

7-8-2014

# Hansen v. Denney Clerk's Record Dckt. 42285

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IN THE SUPREME COURT OF THE STATE OF IDAHO

CALEB HANSEN,

Plaintiff-Appellant,

vs.

BEN YSURSA, Idaho Secretary of State,

Defendant-Respondent.

Supreme Court Case No. 42285

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE STEVEN HIPPLER

CALEB HANSEN

APPELLANT PRO SE

BOISE, IDAHO

MICHAEL S. GILMORE

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Caleb Hansen vs. Ben Ysursa

Date	Code	User		Judge
4/18/2014	NCOC	TCLAFFSD	New Case Filed - Other Claims	Steven Hippler
	APPL	TCLAFFSD	Application For Writ Of Mandamus	Steven Hippler
	AFSA	TCLAFFSD	Affidavit In Support Of Application For Writ Of Mandamus	Steven Hippler
4/22/2014	CERS	CCMCLAPM	Certificate Of Service	Steven Hippler
4/23/2014	AFOS	TCLAFFSD	Affidavit Of Service 4.23.14	Steven Hippler
4/24/2014	MOTN	CCNELSRF	Secretary of State's Motion to Dismiss	Steven Hippler
	MEMO	CCNELSRF	Memorandum in Support of Secretary of State's Motion to Dismiss	Steven Hippler
	NOHG	CCNELSRF	Notice Of Hearing	Steven Hippler
	HRSC	CCNELSRF	Hearing Scheduled (Motion to Dismiss 05/14/2014 03:30 PM)	Steven Hippler
4/25/2014	AFOS	CCMARTJD	Affidavit Of Service 4.25.14	Steven Hippler
	NOHG	CCMARTJD	Notice Of Hearing re Application for Writ of Mandamus (5.14.14@3:30pm)	Steven Hippler
5/1/2014	ANSW	CCCHILER	Verified Answer of Secretary of State Ben Ysursa (Gilmore for Ben Ysursa)	Steven Hippler
	AFFD	CCCHILER	Affidavit of Secretary of State Ben Ysursa	Steven Hippler
	MEMO	CCCHILER	Memorandum in Opposition to Application for Writ of Mandamus	Steven Hippler
5/14/2014	DCHH	CCAMESLC	Hearing result for Motion to Dismiss scheduled on 05/14/2014 03:30 PM: District Court Hearing Held Court Reporter: Valsich Number of Transcript Pages for this hearing estimated: 200	Steven Hippler
5/28/2014	ORDR	CCMASTLW	Order and Judgment	Steven Hippler
	CDIS	CCMASTLW	Civil Disposition entered for: Ysursa, Ben, Defendant; Hansen, Caleb, Plaintiff. Filing date: 5/28/2014	Steven Hippler
	STAT	CCMASTLW	STATUS CHANGED: Closed	Steven Hippler
7/8/2014	NOTA	CCTHIEBJ	NOTICE OF APPEAL	Steven Hippler
	APSC	CCTHIEBJ	Appealed To The Supreme Court	Steven Hippler
9/3/2014	NOTC	CCTHIEBJ	Notice of Transcript Lodged - Supreme Court Docket No. 42285	Steven Hippler

APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

Caleb Hansen, Plaintiff Appearing Pro Se  
280 North 8<sup>th</sup> Street Apt # 306  
Boise, ID 83702  
208-861-4658

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Caleb Hansen, )  
Plaintiff Appearing Pro Se )  
Vs. )  
Ben Ysursa Idaho Secretary of State )  
Defendant )

Case NO. ~~CV 00 1407627~~  
APPLICATION FOR WRIT OF MANDAMUS

Jurisdiction for this petition is dictated by Idaho Code, Section 34-215 which states that any person adversely affected by any failure to act of the Secretary of State may appeal to the District Court for the County in which they reside. Plaintiff resides in Ada County.

Time is of the essence and there is no plain speedy and adequate remedy in the ordinary course of law; therefore, a writ of mandate must be issued pursuant to Idaho Code Section 7-303.

Petitioner has sought to obtain from respondent substantially the same act as Petitioner seeks by writ to compel such officer to perform. On the 12<sup>th</sup> day of March 2014, Petitioner submitted Form SC-6A - Declaration of Independent Candidacy for State Representative, along with a petition of 54 signatures certified by the Ada County Clerk as qualified electors in Legislative District 19, and Form C1: Appointment and Certification of Political Treasurer. Having filed the appropriate paperwork in the proper timeframe, petitioner fulfilled every requirement of Idaho Code to be placed on the general election ballot as an Independent candidate for this office, including all of the requirements set forth in Idaho Code Section 34-614(2), and Section 34-708 as follows:

34-614. ELECTION OF STATE REPRESENTATIVES AND SENATORS --  
QUALIFICATIONS.

(2) No person shall be elected to the office of representative or senator unless he shall have attained the age of twenty-one (21) years at the time of the general election, is a citizen of the United States and shall have resided within the legislative district one (1) year next preceding the general election at which he offers his candidacy.

34-708. INDEPENDENT CANDIDATES. (1) No person may offer himself as an independent candidate at the primary election.

(2) Any person who desires to offer himself as an independent candidate for federal, state, district, or county office may do so by complying strictly with the provisions of this section. In order to be recognized as an independent candidate, each such candidate must file with the proper officer as provided by section 34-705, Idaho Code, a declaration of candidacy as an independent candidate, during the period specified in section 34-704, Idaho Code. Such declaration must state that he is offering himself as an independent candidate, must declare that he has no political party affiliation, and must declare the office for which he seeks

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election. Each such declaration must be accompanied by a petition containing the following number of signatures of qualified electors:

- (a) One thousand (1,000) for any statewide office;
- (b) Five hundred (500) for any congressional district office;
- (c) Fifty (50) for any legislative district office;
- (d) Five (5) for any county office.

(3) Signatures on the petitions required in this section shall be verified in the manner prescribed in section 34-1807, Idaho Code.

(4) If all of the requirements of this section have been met, the proper officer shall cause the name of each independent candidate who has qualified to be placed on the general election ballot, according to instructions of the secretary of state.

The Office of the Secretary of State refused to certify the petitioner's candidacy and place his name on the general election ballot. (See Appendix A)

Given that the petitioner has met all of the requirements of Idaho Code Section 34-708, refusal of the Secretary of State's office to place Petitioner's name on the 2014 general election ballot is in violation of Idaho Code Section 34-708(4).

For these reasons, Applicant requests a Writ of Mandamus ordering the Secretary of State to place the name of Caleb Hansen on the ballot for the position of State Representative, Legislative District 19, Seat B, for the general election to be held November 4<sup>th</sup> 2014. This Application for Writ of Mandate is based on the following grounds:

1. The Idaho Secretary of State overreached his constitutional authority by denying Petitioner's application to be placed on the ballot.
  - 1.1. The constitutional duties of Officials in the Executive branch are to enforce statute; they are not empowered to interpret the Constitution, or create laws.
  - 1.2. The laws written by our legislature serve as the constitutional interpretation that is to be enforced.
    - 1.2.1. IDAHO CONSTITUTION ARTICLE XXI SECTION 15:  
LEGISLATURE TO PASS NECESSARY LAWS. The legislature shall pass all necessary laws to carry into effect the provisions of this Constitution.
  - 1.3. No statute in Idaho Code disqualifies the Applicant from holding the office of State Representative, or from being placed on the ballot for election to that office. The Office of the Secretary of State has also made no assertion that any such statute exists.
  - 1.4. The interpretation of the Constitution used by the Secretary of State and the Attorney General to justify rejecting the application is one that is neither justified by law nor clearly endorsed by any decision of Idaho Courts. It is nothing less than the Executive Branch overreaching their authority by attempting to interpret the Constitution.
  - 1.5. When the State office overseeing elections creates and decides to enforce a statute that does not exist, (see bold text in Appendix E), they have essentially created a law. Even though it does not exist in Idaho

Code, the effect on the citizens of the State is the same as if it did. This is nothing less than the Executive Branch overreaching their authority by attempting to create law.

2. The assertion that our State Constitution's use of the word "elector" signifies a "Qualified Elector" cannot be made without accusing the Legislature of failing to fulfill their obligations described in Article 21 Section 15 of the Idaho Constitution.
  - 2.1. If the Idaho Constitution contains a provision requiring a person to be registered to vote for 1 year before their election in order to qualify for the position of State Representative, as the Secretary of State asserts that it does; then the Legislature has failed to pass the necessary law to carry that provision into effect.
  - 2.2. The Legislature has not failed to pass necessary laws, instead they made it clear that the Constitution in Article 3 Section 6 does not refer to a "Qualified Elector", it refers to an elector without respect to their voter registration status. This argument is justified by their repeated use of the word "elector" throughout our voter registration law clearly and unambiguously referring to citizens qualified to participate in our democracy who may not be registered to vote.

34-404. REGISTRATION OF ELECTORS. (1) All *electors* must register before being able to vote at any primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code... (*emphasis added*)

34-407. PROCEDURE FOR REGISTRATION. (1) Any county clerk or official registrar shall register without charge any *elector* who personally appears in the office of the county clerk or before the official registrar, as the case may be, and requests to be registered.

(2) Upon receipt of a written application to the county clerk from any *elector* who, by reason of illness or physical incapacity is prevented from personally appearing in the office of the county clerk or before an official registrar, the county clerk or an official registrar so directed by the county clerk shall register such *elector* at the place of abode of the *elector*. (*emphasis added*)

34-410. MAIL REGISTRATION. Any *elector* may register by mail for any election... (*emphasis added*)

34-411. APPLICATION FOR REGISTRATION -- CONTENTS. (1) Each *elector* who requests registration shall supply the following information under oath or affirmation... (*emphasis added*)

- 2.2.1. If we apply the same definition of "elector" used by our legislature in Idaho Code, to the word "elector" used in the Idaho Constitution Article 3 Section 6, we see that there is no constitutional provision requiring voter registration to run for State Representative or Senator.
  - 2.2.1.1. This eliminates the anomaly of this rare alleged requirement for State Representatives and Senators. No other State office requires voter registration as a qualification to run for office.
  - 2.2.2. We can also see the Legislature's exact interpretation of the Idaho Constitution Article 3 Section 6, in the law that they passed to carry that provision into effect, codified as Section 34-614.

2.2.2.1. IDAHO CONSTITUTION ARTICLE 3:

Section 6. QUALIFICATIONS OF MEMBERS. No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county or district whence he may be chosen.

2.2.2.2. IDAHO CODE Section 34-614 (2): No person shall be elected to the office of representative or senator unless he shall have attained the age of twenty-one (21) years at the time of the general election, is a citizen of the United States and shall have resided within the legislative district one (1) year next preceding the general election at which he offers his candidacy.

3. The use of the term “elector” does not give any indication of voter registration status in the absence of additional descriptive words.
  - 3.1. A specifically enumerated definition of the word “elector” does not exist anywhere in the Idaho Constitution, or Idaho Code, and has not been directly decided by any court of jurisdiction in Idaho. The Attorney General’s Office asserted in 1998 that DREDGE MINING CONTROL-YES!, INC. v. CENARRUSA (see appendix B) could be used to justify defining “elector” to share a definition with the terms “Qualified Elector”, “Registered Elector”, and “Legal Voter”. This assertion lacks believability for several reasons.
  - 3.2. The Letter concludes *“Instead, a reviewing court will probably rule that an individual can only be considered an ‘elector’ if he or she meets all conditions set out in Art. 6, sec. 2, and is ‘registered as provided by law.’ Art.6, sec. 2.”* This is difficult to reconcile with the majority opinion from this case which chose to use the word “also” in the following sentence: “In order to vote upon an initiative ballot, a person must have the qualifications of an elector and also be registered according to law.” This shows that one can be an “elector”, without also being registered to vote. In order to become a “Registered Elector”, a “Qualified Elector”, or a “Legal Voter”, an “elector” must *also* register according to law.
  - 3.3. If it is determined that the term “elector” does share a definition with these terms, there will be no word left in Idaho Law to describe a person that has all of the qualifications to participate in our democracy, but is not currently registered to vote in accordance with the law.
  - 3.4. If it is determined that the term “elector” does share a definition with these terms, then Idaho Code provides only for the registration of those who are already registered according to law.
    - 3.4.1. Idaho Code Section 34-407(1) “ Any county clerk or official registrar shall register without charge any elector who personally appears in the office of the county clerk or before the official registrar, as the case may be, and requests to be registered.”
    - 3.4.2. Defining the term “elector” to signify someone who is already registered according to law can only allow for an absurd interpretation of our voter registration laws.
  - 3.5. A person may have all of the qualifications of an elector, and not have all of the qualifications of a “Qualified Elector”. Qualifying to be an “elector” is different from qualifying to be a “Qualified Elector”; even a “Disqualified Elector” is still referred to as an elector in Idaho Code.

**3.5.1. Idaho Code, Section 34-403. DISQUALIFIED ELECTORS NOT PERMITTED TO VOTE.** No elector shall be permitted to vote if he is disqualified as provided in article 6, sections 2 and 3 of the state constitution.

