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IN THE SUPREME COURT OF THE STATE OF IDAHO

LUIS JESUS GUZMAN, individually,
Plaintiff-Defendant-
Respondent-Cross-Respondent,

vs.

DALE PIERCY, individually,
Defendant-Plaintiff-Appellant-
Cross-Respondent,

vs.

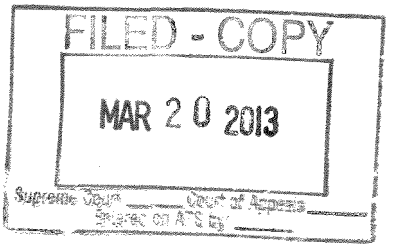
CANYON COUNTY,
Defendant-Respondent,

and

JENNIFER SUTTON, individually,
Defendant-Respondent-
Cross-Appellant.

Supreme Court Docket 39708-2012

Canyon County Case CV05-4848



RESPONDENT BRIEF
DEFENDANT-RESPONDENT CANYON COUNTY

Appealed from the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon

HONORABLE BRADLEY S. FORD, District Judge

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I. STATEMENT OF THE CASE

A. Nature of the Case.

This is an appeal of Piercy's Action for Declaratory Judgment in the Third Judicial District Court seeking an order invalidating Canyon County's 1982 Herd District Ordinance. Judge Ford held that a specific statute of limitations in the 2009 amendment to Idaho Code (hereafter "I.C.") § 31-857 barred Piercy's action and, in the alternative, Judge Ford held Piercy's action was barred by the "catch-all" statute of limitations in I.C. § 5-224. Upon its review of this case, Canyon County respectfully requests that the Court affirm Judge Ford's ruling that the statute of limitations prohibits Piercy's action for declaratory relief.

B. Course of Proceedings and Statement of Facts.

The Course of the Proceeding and Statement of Facts will be set forth in tandem below as the relevant facts arise from the proceedings.

This case began as an action for damages in 2005 brought by Guzman (and another party now removed) against Piercy. Guzman had sustained injuries as a passenger in a vehicle that collided with Piercy's cow. Sutton, the vehicle's driver, was eventually joined.

Piercy plead as a defense that his livestock were in an open range area of Canyon County; therefore, he was not liable for the accident pursuant to I.C. § 25-2118. However, a 1982 Canyon County ordinance placed his livestock in a herd district where he would be liable. Thus, in order to get his livestock in an open range area, Piercy asserted that the 1982 Canyon County ordinance was invalid.

The first Third Judicial District Court judge to hear the case ordered that Canyon County become a party in order for Piercy to challenge the formation of the herd district. Piercy

accomplished this by filing an Action for Declaratory Judgment in the original case naming Canyon County as a defendant.

In order to clarify the alignment of the parties, a joint stipulation between Piercy, Guzman, Sutton and Canyon County with the stated purpose of "simplifying the procedure posture of the case and to accurately reflect the positions of the parties" was filed September 4, 2008. R. Vol. IV, p. 663. Pursuant to the stipulation, Piercy filed an Amended Action for Declaratory Judgment and Guzman, Sutton and Canyon County each filed amended answers. Sutton and Guzman each plead an affirmative statute of limitations defense citing the "catch-all" statute of limitations in I.C. § 5-224. In its amended answer, Canyon County plead a statute of limitations defense based on I.C. § 31-857.[1] Subsequently, a trial was held and the first judge to hear the case left the bench without addressing the statute of limitations defenses.

Canyon County's, Guzman's and Sutton's interests were aligned on the validity of herd district. Because of the multi-party alignment, Canyon County often relied on the arguments and briefing of the principal parties (Guzman and Sutton) to avoid repetitiveness in the proceedings.

During post-trial motions (on July 1, 2009), I.C. § 31-857 was amended to include a seven-year prohibition on challenges to the formation of school, road and herd districts. On December 7, 2009, Judge Ford issued an Order on Motion to Reconsider permitting Guzman, Sutton and Canyon County to argue their statute of limitations defenses. A hearing to that effect was held on August 11, 2010. Judge Ford subsequently ruled that the retroactive I.C. § 31-857 prohibited Piercy's claim and that I.C. § 5-224 barred his claim in the alternative.

