

12-24-2008

# City of Huetter v. Keene Clerk's Record Dckt. 35470

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IN THE SUPREME COURT

OF THE STATE OF IDAHO

**LAW CLERK**

CITY OF HUETTER

Petitioner

v.

**BRADLEY KEENE & JENNIFER BROWN**

Respondents/Appellants

CLERK'S RECORDS ON APPEAL  
FROM THE DISTRICT COURT OF FIRST  
JUDICIAL DISTRICT OF IDAHO,  
IN AND FOR THE COUNTY  
OF KOOTENAI

ATTORNEY FOR PETITIONER

Arthur Macomber

ATTORNEY FOR RESPONDENTS/APPELLANTS

Susan Weeks

**FILED - COPY**

**DEC 24 2008** SUPREME COURT CASE #35470

Supreme Court Court of Appeals

Entered on ATS by: \_\_\_\_\_

**35470**

**IN THE SUPRMEME COURT FOR THE STATE OF IDAHO**

City of Huetter  
Petitioner

v.

Bradley Keene & Jennifer Brown  
Respondents/Appellants

Civil Case # CV08-2252

Supreme Court Case #35470

**CLERK'S CERTIFICATE ON APPEAL**

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai.

HONORABLE LANSING L. HAYNES PRESIDING  
District Judge

Attorney for Respondents/Appellant

Susan P. Weeks  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

Attorney for Petitioner

Arthur Macomber  
408 E. Sherman Ave. Ste. 215  
Coeur d'Alene, ID 83814

City of Huetter vs. Bradley W Keene, Jennifer L Brown

Date	Code	User	Judge
3/19/2008	NCOC	MCCORD	New Case Filed - Other Claims
		MCCORD	Filing: G3 - All Other Actions Or Petitions, Not Demanding \$ Amounts Paid by: State Receipt number: 0787302 Dated: 3/19/2008 Amount: \$.00 (Cash) For: [NONE]
3/20/2008	HRSC	TAYLOR	Hearing Scheduled (Preliminary Injunction 04/03/2008 10:00 AM) and Request for Declaratory Jdmt, Macomber, 1 hr
	NOTH	MCCORD	Notice Of Hearing
3/31/2008		KSMITH	Filing: I7A - Civil Answer Or Appear. All Other Actions No Prior Appearance Paid by: James Vernon & Weeks Receipt number: 0788948 Dated: 3/31/2008 Amount: \$58.00 (Check) For: [NONE]
	MEMO	KSMITH	Memorandum in Opposition to Hearing on Declaratory Judgement to Ascertain Status and Request for Injunction
	MOTN	KSMITH	Motion to Shorten Time
	NOTC	KSMITH	Notice of Hearing on Motion to Shorten Time
	NOAP	KSMITH	Notice Of Appearance Susan P Weeks for Defendants
4/3/2008	DCHH	TAYLOR	Hearing result for Preliminary Injunction held on 04/03/2008 10:00 AM: District Court Hearing Held Court Reporter: LAURIE JOHNSON Number of Transcript Pages for this hearing estimated: LESS THAN 100 and Request for Declaratory Jdmt, Macomber, 1 hr
	HRSC	TAYLOR	Hearing Scheduled (Motion 04/24/2008 03:30 PM) RE: Declaratory Judgment
		TAYLOR	Notice of Hearing
4/9/2008	ORDR	TAYLOR	Stipulated Order of Preliminary Injunction and Setting Expedited Briefing Schedule for Declaratory Judgment
4/10/2008	MEMO	SHEDLOCK	Reply Memorandum To Defendants' Opposition To Request For Declaratory Judgment To Ascertain Status
4/16/2008	MEMO	THOMPSON	Reply Memorandum In Opposition To Declaratory Judgment
4/21/2008	STIP	PARKER	Stipulated Facts
4/24/2008	HRHD	TAYLOR	Hearing result for Motion held on 04/24/2008 03:30 PM: Hearing Held RE: Declaratory Judgment
4/28/2008	MEMO	BAXLEY	Defendants' Post-Trial Memorandum
4/29/2008	BRIE	SHEDLOCK	Plaintiff's Brief Of Clark v. Wonnacott In Support Of Request For Declaratory Judgment

City of Huetter vs. Bradley W Keene, Jennifer L Brown

Date	Code	User		Judge
5/6/2008	MEMO	TAYLOR	Memorandum Opinion: Findings of Fact and Conclusions of Law	Lansing L. Haynes
5/16/2008	CVDI	JOKELA	Civil Disposition entered for: Brown, Jennifer L, Defendant; Keene, Bradley W, Defendant; City of Huetter, Plaintiff. Filing date: 5/16/2008	Lansing L. Haynes
	FJDE	JOKELA	Final Judgement, Order Or Decree Entered	Lansing L. Haynes
	STAT	JOKELA	Case status changed: Closed	Lansing L. Haynes
6/27/2008		VICTORIN	Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to Supreme Court Plus this amount to the District Court) Paid by: Weeks, Susan P. (attorney for Keene, Bradley W) Receipt number: 0801665 Dated: 6/27/2008 Amount: \$15.00 (Check) For: Keene, Bradley W (defendant)	Lansing L. Haynes
	BNDC	VICTORIN	Bond Posted - Cash (Receipt 801670 Dated 6/27/2008 for 100.00)	Lansing L. Haynes
	STAT	VICTORIN	Case status changed: Closed pending clerk action	Lansing L. Haynes
	BNDC	VICTORIN	Bond Posted - Cash (Receipt 801674 Dated 6/27/2008 for 260.00)	Lansing L. Haynes
	APSC	VICTORIN	Appealed To The Supreme Court	Lansing L. Haynes
7/7/2008	NOTE	VICTORIN	Clerk's Certificate to Supreme	Lansing L. Haynes
7/11/2008	BNDC	DARNELL	Bond Posted - Cash (Receipt 803647 Dated 7/11/2008 for 100.00)	Lansing L. Haynes
	MISC	BAXLEY	Respondent's Request For Disks Of Transcript	Lansing L. Haynes
7/14/2008	BNDC	DARNELL	Bond Posted - Cash (Receipt 803667 Dated 7/14/2008 for 100.00)	Lansing L. Haynes
7/17/2008	ORDR	JANUSCH	Order from Supreme Ct Suspending until 7/25/08	Lansing L. Haynes
8/7/2008	NOTC	MCCORD	Amended Notice of Appeal	Lansing L. Haynes
8/28/2008	BNDV	PARKER	Bond Converted (Transaction number 9499786 dated 8/28/2008 amount 175.50)	Lansing L. Haynes
	BNDV	PARKER	Bond Converted (Transaction number 9499787 dated 8/28/2008 amount 84.50)	Lansing L. Haynes
	NOTC	MCCORD	Notice of Transcript Lodged	Lansing L. Haynes
9/12/2008	BNDV	JANUSCH	Bond Converted (Transaction number 9499935 dated 9/12/2008 amount 21.00)	Lansing L. Haynes
	BNDV	JANUSCH	Bond Converted (Transaction number 9499936 dated 9/12/2008 amount 79.00)	Lansing L. Haynes
	MISC	JANUSCH	Invoice	Lansing L. Haynes
10/30/2008	NOTC	MCCORD	Notice of No Objection from City of Huetter	Lansing L. Haynes

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**SUMMONS ISSUED**  
**MAR 19 2008**

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED:

2008 MAR 19 PM 4:49

CLERK DISTRICT COURT  
DEPUTY

Arthur B. Macomber, Attorney at Law  
408 E. Sherman Avenue, Suite 215  
Coeur d'Alene, ID 83814  
Telephone: 208-664-4700  
Facsimile: 208-664-9933  
State Bar No. 7370  
Counsel to Plaintiff City of Huetter

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

CITY OF HUETTER, an Idaho  
municipal corporation;

Plaintiff,

vs.

BRADLEY W. KEENE and  
JENNIFER L. BROWN,

Defendants.

Case No:

CJ08-2252

**REQUEST FOR DECLARATORY  
JUDGMENT TO ASCERTAIN  
STATUS, AND REQUEST FOR  
INJUNCTION**

Filing Fee: Waived pursuant to Idaho  
Code § 67-2301

COMES NOW Plaintiff CITY OF HUETTER, an Idaho municipal corporation (hereinafter "CITY OF HUETTER"), by and through its City Attorney and attorney of record, Arthur B. Macomber, pursuant to power conferred by Idaho Code section 50-301, and the Idaho Uniform Declaratory Judgment Act at Idaho Code section 10-1201 et. seq., requesting declaratory judgment "to declare rights, status, and other legal relations" of Defendants BRADLEY KEENE, registered elector (hereinafter "KEENE"), and JENNIFER BROWN, registered elector (hereinafter "BROWN"), related to CITY OF

**ASSIGNED TO JUDGE**

C01

HUETTER'S Mayoral and one Councilperson position respectively. CITY OF HUETTER requests interpretation of the Idaho Constitution and State statutes related to elections and municipal offices in light of certain facts so that the status and legal relations between the parties may be clarified. These facts and presently arising circumstances have resulted in a live controversy and current uncertainty such that Plaintiff cannot hold necessary City Council meetings or otherwise govern its municipal corporation knowing that it is in accordance with its powers pursuant to Idaho law. (Idaho Const. Art XII § 2; I.C. § 50-301, et seq.)

Further, due to Plaintiff's present inability to hold meetings without disruption it has become disabled as a corporate body, thus CITY OF HUETTER requests this Court exercise its power pursuant to Idaho Rules of Civil Procedure ("I.R.C.P.") 57 and 65(a)(2) to order a speedy hearing of this action and advance it on the calendar for immediate resolution.

Finally, CITY OF HUETTER prays for this Court's immediate Order granting preliminary injunction to bar Defendants from representing that they are municipal officers until such time as this Court can issue its findings and rule thereupon.

#### **JURISDICTION and VENUE**

Plaintiff CITY OF HUETTER is a validly organized Idaho municipal corporation in Kootenai County. Defendants are residents of CITY OF HUETTER and registered electors within voting Precinct 35, a geographic area in Kootenai County designated by the Kootenai County Elections Department that includes Plaintiff CITY OF HUETTER. Thus,

pursuant to Idaho Code sections 1-705, 5-404, and 10-1201 this court has jurisdiction over this matter and venue lies in this Court.

### **STATEMENT OF FACTS**

1. Prior to Election Day in November, 2007, various candidates were timely proposed for election to Plaintiff CITY OF HUETTER offices by petition, including Defendants KEENE and BROWN.

2. On Election Day in November, 2007, CITY OF HUETTER voters challenged the electoral status of twelve voters, to wit, David Meeks, Jackie Meeks, Jennifer Brown, Josh Douglas, Bradley Keene, Andrew Kienow, Carissa Lindblom, Shawn Marquette, Misty Permenter, Jamee Pilmore, Lang Sumner, and John Whitaker.

3. At the election two challenged candidates, Defendants BROWN and KEENE, were elected Mayor and Councilperson respectively.

4. On November 9, 2007, Plaintiff CITY OF HUETTER timely canvassed the votes and determined that Defendants BROWN and KEENE were two of the three people elected as stated in paragraph three herein.

5. On December 27, 2007, pursuant to Idaho Code section 34-432, the Kootenai County Elections Department sent individual notifications of challenge to the twelve challenged voters by U.S. First-class Certified Mail at the addresses provided by those challenged voters on their voter registration cards, but only received two responses, one from Dave Meeks and one from Jackie Meeks. (Exhibits A and B; one exhibit signed and one dated.)

6. Defendants KEENE and BROWN were sworn into office on January 9, 2008.

7. Pursuant to Idaho Code section 34-432(2), the Kootenai County Elections Department removed ten voters from the registration rolls, including KEENE and BROWN. (See Exhibits A and B.)

8. On February 13, 2008, Plaintiff CITY OF HUETTER refused to recognize or seat Defendants KEENE and BROWN, based on their disqualification from office due to their removal from the voter registration rolls by Kootenai County. After a verbal altercation lasting some thirty minutes, during which Defendants would not allow the meeting to be called to order, Councilpersons Meeks and Rodway left the building and no City Council meeting was held. In accord with Plaintiff City Attorney's legal opinion rendered in late January, Defendants KEENE and BROWN were told by Plaintiff's City Attorney that since they were not registered they were not qualified electors and thus they were ineligible to hold office, and could not be appointed into those positions.

9. On February 14, 2008, four of the people deleted from the official voter registration list, including Defendants KEENE and BROWN, provided certain materials to the Kootenai County Elections Department in an attempt to re-register as voters based on their purported residence within Plaintiff CITY OF HUETTER. The attempt was marred by certain acts by the potential registrants that resulted in Elections Department personnel calling Kootenai County security guards and the Kootenai County Sheriff for assistance, which aid was rendered.

10. On February 25, 2008, pursuant to Idaho Code section 34-432, the Kootenai County Elections Department held a hearing on whether to register certain persons who submitted their registration materials on February 14, including Defendants KEENE and BROWN, based on physical evidence presented and oral testimony taken under oath at that hearing, which was presided over by Dan English, the Kootenai County Clerk.

11. At that hearing, Defendants KEENE and BROWN, among others, were found to be residents of Plaintiff CITY OF HUETTER, and their registration as electors that was initiated on February 14, 2008 was allowed. At the outset of that hearing, Mr. English emphasized that the hearing's evidence would be used to uphold or deny registrations submitted on February 14, but that if registration were allowed it would not relate back or affect events occurring prior to that date.

12. On March 7, 2008, after Defendant KEENE'S several assertions in the media that he was still Plaintiff's Mayor, and following his refusal to accept the legal opinion of its City Attorney or provide a competing opinion for re-evaluation by said City Attorney, Plaintiff's City Attorney requested an evaluation of the facts given Idaho elections law by the Idaho State Attorney General's Office. That office responded with the letter hereto attached as Exhibit C, leaving the issue as to vacancy unclear.

13. On the afternoon of March 12, and just prior to the scheduled March 12 City Council meeting, Plaintiff's counsel received a letter attached hereto as Exhibit D stating that unless Plaintiff recognized Defendants KEENE and BROWN as Mayor and Councilperson respectively that a lawsuit would be filed in *quo warrento* arguing that Plaintiff had ousted Defendants from their elected positions.

14. On March 12, 2008, Plaintiff CITY OF HUETTER attempted to hold a City Council meeting, but a quorum was not available. Councilperson Gibler was present, but Councilpersons Meeks and Rodway were absent. Registered electors KEENE and BROWN were present. Attempts to reach Meeks and Rodway by telephone were fruitless.

15. At the March 12 attempted meeting, when it was determined that a quorum was not available, Defendant KEENE, purporting to act as Mayor, scheduled a Special Meeting of Plaintiff's City Council for March 20, 2008.

16. No recall election has been initiated pursuant to Idaho Code section 34-1701 et seq.

### ARGUMENT

17. In order to be a qualified elector, the voter must reside in the jurisdiction wherein the election takes place, be of a certain age, and become registered to vote. (Idaho Const. Art. VI, § 2; I.C. § 50-402(c).) Specifically, the Idaho Constitution at Article VI, Section 2 states:

Every male or female citizen of the United States, eighteen years old, who has resided in this state, and in the county where he or she offers to vote for the period provided by law, *if registered as provided by law*, is a qualified elector.

(emphasis added.)

18. Title 50, section 50-402(c) states:

A “qualified elector” means any person who is eighteen (18) years of age, is a United States citizen and who has resided in the city at least thirty (30) days next preceding the election at which he desires to vote *and who is registered* within the time period provided by law. A “qualified elector” shall also mean any person who is eighteen (18) years of age, is a United States citizen, *who is a registered voter*, and who resides in an area that the city has annexed pursuant to chapter 2, title 50, Idaho Code, within thirty (30) days of a city election.

