

IN THE SUPREME COURT OF THE STATE OF IDAHO

In Re: Petition for Writ of Prohibition.

Docket No. 48784-2021

RECLAIM IDAHO and the COMMITTEE TO
PROTECT AND DEFEND THE IDAHO
CONSTITUTION, INC.

Petitioners,

vs.

LAWERENCE DENNEY, in his official capacity as the
Idaho Secretary of State, and the STATE OF IDAHO,

Respondents.

and

SCOTT BEDKE in his official capacity as Speaker of the
House of Representatives of the State of Idaho; CHUCK
WINDER, in his official capacity as President Pro
Tempore of the Idaho State Senate; SIXTY-SIXTH
IDAHO LEGISLATURE,

Intervenor-Respondents.

**REPLY IN SUPPORT OF JOINT MOTION TO STRIKE DECLARATION OF JOE CHAMPION
AND SUPPLEMENTAL DECLARATION OF GARY MONCRIEF**

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At bottom, Petitioners (collectively, “Reclaim Idaho”) assert in their opposition to the Joint Motion to Strike (“Opp’n”) that they may file anything at any time in this case if “[t]here is nothing in the Court’s rules that prohibits the filings.” Opp’n at 2. The Court publishes its rules together with its mission statement to “provide access to justice through the timely, *fair*, and impartial resolution of cases.” See Idaho Supreme Court, Idaho Appellate Rules, isc.idaho.gov/iar (last accessed on June 21, 2021) (emphasis added). Reclaim Idaho subverts the fairness of these proceedings by filing declarations with its Reply knowing that Respondents and Intervenor-Respondents are afforded no opportunity under the rules to file a sur-reply.

Rather than seek leave from the Court to submit declarations with their Reply, Reclaim Idaho arrogates to itself the authority to do so, leaving the Court to “consider what it deems helpful and unrebutted.” Opp’n at 2. Reclaim Idaho says this happens all the time, citing one dissenting opinion in which Justice Kidwell actually disparaged the three affidavits in that case, two of which were filed with the motion for a writ of prohibition and one “filed on the eve of oral argument.” *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 132, 15 P.3d 1129, 1140 (2000).

Thus, Reclaim Idaho hopes to box Respondents and Intervenor-Respondents into a corner, inviting them to compound Reclaim Idaho’s flaunting of the rules by filing, without leave of the Court, a rebuttal declaration to Reclaim Idaho’s newly disclosed statistician (apparently without an accompanying sur-reply) or else have the Court consider Reclaim Idaho’s unrebutted declarations. Opp’n. at 7. Given the proximity to oral argument, Reclaim Idaho offers more of a

taunt than a legitimate invitation to remedy the prejudice caused by Reclaim Idaho's disregard of the Court's rules.¹

Reclaim Idaho attempts to rehabilitate the Champion declaration by paraphrasing it. Tellingly, Reclaim Idaho reveals that "Dr. Champion took just a few minutes" to calculate that a hypothetical initiative or referendum petitioner would have one in a thousand chances of complying with Idaho Code § 34-1805(2). Opp'n at 5. Dr. Champion's slapdash rumination on a hypothetical petition is forcefully rebutted by Dr. Stevens's declaration and simultaneously illustrates why, in a passage quoted by Reclaim Idaho in its Reply, the United States Supreme Court has cautioned courts not to speculate about hypothetical or imaginary cases when being asked to find a statute facially unconstitutional. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449-50 (2008); Pet. Reply Br. at 22-23.

The untimely and unfounded Champion declaration and Moncrief supplemental declaration should be stricken from the record of this case.

Dated this 21st day of June, 2021.

HOLLAND & HART LLP

By /s/ William G. Myers III

William G. Myers III

Alison C. Hunter

Chris C. McCurdy

Counsel for Intervenor-Respondents

¹ That said, Respondents were able to retain such an expert on short notice who was able to produce a rebuttal declaration. Respondents seek by separate motion permission to file the Declaration of John R. Stevens, Ph.D.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By /s/Megan A. Larrondo
Megan A. Larrondo
Deputy Attorney General

Counsel for Respondents

CERTIFICATE OF MAILING

I hereby certify that on this 21st day of June, 2021, I caused to be filed and served, via iCourt, a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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- U.S. Mail
- Hand Delivered
- Overnight Mail
- Email/iCourt/eServe

/s/ William G. Myers III
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