-imposed constraint adopted from federal practice,” and then recited the traditional standards for standing as put forth in Lujan: injury, causation, and redressability. In a footnote, the court declined to “reassess its standing principles and revert to common law standing principles” because Gilmore did not raise the issue. The court then held that Gilmore did not have standing to sue because
he had shown only a hypothetical injury and had raised merely a
generalized grievance. 31 While court precedent allowed relaxed standing re-
quirements when necessary to hear “alleged constitutional violations
that would otherwise go unaddressed,” 32 the court declined to do
so for Gilmore since it found that Reclaim Idaho and the Committee did
have standing. 33 Because both organizations were sponsoring ballot
measures, the court held the additional burden imposed on their ability
to get them on the ballot constituted sufficient injury. 34 Finally, the
court held that the issue did not present a political question. 35

Next, the majority turned to the merits of the state constitutional
issue. The court focused on whether the Legislature exceeded its au-
thority to regulate the conditions and manner of the people’s exercise of
the legislative power through ballot measures. 36 First, it read the Idaho
Constitution as expressing positive — and thus fundamental — rights to
the citizens’ initiative and referendum powers. 37 Because it found the
rights to be fundamental, the court applied strict scrutiny. 38 Then, the
court held that the thirty-five-district requirement did not serve a com-
pelling interest — there was no pressing need to restrict the rights to pro-
tect minority interests. 39 Nor was it narrowly tailored — the requirement
overcorrected for the problem it sought to solve by “placing an absolute
veto power into the hands of any one legislative district.” 40 Thus, the
court held the geographic distribution requirement unconstitutional. 41

Finally, the court also held unconstitutional the delaying of initiatives

31 See id. at 174–76. In particular, the court rejected Gilmore’s reliance on a prior case in which
the court had held individuals had standing to challenge an act requiring ballots to have a statement
of whether a congressional candidate had violated a term limits pledge, since that act was likely to
harm their own preferred candidate. See id. at 174–75 (distinguishing Van Valkenburgh v. Citizens
for Term Limits, 15 P.3d 1129 (Idaho 2000)). The court held that since Gilmore could not point to
any specific initiative or referendum he favored, he did not allege a sufficient injury. Id. at 176.

32 Id. at 176 (citing Coeur d’Alene Tribe v. Denney, 387 P.3d 761, 767 (Idaho 2015); Regan, 437
P.3d at 21).

33 Id. at 176–77.

34 See id. at 177.

35 See id. at 179–80 (discussing, inter alia, Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803);
Baker v. Carr, 369 U.S. 186 (1962); Rucho v. Common Cause, 139 S. Ct. 2484 (2019)). Since the
majority deemed the question in the case to be merely one of interpreting the constitutional provi-
sions at issue, there were “judicially discoverable and manageable standards” from past precedents,
Id. at 179 (quoting Idaho State AFL-CIO v. Leroy, 718 P.2d 1129, 1133 (Idaho 1986)), rendering this
case different from evaluating an “inherently political exercise of dispersing political power, such as
in the case of gerrymandering,” id. at 180.

36 Id. at 180.

37 Id. at 181.

38 Id. at 184–85. By applying strict scrutiny, the court noted it could rely on “a significant body
of case law from both the Idaho Supreme Court and the United States Supreme Court.” Id. at 185.

39 See id. at 188–89.

40 Id. at 189.

41 Id. at 191.
until July 1 of the following year. Justice Brody wrote separately to dissent from the court’s application of strict scrutiny but concurred that the new requirements were unconstitutional under an alternative test.

Justice Stegner wrote a special concurrence criticizing the majority’s reliance on federal standing doctrine. He argued that it was improper because the Idaho Constitution guarantees that the “courts of justice shall be open to every person,” and that the absence of any analogous “case or controversy” requirement in the Idaho Constitution gives no textual basis for the majority’s reliance on federal standing principles. Further, he argued that most states “avoid adopting federal doctrine without regard to their own precedent or circumstances” and that Idaho’s neighboring states of Oregon and Utah rejected federal standing requirements specifically because their constitutions also lacked any textual basis for applying them. So, Justice Stegner would have held that Gilmore did have standing to proceed with his petition but concurred with the court’s resolution of the constitutional question.

While Justice Stegner was correct to criticize the court’s application of the federal standing framework to find that Gilmore did not have standing, the case also shows more broadly the challenges of state court “lockstepping” with federal standing doctrine. First, lockstepping can lead to deep theoretical tensions in state court jurisprudence, as is made evident when state courts justify doctrines in ways that differ from or even conflict with the justifications offered by federal courts. Second, lockstepping on standing ignores the distinct role that state courts play in the federal system and undermines a core assumption of the federal system itself: that state courts will be open to hear claims when federal courts are closed to them. Finally, by attributing doctrines limiting court access to the U.S.