(emphasis added; and see I.C. §§ 50-412, 50-413, and 50-414.) Thus, a validated registration is required for a person in Idaho to be recognized as a qualified elector. Here, when Defendants did not appropriately respond to Kootenai County’s challenge and were dropped from the voter registration rolls, they lost their status as qualified electors.

19. Plaintiff CITY OF HUETTER does not know whether Defendants KEENE and BROWN were in fact qualified electors when petitioning for elective office, but it does not challenge said election, because it lacks that power, and no registered elector of CITY

OF HUETTER challenged the election results within the twenty-day time period required by Idaho Code. (I.C. §§ 34-2001(2), 34-2007, 34-2008.)

20. Plaintiff CITY OF HUETTER does not argue or directly challenge the election results, but argues that by the loss of qualified elector status Defendants KEENE and BROWN became ineligible to hold office as a matter of Idaho Code sections 50-601 and 50-702. The Attorney General advises in Exhibit C that ineligibility does not serve to create a vacancy, except it is unknown how the City Council can operate to remove Defendants when said Defendants will not allow a meeting to occur unless Plaintiff recognizes them as official office holders. However, the law may be interpreted to find Idaho Code section 50-469 serves to show vacancies exist, where that statute states, “[i]f a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council.” Plaintiff CITY OF HUETTER does not know whether the removal by the Kootenai County Elections Department following its challenge to Defendants constitutes a “fail[ure] to qualify,” thereby creating vacancies in the offices. There is no case law providing interpretation of Idaho Code section 50-469.

21. Idaho Code section 50-601, regarding Mayoral qualifications, states:

*Any person shall be eligible to hold the office of mayor who is a qualified elector of the city at the time his declaration of candidacy or declaration of intent is submitted to the city clerk and remains a qualified elector during his term of office.*

(emphasis added.) The last ten words make it clear that if a person is not a qualified elector, which status is lost if removed from voter rolls, eligibility to hold the office of Mayor is lost. Thus, by operation of the statute, Plaintiff CITY OF HUETTER argues Defendant KEENE voluntarily disqualified himself as Mayor. This voluntary decision not to obey the law when challenged is tantamount to resignation or other voluntary act such as

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moving out of Idaho. A strict reading of that statute affirms this outcome. The Attorney General appears to agree with Plaintiff's contention that "failing to remain a registered voter will render a mayor and councilman ineligible to hold their posts," but that office does not believe such ineligibility equates to "automatic ouster or vacancy." It is not clear how an ineligible officeholder is removed from office where recall has not been initiated, unless it is by operation of law pursuant to Idaho Code section 50-601, 50-702, or 50-469.

22. In support of this argument, Plaintiff notes that the public policy of the State of Idaho would be severely undermined if elected officials were allowed to ignore the clear command of Idaho Code section 34-432 to respond to a valid challenge by elections officials by willfully choosing not to respond. All Idaho elected officials must obey the law, and when they voluntarily choose not to obey it, this Court should not reward that act by reading Idaho Code section 50-601 to hold that the last ten words of that statute have no meaning as to Plaintiff's Mayoral office. Eligibility cannot be only for the electoral moment on Election Day, but must exist for each and every moment of the officeholder's tenure, which is why the last ten words of Idaho Code section 50-601 were implemented in statute.

23. The same argument is offered regarding Defendant BROWN'S Councilperson status given the language of Idaho Code section 50-702, which states:

*Any person shall be eligible to hold the office of councilman of his city who is a qualified elector at the time his declaration of candidacy or declaration of intent is submitted to the city clerk, and remains a qualified elector under the constitution and laws of the state of Idaho.*

(emphasis added.) Thus, Defendant BROWN voluntarily disqualified herself by operation of law when she decided not to respond in the fashion required pursuant to Kootenai County's challenge request. Once qualified elector status was lost, BROWN became ineligible to hold the Councilperson's office and that office became vacant. If operation of

law under Idaho Code section 50-702 did not create a vacancy, it may be the case that upon her voluntary decision not to respond to the challenge Idaho Code section 50-469 created a vacancy, where that statute states, “[i]f a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council.” Defendant BROWN because ineligible to hold office, and a vacancy was thereby created, either through operation of law or Idaho Code section 50-469.

24. The fact that Defendants KEENE and BROWN registered on February 14, and said registration was upheld at hearing on February 25, does not restore them to elected office. The findings and decision at the hearing only restores their status as qualified electors. Therefore, Plaintiff CITY OF HUETTER may decide to appoint them to the vacancies Defendants created. However, Plaintiff argues no restoration of Defendants to office occurred automatically upon Hearing Officer English’s decision, which automatic restoration that Officer disclaimed, such that Plaintiff CITY OF HUETTER can ignore the operation of Idaho Code sections 50-469, 50-601, or 50-702.

25. Plaintiff is now faced with two untenable choices: 1) it can seat the Mayor and Councilperson at their demand under threat of lawsuit, with no knowledge that it is following Idaho law when it seats them, rendering subsequent official acts suspect and arguably invalid, or 2) it can decide not to seat Defendants KEENE and BROWN and be sued as promised by Defendant’s counsel in Exhibit D. Plaintiff brings this suit so such untenable choices may be removed from blocking operation of Plaintiff’s City.

26. Plaintiff argues that Defendants KEENE and BROWN are eligible for appointment to the Council. Idaho Code section 50-608 states, in pertinent part:

When a vacancy occurs in the office of mayor by reason of death, *resignation* or permanent disability, the city council shall fill the vacancy from within or without the council as may be deemed in the best interests of the city, which appointee shall serve until the next

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general city election, at which election a mayor shall be elected for the full four (4) year term.

(emphasis added.) Plaintiff CITY OF HUETTER maintains that Defendants resigned their positions, when they chose to ignore or otherwise not respond to Kootenai County's official challenges, or that they were disqualified creating vacancy pursuant to Idaho Code section 50-469.

27. Plaintiff CITY OF HUETTER'S response to Defendants' counsel's *quo warrento* argument as stated in Exhibit D is that Plaintiff CITY OF HUETTER cannot under Idaho law proceed to seat Defendants when that act may be in violation of Idaho law, and that such refusal to seat based on its reading of the Idaho Constitution and Idaho statutes does not constitute ouster but is a reasonable position under the law. Plaintiff does not agree that any ouster has taken place, given the definition in Idaho Code allowing such action where "any person who usurps, intrudes into, holds or exercises any office or franchise, real or pretended, within this state, without authority of law." (I.C. § 6-602.) Plaintiff has not acted to install any person to the two positions at issue, and those positions are not occupied, except as asserted by Defendants, thus pleas in *quo warrento* should not lie. Plaintiff has not acted to appoint others to said vacant posts. Plaintiff only contends that Defendants voluntarily created vacancies by not acting lawfully, and no person presently occupies those two offices.

**WHEREFORE, Plaintiffs, pray for judgment and injunction as follows:**

1. That the Court declare a judgment that by operation of law or operation of Idaho Code section 50-469 Defendants KEENE and BROWN became ineligible to hold offices in Plaintiff CITY OF HUETTER when they disobeyed the law by deciding not to respond to valid electoral challenge from Kootenai County;

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2. That the Court declare a judgment that by operation of law or operation of Idaho Code section 50-469 vacancies exist in Plaintiff CITY OF HUETTER'S City Council in the offices of Mayor and one Councilperson;

3. That the Court declare a judgment that Defendants KEENE and BROWN are now qualified electors as of the date of the County Clerk's decision on February 25 to accept their February 14 registrations, and that they are as of February 14 eligible for appointment to the City Council along with other qualified electors in Plaintiff CITY OF HUETTER;


4. That this Court exercise its power pursuant to Idaho Rule of Civil Procedure ("I.R.C.P.") 57 and 65(a)(2) to order a speedy hearing of this action and advance it on the calendar for immediate resolution;

5. That this Court immediately Order a preliminary injunction to bar Defendants from representing that they are municipal officers until such time as this Court can issue its findings and rule thereupon.

6. That this Court declare a judgment Defendants are liable for Plaintiffs attorney fees and costs related to this matter pursuant to Idaho Code section 12-117, including payment for enforcement of all writ(s) and order(s) issued by it related to this matter;

7. That the court provide for such other and further relief as the Court may deem appropriate.

Dated: 3-19-08


  
\_\_\_\_\_  
Arthur B. Macomber  
Attorney at Law  
Counsel for Plaintiffs

011

VERIFICATION

STATE OF IDAHO                     )  
  ) ss  
County of Kootenai                 )

ARTHUR B. MACOMBER, being sworn, having read the foregoing, says that the facts set forth herein are accurate and complete to the best of my knowledge and belief.

  
ARTHUR B. MACOMBER, City Attorney  
City of Huetter



Subscribed and Sworn to me <sup>2008</sup>  
this 19<sup>th</sup> day of March, 2007.

  
NOTARY PUBLIC FOR IDAHO

Residing at: Bayview  
My Commission Expires: 8/29/2011

C12



## OFFICE OF KOOTENAI COUNTY ELECTIONS

*"Gatekeepers of Democracy"*

DAN ENGLISH • CLERK • AUDITOR • RECORDER

1808 N. 3<sup>rd</sup> Street • P.O. BOX 9000

COEUR D'ALENE, IDAHO 83816-9000

(208) 446-1030 • FAX (208) 446-1039

[www.kcgov.us/clerk/elections](http://www.kcgov.us/clerk/elections)

Arthur B. Macomber  
P.O. Box 5203  
Coeur D'Alene Idaho 83814

Re: City of Huetter's challenged Voter

Dear Mr. Macomber,

This letter is to notify you of the actions we have taken as a result of the challenges to several voters' registration status that were made during the November 6, 2007 city election. On December 27, 2007 we sent out a total of 12 challenge notifications by U.S. Postal Service Certified mail per Idaho Code 34-432. At the end of the 20 day response time, we only received 2 responses who were subsequently deemed to be properly registered voters. Those names were David Meeks and Jackie Meeks.

As per Idaho Code 34-432, the other 10 voters have been deleted from the official voter registration list. Those names are as follows:

Jennifer Brown, Josh Douglas, Bradley Keene, Andrew Kienow, Carissa Lindblom, Shawn Marquette, Misty Permenter, Jamee Pilmore, Lang Sumner, John Whitaker.

If you have any further questions please feel free to contact my office, 446-1035.

Sincerely,

Deedie Beard  
Kootenai County Election Manager

Cc: Lisa Davisson, City Clerk

C13

Exhibit "A"



OFFICE OF KOOTENAI COUNTY ELECTIONS

*"Gatekeepers of Democracy"*

DAN ENGLISH • CLERK • AUDITOR • RECORDER

1808 N. 3<sup>rd</sup> Street • P.O. BOX 9000  
COEUR D'ALENE, IDAHO 83816-9000  
(208) 446-1030 • FAX (208) 446-1039  
[www.kcgov.us/clerk/elections](http://www.kcgov.us/clerk/elections)

*FILE  
Huetter  
Cortes  
(This is  
dated)*

January 18, 2008

Arthur B. Macomber  
P.O. Box 5203  
Coeur D'Alene Idaho 83814

Re: City of Huetter's challenged Voter

Dear Mr. Macomber,

This letter is to notify you of the actions we have taken as a result of the challenges to several voters' registration status that were made during the November 6, 2007 city election. On December 27, 2007 we sent out a total of 12 challenge notifications by U.S. Postal Service Certified mail per Idaho Code 34-432. At the end of the 20 day response time, we only received 2 responses who were subsequently deemed to be properly registered voters. Those names were David Meeks and Jackie Meeks.

As per Idaho Code 34-432, the other 10 voters have been deleted from the official voter registration list. Those names are as follows:

Jennifer Brown, Josh Douglas, Bradley Keene, Andrew Kienow, Carissa Lindblom, Shawn Marquette, Misty Permenter, Jamee Pilmore, Lang Sumner, John Whitaker.

If you have any further questions please feel free to contact my office, 446-1035.

Sincerely,

Deedie Beard  
Kootenai County Election Manager

Cc: Lisa Davisson, City Clerk

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Exhibit "B"



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

March 19, 2008

Arthur B. Macomber  
City Attorney  
City of Huetter  
FAX: (208) 664-9933

Re: Our File No. 08-21928 – City of Huetter Office Holders

Dear Mr. Macomber:

This letter is a follow-up to the telephone conversation we had this morning with Chief Deputy Secretary of State Tim Hurst.

While failing to make a statement in response to a city clerk's inquiry pursuant to Idaho Code § 34-432 will properly result in the cancellation of an elector's registration to vote, and while failing to remain a registered voter will render a mayor and councilman ineligible to hold their posts,<sup>1</sup> these conditions do not result in their automatic ouster or a vacancy in their offices. Based upon the facts that you have presented, it would appear that Brad Keene and Jennifer Brown remain elected officials of the City of Huetter.

Sincerely,

*Mitch Toryanski*  
MITCHELL E. TORYANSKI  
Deputy Attorney General

MET/mdw

<sup>1</sup> See Idaho Code §§ 50-601 and 50-702.

**JAMES, VERNON & WEEKS, P.A.**

ATTORNEYS AT LAW

KERWIN C. BENNETT\*  
MURIEL M. BURKE\*  
SCOTT A. GINGRAS  
LEANDER L. JAMES\*  
STEPHEN J. NEMEC\*†  
MICHAEL J. PAUKERT\*  
CRAIG K. VERNON\*  
SUSAN P. WEEKS

1626 LINCOLN WAY  
COEUR D'ALENE, ID 83814  
TELEPHONE: (208) 667-0683  
FAX (208) 664-1684

\*ATTORNEYS LICENSED IN IDAHO & WASHINGTON  
†REGISTERED PATENT ATTORNEY

March 12, 2008

VIA FACSIMILE (208) 664-9933

Mr. Art Macomber  
408 E. Sherman Ave., Ste. 215  
Coeur d'Alene, Idaho 83814

Dear Mr. Macomber:

Our firm has been retained to represent Jennifer Brown and Brad Keene. They have sought our assistance because they are being blocked from participating in their elected capacity with the City of Huetter.

At the time of the declaration of candidacy for the position of mayor and council person, Ms. Brown and Mr. Keene were qualified electors of the City of Huetter pursuant to I.C. §§ 50-402 and 50-431 and the Idaho Constitution Article 6, Section 2. Ms. Brown's and Mr. Keene's declarations of candidacy were in proper order and they were qualified electors on the day of the election.

Mr. Brown and Ms. Keene were sworn into office in January 2008, although it does not appear the City of Huetter canvassed the vote as required by statute. After they were sworn in, they were sent a letter by the Kootenai County clerk's office notifying them that their voter registration was being challenged. According to the election officials, Ms. Brown and Mr. Keene did not timely respond to the challenges and were removed from the voter registration rolls. Ms. Brown and Mr. Keene immediately took the proper steps according to statute to reinstate their registration as voters, and they are once again registered voters and qualified electors.

Certain individuals and Huetter officials now claim that Ms. Brown and Mr. Keene aren't qualified to hold office because their removal from the rolls as registered voters disqualified them to hold office and created vacancies in their office. Ms. Brown and Mr. Keene are entitled to hold office unless removed pursuant to Idaho statutes which address the appropriate proceedings for such removal. Since Ms. Brown and Mr. Keene they were not challenged within twenty (20) days as required pursuant to Title 34, Chapter 20, specifically I.C. § 34-2001(2), any challenge under this statute has been waived. Thus, the only other option for their removal is a *quo warranto* proceeding.