4. The fact that the word “elector” is modified by adjectives, to signify if the elector is properly registered according to law, indicates that the definition of “elector” lacks this designation. This is the distinction between the terms “elector” and “qualified elector”/“registered elector”/“legal voter”. Every term designated by law to represent someone who has registered to vote contains a qualifying word. Legal, qualified, and registered are the indicators that in addition to possessing all of the qualifications of an elector, a person has also registered according to law.
  - 4.1. Idaho Code 34-104. "QUALIFIED ELECTOR" DEFINED. "Qualified elector" means 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.
  - 4.2. Idaho Code 34-105. "REGISTERED ELECTOR" DEFINED. "Registered elector", for the purpose of this act, means any "qualified elector".
  - 4.3. “Legal Voter” as decided by DREDGE MINING CONTROL-YES!, INC. v. CENARRUSA means a “Registered Elector” or “Qualified Elector”
5. Voter registration is important to prevent fraud in matters of voting and petition signing. It serves no purpose as a requirement to run for office. If it did, it would be required for other State offices as well.
  - 5.1. Idaho allows same day voter registration at our polling places. This removes any reason for an Idaho Citizen to immediately update their voter registration upon moving. The explanation provided by County Clerks to citizens about how to maintain their registration when moving within the State, often includes the suggestion to simply update their registration at the polling place on Election Day. The Secretary of State’s position is that this seemingly sound advice will disqualify many who follow it from running for State Representative or Senator for some time beyond the actual required residency term.
  - 5.2. November 5<sup>th</sup> 2013 was Election Day, so anyone who registered at a polling site and voted would be disqualified from running for State Representative this year because they are allegedly one day short of the legal requirements. I assert that there is no purpose to this policy, no benefit to the State or its citizens, while there is a clear harm in turning away qualified persons from running for the legislature.
  - 5.3. The requirement to maintain voter registration for a year before running for office is completely arbitrary. It does not insure that the candidate makes any use of his registration during that time, while leaving room for those who do vote to still be disqualified.
6. If voter registration is perceived to be a requirement of serving in the Idaho Legislature, then that raises some other interesting questions-
  - 6.1. If a legislator moves within his district, and forgets to update his voter registration, his registration is legally considered canceled and he is no longer a qualified elector;
    - 6.1.1. Must he be removed from office?
    - 6.1.2. Would he be barred from running for re-election?



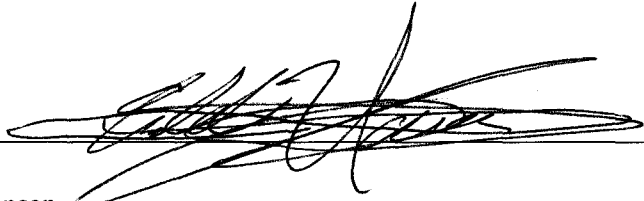
6.1.3. Furthermore, what statute provides for a party to be responsible for tracking this information and enforcing this policy?

7. Time is of the essence; Applicant's election opponent is already fundraising and campaigning while Applicant cannot do so until registered as a candidate with the Secretary of State's office.

Based on these arguments the Applicant requests that the court speedily issue a Writ of Mandate compelling the Secretary of State to certify the Applicant's candidacy and include the name "Caleb Hansen" on the November 4<sup>th</sup> 2014 general election ballot as an unaffiliated candidate for State Representative District 19 Seat B.

Dated this 18<sup>th</sup> day of April, 2014

Signed

A handwritten signature in black ink, appearing to read "Caleb Hansen", written over a horizontal line.

Caleb Hansen  
Applicant, Appearing Pro Se

Appendices:

Only the constitutional qualifications of the Applicant were disputed, not the petitions and other paperwork submitted to the Secretary of State. Papers stipulated by both sides to have been in proper order have not been included in this Pleading. Papers not disputed include Declaration of Candidacy for the position of State Representative District 19 Seat B, a Nominating Petition of 54 signatures certified by the Ada County Clerk as Qualified Electors in District 19, and Form C1: Appointment and Certification of Political Treasurer. Since they are not disputed, attaching them would serve no evidentiary purpose.

Appendix A - Letter explaining rejection from the Secretary of State's Office written to Caleb Hansen, by Timothy A. Hurst, Chief Deputy Secretary of State

Appendix B - 1998 Letter from the Attorney General's office used by the Secretary of State to defend the decision to reject Petitioner's application for candidacy. Originally received by petitioner as an attachment to Appendix A

Appendix C- A blank copy of Form SC-6A - Declaration of Independent Candidacy for State Representative. This form was created by the Secretary of State's Office, and creates the nonexistent statute, requiring 1 full year of voter registration, with bold print.



# APPENDIX A

STATE OF IDAHO  
OFFICE OF THE SECRETARY OF STATE  
BEN YSURSA

March 12, 2014

Caleb Hansen  
3163 East Fairview Ave, Suite #150  
Meridian, ID 83642

Mr. Hansen:

Article III, section 6 of the Idaho Constitution lays out the qualifications of an individual to serve as a member of the Idaho Legislature. It says:

"No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county or district whence he may be chosen."


The Constitution, in Article VI Section 2, also defines an elector. Again, it says:

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

According to the voter registration records of the State, you would not meet the qualifications to be an Idaho Legislator this year. Your name will, therefore, not appear on the primary election ballot. Enclosed is a letter from the Attorney General issued in 1998 addressing this issue. Your petitions are being returned as of this date.

If you disagree with this decision, Idaho Code section 34-215 provides that you may appeal to the District Court for remedy.

Sincerely,

  
TIMOTHY A. HURST  
Chief Deputy  
Secretary of State

TAH/lm  
Enclosure: As cited

P.O. Box 83720, Boise, Idaho 83720-0080  
Telephone: (208) 334-2300, FAX: (208) 334-2282  
Located at 700 West Jefferson, Suite E205

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# APPENDIX B



## COPY

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SECRETARY OF STATE  
STATE OF IDAHO

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE

April 9, 1998

Ralph L. Smith, Ph.D.  
3000 N. Coliseum Avenue  
Boise, ID 83713

Re: Signifying for State Legislative Office

Dear Dr. Smith:

Your recent letter to Attorney General Lance concerning your filing as a candidate for the state legislature has been forwarded to me for review. In particular, you ask this office to determine whether the Secretary of State properly refused to accept your Declaration of Certifiacy for the state legislature. This office concludes that since the Idaho Constitution requires members of the legislature to have been a registered voter of the district they represent for at least one year, individuals who have not met that registered voter requirement are ineligible to sit in the state legislature. Since you would be ineligible to hold a seat in the state legislature if you are elected, the Secretary of State was correct to refuse to accept your Declaration of Certifiacy.

Art. 3, sec. 6 of the Idaho Constitution establishes the following qualifications for members of the Idaho legislature:

No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county<sup>1</sup> or district whence he may be chosen.

It is plain that, in order to serve in the state legislature, you must have been an "elector" of the district you intend to represent for at least "one year" before the general election in November, 1998.

Art. 6, sec. 2 of the Idaho Constitution sets out the qualifications for an "elector":

1. Thiruse of the disjunctive phrase, "county or district," refers to the fact that state senators were once elected by county, rather than by district. Since 1972, all state legislators are elected by district. See Idaho Code § 34-614(1) ("Top of the general election, 1972, and every alternate year thereafter, there shall be elected in each legislative district such representatives and senators as they may be severally entitled").

April 9, 1998

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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 of time provided by law, if registered as provided by law, is a qualified elector (emphasis added).

The plain language of Art. 6, sec. 2, conditions status as an elector upon being "registered" to vote "as provided by law." Therefore, when Art. 3, sec. 6, and Art. 6, sec. 2, are interpreted together, it is clear that in order to hold office as a state legislator, an individual must have been a registered voter of the district he or she represents for at least one year before the general election.

Your letter indicates that the Idaho State Democratic Party Chairman, Tony Park, planned to send some analysis of this issue. While this office has not received anything in writing from Mr. Park, it is my understanding that Mr. Park offers a different analysis because he believes there is an important difference between the terms "elector" and "qualified elector" in the two constitutional provisions. Art. 3, sec. 6, refers to an "elector." Art. 6, sec. 2, on the other hand, refers to a "qualified elector." Mr. Park believes that these differing terms mean that the framers of the Idaho Constitution did not intend to require that registration to vote "as provided by law" is a condition of being an "elector." Rather, Mr. Park asserts, voter registration is only required to be a "qualified elector."

In Dredge Mining Control, 92 Idaho 480, 445 P.2d 655 (1968), the Idaho Supreme Court considered a very similar question. The case concerned the validity of signatures gathered on initiative petitions. One of the issues appealed by the plaintiff in Dredge Mining Control was that the district court had ruled that the phrases "legal voter," as used in the initiative statute, included a registration requirement.

[The trial court entered certain conclusions of law which are the basis of appellant's assignments of error. Among these is the conclusion entered by the trial court to the effect that for a person to be eligible to have his signature on the petition counted, it is necessary that such person not only meet the age and residence requirements to vote prescribed by the constitution, but also that he be registered in the manner prescribed by law. The appellant contends the trial court erred in this regard, asserting that the only requirement for signing an initiative petition is that the person in fact have the constitutional qualifications to vote, whether registered or not.]

Dredge Mining Control, 92 Idaho at 482 (emphasis added).

The Idaho Supreme Court reviewed the language of Art. 6, sec. 2, and agreed with the district court:

It is our conclusion that the legislature in its use of the term "legal voter" in the acts pertaining to the initiative measure, contemplated that the

APPENDIX B

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April 9, 1998

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signers of the petition must be persons who are registered electors. . . . In order to vote upon an initiative ballot, a person must have the qualifications of an elector and also be registered according to law. (Idaho Const. Art. 6, §.2) Therefore, in order that a person be qualified to sign the initiative petition he must be eligible to vote upon the measure, and hence must be registered.

Dredge Mining Control, 92 Idaho at 482.

A reviewing court is likely to follow the Dredge Mining Control rationale in this case. If a court does follow Dredge Mining Control, it will rule that a person is not an "elector," for purposes of Art. 6, sec. 2, simply because he or she has "the constitutional qualifications to vote, whether registered or not." Dredge Mining Control, 92 Idaho at 482. Instead, a reviewing court will probably rule that an individual can only be considered an "elector" if he or she meets all conditions set out in Art. 6, sec. 2, and is "registered as provided by law." Art. 6, sec. 2.

I hope this letter is helpful. If you have any additional questions or comments, please feel free to contact me.

Sincerely

  
MATTHEW J. MCKHOWN  
Deputy Attorney General  
Intergovernmental and Fiscal Law Division

MMJ:j

cc: W. Anthony Park

**APPENDIX B**

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# APPENDIX C

To The Honorable Ben Ysursa  
Secretary of State - State of Idaho

# APPENDIX C

## DECLARATION OF CANDIDACY OF

\_\_\_\_\_  
Please print name exactly as you wish it to appear on the ballot.

### FOR OFFICE OF

### STATE REPRESENTATIVE

I, the undersigned, being a resident of \_\_\_\_\_ County,  
\_\_\_\_\_ Legislative District, State of Idaho, registered with no Political Party  
affiliation (i.e. unaffiliated), do hereby declare myself to be a candidate for the  
office of State Representative - Position \_\_\_\_\_, such office to be voted for at the  
(Indicate A or B)  
General Election to be held on the 4th day of November, 2014, and that my  
residence address is  
\_\_\_\_\_.

\_\_\_\_\_  
(Mailing address if different from above)

I further certify that I possess the legal qualifications to hold said office, which  
are that I have attained the age of at least 21 years at the time of the General  
Election, I am a United States Citizen, and have been a resident and registered  
elector within the Legislative District listed above for one year preceding the  
General Election.

Dated: \_\_\_\_\_, 2014.

Signed: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature: \_\_\_\_\_

Notary Public in and for the State of Idaho  
residing at  
\_\_\_\_\_

(Notary Seal)

My Commission Expires: \_\_\_\_\_

Caleb Hansen, Plaintiff Appearing Pro Se  
280 North 8<sup>th</sup> Street Apt # 306  
Boise, ID 83702  
208-861-4658

APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

STEVEN HIPPLER

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Caleb Hansen, )  
Plaintiff, Appearing Pro Se )  
Vs. )  
Ben Yursa Idaho Secretary of State )  
Defendant )

Case NO. CV 0C 1407627

AFFIDAVIT IN SUPPORT OF APPLICATION  
FOR WRIT OF MANDAMUS

STATE OF IDAHO )  
 ) ss:  
County of Ada )

I, Caleb Hansen, being first duly sworn, and upon personal knowledge of the facts and circumstances recited herein, depose and state:

I am the Plaintiff in this action. On March 12<sup>th</sup> of this year, I submitted all the necessary paperwork to the Secretary of State to register as an Independent candidate for State Representative in Seat B of District 19. I was told by the Chief Deputy that I did not meet the constitutional requirement of having been a registered voter for the full year preceding the election. I tried to plead my case with him, but he acted as if he had heard it all before, and informed me I would have to go to the courts if I wanted to appeal. At this time I requested a letter detailing the reasons for my rejection so that I could make sure there were no procedural, typographical, or technical errors which I could correct before the deadline 2 days away on the 14<sup>th</sup>. I wanted this letter of rejection so that I could be sure of every cause for my rejection. The Chief Deputy, Timothy A. Hurst, sent me a letter (Appendix A) which listed his constitutional argument as the sole reason for the rejection of my application. Unfortunately this letter showed that the level of attention applied to my case, was not enough to recognize that I am running unaffiliated with a political party, and accordingly only applied to be included on the general election ballot, not the primary. He also attached a letter from the Attorney General's office dated April 9<sup>th</sup>, 1998 (Appendix B) as the legal foundation for his decision, since I had already pointed out that there was no statute to justify my rejection.

