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IN THE SUPREME COURT OF THE STATE OF IDAHO

LUIS JESUS GUZMAN, individually, Plaintiff-Defendant-Respondent-Cross-Appellant, vs. DALE PIERCY, individually, Defendant-Plaintiff-Appellant-Cross-Respondent, vs. CANYON COUNTY, Defendant-Respondent. JENNIFER SUTTON, individually, Defendant-Defendant-Respondent-Cross-Appellant.	)	Supreme Court No. 39708-2012 Case No. CV05-4848

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Supreme Court Court of Appeals
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Appealed from the District Court of the Third Judicial District in and for the County of Canyon

DEFENDANT/RESPONDENT LUIS GUZMAN'S CROSS-APPELLANT BRIEF

HONORABLE BRADLEY S. FORD, District Judge

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I. STATEMENT OF THE CASE

Luis Guzman disagrees with Appellant Piercy's Statement of the Case to the extent explained below.

On the night of April 20, 2005, Plaintiff Luis Guzman was one of the two passengers in a car driven by Defendant Jennifer Sutton which struck a bull on Wamstad Road, just south of Parma, Idaho. The animal was owned by Defendant Dale Piercy. Guzman was injured in the crash and sued the defendants.

There is no dispute that the bull was owned by Piercy, that the bull escaped from Piercy's pasture, and that Piercy's pasture was within the boundaries of a herd district formed by the Canyon County Commissioners in 1982.

During a long and convoluted litigation process, Piercy has challenged the validity of the Herd District. Eventually Judge Petrie held a bifurcated bench trial, also referred to as a "mini-trial", on October 8, 2008. On January 21, 2009, Judge Petrie issued his Findings of Fact, Conclusions of Law and Judgment in which he held that the 1982 Canyon County herd district was invalid and void. R. Vol.6, p.1143-1144; R. Vol.6, p.965. Judge Petrie then retired.

Thereafter, the Idaho Legislature passed a new version of I.C. 31-857, effective July 1, 2009, to provide that the validity of a herd district may not be attacked after 7 years from its formation. Based upon this legislative amendment, Guzman asked the District Court (and new Judge Ford) to reverse Judge Petrie's January 21, 2009 Findings that the 1982 herd district is invalid, and to dismiss Piercy's 8th Defense claiming he is entitled to open range immunity, arguing the amended stature was specifically made retroactive by its express language. R.Vol.6, p.1154.

In a written Order filed October 5, 2011, Judge Ford memorialized his Oral Ruling made on Dec 9, 2010, vacating and reversing Judge Petrie's January 21, 2009 Findings of Fact, Conclusions of Law and Judgment in Bifurcated Portion of Trial on the basis that Dale Piercy's September 11,2008 amended Action for Declaratory Relief was time barred by Idaho Code Section 31-857 and/or in the alternative by Idaho Code Section 5-224; ruling that Canyon County's herd district ordinance is valid having been in effect for nearly 29 years, and Piercy's declaratory action challenging it's validity was not filed within 7 years or 4 years of its enactment. R. Vol.8, p.1393 at p.1417.

Guzman also joins in and adopts Sutton's Statement of the Case.

II. ISSUES ON APPEAL

The Cross Appellants Guzman and Sutton have appealed the issues of whether the District Court erred in denying the Cross-Appellants' Motion to Reconsider and Reverse the Court's Order Denying Defendant Piercy's Motion for Summary Judgment, Joining Canyon County, and Holding All Other Motions in Abeyance Until the Herd District's Validity is Resolved, Entered On Or About October 9, 2007, based on estoppel by laches, quasi-estoppel, and equitable estoppel.

III. STANDARD OF REVIEW ON APPEAL

When reviewing a motion for summary judgment, the Supreme Court uses the same standard employed by the trial court when deciding such a motion. *Kolln v. Saint Luke's Regl. Med. Ctr.*, 130 Idaho 323, 327, 940 P.2d 1142, 1146 (1997). Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). "The burden is on the moving party to prove an absence of genuine issues of material fact." *Rees v. State, Dep't of Health and Welfare*, 143 Idaho 10, 14, 137 P.3d 397, 401 (2006). This Court views the facts and inferences in the record in favor of the non-moving party. *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997).