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Exhibit "D"

March 12, 2008

Page 2

A *quo warranto* proceeding examines the facts as they exist at the time of suit in determining the qualification of the office holder. Since Ms. Brown and Mr. Keene are once again registered voters and qualified electors, a *quo warranto* proceeding would not be successful (assuming the prosecuting attorney would even entertain such a though under these facts.) In *Bradbury v. Avery*, 16 Idaho 769, 102 P. 687, 23 L.R.A.N.S. 1228 (1909), the Court introduced its discussion of the election matter by stating that a complaint to contest an election under subdivision 2, § 5026, Rev. Codes, must allege and show facts which disqualify the incumbent, or person declared elected, **at the time of the election**. This holding was again affirmed in *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967). Our Supreme Court once again confirmed this holding in the case of *People ex rel. Neilson v. Wilkins*, 614 P.2d 417, 101 Idaho 394 (1980). In that case, a special prosecuting attorney challenged a county commissioner's right to hold the position because the commissioner did not live in the proper district at the time of the election, and therefore was not qualified. Due to re-districting, the commissioner did live in the proper district at the time the suit was filed and was qualified to hold office. The Supreme Court held that the *quo warranto* proceedings was properly dismissed because qualification of the office holder would be determined at the time of the suit. Given these holdings, were someone to bring a *quo warranto* proceeding, it would be unsuccessful because Ms. Brown and Mr. Keene are qualified electors. Further, until such an action is successfully prosecuted, Ms. Brown and Mr. Keene are the elected officials entitled to hold the office. Any interference absent such a proceeding is an usurpation of their office.

I am aware that certain officials have taken the position that I.C. § 50-601 stands for the proposition that should a mayor not meet the qualification provisions that the office is immediately vacant. Nothing in this statute supports this interpretation. The right to contest an election in Idaho is a matter of legislative determination set out in I.C. § 34-2001, and a common law proceeding for *quo warranto*, which has been codified at I.C. § 6-601 *et seq.* Interpreting these code sections to include provisions not contained therein is contrary to the express language of direct statutes specifically directed to this issue and does not comport with proper statutory construction.

Further, the interpretation is inconsistent with I.C. §§ 50-608 (mayor) and I.C. § 50-702 (council). These provisions provide that when a vacancy in the office of mayor occurs by reasons of *death, resignation or permanent disability*, the council shall fill the vacancy. The duly elected mayor meets none of these criteria. As to Ms. Brown, the applicable statute provides that each councilman elected shall hold office for a term of four years until his successor is elected and qualified.

Those individuals who refuse to allow Ms. Brown and Mr. Keene to participate in city government are usurping their rights as elected city officials.

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March 12, 2008  
Page 3

My clients fully expect to be present and ready to fulfill their offices at the city meeting tonight. Should they once again be blocked from participating, they will bring appropriate legal action for this usurpation of office.

Yours truly,



Susan P. Weeks

Cc: Client

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 19th day of March, 2008, I caused to be served a true and correct copy of the foregoing:

**REQUEST FOR DECLARATORY JUDGMENT TO  
ASCERTAIN STATUS, AND REQUEST FOR INJUNCTION**

by facsimile to:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684  
*Counsel to Defendants Keene and Brown*

DATED this 19th day of March, 2008



---

Arthur B. Macomber  
City Attorney for Plaintiff City of Huetter

C19

ORIGINAL

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED: 788948

2008 MAR 31 PM 3:44

CLERK DISTRICT COURT

DEPUTY

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Fax: (208) 664-1684

Attorney for Defendants Keene and Brown

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CITY OF HUETTER, an Idaho municipal  
corporation,

Plaintiff,

vs.

BRADLEY W. KEENE and JENNIFER L.  
BROWN,

Defendants

Case No. CV 08-2252

NOTICE OF APPEARANCE

Category: I-7(a)

Fee: \$58.00

Susan P. Weeks of the firm of James, Vernon & Weeks, P.A., does hereby appear  
as counsel of record for Defendants, Bradley W. Keene and Jennifer L. Brown, and  
requests that all pleadings and notices in this matter be served on the undersigned

Dated this 31st day of March, 2008.

JAMES, VERNON & WEEKS, P.A.

By: Susan P. Weeks

Susan P. Weeks

Attorneys for Defendants

C20

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31<sup>st</sup> day of March, 2008, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

Arthur B. Macomber 408 E. Sherman Ave., Ste, 215 Coeur d'Alene, ID 83814			
	Mailed		Mailed
	By Hand		By Hand
	Overnight Mail		Overnight Mail
X	Fax		Fax Fax: (208) 664-9933

Susan P. White

C21

ORIGINAL

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:  
788948  
2008 MAR 31 PM 3:44

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Fax: (208) 664-1684

CLERK DISTRICT COURT  
DEPUTY

Attorney for Defendants Keene and Brown

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CITY OF HUETTER, an Idaho municipal  
corporation,

Plaintiff,

vs.

BRADLEY W. KEENE and JENNIFER L.  
BROWN,

Defendants

Case No. CV 08-2252

MEMORANDUM IN OPPOSITION TO  
HEARING ON DECLARATORY  
JUDGMENT TO ASCERTAIN STATUS,  
AND REQUEST FOR INJUNCTION

I. INTRODUCTION

The City of Huetter has filed a post-election complaint for declaratory judgment, verified by its City Attorney, seeking a ruling from this Court that Keene and Brown disobeyed Idaho election laws, and a ruling that such disobedience disqualifies them from holding office in their elected capacities. This request also sought a declaration that these positions (mayor and councilman) are now vacant. Finally, the City of Huetter requested a preliminary injunction be combined with a trial on the merits.

The Defendants have been served with a Notice of Hearing "on Declaratory Judgment to Ascertain Status, and Request for Injunction". There is no accompanying

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motion as required by Rule 7(b)(2), I.R.C.P., which specifies with particularity the grounds for the hearing, including the number of the applicable civil rule, if any, under which it is filed, and does not set forth the relief or order sought. The notice of hearing is defective. For the purposes of this memorandum, it is assumed that the City of Huetter seeks a preliminary injunction at the April 3, 2008 hearing, although it is unknown whether it seeks a trial on the merits at the same time.

## II. FACTS

Prior to the November 6, 2007 city elections, Brad Keene, a qualified elector, filed a declaration of candidacy for mayor of Huetter. Prior to the November 6, 2007 city elections, Jennifer Brown, a qualified elector, filed a declaration of candidacy for councilman. Both Keene and Brown were elected into the respective positions. On January 9, 2008, Keene and Brown were sworn into office.

During the election. Keene and Brown's qualifications as electors (right to vote) was challenged based upon a written notation in the registration polls that they were not residents of the city. Following the election, the Kootenai County Elections Department (and not the county clerk) on or about December 27, 2008 sent some type of notice to Keene and Brown that they had been challenged. Keene and Brown inquired about the notice. They did not submit a writing claiming that the information in their voter registration card was correct. Subsequently, they were informed that their registration had been cancelled effective January 17, 2008 for failure to appear in person or submit a writing responding to the challenge. On January 18, 2008, Art Macomber, City Attorney for Huetter, was informed by the Kootenai County Elections Department that Keene and Brown's voter registration had been cancelled.

On February 13, 2008, Keene and Brown attended a city council meeting. At that meeting, Keene and Brown sat down at the council table. They were informed by the city attorney and two of the members of the council that they could not participate in city government because they had been deleted from the voter registration and had forfeited their rights to their positions.

On February 14, 2008, Keene and Brown appeared before Kootenai County's official registrar to again register as voters. The registrar refused to register them as voters. They were informed that because they had not responded to the voter registration challenge regarding their residency that they could not be registered. Keene and Brown subsequently submitted a written demand pursuant to I.C. § 34-412(2) for a hearing within ten days to determine their qualifications and register as voters.

On February 25, 2008, a hearing was held by the county clerk. At the hearing, evidence was presented regarding Keene's and Brown's qualifications to register as voters. Following the hearing, it was determined that Keene and Brown were qualified to register as voters, and Keene and Brown were again registered.

The City Attorney for Huetter requested that Keene and Brown agree to resign. They did not do so and continued to claim their right to hold office. Keene and Brown were informed that the City had requested an opinion from the Idaho attorney general and were requested to abide by that decision. On March 12, 2008, Keene and Brown subsequently submitted a written objection through their attorney to the usurpation of their offices, and indicating they intended to attend the city council meeting.

On March 19, 2008, the Idaho Attorney General provided the Huetter City Attorney with an opinion whether the removal from the voter registration rendered Keene and Brown ineligible to hold office pursuant to I.C. §§ 50-601 and 50-702. The attorney

general opinion indicated that while failure to remain a registered voter rendered a mayor and councilman ineligible to hold their posts, “these conditions do not result in their automatic ouster or a vacancy in their office. Based upon the facts that you have presented, **it would appear that Brade Keene and Jennifer Brown remain elected officials of the City of Huetter.**” (Emphasis added.) Despite this attorney general opinion, the City claims in its request for declaratory relief that it seeks such relief because the attorney general opinion is unclear.

### III. PLAINTIFF LACKS STANDING

The City of Huetter does not standing in this matter to seek a declaratory judgment and injunction. In *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908), our Supreme Court noted that there were two mechanisms that existed at that time for contesting title to an office. One was a statutory right to contest the election and the other was a common law proceeding of *quo warranto* that had been codified. In later years, under revised statutes that were similar in nature, the Supreme Court again confirmed that this holding remained viable. In *Tiegs v. Patterson*, 79 Idaho 365, 318 P.2d 588 (1957), the Supreme Court again held under the existing statutes (which still exist today) that there were two separate and distinct methods of contesting title to an office. The first was an election contest, which was purely a statutory procedure, and the other was a proceeding in *quo warranto*, which proceeding had been codified, and could only be brought by the county prosecutor or the person whose office was being usurped.

The statutory contest is codified at I.C. § 34-2001, *et seq.* It allows for a challenge to the election of a person when, amongst other criteria, the incumbent was not eligible to the office *at the time of the election*. There is no provision for a challenge based upon ineligibility after the election. Idaho Code § 34-2007 allows a city to make a

challenge under this statute. The challenge has to be made within twenty days of the canvass of the votes and must include a bond for costs.

The City has alleged in its request for Declaratory Judgment that it canvassed the vote on November 9, 2007. Any contest was required to be filed no later than November 29, 2007. This action was filed March 10, 2008. Clearly, it is beyond the time to challenge Keene and Brown under the statutory provisions for challenging an individual's right to title to their office under Title 34.

The other mechanism provided for in Idaho law to challenge Keene and Brown's title to office is through a *quo warranto* proceeding. In *Parsons v. Beebe*, 116 Idaho 551, 777 P.2d 1224 (Ct. App. 1989), the Court explained this proceeding.

At common law, the writ of *quo warranto* was initiated against any individual who claimed or usurped an office or franchise, to determine what authority, if any, supported that individual's claim or right to office. Storti and Bush, *Other Special Proceedings in State and Federal Appellate Courts*, IDAHO APPELLATE HANDBOOK § 14-18 (Idaho Law Foundation, Inc. 1985). In Idaho, this common law writ has been replaced by a statutory procedure. See I.C. § 6-602 (and its precursors). See also *State ex rel. Taylor v. Beneficial Protective Ass'n*, 60 Idaho 587, 595, 94 P.2d 787, 790 (1939).

Title 6, Chapter 6 addresses usurpation of office. Idaho Code § 6-602 designates those people who have standing to bring such an action, and specifies:

An action may be brought in the name of the people of the state against any person who usurps, intrudes into, holds or exercises any office or franchise, real or pretended, within this state, without authority of law. Such action shall be brought by the prosecuting attorney of the proper county, when the office or franchise relates to a county, precinct or city, and when such office or franchise relates to the state, by the attorney general; and it shall be the duty of the proper officer, upon proper showing, to bring such action whenever he has reason to believe that any such office or franchise has been usurped, intruded into, held or exercised without authority of law. Any person rightfully entitled to an office or franchise may bring an action in his own name against the person who has usurped, intruded into, or who holds or exercises the same.

The City of Huetter has no standing under this statute to proceed on its action. It is not the prosecuting attorney for the county nor is it a person rightfully entitled to the

office. Thus, it may not proceed to have this matter heard by the Court and its request for declaratory judgment and injunction should be denied.

#### IV. PLAINTIFF DOES NOT PREVAIL ON THE MERITS OF THE MATTER

Even if the Court were to determine that Plaintiff had standing pursuant to Idaho Code § 10-1201, *et seq.*, the City of Huetter's request fails as a matter of law. The City of Huetter's argument is grounded solely in statutory construction.

The City of Huetter maintains in its request for declaratory judgment that there is a vacancy in Keene's and Brown's elected positions created pursuant to I.C. § 50-469. This code sections provides: "*If a person elected fails to qualify*, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council." (Emphasis added.)

The City of Huetter does not argue that Keene and Brown failed to qualify for office at the time of election or at the time they received their certificate of election. Rather, the City of Huetter's argument is that as soon as Kootenai County removed Keene and Brown from the voter registration list that they "failed to qualify" and therefore, there was an automatic ouster that created a vacancy in their office and they no longer were elected officials.

In determining this issue, it is useful to resort to rules of statutory construction. In particular:

The objective in interpreting a statute or ordinance is to derive the intent of the legislative body that adopted the act. *Payette River Prop. Owners Ass'n*, 132 Idaho at 557, 976 P.2d at 483 (additional citations omitted). Such analysis begins with the literal language of the enactment. *Id.* Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction. *Id.* An ordinance is ambiguous where reasonable minds might differ or be uncertain as to its meaning. *Id.* However, ambiguity is not present merely because the parties present differing interpretations to the court. *Id.* Constructions that would lead to

absurd or unreasonably harsh results are disfavored. *Id.* “Language of a particular section need not be viewed in a vacuum. And all sections of applicable statutes must be construed together so as to determine the legislature's intent.” *Friends of Farm to Market Rd.*, 137 Idaho at 197, 46 P.3d at 14.

*Spencer v. Kootenai County*, \_\_\_\_\_ Idaho \_\_\_\_\_, \_\_\_\_\_ P.3d \_\_\_\_\_ (2008 WL 597661).

There are other Idaho statutes that deal with the subject matter of removal from office due to ineligibility arising from failure to meet certain specific qualifications. In particular, I.C. § 34-2001, *et seq.*, provides the procedure for removal of an elected official from office for failure to qualify for office at the time of election. Idaho Code § 6-602, *et seq.*, provides the procedure for removal from office when an official become ineligible to hold the office.

In circumstances where there are separate statutes dealing with the same subject matter, the rule of statutory construction is that:

Separate statutes dealing with the same subject matter should be construed harmoniously, if at all possible, so as to further the legislative intent. *State v. Maland*, 124 Idaho 537, 540, 861 P.2d 107, 110 (Ct.App.1993). Where a harmonious construction is impossible, the more specific of the two statutes will prevail. *State v. Roderick*, 85 Idaho 80, 84, 375 P.2d 1005, 1007 (1962); *Maland*, 124 Idaho at 540, 861 P.2d at 110; *see also State v. Wilson*, 107 Idaho 506, 508 690 P.2d 1338, 1340 (1984).

*State v. Callaghan*, 143 Idaho 856, 153 P.3d 1202 (Ct. App. 2006).

It is recognized that: “Although a certificate of election may be superceded by a decree in proceedings to contest the election, it is conclusive as to the result of the election **until set aside or vacated in some manner authorized by law.**” 26 Am.Jur.2d Election § 370. (Emphasis added.) Further: “When a condition of ineligibility of the incumbent arises after he or she takes office if he or she was eligible when he or she took office, the subsequent ineligibility merely affords grounds for removal.” 63 Am.Jur.2d Public Officers and Employees § 173.