[1] Piercy argues that Canyon County did not plead a statute of limitations defense; however, Canyon County's amended answer included a statute of limitations defense that ultimately resembled the amendment to I.C. § 31-857 that became a central issue to this case and appeal.

II. ISSUES PRESENTED ON APPEAL

Piercy asserts two (2) issues on appeal regarding Judge Ford's ruling. In his argument section, Piercy articulates his first issue on appeal (whether Judge Ford erred in applying I.C. § 5-224 and I.C. § 31-857) as five (5) distinct arguments. In its reply, Canyon County will address his first and second arguments (both relating to waiver of defenses) in Canyon County's first argument section, and his third and fifth arguments (the application of I.C. § 5-224 or any statute of limitations) in its second argument section. Thus, upon consideration of Piercy's depiction of the issues on appeal, the County would rephrase such issues as follows:

1. Whether the District Court erred in allowing Guzman, Sutton and Canyon County to raise a statute of limitations defense.
2. Whether I.C. § 5-224 applies to Piercy's challenge of Canyon County's 1982 herd district ordinance.
3. Whether I.C. § 31-857 applies to Piercy's challenge of Canyon County's 1982 herd district ordinance.
4. Whether any statute of limitations may apply to Piercy's challenge of Canyon County's 1982 herd district ordinance on constitutional due process grounds.

III. ARGUMENT

A. Standard of Review.

In his Appellate Brief, Piercy asserts issues of statutory interpretation and application, constitutional law, and questions the District Court's interpretation of a stipulation entered by the parties during the course of the proceeding in the District Court. Questions of statutory interpretation and application are given free review. Farm Bureau Mut. Ins. Co. of Idaho v. Eisenman, 153 Idaho 549, 286 P.3d 185, 188 (2012). Likewise, constitutional questions are pure

questions of law; thus, are reviewed *de novo.* Bradbury v. Idaho Judicial Council, 136 Idaho 63, 67, 28 P.3d 1006, 1010 (2001).

When interpreting a contract, like the stipulation contested by Piercy, the court "begins with the language of the contract itself." Boise Mode, LLC v. Donahoe Pace & Partners Ltd., 294 P.3d 1111, 1120 (Idaho 2013). "Determining whether a contract is ambiguous is a question of law over which this Court exercises free review." Id.

B. The District Court's determination that Guzman, Sutton and Canyon County may raise a statute of limitations defense should be affirmed.

1. Guzman, Sutton and Canyon County did not waive their statute of limitations defenses by stipulation.

Piercy asserts that Guzman, Sutton and Canyon County waived their statute of limitations defenses via a court-filed pleading. The parties filed a joint stipulation with an expressly stated purpose of "simplifying the procedure posture of the case and to accurately reflect the positions of the parties." R. Vol. IV, p. 663. This stipulation allowed Piercy to file an amended complaint and each party to file an amended answer. Id., pp. 662-670. The stipulation contained a benign statement that Canyon County, Guzman and Sutton waive any defenses to the "timing of the filing" of Piercy's amended complaint. R. Vol. IV, p. 666. Within a fortnight following the filing of the amended complaint, Canyon County, Guzman and Sutton each filed an amended answer asserting some degree of a statute of limitations defense. R. Vol. IV, pp. 702, 718, and 725-726. The District Court determined that the parties did not intend the language of the stipulation to constitute a waiver of statute of limitations defenses and that the language in the stipulation was not specific enough to accomplish what Piercy suggested. R. Vol. VII, p. 1404.

The "timing of the filing" waiver in its plain meaning is simply an agreement to not raise an objection to Piercy's 2007 amendment. Piercy's amended complaint contains a new claim

that would not relate back to the time of filing from the original 2005 petition. Where a proffered amendment raises a new cause of action rather than a mere modification of the original claim, it does not relate back to the original time of filing. Wing v. Martin, 107 Idaho 267, 270, 688 P.2d 1172, 1175 (1984). Due to the realignment of the parties and new action against Canyon County, the parties were stipulating to treat the new action in amendment as if filed in the original complaint -- not to waive statute of limitations defenses. This understanding is illustrated by the fact that Guzman, Sutton and Canyon County started raising statute of limitations defenses a week after the Piercy's Amended Action for Declaratory Judgment was filed. R. Vol. IV, p. 678.