CS



Since the source of the legal justification was nothing more than a letter from the Attorney General's Office, I decided to ask that Office to reconsider the opinion issued by their predecessors. I delivered a letter outlining my arguments to the Attorney General's office (Appendix C). The response I received suggested that the reason they thought I was writing was to ask them to change one of the laws that I cited to prove my argument. I did not understand how this major miscommunication could have happened, so after receiving their response letter (Appendix D), I went into the office to speak with Kriss Bivens Cloyd, who wrote the response. It was made clear to me that no one at the Attorney General's office would spend any time to look into my issue because I am just a citizen, not a State Official or Agency. It was again suggested that the courts are my only avenue for relief. I have tried every available avenue and there truly is no plain speedy and adequate remedy in the ordinary course of law.

Because the candidate that Applicant will be running against is already fundraising and campaigning, time is of the essence. A speedy issuance of a Writ of Mandamus is the only hope for relief.

Further your affiant sayeth naught.

Dated 4, 18, 2014

Signed [Signature]

SUBSCRIBED AND SWORN TO Before me this 18 day of April, 2014.

[Signature]



Notary Public for Idaho  
Residing at Bose, Idaho  
Commission Expires 12-17-2014

Appendices:

Only the constitutional qualifications of the Applicant were disputed, not the petitions and other paperwork submitted to the Secretary of State. Papers stipulated by both sides to have been in proper order have not been included in this Pleading. Papers not disputed include Declaration of Candidacy for the position of State Representative District 19 Seat B, a Nominating Petition of 54 signatures certified by the Ada County Clerk as Qualified Electors in District 19, and Form C1: Appointment and Certification of Political Treasurer. Since they are not disputed, attaching them would serve no evidentiary purpose.

Appendix A - Letter explaining rejection from the Secretary of State's Office written to Caleb Hansen, by Timothy A. Hurst, Chief Deputy Secretary of State

Appendix B - 1998 Letter from the Attorney General's office used by the Secretary of State to defend the decision to reject Petitioner's application for candidacy. Originally received by petitioner as an attachment to Appendix A

Appendix C - Petitioner's letter requesting clarification from the Attorney General

Appendix D - Response letter written by Kriss Bivens Cloyd, from Attorney General's office to Applicant in response to Appendix C



# APPENDIX A

STATE OF IDAHO  
OFFICE OF THE SECRETARY OF STATE  
BEN YSURSA

March 12, 2014

Caleb Hansen  
3163 East Fairview Ave, Suite #150  
Meridian, ID 83642

Mr. Hansen:

Article III, section 6 of the Idaho Constitution lays out the qualifications of an individual to serve as a member of the Idaho Legislature. It says:

"No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county or district whence he may be chosen."


The Constitution, in Article VI Section 2, also defines an elector. Again, it says:

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

According to the voter registration records of the State, you would not meet the qualifications to be an Idaho Legislator this year. Your name will, therefore, not appear on the primary election ballot. Enclosed is a letter from the Attorney General issued in 1998 addressing this issue. Your petitions are being returned as of this date.

If you disagree with this decision, Idaho Code section 34-215 provides that you may appeal to the District Court for remedy.

Sincerely,

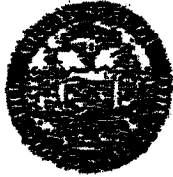
  
TIMOTHY A. HURST  
Chief Deputy  
Secretary of State

TAH/lm  
Enclosure: As cited

P.O. Box 83720, Boise, Idaho 83720-0080  
Telephone: (208) 334-2300, FAX: (208) 334-2282  
Located at 700 West Jefferson, Suite E205

000018

# APPENDIX B



COPY

98 APR -9 PM 9: 58  
SECRETARY OF STATE  
STATE OF IDAHO

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
ALAN G. LANCE  
April 9, 1998

Ralph L. Smith, Ph.D.  
3000 N. Columbine Avenue  
Boise, ID 83713

Re: Eligibility for State Legislative Office

Dear Dr. Smith:

Your recent letter to Attorney General Lance concerning your filing as a candidate for the state legislature has been forwarded to me for review. In particular, you ask this office to determine whether the Secretary of State properly refused to accept your Declaration of Candidacy for the state legislature. This office concludes that since the Idaho Constitution requires members of the legislature to have been a registered voter of the district they represent for at least one year, individuals who have not met that registered voter requirement are ineligible to sit in the state legislature. Since you would be ineligible to hold a seat in the state legislature if you are elected, the Secretary of State was correct to refuse to accept your Declaration of Candidacy.

Art. 3, sec. 6 of the Idaho Constitution establishes the following qualifications for members of the Idaho legislature:

No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county<sup>1</sup> or district whence he may be chosen.

It is plain that, in order to serve in the state legislature, you must have been an "elector" of the district you intend to represent for at least "one year" before the general election in November, 1998.

Art. 6, sec. 2 of the Idaho Constitution sets out the qualifications for an "elector":

<sup>1</sup> The use of the disjunctive phrase, "county or district," refers to the fact that state senators were once elected by county, rather than by district. Since 1972, all state legislators are elected by district. See Idaho Code § 34-614(1) ("[a]t the general election, 1972, and every alternate year thereafter, there shall be elected in each legislative district such representatives and senators as they may be severally entitled").

April 9, 1998

Page - 2

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 of time provided by law, if registered as provided by law, is a qualified elector (emphasis added).

The plain language of Art. 6, sec. 2, conditions status as an elector upon being "registered" to vote "as provided by law." Therefore, when Art. 3, sec. 6, and Art. 6, sec. 2, are interpreted together, it is clear that in order to hold office as a state legislator, an individual must have been a registered voter of the district he or she represents for at least one year before the general election.

Your letter indicates that the Idaho State Democratic Party Chairman, Tony Park, planned to send some analysis of this issue. While this office has not received anything in writing from Mr. Park, it is my understanding that Mr. Park offers a different analysis because he believes there is an important difference between the terms "elector" and "qualified elector" in the two constitutional provisions. Art. 3, sec. 6, refers to an "elector." Art. 6, sec. 2, on the other hand, refers to a "qualified elector." Mr. Park believes that these differing terms mean that the framers of the Idaho Constitution did not intend to require that registration to vote "as provided by law" is a condition of being an "elector." Rather, Mr. Parks asserts, voter registration is only required to be a "qualified elector."

In Dredge Mining Control-Yesel, Inc. v. Cansurra, 92 Idaho 480, 445 P.2d 655 (1968), the Idaho Supreme Court confronted a very similar question. The case concerned the validity of signatures gathered on initiative petitions. One of the issues appealed by the plaintiff in Dredge Mining Control was that the district court had ruled that the phrase "legal voter," as used in the initiative statute, included a registration requirement.

[The trial court entered certain conclusions of law which are the basis of appellant's assignments of error. Among these is the conclusion entered by the trial court to the effect that for a person to be eligible to have his signature on the petition counted, it is necessary that such person not only meet the age and residence requirements to vote prescribed by the constitution, but also that he be registered in the manner prescribed by law. The appellant contends the trial court erred in this regard, asserting that the only requirement for signing an initiative petition is that the person in fact have the conditional qualifications to vote, whether registered or not.

Dredge Mining Control, 92 Idaho at 482 (emphasis added).

The Idaho Supreme Court reviewed the language of Art. 6, sec. 2, and agreed with the district court.

It is our conclusion that the legislature in its use of the term "legal voter" in the acts pertaining to the initiative measures, contemplated that the

APPENDIX B

000020

April 9, 1998

Page - 3


signers of the petition must be persons who are registered electors. . . . In order to vote upon an initiative ballot, a person must have the qualifications of an elector and also be registered according to law. (Idaho Const. Art. 6, § 2) Therefore, in order that a person be qualified to sign the initiative petition he must be eligible to vote upon the measure, and hence must be registered.

Dredge Mining Control, 92 Idaho at 482.

A reviewing court is likely to follow the Dredge Mining Control rationale in this case. If a court does follow Dredge Mining Control, it will rule that a person is not an "elector," for purposes of Art. 6, sec. 2, simply because he or she has "the constitutional qualifications to vote, whether registered or not." Dredge Mining Control, 92 Idaho at 482. Instead, a reviewing court will probably rule that an individual can only be considered an "elector" if he or she meets all conditions set out in Art. 6, sec. 2, and is "registered as provided by law." Art. 6, sec. 2.

I hope this letter is helpful. If you have any additional questions or comments, please feel free to contact me.

Sincerely

  
MATTHEW J. McKEOWN  
Deputy Attorney General  
Intergovernmental and Fiscal Law Division

MJM:j

cc: W. Anthony Park

**APPENDIX B**

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# APPENDIX C

Caleb Hansen  
280 N. 8<sup>th</sup> St. #306  
Boise, ID 83702  
March 18, 2014

Office of the Attorney General  
Lawrence G. Wasden

Dear Mr. Wasden,

On March 12<sup>th</sup> 2014 I submitted to the Secretary of State's office completed paperwork to file as an independent candidate for state representative. In their rejection of my application, they cited a letter from the Idaho Attorney General's office dated April 9, 1998. I have included copies of the letters provided by the Secretary of State explaining my rejection. I believe some of the conclusions drawn by the deputy who wrote the opinion, to be unjustified. Please take the following into consideration, and issue an updated statement.

I concur with the analysis of Mr. Tony Park mentioned in the 1998 letter, that there is an important difference between the terms "elector" and "qualified elector". I do not contest the conclusion that a reviewing court will most likely follow the Dredge Mining Control rationale in this case, but I completely disagree with how it is suggested the court would go about doing so. The 1998 opinion suggests that the court would simply apply the same definition to the term "elector" as it has to the term "legal voter", but there is nothing in the written decision from that case to suggest the court believed those terms should have the same meaning. In fact, they use the term "elector" in the decision several times in context that is clearly, and exclusively, in line with the analysis suggested by Mr. Park, and myself.

"... In order to vote upon an initiative ballot, a person must have the qualifications of an elector and also be registered according to law."

This clearly illustrates that the court saw a distinction between someone who has all of the qualifications of an elector, and one who has also registered to vote. This is the distinction between the terms "elector" and "qualified elector"/"registered elector"/"legal voter". Every term designated by law to represent someone who has registered to vote contains a qualifying word. Legal, qualified, and registered are the indicators that in addition to possessing all of the qualifications of an elector, a person has also registered according to law.

I can see nothing written in the decision that can be viewed as a suggestion that the definition of "legal voter" should be applied to the term "elector". If the reviewing court were to arbitrarily apply the definition of "legal voter" decided by the Dredge case to the word "elector" they would eliminate the only word left in the law to describe a person who has all of the qualifications to vote but has not registered. I respectfully submit that doing so, while simultaneously adding a 4<sup>th</sup> word to a list of terms that already share a single definition, would qualify as an absurd result under statute (73-113[2]).

There are other instances in law that clearly display the intended interpretation. Consider our voter registration law itself.

#### TITLE 34 ELECTIONS - CHAPTER 4

##### VOTERS -- PRIVILEGES, QUALIFICATIONS AND REGISTRATION

34-411. APPLICATION FOR REGISTRATION -- CONTENTS. (1) Each elector who requests registration shall supply the following information under oath or affirmation:

- (a) Full name and sex.
  - (b) Mailing address, residence address or any other necessary information definitely locating the elector's residence.
  - (c) The period of time preceding the date of registration during which the elector has resided in the state.
  - (d) Whether or not the elector is a citizen.
  - (e) That the elector is under no legal disqualifications to vote.
  - (f) The county and state where the elector was previously registered, if any.
  - (g) Date of birth.
  - (h) Current driver's license number or identification card issued by the Idaho transportation department. In the absence of an Idaho driver's license or state issued identification card, the last four (4) digits of the elector's social security number.
- (2) As provided for in section 34-404, Idaho Code, each elector shall select an affiliation with a political party qualified to participate in elections pursuant to section 34-501, Idaho Code, or select to be designated as "unaffiliated." The selection of party affiliation or designation as "unaffiliated" shall be maintained within the voter registration system as provided for in section 34-437A, Idaho Code. If an elector shall fail or refuse to make such a selection, the county clerk shall record as "unaffiliated" such elector within the voter registration system as provided for in section 34-437A, Idaho Code.
- (3) Any elector who shall supply any information under subsection (1) of this section, knowing it to be false, is guilty of perjury.
- (4) Each elector who requests registration may, at the elector's option, supply the elector's telephone number. If the telephone number is supplied by the elector, the telephone number shall be available to the public.

34-407. PROCEDURE FOR REGISTRATION. (1) Any county clerk or official registrar shall register without charge any elector who personally appears in the office of the county clerk or before the official registrar, as the case may be, and requests to be registered.

## APPENDIX C



(2) Upon receipt of a written application to the county clerk from any elector who, by reason of illness or physical incapacity is prevented from personally appearing in the office of the county clerk or before an official registrar, the county clerk or an official registrar so directed by the county clerk shall register such elector at the place of abode of the elector.