The City of Huetter urges that the Court should interpret I.C. § 50-469 to allow City of Huetter officials to determine whether a person elected failed to qualify at the time of election or subsequently failed to continue to be eligible for office and to declare that a vacancy exists when the city official(s) deem that one of these two instances has occurred. Such a reading implicitly repeals I.C. § 34 2001 (contest of an election when the incumbent was not eligible to the office at the time of the election) and I.C. § 6-602 (removal from office due to disqualification). These statutes would have no force or effect because as soon as a city official decided an elected official did not qualify at the time of election or became ineligible after elected, the office would be declared vacant, and there would be no cause or opportunity to pursue a determination under either of the above statutes.

I.C. § 50-469 does not set out who is to make the determination of a failure to qualify or the procedure for making that determination. It does not address whether a “failure to qualify” also encompasses an ineligibility for office arising after one has qualified for election and been issued a certificate of election. It merely indicates in the event that a person “fails to qualify” that there is a vacancy. The reading that the City urges would be an implicit repeal of those portions of Title 34 and Title 6 that address the same subject matter.

Implicit repeal of statutes is not favored. When possible, statutes are to be construed so as to be harmonious with each other. As noted in the authority above, language of a particular section need not be viewed in a vacuum. All sections of applicable statutes must be construed together so as to determine the legislature's intent. Idaho Code § 34-2001 provides the procedure for obtaining a judicial determination that the person elected failed to qualify at the time of election. Idaho Code § 6-602 provides

the procedure for obtaining a judicial determination that the person elected became ineligible for office after elected. Construing these statutes in harmony with I.C. § 50-649, if either of these judicial determinations is made, then the vacancy is declared by the court and the remaining council and mayor are to fill the vacancy, as opposed to holding another election. Such a reading gives effect to all of the provisions and is consistent with well established principles of statutory construction.

This analysis is consistent with earlier holdings and analysis of the *quo warranto* proceeding. In *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908), in analyzing the earlier version of Idaho Code § 6-601 (4612 to 4619, Rev. St. 1887), the Supreme Court indicated: "We can see no legal or valid objection to the Legislature granting the right to a contestant to have the question of the eligibility of the candidate inquired into upon a contest, when we keep in mind the fact that there is guaranteed to the people, and likewise to the candidate elected, as well as the one claiming the office, the right to have the eligibility of the incumbent judicially determined in the properly constituted courts, under information, as provided in sections 4612 to 4619." The City of Huetter's interpretation of the statute attempt to remove the right of the incumbents, Brown and Keene, to a judicial determination of their right to hold office.

#### V. THE CITY WOULD NOT PREVAIL ON A QUO WARRANTO PROCEEDING

Pursuant to Rule 65(e)(1), I.R.C.P., the City may only obtain a preliminary injunction if it shows a likelihood that it is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained. Apparently, the act of which the City complains is Keene's and Brown's ongoing claim to their title to office.

A proceeding *quo warranto* is a proceeding to determine by what authority someone holds an office. In the present case, it is undisputed that Keene and Brown were qualified when they took their office. The instant action is not one in the nature of an election contest. Rather, it is an action to remove Keene and Brown because for a period of time they were not registered voters due to the facts previously recited.

It is undisputed that at the time that this action was filed, Keene and Brown were registered voters and qualified electors. In *Bradbury v. Avery*, 16 Idaho 769, 102 P. 687, 23 L.R.A.N.S. 1228 (1909), the Supreme Court analyzed a *quo warranto* proceeding under the then existing statute, stating that a complaint to contest an election under subdivision 2, § 5026, Rev. Codes, must allege and show facts which disqualify the incumbent, or person declared elected, **at the time of the quo warranto proceeding**. This holding was affirmed in *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967). Our Supreme Court again confirmed this holding in the case of *People ex rel. Neilson v. Wilkins*, 614 P.2d 417, 101 Idaho 394 (1980). In that case, a special prosecuting attorney challenged a county commissioner's right to hold the position because the commissioner did not live in the proper district at the time of the election, and therefore was not eligible to serve pursuant to the statute. Due to re-districting, the commissioner did live in the proper district at the time the suit was filed and was qualified to hold office. The Supreme Court held that the *quo warranto* proceeding was properly dismissed because qualification of the office holder to remain in office were to be determined at the time of the suit. Given these holdings, it is clear that Keene and Brown have a right to their offices and are entitled to a judgment in their favor granting such right and prohibiting the City from further interfering with that right as they were qualified to hold office as of March 19, 2008, the date this proceeding was filed.

XI. CONCLUSION

Contrary to the City of Huetter's claim in its request for declaratory relief, Keene and Brown did not disobey Idaho election laws. Rather, there was a lapse in their voter registration, which lapse was cured by the time this action was filed. As such, their positions are not now vacant. The City of Huetter is not entitled to a preliminary injunction prohibiting Keene and Brown from participating in city government. In fact, Keene and Brown are entitled to a judgment that they hold their offices and a permanent injunction that city officials and staff shall not block their ability to participate in city government.

Dated this 31st day of March, 2008.

JAMES, VERNON & WEEKS, P.A.

By: Susan P. Weeks  
Susan P. Weeks  
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31<sup>st</sup> day of March, 2008, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

Arthur B. Macomber 408 E. Sherman Ave., Ste, 215 Coeur d'Alene, ID 83814			
	Mailed		Mailed
	By Hand		By Hand
	Overnight Mail		Overnight Mail
X	Fax		Fax Fax: (208) 664-9933

Susan P. Weeks

C32

2008 APR -9 AM 10: 13

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Fax: (208) 664-1684

CLERK DISTRICT COURT

*Susan Taylor*  
DEPUTY

Attorney for Defendants Keene and Brown

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CITY OF HUETTER, an Idaho municipal  
corporation,

Plaintiff,

vs.

BRADLEY W. KEENE and JENNIFER L.  
BROWN,

Defendants

Case No. CV 08-2252

STIPULATED ORDER OF PRELIMINARY  
INJUNCTION AND SETTING EXPEDITED  
BRIEFING SCHEDULE FOR  
DECLARATORY JUDGMENT

Plaintiff, the City of Huetter ("Huetter"), filed a Request for Declaratory Judgment to Ascertain Status and Request for Injunction pursuant to I.C. § 10-1201 and moved for a preliminary injunction pursuant to Rule 65 of Idaho Rules of Civil Procedure. The Court denied Huetter's request for preliminary injunction because its verified complaint submitted did not demonstrate that immediate and irreparable injury, loss, or damage would result to the City of Huetter absent the entry of the preliminary injunction. Following the Court's ruling, Plaintiff, by and through its attorney of record, Art Macomber, and Defendants, who were present in court, by and through their attorney of record, Susan P. Weeks, agreed to entry of this Order containing a reciprocal preliminary injunction and the Court, having considered the Complaint, Defendants'

STIPULATED ORDER OF PRELIMINARY INJUNCTION AND SETTING  
EXPEDITED BRIEFING SCHEDULE FOR DECLARATORY JUDGMENT: 1

033

memorandum of law filed in response thereto, and now being advised in the premises, finds that:

1. This Court has jurisdiction of the subject matter of this case and there is good cause to believe it will have jurisdiction of all parties hereto.
2. Venue lies properly with this Court.
3. This Order is in the best interests of all the parties to this action and is in the public interest.
4. No security is required of any political subdivision of the State of Idaho pursuant to I.R.C.P. Rule 65(c).
6. The parties agree that this Order is binding in form and scope pursuant to I.R.C.P. Rule 65(d).
7. The parties by agreeing and stipulating to this Order, make no admissions as to the truth of Plaintiffs allegations or to Defendants' position regarding the proper statutory construction of the applicable statutes.

NOW THEREFORE, the Court hereby issues a preliminary injunction prohibiting the City of Huetter from preventing or interfering with Defendant Keene's attendance and participation as mayor at future city council meetings pending a ruling from this Court on the pending declaratory judgment action.

BE IT FURTHER ORDERED that the Court hereby issues a preliminary injunction prohibiting the City of Huetter from preventing or interfering with Defendant Brown's attendance and participation as councilperson at future city council meetings pending a ruling from this Court on the pending declaratory judgment action.

BE IT FURTHER ORDERED that the City of Huetter and Defendants shall take no action at any meeting pending the Court's ruling on the pending Declaratory Judgment action that would bind the City of Huetter to any future action or contract.

BE IT FURTHER ORDERED that the Court shall hear this matter at an expedited trial to be held April 24, 2008. The City of Huetter shall file a response to Defendants' Opposition Memorandum no later than April 10, 2008. Defendants Keene and Brown

shall file any reply to the City of Huetter's response no later than April 16, 2008. The parties shall file a joint statement of undisputed facts with the Court no later than April 21, 2008.

Dated this 9 day of April, 2008.

Lansing L. Haynes  
LANSING L. HAYNES  
District Judge

APPROVED:

Art Macomber

Art Macomber  
Attorney for Plaintiff

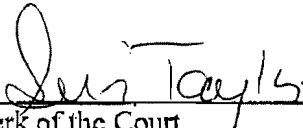
James, Vernon & Weeks, P.A.

By: Susan P. Weeks  
Susan P. Weeks  
Attorneys for Defendants

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of April, 2008, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

Arthur B. Macomber 408 E. Sherman Ave., Ste, 215 Coeur d'Alene, ID 83814		Susan P. Weeks 1626 Lincoln Way Coeur d'Alene, ID 83814	
<input type="checkbox"/>	Mailed	<input type="checkbox"/>	Mailed
<input type="checkbox"/>	By Hand	<input type="checkbox"/>	By Hand
<input type="checkbox"/>	Overnight Mail	<input type="checkbox"/>	Overnight Mail
<input checked="" type="checkbox"/>	Fax (208) 664-9933	<input checked="" type="checkbox"/>	Fax: (208) 664-1684

  
Clerk of the Court

STATE OF IDAHO }  
 COUNTY OF KOOTENAI } ss  
 FILED: 1:38pm  
 4/10/08

2008 APR 10 PM 1:37

Arthur B. Macomber, Attorney at Law  
 408 E. Sherman Avenue, Suite 215  
 Coeur d'Alene, ID 83814  
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 Facsimile: 208-664-9933  
 State Bar No. 7370  
 Counsel to Plaintiff City of Huetter

CLERK DISTRICT COURT  
*Linda Sheddlock*  
 DEPUTY *VS*

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

CITY OF HUETTER, an Idaho  
 municipal corporation;

Plaintiff,

vs.

BRADLEY W. KEENE and  
 JENNIFER L. BROWN,

Defendants.

Case No: CV-08-2252

**REPLY MEMORANDUM TO  
 DEFENDANTS' OPPOSITION TO  
 REQUEST FOR DECLARATORY  
 JUDGMENT TO ASCERTAIN  
 STATUS**

COMES NOW Plaintiff CITY OF HUETTER, an Idaho municipal corporation (hereinafter "CITY OF HUETTER"), by and through its City Attorney and attorney of record, Arthur B. Macomber, pursuant to an Order of this Court rendered at Hearing on April 3, 2008, commanding that a Reply Memorandum to Defendants' Opposition to Request for Declaratory Judgment be tendered by April 10, 2008, so that Defendants' Sur-Reply could be filed by April 16, 2008, in preparation for further Hearing and a final determination of the matter on April 24, 2008.

## INTRODUCTION

On March 20, 2008, Plaintiff City of Huetter ("CITY") filed a Request for Declaratory Judgment "to declare rights, status, and other legal relations" of Defendants BRADLEY KEENE, registered elector (hereinafter "KEENE"), and JENNIFER BROWN, registered elector (hereinafter "BROWN"), related to CITY'S Mayoral and one Councilperson position respectively.

On April 3, 2008, a Hearing was held during which counsel for the parties stipulated to a Preliminary Injunction pending this Court's final determination of this matter on April 24, 2008. This Reply Memorandum is filed pursuant to the Court's Order made that day related to counsel's submission of further argument on this matter.

## ARGUMENT

CITY has requested interpretation of the Idaho Constitution and State elections statutes related to municipal offices in light of certain facts so that the status and legal relations between the parties may be clarified. In this memorandum, CITY will address Defendants' characterization of Plaintiff's case as either A) one of an election challenge, or B) a matter that can only be resolved by a statutory *quo warrento* proceeding. The CITY denies either of those two arguments is a basis for its request to this Court and denies that either is applicable to CITY's request in this matter. However, CITY believes that Defendants appropriate legal response would be to argue for a writ of mandamus, given that CITY's pleadings have stated it cannot know, based on Defendants' elector status as of the date of their removal from registered voter rolls, whether it would be lawful for CITY to exercise municipal powers where two alleged officers have only registered elector status. A writ of mandamus pursuant to Idaho Code section 7-301, et seq. would allow this Court to compel CITY to perform the act of seating Defendants, pursuant to a finding in Defendants' favor. (I.C. § 7-302.) Otherwise in this memorandum, CITY will rely on its previous argument made in its initial Request to this court.

**A. CITY Does Not and Cannot Bring An Election Challenge**

Defendants Motion in Opposition claims that CITY's Request can be equated in law to an election challenge. CITY does not agree. CITY does not claim to have standing for an election challenge nor does it request this Court address this matter as a challenge to the November 2007 election, when Defendants were elected to office. CITY does not challenge that Defendants were elected, and CITY's canvas of the November 2007 election results caused CITY to swear in Defendants at its January ninth meeting. Contrary to Defendants' representation of Idaho Code section 34-2007 in the last sentence beginning on page four of their Motion in Opposition, CITY does not have a statutory right to challenge an election. Idaho Code section 34-2007 reads:

The election of any person declared elected to any office, other than executive state officers and members of the legislature, *may be contested by any elector of the state, judicial district, county, township, precinct, city or incorporated village in and for which the person is declared elected.*

(emphasis added.)

The contesting power belongs to "any elector of the [jurisdiction] in and for which the person is declared elected." CITY has no power to contest an election, because it is not an elector. Idaho Code section 34-104 states a "qualified elector" is:

... any person who is eighteen (18) years of age, is a United States citizen and who has resided in this state and in the county at least thirty (30) days next preceding the election at which he desires to vote, and who is registered as required by law.

Further, Idaho Code section 34-105 states a "registered elector," for the purpose of [the elections code], means any "qualified elector." Thus, because CITY is a municipal corporation, and does not meet the criteria of 34-104, it cannot contest elections. Clearly, electors are those that can vote and become elected to office, and a municipal corporation

such as CITY does not fall into that category. CITY does not and cannot contest an election, and does not argue that it may in its Request to this Court.

**B) Plaintiff's Matter Cannot be Resolved by a Statutory *Quo Warrento* Suit.**

Plaintiff does not challenge Defendants' current status as registered electors. CITY accepts the findings of the February 25 Hearing by the Kootenai County Elections Department in upholding Defendants' registration requests of February 14. However, CITY argues a rational interpretation of the plain language of Idaho Code sections 50-601 and 50-702, construed, as Defendants' Opposition Memorandum argues, with the entire statutory schema, will result in this Court's finding that due to the outcome of Defendants' own voluntary acts they were removed from the registered voter rolls, and due to those voluntary acts they forsook, abandoned, renounced, surrendered, and waived powers to exercise the offices they were sworn into by giving up their status as registered electors.

Pursuant to Idaho Code section 6-602, a statutory *quo warrento* action is to be brought by the prosecuting attorney of the County, where the office usurped is a City office. Here, CITY is not the prosecuting attorney of Kootenai County, thus it lacks statutory power and thus standing to bring a suit in statutory *quo warrento*. CITY does not claim it has such power or standing, and has not pled so in this case.