As the party asserting a waiver, Piercy was required to show the District Court that "he acted in reasonable reliance upon it and that he thereby has altered his position to his detriment." Ada County Highway Dist. v. Total Success Investments, LLC, 145 Idaho 360, 370, 179 P.3d 323, 333 (2008) (quoting Margaret H. Wayne Trust v. Lipsky, 123 Idaho 253, 256, 846 P.2d 904, 907 (1993)). Piercy made no showing to support that he altered his position in detrimental reliance on what he asserts is a "waiver" to that statute of limitation claims. Tr. August 11, 2010.

Piercy's assertions that the statute of limitations defenses should have been barred from being raised at the District Court is disingenuous. First, Piercy's interpretation goes against the plain meaning and express purpose of the stipulation and, secondly, he failed to make a showing that he relied on the stipulation at the District Court. For the foregoing reason, the District Court's interpretation of the stipulation should be upheld.

2. Guzman, Sutton and Canyon County properly plead their statute of limitations defenses or tried the statute of limitations defenses by implied consent.

Piercy contends that the statute of limitations defenses were waived because Canyon

County failed to plead I.C. § 5-224 with particularity. At the District Court, Guzman and Sutton both plead I.C. § 5-224 in amended answers in response to an amended complaint by Piercy. R. Vol. IV, pp. 702, 718. The amended answers were filed by stipulation and according to court order. R. Vol. IV, pp. 662-667. Canyon County asserted a statute of limitations defense pursuant to I.C. § 31-857 filed in accordance with the same stipulation and order. R. Vol. IV, pp. 725-726. Moreover, Judge Ford allowed the statute of limitations defenses to be heard after the first District Court judge failed to address statute of limitations defenses. R. Vol. IV, pp. 572-592. I.C. § 5-224 and I.C. § 31-857 were then the subject of a motion hearing in which each party to this case participated. Tr. August 11, 2010.

Piercy argues as if an amended pleading is somehow less valid than the original pleading. However, "leave to amend is to be freely given" and "permission to amend is left to the sound discretion of the trial court." Jones v. Watson, 98 Idaho 606, 610, 570 P.2d 284, 288 (1977). Under Piercy's analysis his own amended pleading would be void.

If Guzman's, Sutton's and Canyon County's pleadings were not plead with sufficiency, then the defenses were tried by consent and should be treated as if raised in the pleadings. Idaho R. Civ. P. 15(b) in part states:

> When issues not raised by the pleading are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues.

When a statute of limitation is the subject of a motion hearing rather than at trial, the motion hearing is treated as a trial under Rule 15(b). Childers v. Wolters, 115 Idaho 527, 528, 768 P.2d 790, 791 (Ct. App. 1988).

In the instant case, I.C. § 5-224 was raised by Guzman and Sutton prior to the trial and in a sanctioned amendment to their pleading. Canyon County did not raise this particular statute; however, Canyon County participated in the hearing on the issue. Tr. August 11, 2010. Canyon County raised an I.C. § 31-857 statute of limitations defense prior to the 2009 amendment of I.C. § 31-857 being effective. And subsequently, the amended I.C. § 31-857 was raised by Guzman and Sutton and a hearing was held concerning the amendment. Tr. August 11, 2010.

Here Guzman, Sutton and Canyon County properly plead their respective statute of limitations defenses. When a statute was not raised in an answer by a party – the statute was meaningfully tried by the implied consent of the parties; thus pursuant to Rule 15(b), the amended I.C. § 31-857 and I.C. § 5-224 shall be treated "in all respects as if they had been raised in the pleading."

C. Idaho Code § 5-224 bars Appellant Piercy from challenging the 1982 herd district ordinance.

The District Court properly determined that I.C. § 5-224 prevents Piercy from challenging the Canyon County herd district created by ordinance in 1982. Prior to the 2009 amendment to I.C. § 31-857, there was no specific statute of limitations applicable to the cause of action asserted by Piercy in his Amended Action for Declaratory Relief (the challenge to the validity of the County's ordinance on due process grounds). R. Vol. IV, pp. 678-699. When no statute of limitations specifically governs an action, the four (4) year statute of limitations found in I.C. § 5-224 is applied. Stapleton v. Jack Cushman Drilling & Pump Co. Inc., 153 Idaho 735, 291 P.3d 418, 423-24 (2012); C & G, Inc. v. Canyon Highway Dist. No. 4, 139 Idaho 140, 147, 75 P.3d 194, 201 (2003). I.C. § 5-224 is described by the courts as a "catch-all" prohibition against causes of action older than four (4) years. Id.