The interpretation of a statute is an issue of law as to which there is free review on appeal. *Climax,LLC v Snake River Oncology of Eastern Idaho*, 149 Idaho 791, 241 P.3d 964(2010).

IV. ARGUMENT

A. Judge Petrie Did Not Abuse Discretion By Ruling that Guzman and Sutton Did Not Waive Their Right To Assert The Statute Of Limitations Defense When They Entered The Stipulation To Realign The Parties

Judge Petrie required a declaratory action and bifurcated trial as a procedure for determining the validity of the 1982 herd district. Judge Petrie concluded that Canyon County was a necessary party. Although Sutton was originally directed to bring the action against Canyon County, the parties subsequently stipulated to realign themselves to properly and logically address the issues presented by that action. This was accomplished pursuant to the Stipulation to Amend Pleadings and Scheduling filed September 4, 2008, R.Vol.4, p. 662-670, by which Piercy was named Plaintiff in the amended declaratory action against Canyon County. The trial court so found in its Written Order of October 5, 2011. R. Vol.8, p.1393 at p.1403.

By including a provision that read: "That Canyon County, Mr. Guzman and Ms. Sutton waive any defenses they may have regarding the timing of the filing of Mr. Piercy's Amended

Action for Declaratory Relief," Guzman never intentionally or knowingly waived his affirmative defense based on the statute of limitations. The purpose of that language was to create a record to permit the filing of an amended action for declaratory relief late in the case and to avoid the time limitations found in IRCP 15(a) governing amendments to pleadings. This is evident from the language used, i.e. that Guzman and Sutton waive any defenses "regarding the timing of the filing of Mr. Piercy's Amended Action for Declaratory Relief." Furthermore both Guzman and Sutton asserted the statute of limitations defense before Judge Petrie's ruling on the validity of the 1982 Herd District (which his order did not address), R. Vol.8, p.1393 at p.1404, and afterwards, R. Vol.8, p. 1393.

Judge Ford specifically determined that Sutton and Guzman "did not waive their right to assert the statute of limitations defense when they entered the stipulation to realign the parties. If the litigants intended that the stipulation include a specific waiver by (them) of their right to assert a statute of limitations defense, the stipulation should have specifically stated that (they) waive all statute of limitations defenses". R. Vol.8, p.1393 at p.1404

This is a discretionary ruling by the trial court which should not be overturned.

B. Judge Ford Correctly Ruled That IC 31-857 Applies Retroactively

There is no dispute that the Canyon County Commissioners created a herd district in 1982; that the 1982 herd district encompassed Piercy's pasture; that Piercy's bull escaped from said pasture; that Piercy's bull was on Wamstad Road at night just south of the Boise River, within a herd district created in 1908 when the bull was struck by Sutton's car; and that Guzman was injured as a result of that car/livestock collision. Findings of Fact, Conclusions of Law, and Judgment in Bifurcated Trial, January 21, 2008. R. Vol. 6, pp. 959-971; See also Exhibits J and K to Walton Affidavit. R. Vol. 7, pp. 1241-1242; R. Vol. 7, p. 11243.

In 2009, after the Court's January 21, 2008 Judgment in this matter, the Idaho Legislature amended I.C. 31-857 to provide that, "No challenge to the proceedings or jurisdictional steps preceding" the passing of a herd district ordinance, "...shall be heard or considered after seven (7) years has elapsed from the date of the order." I.C. 31-857.

Moreover, the statute was expressly declared to be retroactive by the Idaho Legislature. The statute provides *in toto*:

> 31-857.SCHOOL, ROAD, HERD AND OTHER DISTRICTS -- PRESUMPTION OF VALIDITY OF CREATION OR DISSOLUTION. 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).

The statute expressly states that the statute applies to herd districts created before July 1, 2009, by its use of the language "Whenever any herd district...has heretofore been declared to be created, established...". Thus, by its express language, the statute applies retroactively to this herd district, and to all herd districts created prior to July 1, 2009.

I.C. 73-101, provides that, "No part of these compiled laws is retroactive, unless expressly so declared."