If electors are already registered by definition, then why are they applying for registration?

Why is our voter registration law the only place in statute where the term "elector" is used so often, yet never preceded by "qualified" or "registered"? Suggesting they are synonymous can only result in an absurd interpretation of our voter registration law.

Furthermore, if we are to believe this is a requirement to qualify for office, there must be some benefit accomplished by it. The fact that no other state position requires the candidates to be registered voters, let alone for a full year preceding their election, suggests there is no benefit achieved from this requirement, and its application here is an arbitrary misinterpretation. Registration does not grant any new qualifications to electors, it is simply the first step in the physical process of voting, for those who are already qualified.

If voter registration is perceived to be a requirement of serving in Idaho's legislature, then that raises some other interesting questions- If a legislator moves within his district, and forgets to update his voter registration, his registration is canceled and he is no longer a qualified elector; must he be removed from office? Or would he simply be barred from running for re-election?

Thank you for your time and consideration. I look forward to reading your insights into this important issue.

Sincerely,

Caleb Hansen

**APPENDIX C**

000024



# APPENDIX D

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

March 19, 2014

Caleb Hansen  
280 N 8<sup>th</sup> Street #306  
Boise, ID 83702

Dear Mr. Hansen:

Thank you for your most recent correspondence to the Attorney General's Office seeking a legal opinion concerning the terms "elector" and "qualified elector."

The Attorney General by law is required to give legal opinions in writing to the Legislature, the Governor, Secretary of State, Treasurer, State Controller, the Superintendent of Public Instruction and the trustees or commissioners of state institutions, when requested, upon any question of law relating to their respective offices.

The Attorney General by law cannot provide the legal guidance you are seeking.

If you believe Idaho Code Section 34-411 should be changed, I would encourage you to contact your local elected legislators.

Sincerely,

A handwritten signature in black ink, appearing to read "Kriss Bivens Cloyd".

KRISS BIVENS CLOYD  
Constituent Information Specialist

/kbc

H. P. Plover / Hansen  
MMA 4/25/14

Caleb Hansen, Plaintiff Appearing Pro Se  
280 North 8<sup>th</sup> Street Apt # 306  
Boise, ID 83702  
208-861-4658

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 5

APR 22 2014

CHRISTOPHER D. RICH, Clerk  
By PATRICK McLAUGHLIN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Caleb Hansen, )  
Plaintiff Appearing Pro Se )  
Vs. )  
Ben Ysursa Idaho Secretary of State )  
Defendant )

Case NO. CV OC 1407627

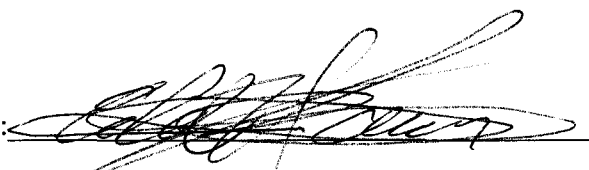
CERTIFICATE OF SERVICE

I certify that on the 21st day of April, 2014, I served two (2) true and accurate copies of the APPLICATION FOR WRIT OF MANDAMUS, and the AFFIDAVIT IN SUPPORT OF APPLICATION FOR WRIT OF MANDAMUS on the Attorney General of Idaho's Office, by hand delivering them to their office in the State Capitol Building, in accordance with I.R.C.P 4(d)(5) and I.R.C.P 5(b).

I further certify that on the 22nd day of April, 2014, I served true and accurate copies of the APPLICATION FOR WRIT OF MANDAMUS, and the AFFIDAVIT IN SUPPORT OF APPLICATION FOR WRIT OF MANDAMUS on the following persons, by deposit in the U.S. Mail, addressed as follows and with the correct first-class postage affixed thereto.

The Honorable Ben Ysursa,  
Office of the Secretary of State  
700 W. Jefferson Street, Suite E205  
PO Box 83720  
Boise, ID 83720-0080

The Honorable Lawrence G. Wasden,  
Office of the Attorney General  
700 W. Jefferson Street, Suite 210  
P.O. Box 83720  
Boise, ID 83720-0010

Signed:   
Caleb Hansen

Date: 4, 22, 2014

PM

**OFFICE OF THE  
ATTORNEY GENERAL**

Caleb Hansen, Plaintiff  
280 North 8<sup>th</sup> Street Apt # 306  
Boise, ID 83702  
208-861-4658

INTERNAL RECORDS OF RECEIPT

This document was reviewed by:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED \_\_\_\_\_ P.M. \_\_\_\_\_

APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

14 APR 18 PM 3:33

*Sherman Furey*

4/21/14

4:07 pm

Caleb Hansen, )  
Plaintiff Appearing Pro Se )  
Vs. )  
Ben Yursa Idaho Secretary of State )  
Defendant )

Name(s) of person(s) delivering document: \_\_\_\_\_

Case NO. CV OC 1407627

APPLICATION FOR WRIT OF MANDAMUS

Jurisdiction for this petition is dictated by Idaho Code, Section 34-215 which states that any person adversely affected by any failure to act of the Secretary of State may appeal to the District Court for the County in which they reside. Plaintiff resides in Ada County.

Time is of the essence and there is no plain speedy and adequate remedy in the ordinary course of law; therefore, a writ of mandate must be issued pursuant to Idaho Code Section 7-303.

Petitioner has sought to obtain from respondent substantially the same act as Petitioner seeks by writ to compel such officer to perform. On the 12<sup>th</sup> day of March 2014, Petitioner submitted Form SC-6A - Declaration of Independent Candidacy for State Representative, along with a petition of 54 signatures certified by the Ada County Clerk as qualified electors in Legislative District 19, and Form C1: Appointment and Certification of Political Treasurer. Having filed the appropriate paperwork in the proper timeframe, petitioner fulfilled every requirement of Idaho Code to be placed on the general election ballot as an Independent candidate for this office, including all of the requirements set forth in Idaho Code Section 34-614(2), and Section 34-708 as follows:

**34-614. ELECTION OF STATE REPRESENTATIVES AND SENATORS -- QUALIFICATIONS.**

(2) No person shall be elected to the office of representative or senator unless he shall have attained the age of twenty-one (21) years at the time of the general election, is a citizen of the United States and shall have resided within the legislative district one (1) year next preceding the general election at which he offers his candidacy.

**34-708. INDEPENDENT CANDIDATES. (1) No person may offer himself as an independent candidate at the primary election.**

(2) Any person who desires to offer himself as an independent candidate for federal, state, district, or county office may do so by complying strictly with the provisions of this section. In order to be recognized as an independent candidate, each such candidate must file with the proper officer as provided by section 34-705, Idaho Code, a declaration of candidacy as an independent candidate, during the period specified in section 34-704, Idaho Code. Such declaration must state that he is offering himself as an independent candidate, must declare that he has no political party affiliation, and must declare the office for which he seeks

**OFFICE OF THE ATTORNEY GENERAL**

Caleb Hansen, Plaintiff  
280 North 8<sup>th</sup> Street Apt # 306  
Boise, ID 83702  
208-861-4658

INTERNAL RECORDS OF RECEIPT

This document was reviewed by:

Signature: [Signature]

Name: Sherman Furey

Date: 4/21/14

Time: 4:07 pm

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. \_\_\_\_\_

APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

14 APR 18 PM 3:33

Caleb Hansen, )  
Plaintiff Appearing Pro Se )  
Vs. )  
Ben Yursa Idaho Secretary of State )  
Defendant )

Name(s) of person(s) delivering document: )

Case NO. CV OC 1407627

APPLICATION FOR WRIT OF MANDAMUS

Jurisdiction for this petition is dictated by Idaho Code, Section 34-215 which states that any person adversely affected by any failure to act of the Secretary of State may appeal to the District Court for the County in which they reside. Plaintiff resides in Ada County.

Time is of the essence and there is no plain speedy and adequate remedy in the ordinary course of law; therefore, a writ of mandate must be issued pursuant to Idaho Code Section 7-303.

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Caleb Hansen, Plaintiff Appearing Pro Se  
280 North 8<sup>th</sup> Street Apt # 306  
Boise, ID 83702  
208-861-4658

APR 23 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

*Hipper-Lora*  
*4/23/2014*  
*SM*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Caleb Hansen, )  
Plaintiff, Appearing Pro Se )  
Vs. )  
Ben Yursa Idaho Secretary of State )  
Defendant )

Case NO. CV OC 1407627

AFFIDAVIT OF SERVICE

STATE OF IDAHO )  
 ) ss:  
County of Ada )

I, Cody Wagoner, being first duly sworn, and upon personal knowledge of the facts and circumstances recited herein, depose and state:

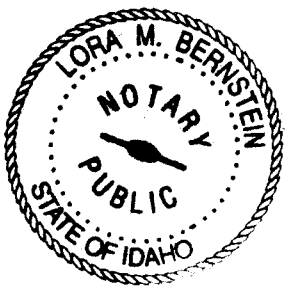
I am a resident of Ada County, in the State of Idaho. I am over the age of eighteen (18) years, and not a party to the above-entitled action.

On the 23rd day of April, 2014, I personally served two (2) true and accurate copies of the APPLICATION FOR WRIT OF MANDAMUS, and the AFFIDAVIT IN SUPPORT OF APPLICATION FOR WRIT OF MANDAMUS on the Idaho Secretary of State, by hand delivering them to the Attorney General of Idaho's Office, in accordance with I.R.C.P 4(d)(5) and I.R.C.P 5(b).

Dated 4/23/2014

Signed *Cody Wagoner*

SUBSCRIBED AND SWORN TO Before me this 23 day of April, 2014.



*Lora M Bernstein*  
Notary Public for Idaho  
Residing at *Boise Id*  
Commission Expires *4/24/2016*

*SM*

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

BRIAN KANE, ISB #6264  
Assistant Chief Deputy Attorney General  
Statehouse, Room #210  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 334-2400  
Facsimile: (208) 854-8071  
brian.kane@ag.idaho.gov

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation  
MICHAEL S. GILMORE, ISB #1625  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
Telephone: (208) 334-4130  
Facsimile: (208) 854-8073  
mike.gilmore@ag.idaho.gov  
Attorneys for Defendant

NO. \_\_\_\_\_  
AM. \_\_\_\_\_ FILED P.M. 4/28

APR 24 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

ORIGINAL

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CALEB HANSEN,	)	
	)	Case No. CV OC 1407627
Plaintiff,	)	<b>SECRETARY OF STATE'S</b>
	)	<b>MOTION TO DISMISS</b>
vs.	)	
	)	
BEN YSURSA, Idaho Secretary of State,	)	<b>Fee Status: Exempt</b>
	)	
Defendant.	)	

Defendant the Hon. Ben Ysursa, Secretary of State of the State of Idaho, hereby moves to dismiss Plaintiff's Application for a Writ of Mandamus.

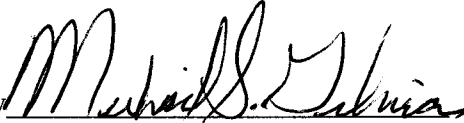
This Motion is supported by an accompanying Memorandum in Support of Secretary of State's Motion to Dismiss.

////////////////////////////////////



DATED this 24th day of April, 2014.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By 

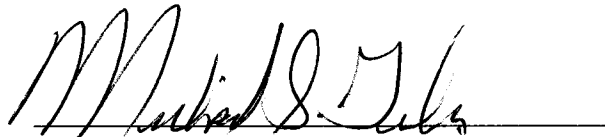
MICHAEL S. GILMORE  
Deputy Attorney General

-----  
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of April, 2014, I caused to be served a true and correct copy of the foregoing by the following method to:

Caleb Hansen  
280 North 8th Street, Apt. #306  
Boise, ID 83702

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail



MICHAEL S. GILMORE  
Deputy Attorney General



NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. *4:28*

APR 24 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

BRIAN KANE, ISB #6264  
Assistant Chief Deputy Attorney General  
Statehouse, Room #210  
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STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation  
MICHAEL S. GILMORE, ISB #1625  
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mike.gilmore@ag.idaho.gov  
Attorneys for Defendant

ORIGINAL

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CALEB HANSEN,	)	
Plaintiff,	)	Case No. CV OC 1407627
vs.	)	<b>MEMORANDUM IN SUPPORT</b>
	)	<b>OF SECRETARY OF STATE'S</b>
BEN YSURSA, Idaho Secretary of State,	)	<b>MOTION TO DISMISS</b>
Defendant.	)	

Defendant the Hon. Ben Ysursa, Secretary of State of the State of Idaho, has moved to dismiss Plaintiff's Application for a Writ of Mandamus. This Memorandum in Support of Secretary of State's Motion to Dismiss provides legal argument that Plaintiff's Application for a Writ of Mandamus should be dismissed because Plaintiff had, but did not timely pursue, a right of appeal. Alternatively, if Plaintiff's Application for an Application for a Writ of Mandamus is considered an appeal, the appeal should be dismissed as untimely.