The "catch-all" I.C. § 5-224 states "[a]n *action* for *relief* not hereinbefore provided for must be commenced within four (4) years after the cause of action shall have accrued" [Emphasis added]. In his Appellant's Brief, Piercy argues that I.C. § 5-224 is inapplicable to declaratory relief; however, Piercy fails to make the proper distinction between the *action* and the *relief* sought by the action. Appellant's Brief, pp. 25-29.

A declaratory judgment is a "binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement." JUDGMENT, Black's Law Dictionary (9th ed. 2009), declaratory judgment. The declaratory judgment is the relief or remedy sought not the action itself.[2] This distinction is seen in the statute that authorizes declaratory judgment and the court rule that prescribes the procedure for the same. I.C. § 10-1201 declares "[n]o action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for." While Idaho R. Civ. P. 57(b) provides that the action is "seeking" the declaratory judgment.

This "catch-all" statute of limitations applies to any action without a more specific limitation whether it is based on a statutory cause of action, one at common law or even a constitutional right. This court has applied a statute of limitations to an action to invalidate an ordinance similar to Piercy's cause of action. Canady v. Coeur d'Alene Lumber Co., 21 Idaho 77, 120 P. 830 (1911). To claims of malicious prosecution. Myers v. City of Pocatello, 98 Idaho 168, 559 P.2d 1136 (1977). And to inverse condemnation actions based on a claim of unconstitutional takings. Ada County Highway Dist. v. Total Success Investments, LLC, 145 Idaho 360, 179 P.3d 323 (2008); Wadsworth v. Dep't of Transp., 128 Idaho 439, 915 P.2d 1

[2] See also: ACTION, Black's Law Dictionary (9th ed. 2009) "A civil or criminal judicial proceeding" and CAUSE OF ACTION, Black's Law Dictionary (9th ed. 2009) "A factual situation that entitles one person to obtain a remedy in court from another person."

(1996).

Piercy's action for declaratory relief is essentially a due process claim, but even the constitutional nature of the claim does not prohibit the application of I.C. § 5-224. Wadsworth v. Dep't of Transp., 128 Idaho 439, 441, 915 P.2d 1, 3 (1996) (citing United States v. Dickinson, 331 U.S. 745, 747, 67 S. Ct. 1382, 1384, 91 L. Ed. 1789 (1947)). "The Constitution is 'intended to preserve practical and substantial rights, not to maintain theories.'" Dickinson, 747 (quoting Davis v. Mills, 194 U.S. 451, 457, 24 S.Ct. 692, 695, 48 L.Ed. 1067 (1904)).

Again, it is the type of action that determines the application of I.C. § 5-224 not the relief being sought. This distinction is illustrated in McCuskey v. Canyon County Com'rs, 128 Idaho 213, 912 P.2d 100 (1996). McCuskey involved an inverse condemnation action seeking relief in the form of a declaratory judgment invalidating the County zoning ordinance upon which the alleged taking was based. The Court applied I.C. § 5-224 when the relief sought was explicitly a declaratory judgment. McCuskey v. Canyon County Com'rs, 128 Idaho 213, 218, 912 P.2d 100, 105 (1996).

As no other statute of limitation applied to Piercy's action when it was filed, the District Court properly applied the "catch-all" I.C. § 5-224.

D. Idaho Code § 31-857 bars Appellant Piercy from challenging the 1982 herd district ordinance.

The District Court held that I.C. § 31-857 was retroactive and a bar to Mr. Piercy's action for declaratory judgment, while holding that I.C. § 5-224 was applicable in the alternative. On appeal, Canyon County asserts that the "catch-all" I.C. § 5-224 was applicable to Piercy's action prior to the implementation of the I.C. § 31-857. While the retroactive I.C. § 31-857 was the more specific, therefore operative, statute of limitations when the District Court issued its ruling.