In *Peavy v. McCombs*, 26 Idaho 143, 140 P. 965 Idaho (1914) the Idaho Supreme Court explained the meaning of those words, "unless expressly so declared":

> [S]ection 3, Rev. Codes ... provides that "no part of these Revised Codes is retroactive, unless expressly so declared." We do not think, however, that this section means that the statute must use the words, "This statute is to be deemed retroactive." We think it is sufficient if the enacting words are such that the intention to make the law retroactive is clear. In other words, if the language clearly refers to the past as well as to the future, then the intent to make the law retroactive is expressly declared within the meaning of section 3, Rev. Codes. 143 P, at 968 (emphasis added).

By providing that the statute applies to herd districts created before or after July 1, 2009, (i.e., by use of the words "has heretofore been, or shall hereafter be") the legislature has evidenced a clear intent that the statute is to be applied retroactively to all herd districts, whenever created.

The fact that the legislature changed the law after Judge Petrie declared the herd district invalid does not change the outcome. No less than the United States Supreme Court has so held.

In the case of *Chase Securities Corp. vs. Donaldson*, 325 U.S. 304, 65 S. Ct. 1137 (1945) Donaldson sued Chase Securities (Chase) for violating Minnesota's Blue Sky laws. Chase pleaded a statute of limitations defense. The trial court rejected the statue of limitations defense, and awarded Donaldson damages. Chase appealed. The Minnesota Supreme Court reversed and held that the statute of limitations **did** bar Donaldson's claim. The case was remanded to the trial court for proceedings related to final disposition.

While proceedings were pending in the lower court, the Minnesota legislature amended the Blue Sky laws, and allowed suits such as Donaldson's to be brought within one year of passage of the amendment to the Blue Sky laws. Based upon the legislative amendment to the statute, the trial court then ruled that the amended law applied, and that Donaldson's claim was now valid.

Chase appealed again, and the Minnesota Supreme Court held that the newly amended statute "was applicable and had the effect of lifting any pre-existing bar of the general limitation statute and that in so doing it did not violate the due process clause of the Fourteenth Amendment." *Chase vs. Donaldson*, 325 U.S., at 308-309.

On appeal, the U. S. Supreme Court held that Chase had not been deprived of due process by the state legislature's legislative "fix" of Donaldson's cause of action, and Donaldson was allowed to recover, notwithstanding the prior entry of judgment against Donaldson by the Minnesota Supreme Court before the legislative amendment that revived Donaldson's claim.

Similarly, notwithstanding Judge Petrie's January 21, 2009 order declaring the 1982 herd district invalid, the July 2009 amendment to I.C. 31-857, which by its express language is to be retroactively applied, invalidates Judge Petrie's January 2009 ruling. Pursuant to I.C. 31-857, because it has been more than seven years since the 1982 herd district was created, Piercy may not challenge the proceedings or jurisdictional steps taken by the Canyon County Commissioners in 1982 when they passed the herd district ordinance at issue. Piercy's bull was therefore pastured in a herd district, the collision occurred in a herd district, and all of Piercy's defenses relating to the validity of the 1982 herd district, including Piercy's Eighth Defense in his Answer to Plaintiff's Third Amended Complaint (which defense alleges Piercy is entitled to 'open range' immunity) must be dismissed.

This Court should therefore rule, based upon the legislative amendment alone, that the 1982 herd district is valid, and that Piercy is subject to liability under Idaho's herd district statutes.

Judge Ford accepted this reasoning, and held that "this court finds that the Idaho legislature expressed, and a literal reading of the plain language of the statute confirms, the intent

that the 2009 amendment creating a seven year statute of limitations was to be applied retroactively to existing enumerated districts. To hold otherwise would eviscerate the stated purpose of eliminating 'unreasonable delayed' legal challenges to the districts." R. Vol. 8, p.1410.

In reaching the above conclusion, Judge Ford considered the legislative history of the 2009 amendment to I.C. 31-857. R. Vol.8, p.1408-1411. House Bill No. 102 stated that this was "an act relating to counties amending section 31-857, Idaho Code, to provide that challenges to proceedings and jurisdictional steps preceding orders relating to the creation, establishment . . . of certain districts **shall not be heard or considered** following the lapse of a specified period of time." (emphasis supplied) Id. at p. 1408-1409.