*W*

## I. Plaintiff's Application for a Writ of Mandamus Should Be Denied Because He Had a Plain, Speedy and Adequate Remedy at Law

Plaintiff's Application for a Writ of Mandamus asks this Court to "issue a Writ of Mandate compelling the Secretary of State to certify the Applicant's candidacy and include the name 'Caleb Hansen' on the November 4th 2014 general election ballot as an unaffiliated candidate for State Representative District 19 Seat B." Application, p. [6].<sup>1</sup> Plaintiff contends that he is entitled to the Writ because "there is no plain speed and adequate remedy in the ordinary course of law." *Id.*, p. [1]. This legal conclusion is in error.

A writ of mandamus can issue when "there is not a plain, speedy and adequate remedy in the ordinary course of the law." Idaho Code § 7-303. The converse is also true; the writ does not issue when there is a plain, speedy and adequate remedy in the ordinary course of the law:

... The district court held, and we agree, that Butters' request for a writ of mandamus is premature because Butters has alternative remedies available to her.

The existence of an adequate remedy in the course of legal procedure, either legal or equitable in nature, will prevent the issuance of a writ of mandamus. The burden of proving the absence of an adequate or speedy remedy in the ordinary course of law rests upon the party seeking the writ of mandamus.

Here, the Board's decision ... is ... under appeal ... . Alternative remedies at law are not only available ..., but are ... being pursued ... . Thus, Butters' action for a writ of mandamus is premature and cannot lie.

*Butters v. Hauser*, 131 Idaho 498, 501-02, 960 P.2d 181, 184-85 (1998) (citations omitted).

Plaintiff had (but did not pursue) a plain, speedy and adequate remedy at law. Idaho Code § 34-215 allowed him to appeal from the Secretary of State's denial of a place on the ballot and allowed this Court to expedite his appeal:

**34-215. Appeals by aggrieved persons.** — (1) Any person adversely affected by any act or failure to act by the secretary of

---

<sup>1</sup> The pages of the application for a Writ of Mandamus are not numbered. This Memorandum provides bracketed page number citations to the Application that refer to the page number that would appear if the Application's pages were numbered consecutively from the first page forward.

state ... under any election law ... may appeal therefrom to the district court for the county in which the act or failure to act occurred or ... in which such person resides.

...

(3) The district courts ..., in their discretion, may give such precedence on their dockets to appeals under this section as the circumstances may require.

Accordingly, Plaintiff had a plain, speedy and adequate remedy under § 34-215.<sup>2</sup>

As the Supreme Court of Idaho said in a case involving a request for a writ of prohibition, which is mandamus's counterpart, Idaho Code § 7-401, and which may also be issued when there is no plain, speedy and adequate remedy at law, § 7-402, writs are not a substitute for appeal:

The right to an appeal, although unexercised and since expired, is an adequate remedy at law. Rim View failed on its own account to use the statutory appeal process available to it. No sufficient reason was given for this failure. The issues raised in this petition for a writ are the same issues that could have been brought in a petition for judicial review. Therefore, we affirm the dismissal of Rim View's petition.

*Rim View Trout Company v. Idaho Department of Water Resources*, 119 Idaho 676, 677-78, 809 P.2d 1155, 1156-157 (1991) (citation omitted).

Plaintiff had a plain, speedy and adequate remedy at law — an appeal under Idaho Code

---

<sup>2</sup> One of Plaintiff's premises putatively showing lack of a plain, speedy and adequate remedy is that his opponent "is already fundraising and campaigning" while he "cannot do so until registered as a candidate with the Secretary of State's office." Application, p. [6]. Applicant is incorrect. The First Amendment protects his right to campaign on his own behalf. Cf. "[T]he First Amendment simply cannot tolerate [a] restriction upon the freedom of a candidate to speak ... on behalf of his own candidacy." *Buckley v. Valeo*, 424 U.S. 1, 54-55, 96 S. Ct. 612, 651-52 (1976). Plaintiff cites no Idaho statute that prevents him from "campaigning" if he has not qualified for the ballot. There is none.

As for raising funds, Idaho's Sunshine Act puts reporting requirements on persons who are candidates for office under its definition of candidate. A candidate for Sunshine Act purposes is "an individual who has taken affirmative action to seek nomination or election to public office." Idaho Code § 67-6602(a). Under this definition people can be candidates for Sunshine Act purposes who have not yet qualified or who may never qualify for the ballot. For example, upon deciding to run for office, individuals may and do create campaign organizations, appoint political treasurers, and begin to run before declaring their candidacy with the Secretary of State's Office. Some of them may reconsider their decisions and decide not to run, or some might never qualify for the ballot for any number of reasons. Regardless, nothing in the fundraising and reporting sections of the Sunshine Act limits fundraising to persons who have qualified for the ballot. See Idaho Code §§ 67-6602, 67-6603, and 67-6604.

§ 34-215. His Application for a Writ of Mandamus should be denied.

**II. Alternatively, if Plaintiff's Application Is Treated as an Appeal Under Idaho Code § 34-215, the Appeal Was Untimely and Should Be Dismissed**

A court evaluates a pleading by its substance, not its caption. *State v. Blume*, 113 Idaho 224, 226, 743 P.2d 92, 94 (Ct. App. 1987) (pleading asking for a writ of review could be treated as one for a writ of prohibition). If the Court decides that Plaintiff's Application is in substance an appeal under Idaho Code § 34-215, the appeal should be dismissed as untimely.

Appeals from non-judicial decisionmakers like the Secretary of State's Office are subject to Idaho Rule of Civil Procedure 84. Rule 84(a) provides that appeals from actions of an officer or agency whose decisions are appealable by statute are processed as provided by statute, but are otherwise governed by Rule 84 where statute is silent:

**Rule 84(a)            Judicial Review of State Agency and Local Government Actions.**

(1) **Scope of Rule 84.** The procedures and standards of review applicable to judicial review of state agency and local government actions shall be as provided by statute. When judicial review of an action of a state agency or local government is expressly provided by statute but no stated procedure or standard of review is provided in that statute, then Rule 84 provides the procedure for the district Court's judicial review. ...

(2) **Definitions.** The term "action," "agency," [and] "judicial review," ... have the following meaning in Rule 84:

(A) "Action" means any ... decision or lack of decision of an agency made reviewable by statute.

(B) "Agency" means any non judicial ... officer for which statute provides for the district court's judicial review of the agency's action.

(C) "Judicial review" means the district court's review pursuant to statute of actions of agencies, ... and the term judicial review includes other terms like appeal.

....

Neither Idaho Code § 34-215 nor any other section of Title 34—Elections provide a

deadline for appealing from the Secretary of State's decision whether a person qualifies to be a legislative candidate. Where statute is silent, Rule 84(b)(1) provides a twenty-eight day deadline:

**Rule 84(b). Filing Petition for Judicial Review.**

(1) Unless a different time or procedure is prescribed by statute, a petition for judicial review from an agency to district court must be filed with the appropriate district court within twenty-eight (28) days after the agency action is ripe for judicial review under the statute authorizing judicial review, but the time for filing ... is extended as provided in the next sentence. When the decision to be reviewed is issued by an agency with authority to reconsider its decision, the running of the time for petition for judicial review is suspended by a timely motion for reconsideration, ... . Judicial review is commenced by filing a petition for judicial review with the district court ... .

In this case, the agency action at issue is the March 12, 2014, letter from Chief Deputy Secretary of State Timothy A. Hurst, attached to the Application as Appendix A. The letter said: "According to the voter registration records of the State, you would not meet the qualification to be an Idaho Legislator this year." That letter also notified Plaintiff of his appellate rights: "If you disagree with this decision, Idaho Code section 34-215 provides that you may appeal to the District Court for remedy."

Plaintiff did not appeal within twenty-eight days of Mr. Hurst's March 12 letter. He did not appeal at all. Instead, thirty-seven days later, on April 18, 2014, he filed his Application for a Writ of Mandamus. Rule 84(n) is clear about what happens to untimely appeals: They must be dismissed for lack of jurisdiction, upon any party's motion or *sua sponte* by the Court.

**Rule 84(n). Effect of Failure to Comply With Time Limits.**

The failure to physically file a petition for judicial review ... with the district court within the time limits prescribed by statute and these rules shall be jurisdictional and shall cause automatic dismissal of the petition for judicial review upon motion of any party, or upon initiative of the district court. ...

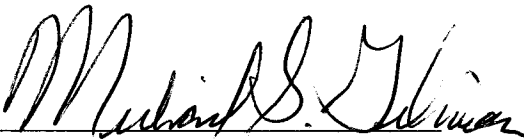
Accordingly, if the Application for a Writ of Mandamus is in substance an appeal, it was untimely filed and should be dismissed for lack of jurisdiction.

### III. Summary

Plaintiff had a right of timely appeal to the District Court from the decision denying him a place on the ballot as a candidate for the Legislature in the 2014 election. He did not timely appeal. Instead, he attempted to use the mechanism of a Writ of Mandamus as a substitute for appeal after his appeal time had run. Mandamus is not available to those who had, but did not pursue, a right of appeal. Plaintiff's Application for a Writ of Mandamus should therefore be dismissed.

DATED this 24th day of April, 2014.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

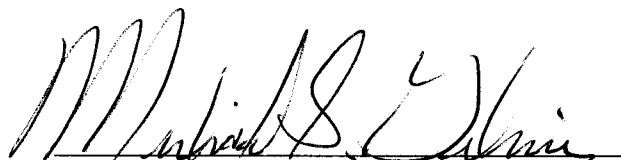
By   
MICHAEL S. GILMORE  
Deputy Attorney General

-----  
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of April, 2014, I caused to be served a true and correct copy of the foregoing by the following method to:

Caleb Hansen  
280 North 8th Street, Apt. #306  
Boise, ID 83702

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail

  
MICHAEL S. GILMORE  
Deputy Attorney General

Hippler - Lore

4/29/2014

SM

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

BRIAN KANE, ISB #6264  
Assistant Chief Deputy Attorney General  
Statehouse, Room #210  
P.O. Box 83720  
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Boise, ID 83720-0010  
Telephone: (208) 334-4130  
Facsimile: (208) 854-8073  
mike.gilmore@ag.idaho.gov  
Attorneys for Defendant

NO \_\_\_\_\_ FILED \_\_\_\_\_  
AM \_\_\_\_\_ PM 4:28

APR 24 2014

CHRISTOPHER D. RICH, Clerk  
By STEPHANIE VIDAK  
DEPUTY

ORIGINAL

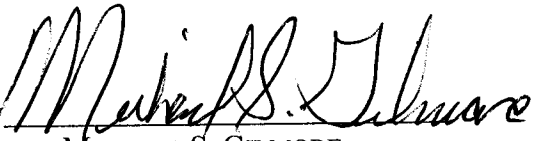
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

\_\_\_\_\_  
CALEB HANSEN, Appearing Pro Se )  
 ) Case No. CV OC 1407627  
Plaintiff, )  
 )  
vs. ) **NOTICE OF HEARING**  
 )  
 )  
BEN YSURSA, Idaho Secretary of State, )  
 )  
 )  
Defendant. )  
\_\_\_\_\_

PLEASE TAKE NOTICE that on the 14th day of May, 2014, at 3:30 p.m., or as soon thereafter as the parties can be heard, in the courtroom of the Honorable Steven Hippler, Fourth District Judge, in the Ada County Courthouse, 200 W. Front Street, Boise, Idaho, Defendant Secretary of State's Motion to Dismiss will be called up and presented for hearing.

DATED this 24th day of April, 2014.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

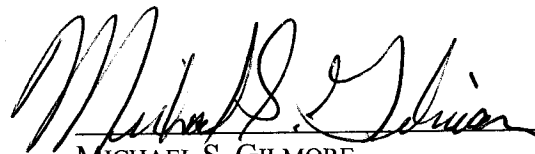
By   
MICHAEL S. GILMORE  
Deputy Attorney General

-----  
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Caleb Hansen  
280 North 8th Street, Apt. #306  
Boise, ID 83702

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail

  
MICHAEL S. GILMORE  
Deputy Attorney General



Caleb Hansen, Plaintiff Appearing Pro Se  
280 North 8<sup>th</sup> Street Apt # 306  
Boise, ID 83702  
208-861-4658

APR 25 2014

CHRISTOPHER D. RICH, Clerk  
By JAMIE MARTIN  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Caleb Hansen, )  
Plaintiff, Appearing Pro Se )  
Vs. )  
Ben Ysursa Idaho Secretary of State )  
Defendant )

Case NO. CV OC 1407627

AFFIDAVIT OF SERVICE

I, Blake Summers, being first duly sworn, and upon personal knowledge of the facts and circumstances recited herein, depose and state:

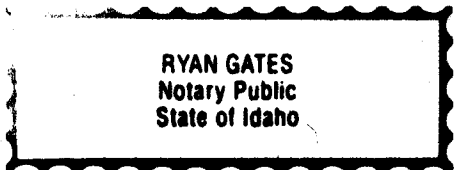
I am a resident of Ada County, in the State of Idaho. I am over the age of eighteen (18) years, and not a party to the above-entitled action.

On the 25th day of April, 2014, I personally served two (2) true and accurate copies of the Notice of Hearing on the Idaho Secretary of State, by hand delivering them to the Attorney General of Idaho's Office, in accordance with I.R.C.P 4(d)(5) and I.R.C.P 5(b).