The application of I.C. § 5-224 to Piercy's claim effectively bars the action even if I.C. § 31-857 was deemed prospective – as will be discussed below.

1. The District Court's ruling that the 2009 amendment to I.C. § 31-857 is retroactive should be affirmed.

Foremost, the express and plain language of I.C. § 31-857 provides for legislatively intended retroactive application of the statute of limitations in I.C. § 31-857; thus, barring Piercy from challenging Canyon County's 1982 herd district ordinance. Generally, Idaho statutes are not retroactive unless "expressly so declared" by the legislature. I.C. § 73–101. The 2009 amendment to I.C. § 31-857 contained a plain and clear expression of legislative intent of retroactivity; thus, must be given such effect.

During the District Court proceedings (July 1, 2009), I.C. § 31-857 was amended by adding the following additional sentence to the existing statute: "No challenge to the proceedings or jurisdictional steps preceding such an order, shall be heard or considered after seven (7) years has lapsed from the date of the order." Prior to the amendment, I.C. § 31-857 altered the burden of proof when challenging the formation of certain statutorily created districts and included language of retroactivity "heretofore been, or shall hereafter" to the shifted burden of proof. This language of retroactivity remained in the 2009 amendment.

The legislative history for the enactment of the 2009 amendment was reviewed and discussed by the District Court. Notably, the District Court reviewed the Statement of Purpose for the amendment from the House bill:

> This bill establishes a standard seven year statute of limitations for procedural and jurisdictional challenges to the creation of governmental districts under Idaho law. This will eliminate unreasonably delayed legal challenges to the procedures used by the County Commission after seven years have passed, the districts are in place and have been relied upon by the citizens of the county.

R. Vol. VIII, p. 1410 and Appellant's Brief, Appendix "B." This statement was repeated in an explanation of the bill from the minutes of the House Judiciary, Rules and Administrative Committee. R. Vol. VIII, p. 1409 and Appellant's Brief, Appendix "B."

A minute from the House Local Government Committee provided the following additional legislative comment on the purpose of the amendment:

> He stated this bill began in Judiciary and Rules because of a Jefferson County court case alleging that a Herd District had not been created appropriately. HO102 establishes that if a district is created, established, disestablished, dissolved, or modified, challenges shall not be heard or considered following the lapse of a certain period. Id.

In Wheeler v. Idaho Dept. of Health & Welfare, 147 Idaho 257, 263, 207 P.3d 988, 994 (2009), the court offered the following summary of the framework it utilizes in interpreting the Idaho Code:

> When interpreting a statute, this Court must strive to give force and effect to the legislature's intent in passing the statute. Davaz v. Priest River Glass Co., Inc., 125 Idaho 333, 336, 870 P.2d 1292, 1295 (1994). "It must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole." McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 813, 135 P.3d 756, 759 (2006) (citations omitted). "Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction." State v. Rhode, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999). However, if the result is "palpably absurd," this Court must engage in statutory construction. Id. When engaging in statutory construction, this Court has a "duty to ascertain the legislative intent, and give effect to that intent." Id. "[T]he Court must construe a statute as a whole, and consider all sections of applicable statutes together to determine the intent of the legislature." Davaz, 125 Idaho at 336, 870 P.2d at 1295 (internal citation omitted). "[The Court] also must take account of all other matters such as the reasonableness of the proposed interpretations and the policy behind the statute."

It has been further stated that effect must be given to "to every word, clause and sentence of a statute" if possible. Messenger v. Burns, 86 Idaho 26, 30, 382 P.2d 913, 915 (1963). To

enact a retroactive statute, the legislature need not use the word "retroactive," but only make the retroactive nature of the statute clear. Peavy v. McCombs, 26 Idaho 143, 140 P. 965, 968 (1914). The 2009 amendment to I.C. § 31-857 is as follows:

> Whenever any school district, road district, herd district, or other district has *heretofore* been, or shall hereafter be, declared to be *created, established,* disestablished, dissolved, or *modified, by an order of the board of county commissioners* in any county of the state of Idaho, a legal prima facie presumption is hereby declared to exist, after a lapse of two (2) years from the date of such order, that all proceedings and jurisdictional steps preceding the making of such order have been properly and regularly taken so as to warrant said board in making said order, and the burden of proof shall rest upon the party who shall deny, dispute, or question the validity of said order to show that any of such preceding proceedings or jurisdictional steps were not properly or regularly taken; and such prima facie presumption shall be a rule of evidence in all courts in the state of Idaho. No challenge to the proceedings or jurisdictional steps preceding such an order, shall be heard or considered after seven (7) years has lapsed from the date of the order.