Defendants argue that if the Kootenai County prosecuting attorney brought a suit in statutory *quo warrento* that such proceedings must only analyze conditions existing at the time the action is brought. (*People ex rel. Neilson v. Wilkins*, 101 Idaho 394 (1980).) CITY does not disagree with this argument. However, CITY does not have standing and does not bring an action pursuant to Idaho Code section 6-602. CITY requests this Court ascertain Defendants' status as of the date Kootenai County removed them from the voter registration rolls, not as of March 19, when this action was brought.

CITY's response to Defendants' *quo warrento* argument is that CITY cannot under Idaho law proceed to seat Defendants when that act by it may be in violation of Idaho law,

and that such refusal to seat based on its reading of the Idaho Constitution and Idaho statutes does not constitute unlawful ouster but is a reasonable position under the law, especially given the lack of third party interference in Defendants' status and their own decisions to ignore the Idaho Code section 34-432 challenge. CITY does not agree that any ouster has taken place, given the definition in Idaho Code allowing such action where "any person who usurps, intrudes into, holds or exercises any office or franchise, real or pretended, within this state, without authority of law." (I.C. § 6-602.) CITY has not acted to install or appoint any person to the two positions at issue, no person has attempted to occupy or exercise the powers of the two offices, and those positions are not occupied, except as a result of the preliminary injunction previously imposed by this Court, thus pleas in *quo warrento* should not lie. CITY only contends that Defendants voluntarily created vacancies as a matter of law by not responding lawfully to the challenge, and no person presently occupies those two offices. A statutory *quo warrento* suit is not applicable to facts of this case.

### **C. Clarification of CITY's Request**

If Defendants' status as non-registered voters is found by this Court to have existed as of the date Defendants were removed from voter registration rolls, CITY requests this Court then proceed to construe Defendants' status as of the date of removal from the registration rolls pursuant to Idaho Code section 50-601 and 50-702, which require registered status in order to retain eligibility to hold office. CITY's pleadings argue that Defendants lost their eligibility to hold office, and that thus, as a matter of law, upon removal from voter registration rolls Defendants did not hold office. Further, CITY argues that the re-registration effective February 14 cannot accomplish any cure to the loss of eligibility to hold office, but that the re-registration only restored Defendants' basic registered voter status.

If this Court finds otherwise, then any Idaho elected municipal official could ignore the Idaho Code section 34-432 challenge from an elections department, with the assurance that they could simply re-register and their status as officeholder would be magically restored – with absolutely no penalty for not responding to a statutory challenge where an oath of office was taken to uphold and obey the laws of the State of Idaho.

However, if this Court agrees with the Attorney General's letter that a loss of eligibility to hold office pursuant to a plain reading of Idaho Code sections 50-601 and 50-702 does not, as a matter of law, remove Defendants from office, this Court may determine that Idaho Code section 50-469 serves to show vacancies exist, where that statute states, "[i]f a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council." This is reasonable, because once Defendants were removed from the voter registration rolls, they failed to maintain any qualification to hold office pursuant to Idaho Code section 50-601 and 50-702. Certainly the Constitution and laws of the State of Idaho do not allow a person to occupy elected office when they have not even registered to vote or responded to a valid challenge related to their registration. CITY does not know whether the removal by the Kootenai County Elections Department following its challenge to Defendants constitutes a "fail[ure] to qualify," thereby creating vacancies in the offices. (I.C. § 50-469.) There is no case law providing interpretation of Idaho Code section 50-469.

**D. CITY Has Standing to Request Declaratory Judgment under I.C. § 10-1201.**

"[A]s a general rule, a declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists." (*Harris v. Cassia County*, 106 Idaho 513, 516 (1984).) Kootenai County removed Defendants from voter registration rolls sometime between January 17, after the twenty (20) day period had passed for Defendants response pursuant to Idaho Code section 34-432(2), and the date Defendants were re-registered effective February 14. Therefore, Defendants were sworn into office as registered electors

on January 9, prior to being removed from voter registration rolls after January 17. Thus, while Defendants were elected officials between January 9 and the date of removal from registration rolls on January 17 (or the actual date of removal from registration rolls subsequent to January 17 but before February 14), upon said removal neither Defendant was "eligible to hold the[ir] office" because neither Defendant "remain[ed] a qualified elector . . ." after removal from registration rolls. (I.C. §§ 50-601 (Mayoral statute allows official to hold office only if holder "remains a qualified elector during his term of office"); 50-702 (Councilperson statute allows official to hold office only if holder "remains a qualified elector under the constitution and laws of the state of Idaho.").)

These facts and presently arising circumstances have resulted in a live controversy and current uncertainty such that CITY cannot hold necessary City Council meetings or otherwise govern its municipal corporation knowing that it is in accordance with its powers pursuant to Idaho law. (Idaho Const. Art XII § 2; I.C. § 50-301, et seq.)

Further, due to Plaintiff's present inability to hold meetings without the temporary injunction it has become disabled as a corporate body, thus CITY requests this Court provide clarity by declaring a judgment on the issues argued in CITY's pleadings.

### CONCLUSION

CITY does not plead an election contest, because it has no statutory power or standing to bring such suit. Statutory *quo warranto* does not apply here, because no usurper has taken or occupies the respective offices, and CITY is not the statutory entity charged with bringing such suit. Defendants may have grounds to request a writ of mandamus, if this Court rules against CITY after which CITY refuses to seat Defendants.

Dated: 4-10-08  
Arthur B. Macomber

Arthur B. Macomber  
Attorney at Law  
Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10th day of April, 2008, I caused to be served a true and correct copy of the foregoing:

**REPLY MEMORANDUM TO DEFENDANTS' OPPOSITION  
TO REQUEST FOR DECLARATORY JUDGMENT TO ASCERTAIN STATUS**

by facsimile to:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684  
*Counsel to Defendants Keene and Brown*

DATED this 10th day of April, 2008



Arthur B. Macomber  
City Attorney for Plaintiff City of Huetter

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED 11:25 AM  
N.B.

2008 APR 16 AM 11:25

CLERK DISTRICT COURT

DEPUTY

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Attorney for Defendants Keene and Brown

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CITY OF HUETTER, an Idaho municipal  
corporation,

Plaintiff,

vs.

BRADLEY W. KEENE and JENNIFER L.  
BROWN,

Defendants

Case No. CV 08-2252

REPLY MEMORANDUM IN  
OPPOSITION TO DECLARATORY  
JUDGMENT

The City of Huetter seeks a ruling from this Court declaring vacant the office of Mayor to which Brad Keene was elected and the office of Councilman to which Jennifer Brown was elected. The City of Huetter's argument is that upon the happening of Keene's and Brown's removal from the voter list that a forfeiture of their office occurred pursuant to Idaho Code § 50-469.

I. STANDING

In response to the standing issue raised by Keene and Brown, the City of Huetter concedes that it does not have standing to bring an election challenge pursuant to Title 34, Idaho Code. It also acknowledges that it does not have standing to bring a *quo*

warranto proceeding pursuant to Title 6, Chapter 6. Instead, the City claims it seeks only a clarification of I.C. § 50-469.

## II. ARGUMENT

The City argues that it cannot under Idaho law seat Defendants because such an act would be in violation of Idaho law. The City claims that Brown and Keene became ineligible to hold office pursuant to I.C. § 50-601 and I.C. § 50-702 when they were removed from the voter registration. The City claims this ineligibility resulted in a forfeiture of Keene and Brown's right to office. The logical starting point of the analysis is the statutes that the City utilizes to support its arguments.

The foundation of the City's argument is grounded in I.C. § 50-601, which provides that: "[a]ny person shall be eligible to hold the office of mayor who is a qualified elector of the city at the time his declaration of candidacy or declaration of intent is submitted to the city clerk and remains a qualified elector during his term of office" and I.C. § 50-702, which provides that: "[a]ny person shall be eligible to hold the office of councilman of his city who is a qualified elector at the time his declaration of candidacy or declaration of intent is submitted to the city clerk, and remains a qualified elector under the constitution and laws of the state of Idaho." The City claims that by removal from the election register that Keene and Brown failed to maintain their status as "qualified electors". The City does not expand on this bald assertion. Instead, the City tries to change the statutory requirement that Keene and Brown remain "qualified electors" during the term of their office to a requirement that they remain "registered voters". There is no support for this position in the statutes themselves or case law.

Article VI, Section 2 of the Idaho Constitution provides that "[e]very male or female citizen of the United States, eighteen years old, who has resided in this state, and

in the county where he or she offers to vote for the period provided by law, if registered as provided by law, is a qualified elector. Idaho Code § 50-402(c) provides in relevant part that "[a] 'qualified elector' means any person who is eighteen (18) years of age, is a United States citizen and who has resided in the city at least thirty (30) days next preceding the election at which he desires to vote and **who is registered within the time period provided by law.**" (Emphasis added.) Idaho Code § 34-408, subsection 1, addresses the general time period for registration and provides: "No elector may register in the office of the county clerk within twenty-four (24) days preceding any election held throughout the county in which he resides for the purpose of voting at such election; provided however, a legible, accurate and complete registration card received in the office of the county clerk during the twenty-four (24) day period preceding an election shall be accepted and held by the county clerk until the day following the election when registration reopens, at which time the registration shall become effective. This deadline shall also apply to any registrars the county clerk may have appointed."

The City concedes that Keene and Brown were residents of the City of Huetter, met the age requirements and were registered as voters within the time period required by law at the time of the city election. However, the City argues that upon removal from the election register that Keene and Brown were no longer "qualified elector" under the applicable statutes. This argument ignores the actual provisions of the above statutes.

At the time that Keene and Brown were removed from the election register, the next election in which Keene and Brown could vote in Kootenai County was the primary election in May 2007. Keene and Brown assured that they were placed back on the election register long before that date. Therefore, they were qualified electors in the

November 2007 election and they are qualified electors for any upcoming election. Thus, they have not violated the provisions of I.C. §§ 50-601 and 50-702 respectively.

In its declaratory judgment petition and argument, the City completely ignores

I.C. § 59-901. This statute provides:

**HOW VACANCIES OCCUR.** Every civil office shall be vacant upon the happening of either of the following events at any time before the expiration of the term of such office, as follows:

1. The resignation of the incumbent.
2. His death.
3. His removal from office.
4. The decision of a competent tribunal declaring his office vacant.
5. His ceasing to be a resident of the state, district or county in which the duties of his office are to be exercised, or for which he may have been elected.
6. A failure to elect at the proper election, there being no incumbent to continue in office until his successor is elected and qualified, nor other provisions relating thereto.
7. A forfeiture of office as provided by any law of the state.
8. Conviction of any infamous crime, or of any public offense involving the violation of his oath of office.
9. The acceptance of a commission to any military office, either in the militia of this state, or in the service of the United States, which requires the incumbent in the civil office to exercise his military duties out of the state for a period of not less than sixty (60) days.

In the present case, the City argues that there has been a forfeiture of office as provide by statute. Idaho Code § 34-469 provides that: "If a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council." It does not provide that the office is forfeited. In cases of forfeiture, the legislature has been very definite that the office has been forfeited. For example, I.C. § 18-310 specifically provides in relevant part that: [a] sentence of custody to the Idaho state board of correction suspends all the civil rights of the person so sentenced including the right to refuse treatment authorized by the sentencing court, and forfeits all public

offices and all private trusts, authority or power during such imprisonment...". Thus, this statute does not provide for a forfeiture of office.

Rather, the City's position is that when Keene and Brown were removed from the voter registration that they became ineligible to hold office, and such ineligibility created an automatic vacancy. In its opening brief, Keene and Brown went through the rules of statutory construction and how this interpretation does not meet those rules. In its response brief, the City inexplicably ignored the statutory construction arguments raised by Defendants. The City offers no explanation of how its proposed interpretation is compatible with the tenets of statutory construction advanced by Defendants, or how its interpretation would harmonize the other statutes that exist on the same subject matter. As explained in the Defendants' opening brief, the position advanced by Plaintiff is contrary to the general rules of statutory construction.

### III. CONCLUSION

The City has failed to establish that Keene and Brown "failed to qualify" for their positions. There has been no election for which Keene and Brown failed to qualify. There is no dispute that Keene and Brown are qualified electors for upcoming elections. Thus, they meet the requirement that they remain qualified electors. The approximate thirty day lapse in their voter registration is immaterial to whether they are qualified electors.

Further, even if credence is given to the City's argument that the lapse in the voter registration made Keene and Brown ineligible to hold office, the rules of statutory construction would require such a challenge to be brought pursuant to Title 6, Chapter 6. The City has no standing for such a challenge. Even if the City had standing to bring such a challenge, the ineligibility would be measured at the time of the suit. By the time

this suit was brought, the ineligibility was cured. Thus, Keene and Brown are entitled to continue in office.

Dated this 16<sup>TH</sup> day of April, 2008.

JAMES, VERNON & WEEKS, P.A.

By: Susan P. Weeks  
Susan P. Weeks  
Attorneys for Defendants

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of April, 2008, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

Arthur B. Macomber 408 E. Sherman Ave., Ste, 215 Coeur d'Alene, ID 83814		
<input type="checkbox"/>	Mailed	Mailed
<input type="checkbox"/>	By Hand	By Hand
<input type="checkbox"/>	Overnight Mail	Overnight Mail
<input checked="" type="checkbox"/>	Fax	Fax Fax: (208) 664-9933

Susan P. Weeks

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED

2008 APR 21 PM 4:45

CV08-2252

CLERK DISTRICT COURT

DEPUTY

ps

### STIPULATED FACTS

1. Defendants KEENE and BROWN timely filed verified declarations of candidacy in compliance with I.C. § 50-432.
2. Defendants KEENE and BROWN's entry as electors in the election record and poll book was challenged by entry of a challenge in the record and poll book, as were the entries of David Meeks, Jackie Meeks, Josh Douglas, Andrew Kienow, Carissa Lindblom, Shawn Marquette, Misty Penninger, Jamee Pilmore, Lang Sumner and John Whitaker. The city clerk notified the Kootenai County Election Department of all challenges in the combination election record and poll book.
3. Defendant KEENE was elected mayor and Defendant BROWN was elected as a council member at the election conducted November 6, 2007.
4. On November 9, 2007, Plaintiff CITY OF HUETTER timely canvassed the votes and determined that Defendants BROWN and KEENE were two of three people elected as stated in paragraph three herein.
5. On December 27, 2007, pursuant to Idaho Code § 34-432, the Kootenai County Elections Department sent individual notifications of challenge to the twelve challenged voters at the address provided by them. The mail was sent by Certified Mail. The Post Office was unable to find Defendant KEENE at home and left a notice for him to retrieve his letter from the post office. Defendant KEENE was unable to retrieve his registered letter from the post office because of his work hours. Defendant BROWN received and signed for her letter on January 8, 2008. She called the Kootenai County Elections Department to discuss the matter.
6. On January 9, 2008, Defendants KEENE and BROWN were sworn into office at a regularly scheduled and noticed meeting of the Huetter City Council.

7. On January 18, 2008, the Kootenai County Elections Department removed ten voters from the registration rolls, including Defendants KEENE and BROWN.

8. On February 13, 2008, Plaintiff CITY OF HUETTER refused to recognize or seat Defendants KEENE and BROWN, based on the City Attorney's assessment that Defendants were ineligible to hold office and therefore their offices were vacant due to their removal from the voter registration rolls by Kootenai County.

9. On February 14, 2008, four people deleted from the official voter registration list, including Defendants KEENE and BROWN, appeared in person at the Kootenai County Elections Department to re-register as voters. A demand was made pursuant to Idaho Code § 34-412(2) for a ten (10) day qualification hearing.