Dated 4/25/2014

Signed [Signature]

SUBSCRIBED AND SWORN TO Before me this 25<sup>th</sup> day of April, 2014.



[Signature]  
Notary Public for Idaho  
Residing at 827 W Idaho Boise 83702  
Commission Expires January 24, 2020

Caleb Hansen, Plaintiff Appearing Pro Se  
280 North 8<sup>th</sup> Street Apt # 306  
Boise, ID 83702  
208-861-4658

APR 25 2014

CHRISTOPHER D. RICH, Clerk  
By JAMIE MARTIN  
DEPUTY

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4-28-14  
TR

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

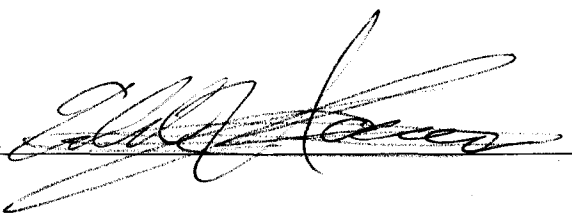
Caleb Hansen, )  
Plaintiff, Appearing Pro Se )  
Vs. )  
Ben Yursa Idaho Secretary of State )  
Defendant )

Case NO. CV OC 1407627

NOTICE OF HEARING

A hearing on the Plaintiff's Application for Writ of Mandamus will be held on Wednesday May 14<sup>th</sup>, 2014, at 3:30 p.m., at the Ada County Courthouse, located at 200 West Front Street, Boise, ID.

Dated: 4-24-2014

Signed 

Caleb Hansen, Plaintiff Appearing Pro Se  
280 North 8<sup>th</sup> Street Apt # 306  
Boise, ID 83702  
208-861-4658

APR 18 2014

CHRISTOPHER D. RICH, Clerk  
By STACEY LAFFERTY  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Caleb Hansen, )  
Plaintiff Appearing Pro Se )  
Vs. )  
Ben Yursa Idaho Secretary of State )  
Defendant )

Case NO. CV OC 1407627

APPLICATION FOR WRIT OF MANDAMUS

Jurisdiction for this petition is dictated by Idaho Code, Section 34-215 which states that any person adversely affected by any failure to act of the Secretary of State may appeal to the District Court for the County in which they reside. Plaintiff resides in Ada County.

Time is of the essence and there is no plain speedy and adequate remedy in the ordinary course of law; therefore, a writ of mandate must be issued pursuant to Idaho Code Section 7-303.

Petitioner has sought to obtain from respondent substantially the same act as Petitioner seeks by writ to compel such officer to perform. On the 12<sup>th</sup> day of March 2014, Petitioner submitted Form SC-6A - Declaration of Independent Candidacy for State Representative, along with a petition of 54 signatures certified by the Ada County Clerk as qualified electors in Legislative District 19, and Form C1: Appointment and Certification of Political Treasurer. Having filed the appropriate paperwork in the proper timeframe, petitioner fulfilled every requirement of Idaho Code to be placed on the general election ballot as an Independent candidate for this office, including all of the requirements set forth in Idaho Code Section 34-614(2), and Section 34-708 as follows:

34-614. ELECTION OF STATE REPRESENTATIVES AND SENATORS --  
QUALIFICATIONS.

(2) No person shall be elected to the office of representative or senator unless he shall have attained the age of twenty-one (21) years at the time of the general election, is a citizen of the United States and shall have resided within the legislative district one (1) year next preceding the general election at which he offers his candidacy.

34-708. INDEPENDENT CANDIDATES. (1) No person may offer himself as an independent candidate at the primary election.

(2) Any person who desires to offer himself as an independent candidate for federal, state, district, or county office may do so by complying strictly with the provisions of this section. In order to be recognized as an independent candidate, each such candidate must file with the proper officer as provided by section 34-705, Idaho Code, a declaration of candidacy as an independent candidate, during the period specified in section 34-704, Idaho Code. Such declaration must state that he is offering himself as an independent candidate, must declare that he has no political party affiliation, and must declare the office for which he seeks

election. Each such declaration must be accompanied by a petition containing the following number of signatures of qualified electors:

- (a) One thousand (1,000) for any statewide office;
- (b) Five hundred (500) for any congressional district office;
- (c) Fifty (50) for any legislative district office;
- (d) Five (5) for any county office.

(3) Signatures on the petitions required in this section shall be verified in the manner prescribed in section 34-1807, Idaho Code.

(4) If all of the requirements of this section have been met, the proper officer shall cause the name of each independent candidate who has qualified to be placed on the general election ballot, according to instructions of the secretary of state.

The Office of the Secretary of State refused to certify the petitioner's candidacy and place his name on the general election ballot. (See Appendix A)

Given that the petitioner has met all of the requirements of Idaho Code Section 34-708, refusal of the Secretary of State's office to place Petitioner's name on the 2014 general election ballot is in violation of Idaho Code Section 34-708(4).

For these reasons, Applicant requests a Writ of Mandamus ordering the Secretary of State to place the name of Caleb Hansen on the ballot for the position of State Representative, Legislative District 19, Seat B, for the general election to be held November 4<sup>th</sup> 2014. This Application for Writ of Mandate is based on the following grounds:

1. The Idaho Secretary of State overreached his constitutional authority by denying Petitioner's application to be placed on the ballot.
  - 1.1. The constitutional duties of Officials in the Executive branch are to enforce statute; they are not empowered to interpret the Constitution, or create laws.
  - 1.2. The laws written by our legislature serve as the constitutional interpretation that is to be enforced.
    - 1.2.1. IDAHO CONSTITUTION ARTICLE XXI SECTION 15:  
LEGISLATURE TO PASS NECESSARY LAWS. The legislature shall pass all necessary laws to carry into effect the provisions of this Constitution.
  - 1.3. No statute in Idaho Code disqualifies the Applicant from holding the office of State Representative, or from being placed on the ballot for election to that office. The Office of the Secretary of State has also made no assertion that any such statute exists.
  - 1.4. The interpretation of the Constitution used by the Secretary of State and the Attorney General to justify rejecting the application is one that is neither justified by law nor clearly endorsed by any decision of Idaho Courts. It is nothing less than the Executive Branch overreaching their authority by attempting to interpret the Constitution.
  - 1.5. When the State office overseeing elections creates and decides to enforce a statute that does not exist, (see bold text in Appendix E), they have essentially created a law. Even though it does not exist in Idaho

Code, the effect on the citizens of the State is the same as if it did. This is nothing less than the Executive Branch overreaching their authority by attempting to create law.

2. The assertion that our State Constitution's use of the word "elector" signifies a "Qualified Elector" cannot be made without accusing the Legislature of failing to fulfill their obligations described in Article 21 Section 15 of the Idaho Constitution.
  - 2.1. If the Idaho Constitution contains a provision requiring a person to be registered to vote for 1 year before their election in order to qualify for the position of State Representative, as the Secretary of State asserts that it does; then the Legislature has failed to pass the necessary law to carry that provision into effect.
  - 2.2. The Legislature has not failed to pass necessary laws, instead they made it clear that the Constitution in Article 3 Section 6 does not refer to a "Qualified Elector", it refers to an elector without respect to their voter registration status. This argument is justified by their repeated use of the word "elector" throughout our voter registration law clearly and unambiguously referring to citizens qualified to participate in our democracy who may not be registered to vote.

34-404. REGISTRATION OF ELECTORS. (1) All *electors* must register before being able to vote at any primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code... (*emphasis added*)

34-407. PROCEDURE FOR REGISTRATION. (1) Any county clerk or official registrar shall register without charge any *elector* who personally appears in the office of the county clerk or before the official registrar, as the case may be, and requests to be registered.

(2) Upon receipt of a written application to the county clerk from any *elector* who, by reason of illness or physical incapacity is prevented from personally appearing in the office of the county clerk or before an official registrar, the county clerk or an official registrar so directed by the county clerk shall register such *elector* at the place of abode of the *elector*. (*emphasis added*)

34-410. MAIL REGISTRATION. Any *elector* may register by mail for any election... (*emphasis added*)

34-411. APPLICATION FOR REGISTRATION -- CONTENTS. (1) Each *elector* who requests registration shall supply the following information under oath or affirmation... (*emphasis added*)

2.2.1. If we apply the same definition of "elector" used by our legislature in Idaho Code, to the word "elector" used in the Idaho Constitution Article 3 Section 6, we see that there is no constitutional provision requiring voter registration to run for State Representative or Senator.

2.2.1.1. This eliminates the anomaly of this rare alleged requirement for State Representatives and Senators. No other State office requires voter registration as a qualification to run for office.

2.2.2. We can also see the Legislature's exact interpretation of the Idaho Constitution Article 3 Section 6, in the law that they passed to carry that provision into effect, codified as Section 34-614.

2.2.2.1. IDAHO CONSTITUTION ARTICLE 3:

Section 6. QUALIFICATIONS OF MEMBERS. No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county or district whence he may be chosen.

2.2.2.2. IDAHO CODE Section 34-614 (2): No person shall be elected to the office of representative or senator unless he shall have attained the age of twenty-one (21) years at the time of the general election, is a citizen of the United States and shall have resided within the legislative district one (1) year next preceding the general election at which he offers his candidacy.

3. The use of the term “elector” does not give any indication of voter registration status in the absence of additional descriptive words.
  - 3.1. A specifically enumerated definition of the word “elector” does not exist anywhere in the Idaho Constitution, or Idaho Code, and has not been directly decided by any court of jurisdiction in Idaho. The Attorney General’s Office asserted in 1998 that DREDGE MINING CONTROL-YESI, INC. v. CENARRUSA (see appendix B) could be used to justify defining “elector” to share a definition with the terms “Qualified Elector”, “Registered Elector”, and “Legal Voter”. This assertion lacks believability for several reasons.
  - 3.2. The Letter concludes *“Instead, a reviewing court will probably rule that an individual can only be considered an ‘elector’ if he or she meets all conditions set out in Art. 6, sec. 2, and is ‘registered as provided by law.’ Art.6, sec. 2.”* This is difficult to reconcile with the majority opinion from this case which chose to use the word “also” in the following sentence: “In order to vote upon an initiative ballot, a person must have the qualifications of an elector and also be registered according to law.” This shows that one can be an “elector”, without also being registered to vote. In order to become a “Registered Elector”, a “Qualified Elector”, or a “Legal Voter”, an “elector” must *also* register according to law.
  - 3.3. If it is determined that the term “elector” does share a definition with these terms, there will be no word left in Idaho Law to describe a person that has all of the qualifications to participate in our democracy, but is not currently registered to vote in accordance with the law.
  - 3.4. If it is determined that the term “elector” does share a definition with these terms, then Idaho Code provides only for the registration of those who are already registered according to law.
    - 3.4.1. Idaho Code Section 34-407(1) “ Any county clerk or official registrar shall register without charge any elector who personally appears in the office of the county clerk or before the official registrar, as the case may be, and requests to be registered.”
    - 3.4.2. Defining the term “elector” to signify someone who is already registered according to law can only allow for an absurd interpretation of our voter registration laws.
  - 3.5. A person may have all of the qualifications of an elector, and not have all of the qualifications of a “Qualified Elector”. Qualifying to be an “elector” is different from qualifying to be a “Qualified Elector”; even a “Disqualified Elector” is still referred to as an elector in Idaho Code.

3.5.1. **Idaho Code, Section 34-403. DISQUALIFIED ELECTORS NOT PERMITTED TO VOTE.** No elector shall be permitted to vote if he is disqualified as provided in article 6, sections 2 and 3 of the state constitution.

4. The fact that the word "elector" is modified by adjectives, to signify if the elector is properly registered according to law, indicates that the definition of "elector" lacks this designation. This is the distinction between the terms "elector" and "qualified elector"/"registered elector"/"legal voter". Every term designated by law to represent someone who has registered to vote contains a qualifying word. Legal, qualified, and registered are the indicators that in addition to possessing all of the qualifications of an elector, a person has also registered according to law.
  - 4.1. Idaho Code 34-104. "QUALIFIED ELECTOR" DEFINED. "Qualified elector" means 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.
  - 4.2. Idaho Code 34-105. "REGISTERED ELECTOR" DEFINED. "Registered elector", for the purpose of this act, means any "qualified elector".
  - 4.3. "Legal Voter" as decided by DREDGE MINING CONTROL-YESI, INC. v. CENARRUSA means a "Registered Elector" or "Qualified Elector"
5. Voter registration is important to prevent fraud in matters of voting and petition signing. It serves no purpose as a requirement to run for office. If it did, it would be required for other State offices as well.
  - 5.1. Idaho allows same day voter registration at our polling places. This removes any reason for an Idaho Citizen to immediately update their voter registration upon moving. The explanation provided by County Clerks to citizens about how to maintain their registration when moving within the State, often includes the suggestion to simply update their registration at the polling place on Election Day. The Secretary of State's position is that this seemingly sound advice will disqualify many who follow it from running for State Representative or Senator for some time beyond the actual required residency term.
  - 5.2. November 5<sup>th</sup> 2013 was Election Day, so anyone who registered at a polling site and voted would be disqualified from running for State Representative this year because they are allegedly one day short of the legal requirements. I assert that there is no purpose to this policy, no benefit to the State or its citizens, while there is a clear harm in turning away qualified persons from running for the legislature.
  - 5.3. The requirement to maintain voter registration for a year before running for office is completely arbitrary. It does not insure that the candidate makes any use of his registration during that time, while leaving room for those who do vote to still be disqualified.
6. If voter registration is perceived to be a requirement of serving in the Idaho Legislature, then that raises some other interesting questions-
  - 6.1. If a legislator moves within his district, and forgets to update his voter registration, his registration is legally considered canceled and he is no longer a qualified elector;
    - 6.1.1. Must he be removed from office?
    - 6.1.2. Would he be barred from running for re-election?