(Emphasis added.).

Piercy argues that the final sentence of the statute should be read independent of the preceding paragraph to give effect to his interpretation of the statute as prospective. However, under Wheeler and the cases that precede it, the statute must be construed as a whole with plain, usual and ordinary meaning given to each word. The intent of the legislature to give retroactive effect to the 2009 amendment of I.C. § 31-857 is expressed in its adoption of the amendment as a whole with the "heretofore" language.

Moreover, the legislature intended the amendment to protect long-standing school, road and herd districts that have been utilized and relied on by Idahoans for decades. As Judge Ford said, to not construe the amendment as retroactive "would eviscerate the stated purpose of eliminating 'unreasonable delayed legal challenges' to the districts." A prospective application renders the amendment useless as challenges to hundred-year-old districts would be given an additional seven (7) years to proceed. Piercy's interpretation of the statute does not give effect to

the legislative intent. The District Court's determination that I.C. § 31-857 is retroactive gives effect to the legislature's intent and should be affirmed.

2. Piercy is not granted a prospective right to challenge the herd district by the 2009 amendment to I.C. § 31-857.

On appeal, Piercy asserts that I.C. § 31-857 is prospective and extends the right to challenge the creation of Idaho districts by seven (7) years. A court generally applies the law in effect at the time it renders a decision. Landgraf v. USI Film Products, 511 U.S. 244, 273, 114 S. Ct. 1483, 1501, 128 L. Ed. 2d 229 (1994). However, Piercy's prospective claim under I.C. § 31-857 would be void because the "catch-all" statute of limitations in I.C. § 5-224 was previously applicable to the claim.

"Extending a statute of limitations after the pre-existing period of limitations has expired impermissibly revives a moribund cause of action." Hughes Aircraft Co. v. United States ex rel. Schumer, 520 U.S. 939, 950, 117 S.Ct. 1871, 138 L.Ed.2d 135 (1997). A newly enacted statute cannot retroactively revive a clam that was prohibited under the prior statute of limitations. Chenault v. United States Postal Serv., 37 F.3d 535, 539 (9th Cir.1994). Thus, because the "catch-all" I.C. § 5-224 barred Piercy's action prior to the 2009 amendment to I.C. § 31-857, even Piercy's prospective interpretation of I.C. § 31-857 does not revive his cause of action.

E. Statutes of limitation apply to Appellant Piercy's constitutional claims.

Piercy asserts that no statute of limitations (neither I.C. § 5-224 or I.C. § 31-857) can apply to his cause of action because to do so would violate his constitutional due process rights.

When challenging a statute:

> [t]here is a presumption in favor of the constitutionality of the challenged statute or regulation, and the burden of establishing that the statute or regulation is unconstitutional rests upon the challengers. "[A]n appellate court is obligated to seek an interpretation of a statute that upholds it constitutionality." *In Re Bermudes (East. Idaho Reg. Med. Ctr. v. Minidoka County)*, 141 Idaho 157, 159,

> 106 P.3d 1123, 1125 (2005). The judicial power to declare legislative action unconstitutional should be exercised only in clear cases.
>
> A party may challenge a statute as unconstitutional "on its face" or "as applied" to the party's conduct. A facial challenge to a statute or rule is "purely a question of law." Generally, a facial challenge is mutually exclusive from an as applied challenge. For a facial constitutional challenge to succeed, the party must demonstrate that the law is unconstitutional in *all* of its applications. In other words, "the challenger must establish that no set of circumstances exists under which the [law] would be valid." *State v. Korsen*, 138 Idaho 706, 712, 69 P.3d 126, 132 (2003). In contrast, to prove a statute is unconstitutional "as applied", the party must only show that, as applied to the defendant's conduct, the statute is unconstitutional.
>
> An "on its face" constitutional analysis may not be combined with an "as applied" constitutional analysis. In other words, a court may hear both types of challenges to a rule's constitutional validity; however, it may not do a "hybridized" form of either test, in which the two tests are combined into a single analysis. (Internal citation omitted.)