10. On February 25, 2008, pursuant to Idaho Code § 34-412(2), the Kootenai County Elections Department held a hearing on whether the four people requesting registration, including Defendants KEENE and BROWN, were qualified to register. Defendants KEENE and BROWN presented evidence as to their qualifications to register. Dan English, Kootenai County Clerk determined they were qualified to register, and upon the conclusion of the hearing, registered them as voters.

11. On February 25, 2008, and pursuant to I.C. §34-408, the registration roll was open for registering voters.

Date: 4-21-08

Arthur B. Macomber  
Arthur B. Macomber  
Attorney at Law  
Counsel for Plaintiffs

Date: 4-21-08

Susan P. Weeks  
Susan P. Weeks  
Attorney at Law  
Counsel for Defendants

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of April, 2008, I caused to be served a true and correct copy of the foregoing:

#### STIPULATED FACTS FOR DECLARATORY JUDGMENT TO ASCERTAIN STATUS

by facsimile to:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684  
*Counsel to Defendants Keene and Brown*

DATED this 21st day of April, 2008



Arthur B. Macomber  
City Attorney for Plaintiff City of Huerfano

2008 APR 28 AM 9:48

CLERK DISTRICT COURT  
*Patty Bailey*  
DEPUTY

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
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Telephone: (208) 667-0683  
Fax: (208) 664-1684 *AW*

Attorney for Defendants Keene and Brown

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CITY OF HUETTER, an Idaho municipal  
corporation,

Plaintiff,

vs.

BRADLEY W. KEENE and JENNIFER L.  
BROWN,

Defendants

Case No. CV 08-2252

DEFENDANTS' POST-TRIAL  
MEMORANDUM

This memorandum addresses the case of **Clark v. Wonnacott**, 30 Idaho 98, 162 P. 1074 (1917), which was raised for the first time during oral arguments of this matter. In 1914, Fred C. Wonnacott was elected Kootenai County assessor. In November 1916, William McFarland was elected Kootenai County assessor. McFarland died before taking office. At the time of his death, McFarland had not taken the oath of office or filed the bond that was required to hold the office. Therefore, at the time of his death he had not qualified for office.

In January 1918, the Kootenai County Board of Commissioners declared the assessor's office vacant due to McFarland's death. The Board appointed Henry C. Clark assessor. Clark took the oath of office and filed the required bond. The issue arose whether the statutory provision addressing the term of office was in conflict with the Idaho Constitution. Wonnacott took the position that the legislature could not declare the

office vacant by reason of McFarland's death because the statutory provision conflicted with the constitutional provision.

In analyzing whether the office was vacant and subject to appointment, the Supreme Court commenced its analysis by acknowledging that as of 1917, there were conflicting opinions regarding the issue. The Supreme Court noted that Article 6, Section 18 of the Idaho Constitution required biennial election of county officers. The statutes in effect at that time provided that every elected officer would hold office until his successor was elected and qualified.

The Idaho Supreme Court found that the statute was not in conflict with the constitution. The Idaho Supreme Court then proceeded to analyze the effect of McFarland's death on the incumbent's right to continue in office. Under the statute as it existed at that time, the Supreme Court found that the incumbent had a right to continue in office, and the Board had no authority to appoint another assessor. The Supreme Court concluded: "There can be no appointment unless there is a vacancy; there can be no vacancy where there is an incumbent. A vacancy exists where there is no person lawfully authorized to assume and exercise at present the duties of the office.... It necessarily follows that if an officer under the law is entitled to hold his office until his successor is elected and qualified, that the election of the officer does not create a vacancy, but it requires his election and qualification coupled with the expiration of his predecessor's term to create a vacancy."

Although Defendants do not profess to have a complete understanding of the City of Huetter's position at oral argument, apparently the City's position is that Defendants removal from the voter registration rolls after they were sworn into office caused Defendants to fail to qualify for their offices at the time of their election. This argument is contrary to the facts to which the City stipulated. The City stipulated that Keene and Brown were qualified when they were sworn into office. After being declared the elected officials by the canvass of the vote, taking their oath and filing it, and receiving

certificates of election, Keene and Brown were qualified to hold office. This fact sets the present case apart from **Clark v. Wonacott**, *supra*.

However, following the City's argument, if it is claimed that Keene and Brown were not qualified to take office at the time of their election by virtue of their removal from the voter registration rolls on January 18, 2008, then such a contest must be brought pursuant to I.C. § 34-2001(2), which statute specifically provides for contest of a person's right to hold office when the incumbent was not eligible to the office at the time of the election. Under this chapter of the election laws, an incumbent is the person whom the canvassers declare elected. Pursuant to I.C. § 34-2007, only an elector of the City could bring such a challenge. The City of Huetter has no standing for this challenge if such is its position.

If it is the City's position that Keene and Brown no longer met the qualifications for mayor and council person as of their removal on January 18, 2008, the City's position under this argument as understood by Defendants is that once Defendants were removed from the voter registration they no longer met the qualification requirements of I.C. §§ 50-601 and 50-702, and as such, fell under the auspices of I.C. § 50-469.<sup>1</sup> In analyzing this argument, one must look at the position of this code section in conjunction with the other election statutes contained in title 4, Chapter 50, as well as other statutes addressing the topic and read them *in pari materia*. The code section immediate succeeding this code section, I.C. § 50-470, provides for issuance of certificates of election. Combined with this fact is the I.C. § 50-901 provides for events that will cause a vacancy in office after certificates of election are provided and Title 6, Chapter 6 provides for a *quo warranto* proceeding should an officer be ineligible to hold office during the term of his office and refuse to surrender it. When considered together, these facts indicate that I.C. § 50-469 was aimed towards addressing vacancies that occurred before the incumbent took office. Without this statute, under **Clark v. Wonacott**, *supra*, the former incumbent

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<sup>1</sup> Defendants do not believe that their removal from the voter registration disqualified them from continuing to hold office under I.C. §§ 50-601 and 50-702 as no county-wide election was pending at the time.

would continue in office. Given the provisions of I.C. § 50-469, it is clear that the former incumbent would not continue to hold office and the City would have the authority to appoint a new officer. It appears I.C. § 50-469 was enacted to counter the holding of **Clark v. Wonacott**.

Dated this 28<sup>th</sup> day of April, 2008.

JAMES, VERNON & WEEKS, P.A.

By: Muriel M. Burke  
Muriel M. Burke for Susan P. Weeks  
Attorneys for Defendants

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28<sup>th</sup> day of March, 2008, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

Arthur B. Macomber 408 E. Sherman Ave., Ste, 215 Coeur d'Alene, ID 83814			
<input type="checkbox"/>	Mailed		
<input type="checkbox"/>	By Hand		
<input type="checkbox"/>	Overnight Mail		
<input checked="" type="checkbox"/>	Fax (208) 664-9933		

Christine Clouse

STATE OF IDAHO } SS  
 COUNTY OF KOOTENAI }  
 FILED

DATE APR 29 AM 8:26

Arthur B. Macomber, Attorney at Law  
 408 E. Sherman Avenue, Suite 215  
 Coeur d'Alene, ID 83814  
 Telephone: 208-664-4700  
 Facsimile: 208-664-9933  
 State Bar No. 7370  
 Counsel to Plaintiff City of Huetter

CLERK DISTRICT COURT  
*Linda Shedd*  
 DEPUTY PB

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

CITY OF HUETTER, an Idaho  
 municipal corporation;

Plaintiff,

vs.

BRADLEY W. KEENE and  
 JENNIFER L. BROWN,

Defendants.

Case No: CV-08-2252

**PLAINTIFF'S BRIEF OF CLARK V.  
 WONNACOTT IN SUPPORT OF  
 REQUEST FOR DECLARATORY  
 JUDGMENT**

COMES NOW Plaintiff CITY OF HUETTER, an Idaho municipal corporation (hereinafter "CITY" or "Plaintiff"), by and through its City Attorney and attorney of record, Arthur B. Macomber, pursuant to an Order of this Court rendered at Hearing on April 24, 2008, commanding that a Brief be tendered to this Court by Monday, April 28, 2008 addressing issues raised by the case of *Clark v. Wonnacott*, 30 Idaho 98 (1917) regarding qualification of electors and incumbents.

**INTRODUCTION**

On March 20, 2008, Plaintiff filed a Request for Declaratory Judgment "to declare rights, status, and other legal relations" of Defendants KEENE, registered elector, and

BROWN, registered elector (hereinafter "defendants"), related to plaintiff's Mayoral and one Councilperson position respectively.

On April 24, 2008, a Hearing was held during which counsel for the parties stipulated to certain evidence being included in this case, and the Court required counsel to address arguments raised and pertinent to this case related to officeholder qualifications. This Brief is filed pursuant to the Court's Order made that day.

### **DISCUSSION OF CLARK v. WONNACOTT**

A writ of mandate was denied in the holding rendered in the 1917 case of *Clark v. Wonnacott*. (*Clark v. Wonnacott*, 30 Idaho 98, 108 (1917).) Plaintiff Clark was denied the plea for writ to be seated as Kootenai County Assessor, which position was held by defendant Wonnacott, following the Idaho State Supreme Court's interpretation of its Constitution and related statutes. That Court found decedent and putative assessor McFarland never qualified to hold the office following his election, thus the previous assessor, defendant Wonnacott, was legally entitled to continue in office until a new assessor could be elected and shown to be qualified to hold the office.

If McFarland had been qualified to hold office after election but prior to his death, a vacancy would have been created pursuant to statute triggering the power of appointment in the Kootenai County Board of Commissioners. But, "at the time of [McFarland's] death he had not qualified as such Assessor of Kootenai County, *and* had not made or filed his official oath or given the bond required by law." (*Clark*, 30 Idaho at 101; (emphasis added).) Thus, the Court determined that predecessor Wonnacott remained in office and that the power of appointment never arose, thus plaintiff Clark's appointment was invalid. In Idaho, the Court stated, "the person elected to an office does not become the incumbent of the office until he qualifies." (*Clark*, 30 Idaho at 106.)

Three Idaho cases cite *Clark*: *Big Wood Canal Co. v. Chapman*, *White v. Young*, and *Bone v. Duclos*. All cite the statutory interpretation that along with election must come

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qualification, of one sort or another, to create a valid incumbency in a candidate. None of the three cases overrule or abrogate *Clark* as to qualification being required to create incumbency.

A “[watermaster] holds office until his successor is elected or appointed *and qualified*.” (*Big Wood Canal Co. v. Chapman*, 45 Idaho 380, 390 (1927); (emphasis added).) This is a simple recitation of the *Clark* holding.

The *White* case states, “. . . the oath for county elective officers, being required to be taken on the second Monday of January succeeding the general election, [a newly elected official] may not qualify for office until the second Monday of January . . .” (*White v. Young*, 88 Idaho 188, 196 (1964) (Oath of office found to finalize qualification of elected official, but prior to oath was not qualified to hold office).) According to the *White* case, the oath of office is but one requirement to show qualification to hold office. If an oath of office is not taken, *White* holds qualification for incumbency does not occur. However, Plaintiff Huetter here argues that even where an oath is taken, an elected person may not be qualified, if they do not respond to a valid challenge made on election day, because their contested status as a qualified elector might not be resolved until after the oath of office was given.

In a case of first impression in Idaho, the Idaho State Supreme Court found statutes required that “[a]n appointee to the office of county commissioner filling a vacancy serves only until his successor is *elected and qualified*.” (*Bone v. Duclos*, 94 Idaho 589, 590 (1972); *Bone v. Andrus*, 96 Idaho 291 (1974) (Sovereign immunity shields Gov. Andrus from challenge to appointment of Bone due to Governor acting under statutory authority and his reasonable conclusion that he had power to appoint); (emphasis in original).) Thus, appointee Duclos, not being elected but appointed, could not occupy county commissioner’s office. Thus, without both election and qualification, incumbency does not accrue.

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## CURRENT STATUS OF IDAHO LAW RE: QUALIFICATION

Generally, Idaho law related to the dual requirement of election and qualification remains the same as it did in 1917 when *Clark* was rendered.

Specifically, the Idaho State Constitution at Article VI, Section 2 states:

Every male or female citizen of the United States, eighteen years old, who has resided in this state, and in the county where he or she offers to vote for the period provided by law, *if registered as provided by law*, is a qualified elector.

(emphasis added.) Thus, one cannot be a qualified elector in Idaho unless one is of a certain age, has residency in the Idaho county in which one wants to vote, and one is registered as provided by law. The words "if registered as provided by law" immediately preceding the other two requirements validates the importance of the requirement of registration in order for one to be qualified. (*Kerley v. Wetherell*, 61 Idaho 31, 41-42 (1939).)

The Idaho Legislature has the power to prescribe qualifications for public office. (*Id.* at 42; Idaho Const. Art VI § 4.) The legislature has enacted several Idaho codes that refer to or include registration as a requirement, including, as pertinent here but not limited to, 34-104 (qualified elector defined), 34-105 (registered elector defined), 34-107(3-5) (residency requirements), 34-110 (registration required for voter to appear on election register), 34-402 (qualifications of electors, substantially mirrors Idaho Const., Art. VI § 2), 34-403 (disqualified electors not allowed to vote), 34-404 (registration of elector required), 34-407 through 34-420 (registration processes generally).

Idaho Code section 34-431 allows a registered elector to challenge "the entry of an elector's name as it appears in the election register." (See I.C. § 50-427 (the entry of an elector's name as it appears "in the election record and poll book").) Idaho Code section 50-427 refers a county clerk to Idaho Code section 34-432, which gives the county clerk a process for verifying those challenges. The last sentence of Idaho Code section 34-432(2)

states, "If a challenged elector fails to make the statement or request in response to the inquiry, the county clerk shall cancel the registration."

### ARGUMENT

Stipulated facts before this Court include the fact that defendants were elected in the November 2007 election. However, as discussed herein above, there exists a dual requirement of election *plus qualification* under Idaho law. When defendants registered prior to the election, that act placed their names on the election register. (I.C. § 34-110.) Pursuant to Idaho Code section 34-431, on election day another elector challenged defendants' qualified elector status. On that same day, defendants took an oath that they were qualified electors. (I.C. § 34-1111.) Thus the challenge was joined, but until the county clerk could resolve the challenge, defendants could be elected and sworn into office without the qualification element being satisfied allowing incumbency under Idaho registration requirements and the case law as discussed above. Therefore, from election day, past the date of canvassing of votes, past the date of administration of the oath of office, up until the twenty (20) day time period for the challenged electors' responses were either received or not received by the county clerk, which date here was January 17, 2008, the defendants' qualifications as electors and thus incumbents (after the administration of the oath of office) was an unresolved challenge.

Without an election day challenge, the Kootenai County Clerk would have had no need to verify and resolve defendants' elector status using Idaho Code section 34-432. Here, defendants were challenged, they took the election day oath, and that qualification controversy was presented to the County Clerk after the election. On December 27, the County Clerk followed the procedure of Idaho Code section 34-432, but defendants never responded as required by law. Facts before this court have verified that defendants never returned the required ER-17 form. Thus, the Kootenai County Clerk removed defendants

from the registration rolls on January 18, 2008. The resolution of that election day controversy was that defendants had not met the qualification requirement necessary to gain incumbency.

