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Attorneys for Respondent

IN THE SUPREME COURT OF THE STATE OF IDAHO

In Re: Petition for Writ of Mandamus

MICHAEL STEPHEN GILMORE, a
Qualified Elector of Ada County,

Petitioner,

v.

LAWRENCE DENNEY, Idaho
Secretary of State, in his official capacity,

Respondent.

Supreme Court Docket No. 48760-2021

**LAWRENCE DENNEY'S VERIFIED
ANSWER TO PETITION FOR ISSUANCE
OF A WRIT OF MANDAMUS**

Defendant, Lawrence Denney, Secretary of State for the State of Idaho (“Respondent”), hereby answers and responds to the Verified Petition for Issuance of a Writ of Mandamus to Order the Secretary of State not to Implement Unconstitutional Law (“Petition”) filed April 26, 2021.

I. GENERAL RESPONSE

Unless specifically admitted herein, Respondent denies each and every allegation, claim, and request for relief contained in the Petition.

II. SPECIFIC RESPONSES

In response to the specific allegations, claims, and requests for relief contained in the specific paragraphs in the Complaint, Respondent responds as follows:

PETITIONER’S PREFATORY STATEMENTS

1. To the extent Petitioner’s Prefatory Statements may be construed as allegations or requests for relief, Respondent admits that Petitioner is a Qualified Elector of the State of Idaho and an attorney on senior status representing himself in this matter. In answering the question posed as to who determines the conditions and manner for signing a Petition to place a Referendum or an Initiative on the statewide ballot, the plain language of Article III, section 1, the history of Idaho Code §§ 34-1801 *et seq.*, and Idaho Supreme Court precedent make the answer clear: it is the Idaho legislature. Accordingly, Respondent denies Petitioner is entitled to the relief he seeks.

PARTIES AND ALLEGATIONS OF FACT PERSONAL TO ME

2. Respondent admits the allegations in paragraph 1 of the Petition.

3. Respondent, through the assistance of staff within his Office, has reviewed the available records on file in relation to Petitioner’s voting history. Based upon a review of available

records, Respondent admits that Petitioner voted in the general elections for 2012 through 2020 as a qualified voter of Ada County. Respondent is without sufficient information to admit or deny the remaining allegations in paragraph 2 of the Petition, and therefore denies same.

4. In answering the allegations in paragraph 3 of the Petition, Respondent admits that the Sunshine Initiatives, Idaho Code §§ 67-6601 *et seq*, appeared on the statewide general election ballot and were adopted by the people and that the definition of Measure includes both Referenda and Initiatives. Respondent further admits that through the assistance of staff within his Office, he has reviewed the available records on file in relation to Petitioner's participation in the initiative process and based upon those records, admits that Petitioner signed petitions in support of four initiatives (one each in 2006, 2010, 2014 and 2018). Respondent is without sufficient information to admit or deny the remaining allegations in paragraph 3 of the Petition, and therefore denies same.

5. Respondent is without sufficient evidence to admit or deny the allegations in paragraph 4 of the Petition and therefore denies same. Respondent further denies the allegations in paragraph 4 on the basis that they present hypothetical future events and are not based in fact.

6. Respondent is without sufficient evidence to admit or deny the allegations in paragraph 5 of the Petition that pertain to Petitioner's interest in seeing measures appear on the statewide general election ballot or in Petitioner's interest in opposing signature requirements and therefore denies same. To the extent the allegations contain legal conclusions regarding the efficacy of Petitioner's signature, Respondent denies same.

7. Respondent is without sufficient evidence to admit or deny the allegations in paragraph 6 of the Petition that pertain to Petitioner's interest in opposing signature requirements or in his efforts to so oppose in the future and therefore denies same. To the extent the allegations contain legal conclusions regarding the constitutionality of the Act, Respondent denies same.

- a. Respondent denies the allegations in paragraph 6(a) of the Petition on the basis that it concerns "other organized groups" who have not been identified and are not parties to this present Petition. Respondent further denies the allegations in paragraph 6(a) on the basis that they present hypothetical events and are not based in fact.
- b. Respondent denies the allegations in paragraph 6(b) of the Petition on the basis that it concerns "some Qualified Electors" who have not been identified and are not parties to this present Petition. Respondent further denies the allegations in paragraph 6(b) on the basis that they present hypothetical events and are not based in fact.
- c. Respondent denies the allegations in paragraph 6(c).

8. In answering the allegations in paragraph 7 of the Petition, Respondent admits that, as the chief election officer for the State of Idaho, he will administer the signature requirements as codified in Idaho Code §§ 34-1801 *et seq.* and denies that any relief against him in his official capacity is appropriate in this matter.

JURISDICTION, STANDING & URGENCY

9. In answering the allegations in paragraph 8 of the Petition, Respondent admits the quoted statements are attributable to the Idaho Constitution and Idaho Appellate Rule, but denies that the Court has jurisdiction to consider the Petition for Issuance of a Writ of Mandate.

10. In answering the allegations in paragraph 9 of the Petition, Respondent denies that Paragraphs 1 through 6 establish Petitioner has suffered an injury in fact. Respondent further denies that Petitioner has suffered an injury or that any alleged injury is “not one shared alike by all Qualified Electors.” Respondent denies that a declaration finding Idaho Code § 34-1805 unconstitutional is an effective remedy. Respondent denies that Petitioner has standing to Petition for the Issuance of a Writ of Mandamus.