Am. Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Res., 143 Idaho 862, 869, 154 P.3d 433, 440 (2007).

A statute of limitations is neither purely procedural or purely substantive. Sun Oil Co. v. Wortman, 486 U.S. 717, 736, 108 S. Ct. 2117, 2129, 100 L. Ed. 2d 743 (1988). A challenge to procedural due process is a question of whether the "procedure employed is fair." Bradbury v. Idaho Judicial Council, 136 Idaho 63, 72, 28 P.3d 1006, 1015 (2001). A court reviews the challenge under a two-step analysis. Id. First, the court determines whether a liberty or property interest exists for the right under the Fourteenth Amendment. Id. Then, only after a liberty or property interest is found, a court determines "what process is due." Id.

A substantive due process claim protects against state deprivation of a person's "life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1; Idaho Const. art. 1, § 13. A state action must deprive a person of life, liberty, or property and be arbitrary, capricious, or without a rational basis for the aggrieved party to prevail. Idaho Dairymen's Ass'n, Inc. v. Gooding County, 148 Idaho 653, 661, 227 P.3d 907, 915 (2010). A substantive due

process violation will not be found if the state action "bears a reasonable relationship to a permissible legislative objective." Id.

Statutes of limitations are designed by the state "to promote stability and avoid uncertainty with regards to future litigation." Wadsworth v. Dep't of Transp., 128 Idaho 439, 442, 915 P.2d 1, 4 (1996). The state's purpose in creating the statutes of limitations is the "protection of defendants against stale claims, and protection of the courts against needless expenditures of resources." Id. (Citing Johnson v. Pischke, 108 Idaho 397, 402, 700 P.2d 19, 25 (1985)).

As stated previously herein, the constitutional nature of the claim does not prohibit the application of a statute of limitations. Wadsworth v. Dep't of Transp., 128 Idaho 439, 441, 915 P.2d 1, 3 (1996) (citing United States v. Dickinson, 331 U.S. 745, 747, 67 S. Ct. 1382, 1384, 91 L. Ed. 1789 (1947)). "The Constitution is 'intended to preserve practical and substantial rights, not to maintain theories.'" Dickinson, 747 (quoting Davis v. Mills, 194 U.S. 451, 457, 24 S.Ct. 692, 695, 48 L.Ed. 1067 (1904)).

Piercy's procedural argument is essentially that he was denied due process because I.C. § 31-857 prevents him from raising his underlying due process claim, an "as applied" challenge. His substantive due process argument then goes a step further into a facial challenge and he argues that no statute of limitations can ever be applied to his underlying due process claim.

Contrary to Piercy's assertions, the state can limit claims based on state and federal constitutional grounds. A statute of limitations does not infringe on ability to bring claim only on time the theory can be raised. Piercy's due process claim is stale. To avoid liability, he seeks to extinguish a public-service district that has been active for thirty (30) years. The four (4)

years allowed for Piercy to challenge the district by the "catch-all" was fair and the seven (7) years given by I.C. § 31-857 is even more so.

All statutes of limitation share the purpose of promoting stability and the uncertainty that comes with perpetual future litigation. This is a permissive legislative objective that is related to a legitimate and reasonable legislative power. Piercy's due process rights were not violated by I.C. §§ 5-224 and 31-857.

IV. CONCLUSION

In summation, the District Court properly determined that I.C. §§ 5-224 and 31-857 bar Piercy from challenging the validity of Canyon County's 1982 herd district ordinance. These statutes of limitation were properly raised during the lower court proceedings and are applicable to Piercy's action. For the foregoing reasons, Respondent Canyon County respectfully requests that the Court affirm the District Court ruling that I.C. §§ 5-224 and 31-857 prohibit Piercy from challenging the validity of Canyon County's herd district.

DATED: March 20, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of March, 2013, I caused a true and correct copy of the foregoing **RESPONDENT'S BRIEF** to be served on the following in the manner indicated:

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