This argument dispensed for the requirement of an election challenge, because defendants, while elected, never qualified for their respective offices. Plaintiff never believed defendants were incumbents, thus it did not request Kootenai County prosecutors initiate a quo warranto proceeding. Without qualification, no incumbency accrued. (*Clark*, 30 Idaho at 106.) Further, Idaho Code section 50-601 requires a Mayor to “remain[] a qualified elector during his term of office,” and Idaho Code section 50-702 requires a councilperson to “remain[] a qualified elector under the constitution and laws of the state of Idaho.” Here, an election day controversy related to defendants’ qualifications to hold office was unresolved until after vote canvassing and the administration of the oath of office, but when resolved it resulted in disqualification to hold office. Both Idaho Code section 50-601 and 50-702 state that eligibility to hold office is dependent on qualified elector status being retained for the term of the office held.

Finally, Idaho Code section 50-469 states, “[I]f a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council.” The statutory use of the word “shall” requires a vacancy to be declared, but that statute does not state what entity must declare said vacancy. Here, plaintiff’s attorney told defendants that a vacancy existed, but defendants refused to accept that interpretation of Idaho law, thus plaintiff brought this suit for declaratory judgment so this Court could make that declaration of vacancy. In support of its suit, plaintiff notes that defendants have argued that plaintiff cannot declare a vacancy exists, because it may be under a conflict of interest or be otherwise biased as to the outcome. Given the small size of plaintiff, at or around one hundred (100) residents and about forty (40) registered electors, plaintiff

concurs with defendants' assessment and requests this Court declare said vacancy.

Therefore, plaintiff herein renews its plea for this Court to declare vacancy exists in its Mayor's office and in the office of one Councilperson.

### CONCLUSION

The Idaho Constitution, its statutes, and its case law require two elements be satisfied for incumbency to accrue to a candidate. Those two elements are election and qualification. Here, defendants were elected, but their putative election day qualifications made under oath that day were found null and void in a finding by the Kootenai County Clerk when defendants did not respond to that Clerk's challenge inquiry letter sent pursuant to Idaho Code section 34-432. Therefore, defendants were not qualified to vote or to become incumbents, and this Court should declare vacancies exist in the two offices to which defendants were elected, pursuant to Idaho Code sections 50-469 and 509-901(4).

Dated: 4-28-08



Arthur B. Macomber

Attorney at Law

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 28th day of April, 2008, I caused to be served a true and correct copy of the foregoing:

**PLAINTIFF'S BRIEF OF CLARK V. WONNACOTT  
IN SUPPORT OF REQUEST FOR DECLARATORY JUDGMENT**

by facsimile to:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684  
*Counsel to Defendants Keene and Brown*

Judge Haynes  
Facsimile: 208-446-1132

DATED this 28th day of April, 2008



Arthur B. Macomber  
City Attorney for Plaintiff City of Huetter

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

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CLERK DISTRICT COURT  
*Susan P. Weeks*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CITY OF HUETTER, an Idaho municipal  
Corporation

PLAINTIFF,

vs.

BRADLEY W. KEENE and JENNIFER L.  
BROWN,

DEFENDANTS.

CASE NO. CV-2008-2252

MEMORANDUM OPINION:  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter of City of Huetter's Request for Declaratory Judgment to Ascertain Status, and Request for Injunction against Bradley W. Keene and Jennifer L. Brown, was tried before this Court on April 24, 2008. Arthur B. Macomber appeared for Plaintiff and Susan P. Weeks appeared for Defendants. The parties stipulated to the factual background of the case, and argued the matter to the Court as a matter of law. After hearing the evidence of the parties and the arguments of counsel, and being fully advised herein, this Court now finds for Plaintiff and against Defendants, and hereby makes the following special findings of fact and conclusions of law, which constitute the decision of the Court.

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## FACTS

The facts in this case are stipulated by counsel and/or testified to, and are as follows:

1. Defendants Keene and Brown timely filed verified declarations of candidacy in compliance with I.C. § 50-432.
2. Defendants Keene and Brown's entries as electors in the election record and poll book were challenged by entries of challenge in the record and poll book, as were the entries of David Meeks, Jackie Meeks, Josh Douglas, Andrew Kienow, Carissa Lindblom, Shawn Marquette, Misty Permenter, James Pilmore, Lang Sumner and John Whitaker. The city clerk notified the Kootenai County Election Department of all challenges in the combination election record and poll book.
3. Defendant Keene was elected mayor and Defendant Brown was elected as a council member at the election conducted November 6, 2007.
4. On November 9, 2007, Plaintiff City of Huetter timely canvassed the votes and determined that Defendants Brown and Keene were two of three people elected as stated in paragraph three (3) herein.
5. On December 27, 2007, pursuant to Idaho Code § 34-432, the Kootenai County Elections Department sent individual notifications of challenge to the twelve challenged voters at the addresses provided by them. The mail was sent by Certified Mail. The Post Office was unable to find Defendant Keene at home and left a notice for him to retrieve his letter from the Post Office. Defendant Keene was unable to retrieve his registered letter from the Post Office because of his work hours. Defendant Keene testified that he did not ask his roommates, Lang Sumner and Luke Gibler, to pick up his Certified Mail, partly because Defendant Keene had spoken with Defendant Brown about the contents of her Certified Mail, and Defendant Brown had advised Defendant Keene that it was unnecessary to pick up his Certified Mail, and at worst, he could re-register.
6. On January 8, 2008, Defendant Brown called Kootenai County Election Manager, Deedie Beard, to ask why she had been challenged. Deedie Beard testified that she told Defendant Brown that Brown had been challenged at the polls and had taken the oath of a challenged person. She also told Defendant Brown that she had twenty days to respond or be dropped from the rolls of registered voters and that each person receiving the Certified Mail must respond in his own envelope. Deedie Beard testified that Defendant Brown asked if she could re-register, and Deedie Beard answered that she could. Deedie Beard testified that she did not tell Defendant Brown that re-registering would satisfy the challenge letter.
7. On January 9, 2008, Defendants Keene and Brown were sworn into office at a regularly scheduled and noticed meeting of the Huetter City Council.
8. On January 18, 2008, the Kootenai County Elections Department removed ten voters from the registered rolls, including Defendants Keene and Brown.

9. Defendant Brown testified that on January 24, 2008, she called Deedie Beard and asked if her vote in the November, 2007, election had counted; Deedie Beard told Defendant Brown that she, Deedie Beard, could not answer that question.

10. On February 13, 2008, Plaintiff City of Huetter refused to recognize or seat Defendants Keene and Brown, based on the City Attorney's assessment that Defendants were ineligible to hold office and therefore their offices were vacant due to their removal from the voter registration rolls by Kootenai County.

11. On February 14, 2008, four people deleted from the official voter registration list, including Defendants Keene and Brown, appeared in person at the Kootenai County Elections Department to re-register as voters. A demand was made pursuant to I.C. §34-412(2) for a ten (10) day qualification hearing.

12. On February 25, 2008, pursuant to Idaho Code §34-412(2), the Kootenai County Elections Department held a hearing on whether the four people requesting registration, including Defendants Keene and Brown, were qualified to register. Defendants Keene and Brown presented evidence as to their qualifications to register. Dan English, Kootenai County Clerk, determined they were qualified to register, and upon the conclusion of the hearing, registered them as voters.

13. On February 25, 2008, and pursuant to Idaho Code § 34-408, the registration roll was open for registering voters.

## DISCUSSION

A Declaratory Judgment is appropriate only where there is an actual and justiciable controversy. A justiciable controversy is one that is not "hypothetical" or "abstract" in character. *Davidson v. Wright*, 143 Idaho 616, 151 P.3d 812 (2006). The facts of this case present a concrete justiciable controversy that requires this Court to clarify and settle the legal relations between the parties and afford relief from the uncertainty that the situation has caused.

City of Huetter asserts that Bradley W. Keene and Jennifer L. Brown both failed to maintain their respective status as qualified electors, by virtue of their failure to respond to the valid electoral challenges, and thus became ineligible to hold office pursuant to I.C. § 50-469. City of Huetter further asserts that Defendants' reinstatement to the roll of registered voters on February 25, 2007, did not operate to cure the lapse in their standing as qualified electors for the

period January 18, 2008, to February 25, 2008.

I.C. §50-601 defines the qualifications to hold the office of mayor:

Any person shall be eligible to hold the office of mayor who is a qualified elector of the city at the time his declaration of candidacy or declaration of intent is submitted to the city clerk and remains a qualified elector during his term of office.

I.C. § 50-702 defines the qualifications to hold the office of councilman:

Any person shall be eligible to hold the office of councilman of his city who is a qualified elector at the time his declaration of candidacy or declaration of intent is submitted to the city clerk, and remains a qualified elector under the constitution and laws of the state of Idaho.

I.C. § 50-469 states the consequences of failing to qualify:

If a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council.

Defendants Brown and Keene rely on *Toncray v. Budge*, 14 Idaho 621, 95 P.26 (1908), for their proposition that I.C. § 34-2007 (Who May Contest Elections) and I.C. § 6-602 (Actions for Usurpation of Office), are the only methods of challenging the status of an election.

In *Toncray*, an elector challenged the election of Defendant Budge to the position of judge in the 5<sup>th</sup> Judicial District. The Idaho Supreme Court held that Idaho statute books contained two remedies for reaching the ineligibility of a person to hold office: (1) Sec. 119 of the Act of February 2, 1899, contesting the election of any person to office, and (2) by way of a *quo warranto* proceeding under Secs. 4612 to 4619, Rev. Statutes. Defendants further argue that Plaintiff, City of Huetter, does not have standing to bring either form of challenge, and therefore Plaintiff's action for Declaratory Judgment should be dismissed.

Defendants' proposition may have been true in 1908 when *Toncray* was decided, but presently, and since 1978, I.C. § 50-469 has created at least a third way of reaching the ineligibility of a person to hold office.

**I.C. § 34-2007:**

I.C. § 34-2007 is not applicable to the instant case in that City of Huetter is not challenging the actual election of Defendants Keene and Brown. Rather, City of Huetter alleges that Keene and Brown became unqualified electors after having begun their terms of office.

**I.C. § 6-602:**

I.C. § 6-602 is likewise inapplicable to the present circumstances. The judicial history of I.C. § 6-602, sometimes referred to as a *quo warranto* type proceeding, indicates that this proceeding is properly utilized in an action brought on behalf of the people by the prosecuting attorney against a person who holds or exercises office without legal authority, hence the title "Actions for Usurpation of Office."

In *People v. Green*, 1 Idaho 235 (Id.Terr.1869) a Mr. Green was elected Ada County Treasurer in 1865 and took office January, 1866. One Logan was elected to the same office in 1867, but failed to qualify for failure to post the required bond and so was not sworn into office. Green continued to serve as Treasurer. In August 1867, one Glidden was elected to commence his term in the office, as of January 1868. When Green would not relinquish the office, a *quo warranto* type action was brought in the name of the people on behalf of Glidden alleging that Green was usurping the office of Treasurer.

In *People v. Havird*, 2 Idaho 498, 25 Pac.294 (1889), a *quo warranto* type action was employed to try the title of Havird to the office of Boise County Sheriff among several claimants. See also *Whitten v. Chapman*, 45 Idaho 653, 264 P.871 (1928) (a *quo warranto* type

action to oust the defendant incumbent public officer and to induct the plaintiff into that office); *Tiegs v. Patterson*, 81 Idaho 46, 336 P.2d 687 (1959) (a *quo warranto* type action in which plaintiff sought to obtain the office of Nampa & Meridian Irrigation District Director from defendant who would not relinquish); *People ex. rel. Neilson v. Wilkins*, 101 Idaho 394, 614 P.2d 417 (1980) (special prosecutor filed *quo warranto* type suit for removal of defendant on issue of defendant's residency at time of election. Suit dismissed on grounds that an I.C. §6-602 action applies only to conditions existing at time action is brought).

**I.C. § 50-469:**

Defendants argue that I.C. § 50-469 is inapplicable under the facts of this case because the statute amounts to a legislative reply to the narrow holding in *Clark v. Wonnacott*, 30 Idaho 98, 162 P. 1074 (1917), in which the court held that a vacancy was not created when an elected official failed to qualify for office before his death. In that case Wonnacott won the November 1914 election for a two year term of service as Kootenai County Assessor. Two years later, one McFarland won the November 1916 election for that same office, but Mr. McFarland died before he became qualified for the office; that is, before he took the oath of office and posted the then required bond. The Kootenai County Board of County Commissioners declared the office vacant and appointed Clark to the office. Clark then brought an application for a writ of mandate requiring Wonnacott to give over the office to him. The Idaho Supreme Court invalidated the Board's appointment of Clark and held that no vacancy existed such that would authorize the Board to make an appointment to fill the position. The controlling statute at the time was Sec. 32a, Rev. Codes, which stated that every official elected to a public office shall hold that office until his successor is elected and qualified (emphasis added). The court held that there existed no vacancy because McFarland, although elected, had not qualified to take office before his

death, and therefore, the incumbency of Wonnacott was never terminated. Defendants urge this Court to conclude that because Defendants Brown and Keene took their oaths and began serving their terms of office on January 9, 2008, I.C. § 50-469 does not operate to create a vacancy under these facts because the statute creates a vacancy only if the elected official is unqualified and thus unable to take the oath of office.

In the alternative, Plaintiff City of Huetter argues that the holding in *Clark* suggests that had Mr. McFarland been elected and qualified, and then died, a vacancy would have been created that would have triggered an appointment by the Board of County Commissioners.

Due to the various interpretations urged by the parties in the case, and the interrelation of several statutes, this Court will analyze the relevant statutes with a specific emphasis on I.C. § 50-469.

An ordinance is ambiguous where reasonable minds might differ or be uncertain as to its meaning. *Payette River Prop. Owners Ass'n. v. Board of Commissioners of Valley County*, 132 Idaho 551, 976 P.2d 477 (1999). This Court's review of I.C. §50-469 does not lead it to a clear and simple understanding of how that statute should be applied within the body of Idaho election law. Therefore, this court will look to rules of construction for guidance, and will consider the reasonableness of proposed interpretations. *Id.*, at 557, 976 P.2d 477 (1999).

All sections of applicable statutes must be construed together so as to determine the legislature's intent. *Friends of Farm to Market Road v. Valley County*, 137 Idaho 192, 46 P.3d 9 (2002). Separate statutes dealing with the same subject matter should be construed harmoniously, if at all possible, so as to further the legislative intent. *State v. Maland*, 124 Idaho 537, 861 P.2d 107 (Ct.App. 1993). It is also axiomatic to state that statutes should not be

construed in a way that leads to absurd results. *Payette River Prop. Owners Ass'n.* at 557, 976 P.2d 477 (1999).

This Court will now construe the relevant statutes with the above standards in mind.

I.C. §§ 50-601 and 50-702 both require a public official to remain eligible to hold office, that is, to remain a “qualified elector” during his term of office. I.C. §50-469 states that an elected person who fails to “qualify” is subject to a declaration that a vacancy exists, which vacancy shall be filled by the mayor and council. I.C. §59-901 lists several events which cause a vacancy to occur during an elected person’s term of office, including subsection 4, which states that a vacancy is created upon “[t]he decision of a competent tribunal declaring his office vacant.”

**What is a qualified elector?**

Article VI, §2 of the Idaho Constitution defines a “qualified elector” as having accomplished the following four requirements: 1) United States citizenship, 2) 18 years of age, 3) residency in the county in which he is voting, and 4) voter registration under the law.

I.C. §50-402(c) defines a “qualified elector” in essentially the same way, only adding that residency must be for thirty (30) days prior to the election.

The facts pertaining to Defendants Keene and Brown establish that they have at all times, pertinent to this issue, satisfied the requirements of citizenship, age and residency. But the facts also establish that from the dates of January 18, 2008, to February 25, 2008, Defendants were not registered voters. Thus, for that period of time Defendants were not qualified electors during their respective terms of office.