---

42 Id. at 192–93. The court reasoned that since laws passed through the initiative process “stand[] on equal footing with laws enacted by the legislature” and the citizens act independently from the Legislature through the process, this action infringed on the people’s right. Id. at 193.
43 Id. at 197 (Brody, J., concurring in part and dissenting in part). Justice Brody stated that the state constitution expressly provides the Legislature a role in “setting the conditions and manner for the exercise of referendum and initiative rights” and applying strict scrutiny to every legislative action would undermine its ability to do so. Id. at 199. Instead, she would have applied a “reasonable and workable” test, which she argued the court had adopted for balancing the “tension that exists between the people’s right to an initiative and the legislature’s authority to regulate that right.” Id. at 200. Applying that test, she found the restrictions passed by the Legislature were not reasonable and workable because they gave each legislative district effective veto power, creating a “tyranny of the minority.” Id.
44 See id. at 195 (Stegner, J., specially concurring).
45 Id. at 197 (quoting IDAHO CONST. art. I, § 18).
46 Id. at 195.
47 Id. at 196 (quoting Wyatt Sassman, A Survey of Constitutional Standing in State Courts, 8 KY. J. EQUINE AGRIC. & NAT. RES. L. 349, 398 (2016)).
48 Id. at 197 (citing Couey v. Atkins, 355 P.3d 866, 885 (Or. 2015); Jenkins v. Swan, 675 P.2d 1145, 1149 (Utah 1983)).
49 Id. at 195.
Supreme Court, lockstepping disrupts the democratic prerogatives of state voters to control their own court systems and hold state judges accountable. With the U.S. Supreme Court now engaged in major shifts in its own standing jurisprudence, the time has come for the Idaho Supreme Court to decouple its standing jurisprudence from federal doctrine.

Idaho’s adoption of federal standing doctrine without grounding in the state constitution reflects the broader trend in state constitutional law toward “lockstepping” — “the tendency of some state courts to diminish their constitutions by interpreting them in reflexive imitation of the federal courts’ interpretation of the Federal Constitution.” 50 Some courts and scholars have supported the practice, at least in instances where federal doctrines can be imported after case-by-case consideration of the independent value of a uniform approach. 51 But many others have criticized this practice for myriad reasons. 52 Idaho’s “unreflective adoption” 53 of federal standing doctrine without substantial explanation bears out many of these negative aspects of lockstepping.

First, lockstepping can lead to theoretically mismatched and ungrounded jurisprudence, as becomes particularly evident when state and federal courts offer competing justifications for the very same doctrines. In Reclaim Idaho, the court reiterated its recent assertion that federal standing rules serve principles of judicial administrability, noting that “[t]he origin of Idaho’s standing [rule] is a self-imposed constraint adopted from federal practice.” 54 The court also recently indicated that it applies these rules, despite there being no constitutional requirement, so as to “identify appropriate or suitable occasions for adjudication by a court.” 55 But these purported justifications run counter to the U.S. Supreme Court’s recent departure from a “prudential” conception of standing. 56 In Lexmark International, Inc. v. Static Control Components,
RECENT CASES

In re, the Supreme Court discussed prudential standing at length, noting that it "is in some tension with . . . the principle that 'a federal court’s “obligation” to hear and decide' cases within its jurisdiction ‘is “virtually unflagging.’” Troubled by prudential standing’s lack of basis in the Constitution, the Court identified alternative bases for two of the three then-existing categories of limitations on standing. So, even as the U.S. Supreme Court has recharacterized standing as a constitutional, and not prudential, requirement, the Idaho Supreme Court has rationalized its adoption of the same principles on prudential concerns of judicial restraint. As a result, federal courts are crafting inflexible constitutional doctrines, regardless of whether they strike the right practical balance in regulating the exercise of judicial power, and Idaho courts are presumptively bound to applying those same doctrines to be an effective means of regulating judicial power.

