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IDAHO SUPREME COURT
COURT OF APPEALS

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BEFORE THE SUPREME COURT OF IDAHO

MICHAEL STEPHEN GILMORE, a)	
Qualified Elector of Ada County,)	Case No. <u>48760-2021</u>
Petitioner,)	
v.)	VERIFIED PETITION FOR ISSUANCE
)	OF A WRIT OF MANDAMUS TO
LAWRENCE DENNEY, Idaho Secretary of)	ORDER THE SECRETARY OF STATE
State, in his official capacity,)	NOT TO IMPLEMENT AN
Respondent.)	UNCONSTITUTIONAL LAW

I, Petitioner Michael Stephen Gilmore, a Qualified Elector of the State of Idaho and an attorney on senior status representing only myself, file this Verified Petition for Issuance of a Writ of Mandamus to Order the Secretary of State not to Implement an Unconstitutional Law. This Petition presents a simple question:

Who is entitled to choose which voters must sign a Petition to put a Referendum or an Initiative on a statewide ballot — (1) the Legislature, whose action or inaction would be overturned by the Referendum or the Initiative, or (2) the *People themselves* as individuals, as they sign a Petition to put a Referendum or Initiative on the statewide ballot?

I allege as follows in this Petition and pray that this Court:

(1) declare the Act known as 2021 Senate Bill No. 1110, 2021 Idaho Session Law Chapter 255, unconstitutional to the extent that it requires supporters of Referenda or Initiatives to gather a certain number of signatures of Qualified Electors from each of Idaho’s thirty-five Legislative District in order to qualify the Referendum or Initiative for the statewide general election ballot, and

(2) issue a Writ of Mandamus to Respondent Secretary of State Denney in his official capacity that orders the Secretary of State not to implement the Act's requirement that a certain number of qualifying signatures for a Referendum or an Initiative Petition must come from each of Idaho's thirty-five Legislative Districts.

I refer to this Act as the Supermajoritarian Signature Act.

PARTIES AND ALLEGATIONS OF FACT PERSONAL TO ME

1. I, Petitioner Michael Stephen Gilmore, am a natural born citizen of the United States of America and of the State of Idaho. I am a Qualified Elector (*i.e.*, a voter) of Ada County. See Idaho Code § 33-104 ("Qualified Elector" defined).

2. Beginning in 1970 and through and including 2020, I have voted in every general election in the State of Idaho, either as a Qualified Elector of Bannock County (1970 and 1972) or as a Qualified Elector of Ada County (1974 through 2020).

3. Beginning in the general election of 1974, when the Sunshine Initiative, Idaho Code §§ 67-6601 *et seq.*, appeared on the statewide general election ballot (I signed a petition to put it on the statewide general election ballot) and was adopted by the People (I voted for it), I have signed petitions to put various Measures¹ on the statewide general election ballot and/or have voted for various Measures appearing on the statewide ballot, including one Measure on the 2018 statewide general election ballot.

4. In the future I intend to continue to sign petitions to put Measures on the statewide general election ballot if I support the Measures and I intend to continue to vote for Measures on the statewide general election ballot if I support the Measures.

5. As a Qualified Elector of Idaho, I have an interest in seeing that Measures that I

¹ The Sunshine Act's definition of a "Measure" includes both Referenda and Initiatives. Idaho Code § 67-6002(17).

support will continue to appear on the statewide general election ballot. I oppose laws that restrict my ability to give expression and effect to my policy views by reducing or eliminating the efficacy of my signature in support of a Measure, especially laws that take into account the Legislative District in which I live in determining whether my signature in support of a Measure will or will not advance a Petition to qualify a Measure for a statewide ballot.

6. In particular, I oppose the Supermajoritarian Signature Act and would sign a Petition to put a Referendum on that Act on the 2022 statewide general election ballot if it were necessary to do so. I will join in organized groups' efforts to overturn the Supermajoritarian Signature Act by Referendum if it comes to that, but I contend that it should not come to that because the Act is unconstitutional. The facts supporting this legal position include:

(a) other organized groups who attempt to qualify matters for a statewide ballot by circulating Petitions to put candidates on the statewide ballot, put new political parties on the statewide ballot, or put a recall election on the statewide ballot need not show Legislative-District-by-Legislative-District support in their Petitions, but supporters of Referenda or Initiatives like me must;

(b) it is likely that some Qualified Electors' whose signatures in support of a Petition to qualify a Referendum will advance the Petition's qualification for the statewide ballot and others like me will not because I live in a Legislative District where it is likely that the six percent threshold can be more readily achieved and my signature will not advance the Petition's attempt to qualify a Referendum or Initiative for the ballot; and

(c) the Act restricts my ability to give expression and effect to my policy views in conjunction with others with similar views.