Judge Ford also considered the minutes for the House Judiciary, Rules and Administrative Committee held on February 11, 2009. The minutes indicate that the bill sponsor Representative Lake was asked to explain the proposed legislation and said:

> This bill establishes a standard seven year statute of limitation for procedural and jurisdictional districts under Idaho law. This **will eliminate unreasonably delayed legal challenges to the procedures used by the County Commissioner after seven years have passed, the districts are in place and have been relied upon by the citizens and the county.** (emphasis supplied) *Id.* at p.1409

Judge Ford also considered a minute for the House Local Government Committee held on February 18, 2009 in which Representative Lake presented House Bill 102 and the minutes stated the following:

> He stated that this began in Judiciary and Rules because of Jefferson County court case alleging that a herd district had not been created appropriately. HO 102 (sic) 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 time period.** (emphasis supplied) Id. at p. 1409

Judge Ford considered a minute from the Senate Local Government and Taxation Committee in which the following was stated:

> . . . In cases involving a herd district, the validity of the district has been questioned due to the historical circumstances of the determination. This bill clarifies the issue of whether a district is established or disestablished and that the duty of proof falls on anyone but the county. **If the county has acted and gone through the process of establishing a district, it is a matter of law.** (emphasis supplied) Id. at p. 1410

Finally, Judge Ford looked at the Statement of Purpose for the 2009 amendment which stated:

> 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.** (emphasis supplied) Id. at p. 1410

Accordingly Judge Ford correctly reversed Judge Petrie's prior ruling invalidating the 1982 Canyon County herd district by finding that the 2009 amendment created a seven year statute of limitations which was to be applied retroactively to existing herd districts and that to hold otherwise would eviscerate the stated purpose of eliminating "unreasonably delayed legal challenges" to the herd district. *Id.* at p. 1410-1411.

C. The Statute of Limitations Set Forth at Idaho Code § 5-224 Prevents Piercy From Contesting the Validity of the 1982 Herd District.

In the event that this Court finds I.C. § 31-857 statute of limitations is not retroactive, Guzman maintains in the alternative that the statute of limitations set forth by I.C. § 5-224 bars Piercy from challenging the validity of the 1982 herd district.

Idaho Code § 5-224 provides that, "[a]n action for relief not hereinbefore provided for must be commenced within four (4) years after the cause of action shall have accrued." Idaho Rule of Civil Procedure 57 and Idaho Code § 10-1201 *et seq.* both refer to the process of obtaining declaratory relief as an "action." Idaho Code § 5-240 defines an "action" as a special proceeding of a civil nature. Idaho Code § 5-201 provides that "[c]ivil actions can only be commenced within the periods prescribed in this chapter after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute."

The Idaho Supreme Court has treated cases before it involving declaratory actions as "civil actions." *See Smith v State Board of Medicine of Idaho*, 74 Idaho 191, 194, 259 P.2d 1033, 1034 (1953) ("this is a civil action, albeit for a declaratory judgment."); *Freiburger v. J-U-B Engineers, Inc.*, 141 Idaho 415, 423-24, 111 P.3d 100, 108-109)(2005)(award of attorney fees in declaratory judgment action pursuant to Idaho Code § 12-120(3) which allows for the recovery of attorney fees in "any civil action.").

Based on the above precedent,, Judge Ford held that " if it is determined upon appellate review that the statute of limitations set forth in Idaho Code § 31-857 does not apply to the facts of this case, this court concludes that as a civil action, declaratory actions fall within the "catch all" statute of limitations provision of I.C. §5-224." R. Vol. 8 at p.1412.

Assuming I.C. §5-224 applies to Piercy's declaratory relief action, the court must also determine when the declaratory cause of action accrued. Under I.C. §5-224, an action "must be commenced within four (4) years after the cause of action shall have accrued." Based on *Canady v. Coeur d'Alene Lumber Co.*, 21 Idaho 77, 120 P. 830, 831 (1911), the cause of action accrued the date the herd district went into effect.