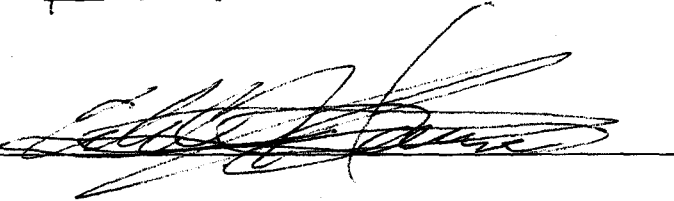
6.1.3. Furthermore, what statute provides for a party to be responsible for tracking this information and enforcing this policy?

7. Time is of the essence; Applicant's election opponent is already fundraising and campaigning while Applicant cannot do so until registered as a candidate with the Secretary of State's office.

Based on these arguments the Applicant requests that the court speedily issue a Writ of Mandate compelling the Secretary of State to certify the Applicant's candidacy and include the name "Caleb Hansen" on the November 4<sup>th</sup> 2014 general election ballot as an unaffiliated candidate for State Representative District 19 Seat B.

Dated this 18<sup>th</sup> day of April, 2014

Signed

A handwritten signature in black ink, appearing to read "Caleb Hansen", written over a horizontal line.

Caleb Hansen  
Applicant, Appearing Pro Se



Appendices:

Only the constitutional qualifications of the Applicant were disputed, not the petitions and other paperwork submitted to the Secretary of State. Papers stipulated by both sides to have been in proper order have not been included in this Pleading. Papers not disputed include Declaration of Candidacy for the position of State Representative District 19 Seat B, a Nominating Petition of 54 signatures certified by the Ada County Clerk as Qualified Electors in District 19, and Form C1: Appointment and Certification of Political Treasurer. Since they are not disputed, attaching them would serve no evidentiary purpose.

Appendix A - Letter explaining rejection from the Secretary of State's Office written to Caleb Hansen, by Timothy A. Hurst, Chief Deputy Secretary of State

Appendix B - 1998 Letter from the Attorney General's office used by the Secretary of State to defend the decision to reject Petitioner's application for candidacy. Originally received by petitioner as an attachment to Appendix A

Appendix C- A blank copy of Form SC-6A - Declaration of Independent Candidacy for State Representative. This form was created by the Secretary of State's Office, and creates the nonexistent statute, requiring 1 full year of voter registration, with bold print.



# APPENDIX A

STATE OF IDAHO  
OFFICE OF THE SECRETARY OF STATE  
BEN YSURSA

March 12, 2014

Caleb Hansen  
3163 East Fairview Ave, Suite #150  
Meridian, ID 83642

Mr. Hansen:

Article III, section 6 of the Idaho Constitution lays out the qualifications of an individual to serve as a member of the Idaho Legislature. It says:

"No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county or district whence he may be chosen."


The Constitution, in Article VI Section 2, also defines an elector. Again, it says:

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

According to the voter registration records of the State, you would not meet the qualifications to be an Idaho Legislator this year. Your name will, therefore, not appear on the primary election ballot. Enclosed is a letter from the Attorney General issued in 1998 addressing this issue. Your petitions are being returned as of this date.

If you disagree with this decision, Idaho Code section 34-215 provides that you may appeal to the District Court for remedy.

Sincerely,

  
TIMOTHY A. HURST  
Chief Deputy  
Secretary of State

TAH/lm  
Enclosure: As cited

P.O. Box 83720, Boise, Idaho 83720-0080  
Telephone: (208) 334-2300, FAX: (208) 334-2282  
Located at 700 West Jefferson, Suite E205

000049

# APPENDIX B



# COPY

98 APR -9 PM 3: 38

SECRETARY OF STATE  
STATE OF IDAHO

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN S. LANCE

April 9, 1998

Robert L. Smith, Ph.D.  
3000 N. Columbia Avenue  
Boise, ID 83713

Re: Eligibility for State Legislative Office

Dear Dr. Smith:

Your recent letter to Attorney General Lance concerning your filing as a candidate for the state legislature has been forwarded to me for review. In particular, you ask this office to determine whether the Secretary of State properly refused to accept your Declaration of Candidacy for the state legislature. This office concludes that since the Idaho Constitution requires members of the legislature to have been a registered voter of the district they represent for at least one year, individuals who have not met that registered voter requirement are ineligible to sit in the state legislature. Since you would be ineligible to hold a seat in the state legislature if you are elected, the Secretary of State was correct to refuse to accept your Declaration of Candidacy.

Art. 3, sec. 6 of the Idaho Constitution establishes the following qualifications for members of the Idaho legislature:

No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and a senator of this state, nor anyone who has not been for one year next preceding his election an elector of the county<sup>1</sup> or district whereto he may be chosen.

It is plain that, in order to serve in the state legislature, you must have been an "elector" of the district you intend to represent for at least "one year" before the general election in November, 1998.

Art. 6, sec. 2 of the Idaho Constitution sets out the qualifications for an "elector":

1. Thirty of the electors of persons, "county or district," refers to the fact that state senators were once elected by county, rather than by district. Since 1972, all state legislators are elected by district. See Idaho Code § 34-614(1) ("Up the general election, 1972, and every thereafter year thereafter, there shall be elected in each legislative district such representatives and senators as they may be severally entitled").

April 9, 1998

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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 of time provided by law, if registered as provided by law, is a qualified elector (emphasis added).

The plain language of Art. 6, sec. 2, conditions status as an elector upon being "registered" to vote "as provided by law." Therefore, when Art. 3, sec. 6, and Art. 6, sec. 2, are interpreted together, it is clear that in order to hold office as a state legislator, an individual must have been a registered voter of the district he or she represents for at least one year before the general election.

Your letter indicates that the Idaho State Democratic Party Chairman, Tony Park, planned to send some analysis of this issue. While this office has not received anything in writing from Mr. Park, it is my understanding that Mr. Park offers a different analysis because he believes there is an important difference between the terms "elector" and "qualified elector" in the two constitutional provisions. Art. 3, sec. 6, refers to an "elector." Art. 6, sec. 2, on the other hand, refers to a "qualified elector." Mr. Park believes that these differing terms mean that the framers of the Idaho Constitution did not intend to require that registration to vote "as provided by law" is a condition of being an "elector." Rather, Mr. Park asserts, voter registration is only required to be a "qualified elector."

In Dardas Manning Control, 92 Idaho 480, 445 P.2d 553 (1968), the Idaho Supreme Court considered a very similar question. The case concerned the validity of arguments advanced on initiative petitions. One of the issues appealed by the plaintiff in Dardas Manning Control was that the district court had ruled that the phrases "legal voter," as used in the initiative section, included a registration requirement.

[T]he trial court entered certain considerations of law which are the basis of appellant's assignments of error. Among these is the conclusion entered by the trial court to the effect that for a person to be eligible to have his signature on the petition counted, it is necessary that such person not only meet the age and residence requirements to vote prescribed by the constitution, but also that he be registered in the manner prescribed by law. The appellant contends the trial court erred in this regard, asserting that the only requirement for signing an initiative petition is that the person in fact have the constitutional qualifications to vote, whether registered or not.

Dardas Manning Control, 92 Idaho at 482 (emphasis added).

The Idaho Supreme Court reviewed the language of Art. 6, sec. 2, and agreed with the district court.

It is our conclusion that the legislature in its use of the term "legal voter" in the acts pertaining to the initiative measure, contemplated that the

APPENDIX B

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April 9, 1998

Page - 3


signers of the petition must be persons who are registered electors. . . . In order to vote upon an initiative ballot, a person must have the qualifications of an elector and also be registered according to law. (Idaho Const. Art. 6, § 2) Therefore, in order that a person be qualified to sign the initiative petition he must be eligible to vote upon the measure, and hence must be registered.

Dredge Mining Control, 92 Idaho at 482.

A reviewing court is likely to follow the Dredge Mining Control rationale in this case. If a court does follow Dredge Mining Control, it will rule that a person is not an "elector," for purposes of Art. 6, sec. 2, simply because he or she has "the constitutional qualifications to vote, whether registered or not." Dredge Mining Control, 92 Idaho at 482. Instead, a reviewing court will probably rule that an individual can only be considered an "elector" if he or she meets all conditions set out in Art. 6, sec. 2, and is "registered as provided by law." Art. 6, sec. 2.

I hope this letter is helpful. If you have any additional questions or comments, please feel free to contact me.

Sincerely,

  
MATTHEW J. MCKOWN  
Deputy Attorney General  
Intergovernmental and Fiscal Law Division

MMJ:tj

cc: W. Anthony Park

**APPENDIX B**

000052

# APPENDIX C

To The Honorable Ben Ysursa  
Secretary of State - State of Idaho

# APPENDIX C

## DECLARATION OF CANDIDACY OF

\_\_\_\_\_  
Please print name exactly as you wish it to appear on the ballot.

FOR OFFICE OF

STATE REPRESENTATIVE

I, the undersigned, being a resident of \_\_\_\_\_ County,  
\_\_\_\_\_ Legislative District, State of Idaho, registered with no Political Party  
affiliation (i.e. unaffiliated), do hereby declare myself to be a candidate for the  
office of State Representative - Position \_\_\_\_\_, such office to be voted for at the  
(Indicate A or B)  
General Election to be held on the 4th day of November, 2014, and that my  
residence address is \_\_\_\_\_.

\_\_\_\_\_  
(Mailing address if different from above)

I further certify that I possess the legal qualifications to hold said office, which  
are that I have attained the age of at least 21 years at the time of the General  
Election, I am a United States Citizen, and have been a resident and registered  
elector within the Legislative District listed above for one year preceding the  
General Election.

Dated: \_\_\_\_\_, 2014.

Signed: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature: \_\_\_\_\_

(Notary Seal)

Notary Public in and for the State of Idaho  
residing at \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. *MM*

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

BRIAN KANE, ISB #6264  
Assistant Chief Deputy Attorney General  
Statehouse, Room #210  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 334-2400  
Facsimile: (208) 854-8071  
brian.kane@ag.idaho.gov

MAY 01 2014

CHRISTOPHER D. RICH, Clerk  
By ELYSHIA HOLMES  
DEPUTY

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation  
MICHAEL S. GILMORE, ISB #1625  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
Telephone: (208) 334-4130  
Facsimile: (208) 854-8073  
mike.gilmore@ag.idaho.gov  
Attorneys for Defendant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CALEB HANSEN,	)	
	)	Case No. CV OC 1407627
Plaintiff,	)	
	)	<b>VERIFIED ANSWER OF</b>
vs.	)	<b>SECRETARY OF STATE BEN</b>
BEN YSURSA, Idaho Secretary of State,	)	<b>YSURSA</b>
	)	
Defendant.	)	

Defendant the Honorable Ben Ysursa, Secretary of State of the State of Idaho, answers Plaintiff's Application for Writ of Mandamus as follows. Any allegations of fact not specifically admitted are denied. Any allegations of fact that the Secretary of State does not have sufficient knowledge or information to admit or deny, is generally denied. Any statement that a portion of the Application is a statement of opinion and not an allegation of fact or is a legal conclusion and not an allegation of fact is a general denial if that portion of the Application is an allegation of fact rather than a statement of opinion or a legal conclusion. Failure to dispute a legal conclusion

*EV*

is not agreement with the legal conclusions.

### ANSWER

A. Answer to the First Paragraph of the Application, which is not numbered. The Secretary of State neither admits nor denies the first sentence because it is a legal conclusion and not an allegation of fact. The Secretary of State agrees with its legal conclusion that Idaho Code § 34-215 would give the District Court jurisdiction over a timely appeal from the Office of the Secretary of State's denial of Plaintiffs' attempt to secure a place on the ballot as an independent candidate for Representative Seat B in Legislative District 19 if Plaintiff had timely appealed, but he did not. The second sentence alleges that Plaintiff resides in Ada County, which the Secretary of State does not have sufficient knowledge or information to admit or deny, but does not deny in this Answer. The Secretary of State reserves the right to deny this allegation if he later obtains a factual basis for doing so, but he has no such basis at the moment.

B. Answer to the Second Paragraph, which is not numbered. The Secretary of State neither admits nor denies this paragraph because it is a legal conclusion and not an allegation of fact. The Secretary of State disputes the legal conclusions that Plaintiff may seek a writ of mandate because he has no plain, speedy and adequate remedy at law. Idaho Code § 34-215, the section that Plaintiff cites in the first paragraph, would have provided Plaintiff a plain, speedy and adequate remedy at law if he would have timely appealed under that section, but he did not.