Lockstepping also overlooks the distinct nature of state and federal courts, which is apparent from the fact that Idaho courts have felt the need to craft ad hoc exceptions to the federal framework for standing. For example, as the Reclaim Idaho court discussed, one exception “relax[e] traditional standing requirements” for cases “involving alleged constitutional violations that would otherwise go unaddressed because no one could satisfy traditional standing requirements.” But this exception is largely unprincipled, providing no consistent standard or basis for litigants to access state courts. And by acknowledging the need to relax standing in such “urgent” situations, the court implicitly recognizes that the state courts are the only courts for some claims of exceeding importance. Further, Idaho courts take a more liberal approach to taxpayer standing for one state constitutional provision, a departure that the Idaho Supreme Court has justified on the grounds that failing to provide standing to challenge illegal expenditures "would, in essence, be deleting [this] provision from the Constitution." These exceptions

58  See id. at 125–28.
61  Reclaim Idaho, 497 P.3d at 176 (citing, inter alia, Coeur d’Alene Tribe v. Denney, 387 P.3d 761, 767 (Idaho 2015)).
62  See Zeyen v. Pocatello/Chubbuck Sch. Dist. No. 25, 451 P.3d 25, 41–42 (Idaho 2019) (Stegner, J., dissenting) (criticizing the court’s refusal to relax standing requirements in the case after it decided to do so in a similar case earlier that year, Regan v. Denney, 457 P.3d 15, 21 (Idaho 2019)).
63  Reclaim Idaho, 497 P.3d at 177.
64  Koch v. Canyon County, 177 P.3d 372, 376 (Idaho 2008) (collecting cases in which the court “has entertained taxpayer or citizen challenges based upon that constitutional provision”).
alleviate some of the worst effects of using federal standing rules in state courts, but their ad hoc creation and justification again show the deep theoretical mismatch of applying federal standing doctrine to state court.

A key feature of this theoretical mismatch is that lockstepping undermines a core assumption of the federal system: state courts will be available to hear federal claims even when federal courts are not.65 Ostensibly, if state and federal courts were structurally similar, the interests served by federal standing doctrine could militate in favor of its application in state courts.66 But the juxtaposed language in the Idaho and U.S. Constitutions makes clear that the two court systems are not structurally similar.67 Rather, “the starting premise in state court is inclusion and a presumption of jurisdiction, as opposed to exclusion and the opposite presumption” in federal court.68 If standing serves as a floodgate for federal courts, controlling the wash of cases that would otherwise be brought,69 then state courts could serve as the spillway, picking up the cases that are kicked out of federal courts.70 But tying state court access to the same rules that block federal court access could shut both gates in unison, thereby denying plaintiffs any mechanism for judicial relief.

This risk is heightened by the fact that lockstepping also undermines the democratic prerogatives of state voters in two key ways. For one, the Idaho Constitution provides, in clear terms, that citizens are to have access to the state courts71 and that the Legislature has the sole authority to prescribe the jurisdiction of Idaho’s inferior courts.72 So, by limiting access to the state courts without relying on any constitutional or statutory authority, the state courts have usurped a power reserved to the more politically accountable branches. Further, Idaho’s judges are

---

66 Cf. Developments in the Law — The Interpretation of State Constitutional Rights, 95 HARV. L. REV. 1324, 1360 (1982) (discussing how “structural differences between federal and state constitutional institutions” can be a “good reason” to consider distinct approaches).
68 Reclaim Idaho, 497 P.3d at 195 (Stegner, J., specially concurring).
70 Cf. TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2224 n.9 (2021) (Thomas, J., dissenting) (“The Court does not prohibit Congress from creating statutory rights for consumers; it simply holds that federal courts lack jurisdiction to hear some of these cases. That combination may leave state courts . . . as the sole forum for such cases, with defendants unable to seek removal to federal court.”); The Supreme Court, 2020 Term — Leading Cases, 135 HARV. L. REV. 323, 342 (2021).
71 IDAHO CONST. art. I, § 18; see also Hawley v. Green, 788 P.2d 1321, 1323–24 (Idaho 1990) (asserting that this provision “admonishes the Idaho courts to dispense justice and to secure citizens the rights and remedies afforded by the legislature or by the common law,” id. at 1324).
72 IDAHO CONST. art. V, § 2; see also Acker v. Mader, 481 P.2d 605, 607 (Idaho 1971) (noting that this provision “intended the legislature to be the sole authority in determining the jurisdiction of the inferior courts”); State v. L’Abbe, 324 P.3d 1016, 1021 (Idaho Ct. App. 2014) (same).
elected, so decisions tying state court access to federal doctrine can
insulate state judges from responsibility by purporting to attribute
the limiting of access to state courts to the decisions of federal
judges, whom Idaho voters have little to no authority over. And there are many cases
where the Idaho courts have done just that, such as applying the federal
document to prevent “concerned citizens” from challenging the constitutionality of
their city council’s subsidy to a private party and to prevent
the State from obtaining some funds under a settlement with tobacco
companies. When courts use federal doctrine to keep parties out of
court in cases like these, this practice allows the judges to deflect the
blame by effectively saying “the U.S. Supreme Court made them do it.”