7. Respondent Secretary of State Lawrence Denney is the officer who will administer the signature requirements of the Supermajoritarian Signature Act regarding the distribution

by Legislative District of signatures of Qualified Electors who must sign Petitions to qualify a Referendum or an Initiative for the statewide general election ballot. This Petition seeks relief against Secretary Denney solely in his official capacity as Idaho Secretary of State.

JURISDICTION, STANDING, & URGENCY

8. “The Supreme Court shall also have original jurisdiction to issue writs of mandamus” Idaho Constitution, Article V, § 8. “Any person may apply to the Supreme Court for the issuance of any extraordinary writ or other proceeding over which the Supreme Court has original jurisdiction.” Idaho Appellate Rule 5(a). This Court has jurisdiction to consider my Petition for Issuance of a Writ of Mandate.

9. Paragraphs 1 through 6 establish my injury in fact. My injury is not one shared alike by all Qualified Electors because there are Qualified Electors who support the Supermajoritarian Signature Act’s efforts to make it more difficult to qualify a Measure for the statewide general election ballot.² Declaring the Supermajoritarian Signature Act unconstitutional and ordering the Secretary of State not to enforce its requirements to gather signatures among all thirty-five Legislative Districts will be an effective remedy for my injury in fact. Thus, I have standing to Petition for the Issuance of a Writ of Mandamus.

10. The Court should take up this Petition for Issuance of a Writ of Mandamus because it alleges facts of a possible constitutional violation of an urgent nature. In particular, it is urgent for Qualified Electors like me who believe the Supermajoritarian Signature Act is unconstitutional to receive a speedy resolution of the constitutional question in order to plan whether it

² Minutes of Senate State Affairs Committee of February 17 and 19, 2021, show that there are supporters of the Supermajoritarian Signature Act, *i.e.*, that not all Idaho citizens oppose the Act. So do minutes of the House State Affairs Committee of March 8, 2021. Committee minutes for the Senate and House State Affairs Committees are found at:

<https://legislature.idaho.gov/sessioninfo/2021/standingcommittees/SSTA/>

<https://legislature.idaho.gov/sessioninfo/2021/standingcommittees/HSTA/>

will be necessary for us to assist organized groups that would circulate a Petition for a Referendum on the Act, which are due not more than sixty days after the Legislature adjourns. Idaho Code § 34-1803. If the constitutional issue presented by this Petition were to work its way up from the District Courts to this Court, the resolution of the constitutional issue would come too late to allow Referendum planning for the 2022 statewide general election. This is even more complicated in this election cycle because all thirty-five Legislative Districts are subject to reapportionment following the 2020 Census and no one will know the new Legislative District boundaries until late in 2021 or possibly until 2022.

MORE GENERAL ALLEGATIONS OF FACT

11. The Supermajoritarian Signature Act, 2021 Senate Bill 1110, 2021 Idaho Session Law Chapter 255, has two sections. Section 1 amends Idaho Code § 34-1805 to require that in order to qualify a Referendum or an Initiative for the ballot persons circulating such a Measure must gather signatures from six percent of the Qualified Electors of the largest possible supermajority of Legislative Districts, namely, every Legislative District:

34-1805. SPONSORS TO PRINT PETITION -- NUMBER OF SIGNERS REQUIRED. (1) After the form of the initiative or referendum petition has been approved by the secretary of state as provided in sections 34-1801A through 34-1822, Idaho Code, ~~provided~~, the same shall be printed by the person or persons or organization or organizations under whose authority the measure is to be referred or initiated and circulated in the several counties of the state for the signatures of legal voters.

(2) Before such petitions shall be entitled to final filing and consideration by the secretary of state, there shall be affixed thereto the signatures of 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 ~~at least eighteen (18)~~ the thirty-five (35) legislative districts, ~~provided however, the total number of signatures shall be equal to or greater than six percent (6%) of the Qualified Electors of the state at the time of the last general election.~~