The holding in *Clark*, states that an incumbent holds his office until his successor is both elected and qualified. The logic of this holding implies that if a successor is elected and

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qualified, thus terminating any incumbency, and subsequently during his term of office becomes unqualified, a vacancy is created. In fact, the language of the *Clark* decision is that a vacancy exists where there is no person lawfully authorized to assume and exercise at present the duties of the office. *Id* at 104.

As Defendants Keene and Brown were elected, qualified and took their oaths of office on January 9, 2008, thus terminating any incumbency, but did not remain qualified electors during their terms of offices, this Court hereby declares that a vacancy exists in each office pursuant to I.C. § 59-901(4). Said vacancies are to be filled by the now existing mayor and council of City of Huetter pursuant to I.C. § 50-469.

#### CONCLUSIONS OF LAW

1. The facts of this case present a concrete justiciable controversy appropriate for declaratory judgment.
2. I.C. § 50-601 and § 50-702, respectively, require mayors and councilmen to remain qualified electors during their terms of office.
3. I.C. § 34-2007 is the statutory authority by which an elector may contest the election of a person to any office other than executive state officers and members of the legislature.
4. I.C. § 6-602 is the statutory authority by which an action may be brought in the name of the people of the state against any person who usurps, intrudes into, holds or exercises any office without lawful authority.
5. No vacancy is created when a successor to an office is elected but fails to qualify (i.e., unable to take an oath of office) prior to beginning his term of office. *Clark v. Wonnacott*, 30 Idaho 98, 162 P. 1074 (1917).

6. A vacancy is created when a person elected fails to remain a qualified elector during his term of office. I.C. § 50-469.

7. A person fails to be a qualified elector if that person is not a registered voter. Article VI, § 2, Idaho Constitution; I.C. § 50-402(c).

8. Defendants Brown and Keene were not registered voters from January 18, 2008, to February 25, 2008, during their respective terms of office, and as such were not qualified electors during that period of time.

9. Defendants' failure to remain qualified electors during their respective terms of office creates a vacancy in their offices.

10. This Court declares said vacancies to exist pursuant to I.C. § 59-901(4), said vacancies to be filled by the existing City of Huetter acting mayor and council pursuant to I.C. § 50-469.

Dated this 6 day of May, 2008.

Lansing L. Haynes  
LANSING L. HAYNES  
District Judge

CERTIFICATE OF MAILING/DELIVERY

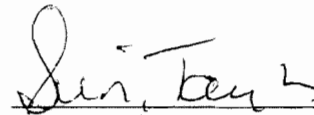
On this 6 day of May, 2008, a true and correct copy of the foregoing was mailed in the U.S. Mails, postage prepaid, sent via interoffice mail, or sent via facsimile, addressed to the following:

Arthur B. Macomber  
Attorney at Law  
408 E. Sherman Avenue, Suite 215  
Coeur d'Alene, ID 83814  
Fax: 208-664-9933

Susan P. Weeks  
James, Vernon & Weeks  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Fax: 208-664-1684

DANIEL J. ENGLISH  
Clerk of the District Court

By:

  
Deputy Clerk

Arthur B. Macomber, Attorney at Law  
 408 E. Sherman Avenue, Suite 215  
 Coeur d'Alene, ID 83814  
 Telephone: 208-664-4700  
 Facsimile: 208-664-9933  
 State Bar No. 7370  
*Counsel to Plaintiff City of Huetter*

STATE OF IDAHO  
 COUNTY OF KOOTENAI } SS  
 FILED

2008 MAY 16 PM 3:10

CLERK DISTRICT COURT  
*[Signature]*  
 DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

CITY OF HUETTER, an Idaho  
 municipal corporation;

Plaintiff,

vs.

BRADLEY W. KEENE and  
 JENNIFER L. BROWN,

Defendants.

Case No: CV-08-2252

**FINAL JUDGMENT**

Pursuant to Idaho Rule of Civil Procedure 54 and based on this Court's May 6,  
 2008 Memorandum Opinion, the Court orders and decrees that:

1. Vacancies are declared to exist in the Mayoral and one Councilperson position of the City of Huetter pursuant to I.C. § 59-901(4), said vacancies to be filled using the procedure mandated by Idaho Code section 50-469;
2. This Court hereby dissolves the stipulated mutual injunction granted on April 9, 2008.

Dated this 16 day of May, 2008.

*Lausing L. Haynes*  
 Judge Haynes

Approved as to Form:

*Susan P. Weeks*  
 Susan Weeks, Counsel for Defendants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16 day of May, 2008, I caused to be served a true and correct copy of the foregoing:

**FINAL JUDGMENT**

by facsimile to:

Susan P. Weeks  
James, Vernon & Weeks, PA  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Facsimile: (208) 664-1684  
*Counsel to Defendants Keene and Brown*

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Arthur B. Macomber, Attorney at Law  
408 E. Sherman Avenue, Suite 215  
Coeur d'Alene, ID 83814  
Telephone: 208-664-4700  
Facsimile: 208-664-9933  
State Bar No. 7370  
*Counsel to Plaintiff City of Huetter*

DANIEL J. ENGLISH

*[Signature]*  
Clerk of the Court



ORIGINAL

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Fax: (208) 664-1684

Attorney for Defendants Keene and Brown

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED: 801665 801670

2008 JUN 27 PM 4: 38

CLERK DISTRICT COURT

*Cathy Vetter*  
DEPUTY CLERK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CITY OF HUETTER, an Idaho municipal  
corporation,

Plaintiff/Respondent,

vs.

BRADLEY W. KEENE and JENNIFER L.  
BROWN,

Defendants/Appellants.

Case No. CV 08-2252

NOTICE OF APPEAL

Fee Category: T

Fee: \$86.00 (Supreme Ct)  
15.00 (Dist. Clerk)

**TO: THE ABOVE NAMED RESPONDENT, CITY OF HUETTER, AND  
THE PARTY'S ATTORNEYS, ART MACOMBER AND THE CLERK OF THE  
ABOVE-ENTITLED COURT.**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, Bradley W. Keene and Jennifer L. Brown, appeal against the above-named Respondent, City of Huetter, to the Idaho Supreme Court from the Final Order, Judgment and Decree entered May 16, 2008.
2. Appellants have a right to appeal to the Idaho Supreme Court and the judgment described in Paragraph 1 is an appealable order under and pursuant to Rule 11(a)(1), Idaho Appellate Rules.

4. A preliminary statement of the issues on appeal which the Appellants then intend to assert in the appeal; provided, such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal:

(a) Did the District Court err in interpreting Idaho statutes and declaring the City of Huetter elected positions filled by Bradley Keene and Jennifer Brown vacant?

6. No order has been entered sealing all or any portion of the record.

7. The Appellants request the preparation of the entire reporter's standard transcript as defined in Rule 25(a) Idaho Appellate Rules.

8. The Appellants request the following documents be included in the clerk's record in addition to those automatically included under Idaho Appellate Rule 28:

- 1 03/31/2008 Memorandum in Opposition to Hearing on Declaratory Judgment to Ascertain Status and Request for Injunction
- 2 03/31/2008 Motion to Shorten Time
- 3 03/31/2008 Notice of Hearing on Motion to Shorten Time
- 4 03/31/2008 Notice Of Appearance Susan P Weeks for Defendants
- 5 04/03/2008 Notice of Hearing
- 6 04/09/2008 Stipulated Order of Preliminary Injunction and Setting Expedited Briefing Schedule for Declaratory Judgment
- 7 04/10/2008 Reply Memorandum To Defendants' Opposition To Request For Declaratory Judgment To Ascertain Status
- 8 04/16/2008 Reply Memorandum In Opposition To Declaratory Judgment
- 9 04/21/2008 Stipulated Facts
- 10 04/24/2008 Hearing result for Motion held on 04/24/2008 03:30 PM: Hearing Held RE: Declaratory Judgment
- 11 04/28/2008 Defendants' Post-Trial Memorandum
- 12 04/29/2008 Plaintiff's Brief Of Clark v. Wonnacott In Support Of Request For Declaratory Judgment
- 13 05/06/2008 Memorandum Opinion: Findings of Fact and Conclusions of Law
- 14 05/16/2008 Final Judgment, Order Or Decree Entered

9. I certify:

- (a) A copy of this notice of appeal has been served on the reporter.
- (b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript and clerk's record.
- (c) The appellate filing fee has been paid.
- (d) Service has been made upon all the parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 27<sup>th</sup> day of June, 2008.

JAMES, VERNON & WEEKS, P.A.

By: Susan P. Weeks  
Susan P. Weeks  
Attorneys for Defendants

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27<sup>th</sup> day of June, 2008, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

Arthur B. Macomber 408 E. Sherman Ave., Ste, 215 Coeur d'Alene, ID 83814		Laurie A. Johnson Court Reporter for Judge Haynes P.O. Box 9000 Coeur d'Alene, ID 83816- 9000	
<input checked="" type="checkbox"/>	Mailed	<input checked="" type="checkbox"/>	Mailed
<input type="checkbox"/>	By Hand	<input type="checkbox"/>	By Hand
<input type="checkbox"/>	Overnight Mail	<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Fax	<input type="checkbox"/>	

Susan D. Neeko

Susan P. Weeks, ISB # 4255  
James, Vernon & Weeks, P.A.  
1626 Lincoln Way  
Coeur d'Alene, ID 83814  
Telephone: (208) 667-0683  
Fax: (208) 664-1684

RECEIVED  
IDaho SUPREME COURT  
COUNTY OF KOOTENAI  
FILED:

2008 JUL 28 AM 9:04  
2008 AUG -1 PM 4:18

CLERK DISTRICT COURT

*Kathleen*  
DEPUTY

Attorney for Defendants Keene and Brown

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CITY OF HUETTER, an Idaho municipal  
corporation,

Plaintiff/Respondent,

vs.

BRADLEY W. KEENE and JENNIFER L.  
BROWN,

Defendants/Appellants.

Supreme Court Docket # 35470

DC Docket # 08-2252

AMENDED NOTICE OF APPEAL

**TO: THE ABOVE NAMED RESPONDENT, CITY OF HUETTER, AND  
THE PARTY'S ATTORNEYS, ART MACOMBER AND THE CLERK OF THE  
ABOVE-ENTITLED COURT.**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, Bradley W. Keene and Jennifer L. Brown, appeal against the above-named Respondent, City of Huetter, to the Idaho Supreme Court from the Final Order, Judgment and Decree entered May 16, 2008.
2. Appellants have a right to appeal to the Idaho Supreme Court and the judgment described in Paragraph 1 is an appealable order under and pursuant to Rule 11(a)(1), Idaho Appellate Rules.

4. A preliminary statement of the issues on appeal which the Appellants then intend to assert in the appeal; provided, such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal:

(a) Did the District Court err in interpreting Idaho statutes and declaring the City of Huetter elected positions filled by Bradley Keene and Jennifer Brown vacant?

6. No order has been entered sealing all or any portion of the record.

7. The Appellants request the preparation of the following portions of the reporter's transcript: Declaratory Judgment trial held 4/24/2008.

8. The Appellants request the following documents be included in the clerk's record in addition to those automatically included under Idaho Appellate Rule 28:

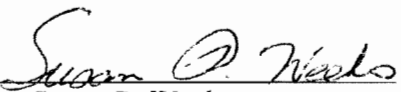
- 1 03/31/2008 Memorandum in Opposition to Hearing on Declaratory Judgment to Ascertain Status and Request for Injunction
- 2 03/31/2008 Motion to Shorten Time
- 3 03/31/2008 Notice of Hearing on Motion to Shorten Time
- 4 03/31/2008 Notice Of Appearance Susan P Weeks for Defendants
- 5 04/03/2008 Notice of Hearing
- 6 04/09/2008 Stipulated Order of Preliminary Injunction and Setting Expedited Briefing Schedule for Declaratory Judgment
- 7 04/10/2008 Reply Memorandum To Defendants' Opposition To Request For Declaratory Judgment To Ascertain Status
- 8 04/16/2008 Reply Memorandum In Opposition To Declaratory Judgment
- 9 04/21/2008 Stipulated Facts
- 10 04/24/2008 Hearing result for Motion held on 04/24/2008 03:30 PM: Hearing Held RE: Declaratory Judgment
- 11 04/28/2008 Defendants' Post-Trial Memorandum
- 12 04/29/2008 Plaintiff's Brief Of Clark v. Wonnacott In Support Of Request For Declaratory Judgment
- 13 05/06/2008 Memorandum Opinion: Findings of Fact and Conclusions of Law
- 14 05/16/2008 Final Judgment, Order Or Decree Entered

9. I certify:

- (a) A copy of this notice of appeal has been served on the reporter.
- (b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript and clerk's record.
- (c) The appellate filing fee has been paid.
- (d) Service has been made upon all the parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 25<sup>th</sup> day of July, 2008.

JAMES, VERNON & WEEKS, P.A.

By:   
Susan P. Weeks  
Attorneys for Defendants

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25<sup>th</sup> day of July, 2008, a true and correct copy of the foregoing document was served upon the following individuals by the method indicated below:

Arthur B. Macomber 408 E. Sherman Ave., Ste, 215 Coeur d'Alene, ID 83814		Laurie A. Johnson Court Reporter for Judge Haynes P.O. Box 9000 Coeur d'Alene, ID 83816- 9000	
<input checked="" type="checkbox"/>	Mailed	<input checked="" type="checkbox"/>	Mailed
	By Hand		By Hand
	Overnight Mail		Overnight Mail
	Fax		

Susan D. Weeks

IN THE SUPRMEME COURT FOR THE STATE OF IDAHO

City of Huetter  
Petitioner

v.

Bradley Keene & Jennifer Brown  
Respondents/Appellants

Civil Case # CV08-2252

Supreme Court Case #35470

CLERK'S CERTIFICATE OF EXHIBITS

I, Daniel J. English, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court of Appeals.

There are no exhibits entered in the above case.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 17 day of DECEMBER, 2008.

Daniel J. English  
Clerk of the District Court

**Kathryn M. McCord**

Deputy Clerk

IN THE SUPRMEME COURT FOR THE STATE OF IDAHO

City of Huetter  
Petitioner

v.

Bradley Keene & Jennifer Brown  
Respondents/Appellants

Civil Case # CV08-2252

Supreme Court Case #35470

CLERK'S CERTIFICATE OF SERVICE

I, Daniel J. English, Clerk of District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record to each of the Attorneys of Record in this cause as follows:

Attorney for Respondents/Appellant

Susan P. Weeks  
1626 Lincoln Way  
Coeur d'Alene, ID 83814

Attorney for Petitioner

Arthur Macomber  
408 E. Sherman Ave. Ste. 215  
Coeur d'Alene, ID 83814

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Kootenai, Idaho this 17 day of DECEMBER, 2008.

DANIEL J. ENGLISH  
Clerk of the District Court  
Kathryn M. McCord

By: \_\_\_\_\_ Deputy

bb

IN THE SUPRMEME COURT FOR THE STATE OF IDAHO

City of Huetter  
Petitioner

v.

Bradley Keene & Jennifer Brown  
Respondents/Appellants

Civil Case # CV08-2252

Supreme Court Case #35470

CLERK'S CERTIFICATE OF MAILING

I, Daniel J. English, Clerk of District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I certify that the attorneys for the appellant and respondent were notified that the Clerk's Record and Reporter's Transcript were complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail; postage prepaid, on the 17 day of DECEMBER, 2008.

I do further certify that the Clerk's Record and Reporter's Transcript will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai, Idaho this 17 day of DECEMBER, 2008.

DANIEL J. ENGLISH

Clerk of District Court

Kathryn M. McCord

By: \_\_\_\_\_ Deputy Clerk

bbb