This lack of accountability is especially prominent given the Supreme
Court’s shifting standing jurisprudence since the 1970s and ’80s. The
decades since Idaho first adopted federal standing principles have seen
a consistent narrowing of federal standing. A particularly abrupt shift
in federal doctrine has stemmed from the Supreme Court’s recent
decision in TransUnion LLC v. Ramirez, decided just two months before
the Idaho Supreme Court’s decision in Reclaim Idaho. In TransUnion,
the Court denied standing to some members of the plaintiff class, holding
that they had not suffered a sufficiently “concrete harm” to bring
suit in federal court, even though they brought suit under a congressionally
prescribed cause of action. To determine whether a harm is
sufficiently “concrete,” the Court indicated that plaintiffs must show “a
close historical or common-law analogue for their asserted injury.”
This new test has thrown more confusion into the law of standing, par-
ticularly as to individuals’ authority to vindicate statutory rights. And
it has the potential to radically rework existing standing jurisprudence.

73 See IDAHO CONST. art. V, §§ 6, 11.
74 See SUTTON, supra note 50, at 188–89.
75 Young v. City of Ketchum, 44 P.3d 1157, 1160 (Idaho 2002).
77 SUTTON, supra note 50, at 189.
78 WRIGHT, MILLER & COOPER, supra note 56, § 3531.1; Cass R. Sunstein, What’s Standing
79 141 S. Ct. 2190 (2021).
80 Id. at 2214.
81 Id. at 2205.
82 Id. at 2204.
83 See Erwin Chemerinsky, What’s Standing After TransUnion LLC v. Ramirez, 96 N.Y.U. L.
REV. ONLINE 269, 270 (2021) (observing TransUnion’s “approach to standing significantly changes
the law and places in doubt the ability to sue to enforce countless federal laws”).
84 Daniel J. Solove & Danielle Keats Citron, Standing and Privacy Harms: A Critique of
“work[ing] a significant change in the law,” as a “radical departure from precedent,” and as “having
dramatic implications”); Andy Grewal, Congressional Standing and Transunion v. Ramirez, YALE
J. ON REGUL.: NOTICE & COMMENT (July 2, 2021), https://www.yalejreg.com/wp/congressional-
standing-and-transunion-v-ramirez [https://perma.cc/A98F-H4D4].
But Idaho has already latched onto the concreteness requirement for injury in fact.\textsuperscript{85} By adopting the broader federal tests for standing, the Idaho Supreme Court has effectively forced itself to rework its own doctrine to account for the U.S. Supreme Court’s shifts — essentially hitching the state’s wagon to a runaway horse.\textsuperscript{86} Any time the U.S. Supreme Court changes its own standing doctrines, Idaho’s doctrines would presumptively change as well. In so doing, the state courts have undermined the state voters’ ability to control this essential element of state government.

These significant shifts in the U.S. Supreme Court’s standing jurisprudence signal that the time has come for the Idaho Supreme Court to formally decouple its own standing doctrines from those of federal courts.\textsuperscript{87} After all, it was a similar retrenchment by the U.S. Supreme Court in the context of individual rights that inspired a resurgence of enhanced state protections and the development of the “New Judicial Federalism,” in which the state courts looked to their own constitutions to enhance protection of individual rights.\textsuperscript{88} As Justice Brennan wrote at the time in praise of this development, “state court judges, and also practitioners, do well to scrutinize constitutional decisions by federal courts.”\textsuperscript{89} The Idaho Supreme Court would do well to take this admonishment to heart in the context of its state standing doctrine. Idaho could return to the development of its own doctrines, as it had done for nearly a century before relying upon the federal doctrines, by looking to its prior precedent and the multiple provisions of the Idaho Constitution that bear on the question of standing, and by looking to other states as illustrative examples. Such an organic jurisprudence would ensure that access to Idaho courts is governed not by an awkward balance between federal standing rules and unprincipled ad hoc exceptions, but by a theoretically grounded and coherent set of doctrines rooted in the Idaho Constitution, state statutes, and the democratic will of Idaho voters.


\textsuperscript{87} Idaho is one of just fourteen states that have adopted some part of the federal standing framework without distinguishing it from any state doctrine. See Sassman, supra note 47, at 353–54 & nn. 17–19.