In *Canaday*, the Idaho Supreme Court granted a "nonsuit" at the conclusion of the plaintiff's case at trial stating:

> It is next contended that appellant's cause of action, if she had one, was barred by the statute of limitations (subd. 1 of section 4054 and sections 4037, 4038, and 4060, Rev. Codes). We think, under the facts of this case, that this action is barred by the statute of limitations; and that this action should have been brought at least within five years from the date such cause of action arose. We think it sufficiently appears that the appellant sat by when Ordinances Nos. 71 and 75 were passed in 1900, and more than nine years before this action was commenced, and made no complaint of any damages having been sustained to her property by reason of said ordinances and the vacation of the streets. And, again, in 1905, when Ordinance No. 115 was passed, she made no protest or objection of any kind. She knew that the Coeur d'Alene Lumber Company was expending a great deal of money in establishing its lumber plant upon said blocks and a portion of one of the streets, and made no protest of any kind whatever to the city and made no claim for damages to her property as resulting from the passage of said ordinances. The first time she complained of damage to her property, so far as the record shows, was when she commenced this action, June 15, 1909.
>
> *Id* at 835.

Using *Canaday* as guidepost, Judge Ford made the following findings and applied them to the case at hand to reach the conclusion Piercy was alternatively time barred from filing the declaratory action challenging the validity of the 1982 Canyon County herd district by Idaho Code § 5-224:

> Piercy has denied specific knowledge of the status of the 1982 Canyon County herd district ordinance prior to the accident that spawned this lawsuit. He has acknowledged farming in Canyon County for essentially his entire life, including the time period during which the 1982 Canyon County herd district ordinance was enacted by the Canyon County Board of Commissioners. He also admits involvement with local cattle ranching associations and other cattle ranchers residing in Canyon County prior to and since 1982. Paul Axness' testimony suggests that Piercy has had to consider herd district versus open range concerns prior to the accident in this case. While the testimony of Paul Axness was insufficient to meet the required elements of estoppel claims, it still suggests that Piercy should have and may have considered whether his property was subject to herd district restrictions prior to the accident that is the basis of this action. Piercy has argued that he was unaware of the 1982 Canyon County herd district ordinance because of the deficiency in notice provided by the

> Board of Commissioners at the time the 1982 herd district was created. There was actual public notice given of the Board of Commissioners' intent to consider and possibly adopt the ordinance. Following the enactment of this ordinance in 1982, Canyon County's public institutions recognized and disseminated information indicating that lands located in Canyon County were subject to the purported herd district. This status would have also been confirmed by the relevant public records regarding this challenged ordinance. This court finds that there was sufficient evidence that Piercy should have been aware of the enactment of the 1982 Canyon County herd district ordinance at the time of its enactment that this declaratory action accrued and the four year statute of limitations established by I.C. § 5-224 commenced to run on the date the 1982 Canyon County herd district ordinance was adopted by the Canyon County Board of Commissioners. This statute of limitations would have run in 1986. Therefore, Piercy was alternatively time barred from filing the declaratory action challenging the validity of the 1982 Canyon County herd district by Idaho Code § 5-224." Id. at p.1413-1414

Aside from sustaining Judge Ford based on his correct legal reasoning, there should be strong support for the policy of finality. This herd district ordinance had been in place for more than 25 years at the time Piercy tried to overturn it. During that time records disappeared, memories lapsed and witnesses died. During that time, the motoring public relied on the fact that their safe passage on the roadways of Canyon County was being ensured by a presumptive herd district law. During that time ranchers have believed that their crops were safeguarded by an ordinance that required their neighbors to fence-in their livestock. There can be no good served by allowing a litigant who has lived under the benefits of a herd district ordinance for more than 25 years to challenge that law when it becomes convenient for him. For the sake of good government the right to challenge a law relied upon by the public must be limited. Piercy had four years to make his challenge. Judge Ford's determination is correct and should be sustained.