11. In answering the allegations in paragraph 10 of the Petition, Respondent denies that it alleges facts of a possible constitutional violation of an urgent nature. Respondent further denies the allegations relating to other “Qualified Electors”, including the hypothetical need to “assist organized groups” to circulate a Petition for a Referendum, as they are not identified and the hypothetical need is not based in fact. Respondent admits the deadline for a Petition for a Referendum on 2021 Senate Bill 1110, also known as 2021 Idaho Session Law Chapter 255, is stated in Idaho Code § 34-1803. Respondent denies that resolution of the constitutional issue presented in this case “would come too late” if originally presented to the District Court. Respondent further denies that reapportionment of Idaho’s thirty-five Legislative Districts would affect a Referendum on the Act. Any initiatives or referenda currently circulating, and any that begin circulating prior to the approval of a new legislative district map by the next Commission on Reapportionment, will have their signature sufficiency determined based on the current

legislative districts. Any initiatives or referenda approved to begin circulating after the next Commission on Reapportionment approves the new legislative districts will be evaluated based on the new legislative districts.

MORE GENERAL ALLEGATIONS OF FACT

12. In answering the allegations in paragraph 11 of the Petition, Respondent admits only that 2021 Senate Bill 1110, 2021 Idaho Session Law Chapter 255, became effective on April 17, 2021, when it was signed by Governor Little. Respondent further admits only that Idaho Code § 34-1805 contains a geographic distribution signature requirement for legal voters “equal in number to not less than six percent (6%) of the Qualified Electors at the time of the last general election in each of the thirty-five (35) legislative districts.” Respondent denies the remaining allegations in paragraph 11 of the Petition.

13. Respondent admits the allegations in paragraph 12 of the Petition except to the date by which Governor Little signed SB 1110, which was April 17, 2021 and not April 19, 2021.

14. In answering the allegations in paragraph 13 of the Petition, Respondent denies Petitioner’s characterization of Senator Vick’s testimony that the purpose of SB 1110 was to favor certain voters. Respondent otherwise admits that the statements quoted in paragraph 14 of the Petition accurately reflect the record of statements made by Senator Vick and Representative Barbieri contained in the Minutes of the Senate State Affairs Committee and the Minutes of the House State Affairs Committee, respectively, but is otherwise without knowledge concerning the allegations in such sentence

15. Respondent objects to the allegations in paragraph 14 of the Petition to the extent the allegations call for a legal conclusion through the use of “more difficult” or “practical impossibility.” Respondent further states that the total number of signatures required remains the same as the prior version of Idaho Code § 34-1805. Without waiving the prior objection, Respondent denies the remaining allegations in paragraph 14 of the Petition.

16. Respondent denies the allegations and request for relief in paragraph 15 of the Petition.

17. Respondent admits that he is charged with enforcing the provisions of Idaho Code §§ 34-1801 *et seq.* and maintains that its contents are constitutional.

PRAYER FOR RELIEF

18. Respondent denies that Petitioner is entitled to the first prayer for relief.

19. Respondent denies that Petitions is entitled to the second prayer for relief.

III. DEFENSES

FIRST DEFENSE

The Petition fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.

THIRD DEFENSE

This matter is not urgent.

FOURTH DEFENSE

Petitioner does not have standing to assert any claims or relief for other voters or organizations.

FIFTH DEFENSE

Petitioner has not suffered a personal injury that is different from that suffered by any other member of the public.

SIXTH DEFENSE

Petitioner's claim for relief violates the Idaho Legislature's right to determine the conditions and manner of the Initiative or Referendum process as set forth in Article III, section 1.

SEVENTH DEFENSE

Petitioner's claim for relief is inconsistent with and unsupported by Idaho and federal law.

WHEREFORE, having fully answered the Petition, Respondent requests that the Court enter an order and judgment:

1. Dismissing the Petition with Prejudice; and
2. Providing such relief as it deems appropriate and just.

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DATED this 13th day of May, 2021.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Megan A. Larrondo
MEGAN A. LARRONDO
Deputy Attorney General

DATED this 13th day of May, 2021.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Robert A. Berry
ROBERT A. BERRY
Deputy Attorney General

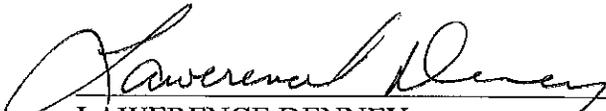
VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

Lawrence Denney, Secretary of State for the State of Idaho, being first duly sworn, deposes and says:

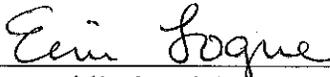
I have read the foregoing Verified Answer to Petition for Issuance of a Writ of Mandamus and know the contents thereof, and the same are true to the best of my knowledge and belief.

DATED this 12 day of May, 2021.

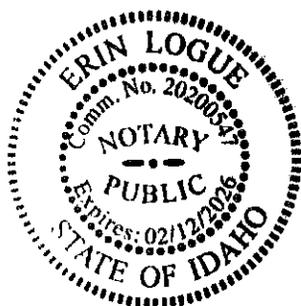


LAWRENCE DENNEY

SUBSCRIBED AND SWORN to before me this 12 day of May, 2021.



Notary Public for Idaho
Residing at: Ada County
My Commission Expires: 2/12/2026



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May, 2021, I filed the foregoing electronically through the iCourt E-File system.

I FURTHER CERTIFY THAT on this same date, I sent the foregoing via email and U.S. Mail, First Class to the non-registered participant below:

Michael Stephen Gilmore, ISB #1625
An attorney on Senior Status
204 West Village Lane
(208) 949-4120
mgilmore@cableone.net

By: /s/ Megan A. Larrondo
MEGAN A. LARRONDO
Deputy Attorney General