D. Guzman and Sutton Were Entitled to Defend Canyon County's Herd District Ordinance.

Piercy argues that Guzman and Sutton lack standing to assert statute of limitations defenses because Canyon County waived such a defense by failing to specifically assert it in his

pleadings. Piercy's position ignores Idaho Code 10-1202 which gives Guzman the right to argue that the 1982 herd district was valid:

> 10-1202. PERSON INTERESTED OR AFFECTED MAY HAVE DECLARATION. **Any person** interested under a deed, will, written contract or other writings constituting a contract or any oral contract, or **whose rights, status or other legal relations are affected by** a statute, municipal **ordinance**, contract or franchise, **may have determined any question of construction or validity arising under** the instrument, statute, **ordinance**, contract or franchise **and obtain a declaration of rights, status or other legal relations thereunder**. (emphasis supplied)

Guzman's "rights, status or other legal relations" are obviously "affected" by the existence or non-existence of the 1982 herd district. If the herd district is valid, then Guzman has the right to seek liability and damages from Piercy. As Judge Ford found: "Sutton and Guzman have an articulated and identifiable financial interest in the outcome of the declaratory action and so this court will consider their statutes of limitations defense." R. Vol.8, p.1405. It is not an exaggeration to say that the validity of the outcome of Guzman's lawsuit against Piercy depends on the validity of the herd district law itself and Guzman should be entitled to show that the herd district is valid.

Furthermore, it defies common sense that a governmental agency is an indispensable party every time the validity of a law is in question. For example, that would mean that every time a federal law is contested, it would become necessary to join the federal government as a party. The waste of time and energy if such were in fact the law is apparent.

E. The 2009 Amendment to Idaho Code §31-859 is Constitutional.

1. Statutory Construction.

The constitutionality of a statute is a question of law over which this Court exercises free review. *Stuart v State*, 149 Idaho 35, 40; 232 P.3d 813, 818 (2010) (additional citations omitted).

The party challenging a statute on constitutional grounds bears the burden of establishing that the statute is unconstitutional and "must overcome a strong presumption of validity." *Doe I v Doe*, 138 Idaho 893, 903, 71 P.3d 1040, 1050 (2003) (additional citations omitted). Every reasonable presumption must be indulged in favor of the constitutionality of a statute. *State v Pontier*, 95 Idaho 707, 711, 518 P.2nd 969, 973 (1974) (additional citations omitted). The legislature is presumed to have acted within its constitutional power. *Worthen v State*, 96 Idaho 175, 179, 525 P.2d 957, 961 (1974) (additional citations omitted).

The party challenging a statute on constitutional grounds must show the statute is unconstitutional "on its face" or "as applied." *Am. Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Res.,* 143 Idaho 862, 870, 154 P.3d 433, 441 (2007) (additional citations omitted). A facial challenge requires a showing that the statute in question is unconstitutional in all applications and is purely a question of law. *Id.* (additional citations omitted). By contrast, an "as applied" challenge requires a showing that the statute is unconstitutional as applied to the offending conduct. *Id.* (Additional citations omitted). It appears Piercy is solely making an "as applied" challenge.

2. The 2009 Amendment to Idaho Code § 31-857 Does Not Violate Procedural Due Process.

The due process clause of the Fourteenth Amendment "prohibits deprivation of life, liberty, or property without 'fundamental fairness' through governmental conduct that offends the community's sense of justice, decency and fair play." *Maresh v. State, Dept. of Health and Welfare ex rel . Caballero*, 132 Idaho 221, 225-226, 970 P.2d 14, 18-19 (1998) (additional citations omitted). Furthermore, "due process is not a concept rigidly applied to every adversarial confrontation, but instead is a flexible concept calling for such procedural protections

as are warranted by the particular situation." *Id.* at 226, 970 P.2d at 19. (Additional citations omitted).

For purposes of determining whether an individual's due process rights under the Fourteenth Amendment have been violated, a court must engage in a two-step analysis. *Id.* It must first decide whether the individual's threatened interest is a liberty or property interest under the Fourteenth Amendment. *Id.* (Additional citations omitted).

Only after a court finds a liberty or property interest will it reach the next step of analysis, in which it determines what process is due. *Id.* (Additional citations omitted).

Whether a property interest exists can be determined only by an examination of the particular statute or ordinance in question. *Id.* (Additional citations omitted). A person must have more than an abstract need or desire for a benefit in order to have a property interest therein. *Id.* at 227, 970 P.2d at 20. (Additional citations omitted). Further, that person must have more than a unilateral expectation in the benefit; instead, she must have a "legitimate claim of entitlement to it." *Id.* (Additional citations omitted).

"The Fourteenth Amendment's procedural protection of property is a safeguard of the security of interests that a person has already acquired in specific benefits." *Id.* at 226, 970 P.2d at 19, *citing Board of Regents v. Roth*, 408 U.S. 564, 576, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

Examples of potentially protected property interests include drivers' licenses, welfare benefits, unemployment insurance, homestead exemptions, Social Security, workers' compensation and medical licenses. *See*, Ides, Allan and Christopher N. May, Examples & Explanations: Constitutional Law – Individual Rights, 2nd Ed., Aspen Law & Business, 2001.

Piercy has failed to support his argument that open range status is a clearly protected property interest. Furthermore, Title 25, Chapter 24, Idaho Code demonstrates there is no such constitutional right because it grants counties the right to create herd districts. Idaho Code §25-2401. The statutes simply do not entitle Piercy to certain benefits, nor do they create an expectation that property is open range. Piercy has no legitimate claim of entitlement to open range property status. Consequently, he does not have a property interest protected by the constitution.

Even assuming Piercy does have a protected property interest, Piercy has failed to show the statutes providing notice and an opportunity to be heard violate due process. Rather, Piercy asserts the 2009 amendment to Idaho Code § 31-857 somehow violates the statutory provision regarding notice and an opportunity to be heard. This argument is flawed.

It is well established that the Due process Clause of the Fourteenth Amendment does not prohibit a state from attaching reasonable time limitations to the assertion of federal constitutional rights. *Martinez v State*, 130 Idaho 530, 534, 944 P.2d 127, 131 (Ct.App.1997) (Additional citations omitted). The test is whether the defendant has had "a reasonable opportunity to have the issue as to the claimed right heard and determined." *Id.* (Additional citations omitted). The current statute of limitations for a challenge to the validity of an ordinance is four (4) years pursuant to Idaho Code § 5-224. The 2009 Amendment expanded the statute of limitations to seven (7) years. Even applied retroactively, four or seven years is more than a reasonable amount of time in which to pursue a claim for relief. *See, Martinez*, 130 Idaho at 535, 944 P.2d at 132 (reaffirming that a one year statute of limitations is a reasonable amount

of time within which to file an application for post-conviction relief.) Therefore, there is no merit to Piercy's argument that procedural due process was violated.

Judge Ford agreed with the above reasoning and found that the 2009 amendment to I.C. 31-857 did not violate Piercy's rights to procedural due process. The Judge ruled that Piercy did not have a protected property interest in preserving or maintaining open range status on his property, since the Idaho Code clearly allows the regulation of such matters in its statutory provisions authorizing counties to create herd districts. R. Vol. 8, p.1415. Judge Ford further found, that even assuming Piercy had a protected property interest in preserving his open range status, his argument that his right to notice and to be heard does not survive careful scrutiny. Since the 1982 Canyon County herd district ordinance was adopted 29 years before the Motion for Reconsideration in 2011, Judge Ford found that Piercy had fully had an opportunity to challenge the ordinance. R. Vol. 8, p.1416.

3. The 2009 Amendment to Idaho Code §31-857 Does Not Violate Substantive Due Process.

The United States and Idaho Constitutions protect against state deprivation of a person's "life, liberty, or property, without due process of law." *Idaho Dairymen's Ass'n., Inc. v Gooding County*, 148 Idaho 653; 227 P.3d 907, 915 (2010), *citing* U.S. Const. amend. XIV, § 1; Idaho Const. Art 1, § 13. In order to prevail on a substantive due process claim, the state action that deprives a person of life, liberty, or property must be arbitrary, capricious, or without a rational basis. *Idaho Dairymen's Ass'n. Inc.*, 148 Idaho at _____, 227 P.3d at 915, *citing Pace v. Hymas,* 111 Idaho 581, 586, 726 P.2d 693, 698 (1986). Conversely, a substantive due process violation will not be found if the state action "bears a reasonable relationship to a permissible legislative

objective." *Id., citing McNeely v State*, 119 Idaho 182, 189, 804 P.2d 911, 918 (Ct.App.1990 (citing *State v Reed*, 107 Idaho 162, 167, 686 P.2d 842, 847 (Ct.App.1984)).

Piercy's claim that the 2009 amendment to Idaho Code §31-857 violates substantive due process is without merit. First, as argued above, there is no evidence or case law supporting Piercy's claim that he has a constitutionally protected property interest. Second, even if the Court finds Piercy has a property interest, the 2009 amendment to Idaho Code § 31-857 bears a reasonable relationship to a permissible legislative objective.

The 2009 amendment precludes a challenge to the proceedings or jurisdictional steps preceding certain orders of the board of county commissioners after seven (7) years from the date of the order. The purpose of the amendment, as discussed in greater detail above, is to protect existing school, road, herd, or other districts from stale claims. Similar to the facts of this case, many of these districts have been in existence for decades. A challenge to the creation of such districts would require review of evidence that because of the passage of time no longer exists due to destruction or death, and/or reliance on faded memories. Therefore, the amendment is valid because the government has sufficient reason to want to avoid stale claims. Furthermore, the expressed legislative purpose of the 2009 amendment is to "eliminate unreasonably delayed legal challenges to the procedures sued by the County Commission after seven years have passed, the districts are in place and have been relied upon by the citizen and the county." Statement of Purpose, *supra*, R. Vol. 8, p.1410. Such purpose clearly bears a reasonable relationship to a permissible legislative objective.

Finally, it is well-established the legislature may establish statutes of limitations. *Stuart v State*, 149 Idaho 35; 232 P.3d 813, 820 (2010). Because such authority is vested with the legislature, there cannot be a substantive due process violation.

Judge Ford found that found the statute did not deprive Piercy of life, liberty, or a protected property interest, as discussed above. R. Vol. 8, p.1416. The Judge also found that seven year statute of limitations was rationally related to the State of Idaho's stated goal of reducing the number of stale, unreasonably delayed legal challenges to the procedures utilized to create herd districts. Judge Ford reasoned that such stale challenges present difficulties for obtaining and reviewing important evidence that may no longer exist due to the loss or destruction of records and the death, unavailability or faded memories of important witnesses. Likewise the Judge reasoned there is no rational basis in confirming the legitimacy of such entities that citizens have relied upon for years, and if disputed, to encourage timely challenges to the entities existence. R. Vol. 8, p.1416-1417

For all these reasons, the 2009 amendment to Idaho Code §31-859 is constitutional.

F. Whether the District Court Erred in Denying the Cross-Appellants' Motion to Reconsider and Reverse the Court's Order Denying Defendant Piercy's Motion for Summary Judgment, Joining Canyon County, and Holding All Other Motions in Abeyance Until the Herd District's Validity is Resolved, Entered On Or About October 9, 2007, Based on Estoppel by Laches, Quasi-Estoppel, and Equitable Estoppel.

Guzman joins in and adopts Sutton's arguments that the equitable doctrine of equitable estoppel by laches, quasi-estoppel, and equitable estoppel prevents Piercy from contesting the validity of the 1982 herd district. Guzman is mindful of the ever-expanding size of the Court's file in this case, and the Court's limited time and resources. Guzman's failure to fully brief these issues is not a reflection of the merits of these arguments as they apply to this case; rather, it is simply a recognition that Sutton's counsel is more capable of briefing and presenting these

arguments to this Court, and the Court does not need to expend the additional time and resources to read Guzman's counsel's arguments on the issue. Undersigned's arguments on this issue mirror Sutton's counsel's arguments.

V. CONCLUSION

Mr. Guzman has shown that Judge Ford's rulings were correct and should be sustained on appeal.

Respectfully submitted this 20th day of March, 2013.

CHASAN & WALTON, L.L.C.

By _____
Andrew M. Chasan

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of March, 2013, I caused true and correct copies of the foregoing document to be served by the method indicated below upon each of the following:

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