C. Answer to the Third Paragraph, which is not numbered. The Secretary of State admits the first and second sentences. The Secretary of State neither admits or nor denies the third sentence and the quotations of Idaho Code § 34-614 and § 34-708 that follow because they are legal conclusions and not allegations of fact. The Secretary of State disputes the third sentence's legal conclusion that "petitioner fulfilled every requirement of Idaho Code to be placed on the general election ballot" because all Idaho Code sections are subject to constitutional constraints. The Secretary of State maintains that Plaintiff was ineligible for the ballot because he would not be a qualified elector in his district for one year before the general election, as required by Idaho Constitution, Article III, § 6, and Article VI, § 2.



D. Answer to the Fourth Paragraph, which is not numbered. The Secretary of State admits this paragraph, which is immediately beneath the quotation at the top of the second page. The Secretary of State also admits that Appendix A is an accurate copy of a letter from Chief Deputy Secretary of State Timothy A. Hurst to Plaintiff, dated March 12, 2014, which is the Office of the Secretary of State's denial of Plaintiff's request to appear on the ballot.

E. Answer to the Fifth Paragraph, which is not numbered. The Secretary of State neither admits nor denies this paragraph because it is a legal conclusion and not an allegation of fact. The Secretary of State disputes its legal conclusion.

F. Answer to the Sixth Paragraph, which is not numbered. The Secretary of State neither admits nor denies this paragraph because it is a prayer for relief and not an allegation of fact. The Secretary of State disputes its legal conclusion.

1. Answer to Paragraph 1, including subparts 1.1 through 1.5. The Secretary of State neither admits nor denies these paragraphs because they are legal conclusions and not allegations of facts. The Secretary of State disputes their legal conclusions.

2. Answer to Paragraph 2, including subparts 2.1, 2.2, 2.2.1, 2.2.1.1, 2.2.2, 2.2.2.1 and 2.2.2.2. The Secretary of State neither admits nor denies these paragraphs because they are legal conclusions and not allegations of facts. The Secretary of State disputes their legal conclusions.

3. Answer to Paragraph 3, including subparts 3.1 through 3.4, 3.4.1, 3.4.2, 3.5 and 3.5.1. The Secretary of State neither admits nor denies these paragraphs because they are legal conclusions and not allegations of facts. The Secretary of State disputes their legal conclusions.

4. Answer to Paragraph 4, including subparts 4.1 through 4.3. The Secretary of State neither admits nor denies these paragraphs because they are legal conclusions and not allegations of facts. The Secretary of State disputes their legal conclusions.

5. Answer to Paragraph 5, including subparts 5.1 through 5.3. Except as noted below, the Secretary of State neither admits nor denies these paragraphs because they are legal conclusions or statements of opinion and not allegations of facts. The Secretary of State disputes

their legal conclusions and statements of opinion. The Secretary of State admits the first sentence of subparagraph 5.1: "Idaho allows same day voter registration at our [Idaho's] polling places." The Secretary of State denies any implication in subpart 5.2 that Plaintiff registered at a polling place on Election Day 2013 (November 5, 2013) and thus would be a registered voter one year less one day on Election Day 2014 (November 4, 2013). The Secretary of State alleges that Plaintiff first registered to vote in Ada County on March 11, 2014, which was the day before he presented his Declaration of Independent Candidacy to the Secretary of State's Office on March 12, 2014. See Exhibit A to this Answer, which is a copy made from Statewide voter registration records maintained by each county and directly accessible by the Secretary of State's Office as part of its normal operations. The voter registration records from which Exhibit A was printed are part of a data compilation of voter registration records that are regularly conducted and regularly recorded and relied upon by the Secretary of State's Office to determine who is a registered voter and when a person registered to vote.

6. Answer to Paragraph 6, including subparts 6.1 and 6.1.1 through 6.1.3. The Secretary of State neither admits nor denies these paragraphs because they are legal conclusions or statements of opinion and not allegations of facts. The Secretary of State disputes their legal conclusions or statements of opinion.

7. Answer to Paragraph 7. The Secretary of State neither admits nor denies the first clause of Paragraph 7 ("Time is of the essence") because it is a legal conclusion. The Secretary of State disputes that time is of the essence because nothing prevents Plaintiff from fundraising or campaigning now if he so chooses. The Secretary of State admits that part of the second clause that alleges other candidates for State Representative for District 19 Seat 19B are already fundraising because Sunshine Law Reports filed with the Secretary of State's Office show that a candidate for that position has already filed reports showing the raising of funds. The Secretary of State is without knowledge or information to admit or deny that part of the second clause that alleges candidates for State Representative Seat B for District 19 "are campaigning." The Secretary of State denies the third and last clause, which alleges that Plaintiff "cannot do so

[raise funds or campaign] until registered as a candidate with the Secretary of State's office." The Sunshine Law, in particular Idaho Code § 67-6602(a) ("candidate" defined), § 67-6603 (appointment of political treasurer), and § 67-6604 (accounts of political treasurer), has no requirement for a candidate to qualify for the ballot before a candidate may raise funds or campaign.

**PRAYER FOR RELIEF**

Defendant the Honorable Ben Ysursa, Secretary of State of the State of Idaho, prays:

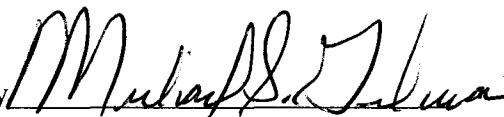
That the Application for Writ of Mandate be denied because Plaintiff has a plain, speedy and adequate remedy at law under Idaho Code § 34-215; and

If the Court construes Plaintiff's Application for Writ of Mandate to be an appeal under Idaho Code § 34-215, that Court dismiss the appeal for lack of jurisdiction as untimely; and

If the Court reaches the merits of either the Application for a Writ of Mandamus or an appeal under § 34-215, that Plaintiff's claim be denied on the merits and Plaintiff take nothing and the action of the Secretary of State be affirmed.

DATED this 1st day of May, 2014.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By   
MICHAEL S. GILMORE  
Deputy Attorney General

VERIFICATION

STATE OF IDAHO )  
 ) ss.  
County of Ada )

I, Ben Ysursa, being first duly sworn upon oath, depose and state upon personal knowledge as follows:

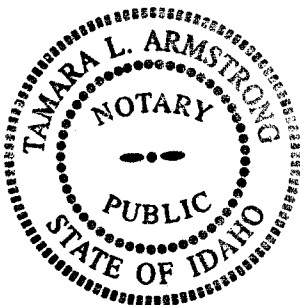
That I am the Defendant in the foregoing VERIFIED ANSWER OF SECRETARY OF STATE BEN YSURSA and that I have read this ANSWER and believes the facts stated therein are true based upon my own information and belief.

This concludes my VERIFICATION.

Ben Ysursa  
Ben Ysursa

SUBSCRIBED AND SWORN TO before me this 1st day of May, 2014.

S  
E  
A  
L



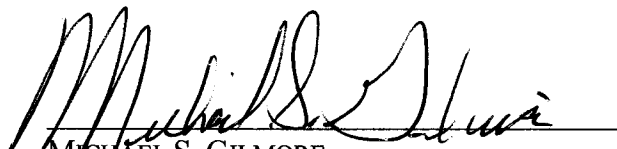
Tamara Armstrong  
Notary Public  
Residing at: Boise ID  
My Commission Expires: 12-26-18

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2014, I caused to be served a true and correct copy of the foregoing by the following method to:

Caleb Hansen  
280 North 8th Street, Apt. #306  
Boise, ID 83702

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail



MICHAEL S. GILMORE  
Deputy Attorney General

# **EXHIBIT A**

**Main Menu:**

Activities

Reports

**Inquiries**

**Voter Registration**

External Interfaces

Voter Absentee Ballot

Voter Election History

Voter Change Audit

Voter Petition History

Voter Cancellations

County Street

Clerk Information

Cancelled/Purged Voter

Poll Place

Help

Logout

# Inquiry - View Voter Registration

ADA / ADA

Previous Name

Previous Address

Election History

### Voter Information:

Prefix Name:  
**Voter's Name:** CALEB FOSTER  
 HANSEN  
**Date of Birth:** [REDACTED]  
**Voter ID:** [REDACTED]  
**Driver's License**  
**Number:** [REDACTED]  
**SSN:** [REDACTED]  
**Protective Order:** N

### Residence Address:

**Street Number:** 280  
**Street Name:** N 8TH ST  
**Unit:** #306  
**Address Line 2:**  
**Address Line 3:**  
**City:** BOISE  
**State:** ID  
**Zip:** 83702

### Miscellaneous Information:

**Gender:** Male  
**Military/Overseas**  
**Status:** None  
**Registration Type:** In Person  
**Telephone:** 208-861-4658

### Status Information:

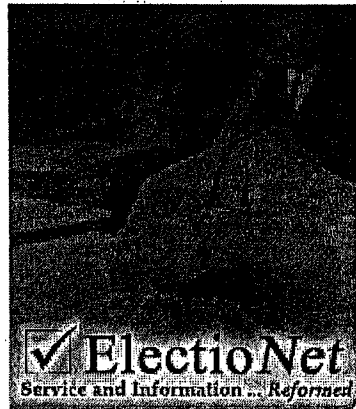
**Effective Date:** 03/11/2014  
**Current Status :** Active

### External Validation:

**Date Verified**  
**DMV ID :**  03/11/2014  
 [REDACTED]

### Party Information:

**Previous Party**  
**Current Party Changes:**  
 Unaffiliated



Display Signature    Display Reg Card  
 Audit History    Purge/Cancellation History  
 Correspondence History  
 Print Screen

### Mailing Address:

Street Number	Street Name	Unit
Address Line 2	Address Line 3	
City	State	Zip Code

000062

000063

Country:

Districts:

<b>County Precinct</b>	1916	<b>Congressional District</b>	2
<b>Taxcode Area</b>	01-6	<b>City Precinct</b>	
<b>Legislative District</b>	19	<b>Auditorium District</b>	44 (GREATER BOISE AUDITORIUM)
<b>County District</b>	1 (ADA COUNTY)	<b>College District</b>	100 (COLLEGE OF WESTERN IDAHO)
<b>City District</b>	14 (BOISE CITY)	<b>Hospital District</b>	3 (EMERGENCY MEDICAL)
<b>Highway District</b>	6 (ADA COUNTY HIGHWAY DIST)	<b>Highway Zone</b>	3 (HIGHWAY ZONE 3)
<b>Mosquito Abatement</b>	43 (MOSQUITO ABATEMENT)	<b>School District</b>	7 (BOISE SCHOOL DISTRICT NO. 1)
<b>Soil District</b>	900 (ADA SOIL CONSERVATION)		

Annexation

Polling Places

County:

Name:

BOISE SENIOR CENTER

Address:

690 ROBBINS RD  
BOISE, ID 83702-4539

Absentee Walk-In:

Memo:

Previous



## Inquiry - Voter Change Audit History

ADA / ADA

**Voter Name:** CALEB FOSTER HANSEN

### Change Audit History:

Audit Date/Time	Type	Change Date	Change Reason	Prev Reg Date	Changed User Id	Type of Change
03/11/2014 03:08 PM	Add	03/11/2014	New Voter		AUHANENJ	

Close

---

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LAWRENCE G. WASDEN  
ATTORNEY GENERAL

BRIAN KANE, ISB #6264  
Assistant Chief Deputy Attorney General  
Statehouse, Room 210  
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Facsimile: (208) 854-8071  
brian.kane@ag.idaho.gov

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation  
MICHAEL S. GILMORE, ISB #1625  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
Telephone: (208) 334-4130  
Facsimile: (208) 854-8073  
mike.gilmore@ag.idaho.gov  
Attorneys for Defendant

NO. \_\_\_\_\_  
FILED \_\_\_\_\_  
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MAY 01 2014

CHRISTOPHER D. RICH, Clerk  
By ELYSHIA HOLMES  
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

\_\_\_\_\_  
CALEB HANSEN,

Plaintiff,

vs.

\_\_\_\_\_  
BEN YSURSA, Idaho Secretary of State,

Defendant.

)  
) Case No. CV OC 1407627  
)  
) **AFFIDAVIT OF SECRETARY OF**  
) **STATE BEN YSURSA**  
)  
)  
)

STATE OF IDAHO )  
) ss.  
County of Ada )

I, Ben Ysursa, being first duly sworn upon oath, depose and state upon personal knowledge as follows:

1. I am Ben Ysursa. I am the Defendant in this case. I am the duly qualified Secretary of State of the State of Idaho. I was first elected Secretary of State in the general election of November 5, 2002, and took office on January 6, 2003. I was re-elected Secretary of State in the

*EC*

general elections of November 7, 2006, and November 2, 2010. I have continued to serve as Secretary of State from January 6, 2003, until the present. I have personal knowledge of all of the matters discussed in this Affidavit.

2. Before I was elected Secretary of State in 2002 and assumed that office, I was Chief Deputy Secretary of State during the primary and general elections held in every even numbered year from 1976 to 2002. I joined the Secretary of State's Office in 1974 and was Chief Elections Deputy during the primary and general elections of 1974. Based upon my experience first as Chief Elections Deputy, then as Chief Deputy Secretary of State, and finally as Secretary of State, I am familiar with interpretations of and administration of Idaho election laws by the Office of the Secretary of State.

3. During my tenure with the Secretary of State's Office since 1974, it has been the Office's uniform interpretation of the Idaho Constitution that:

(a) Article VI, § 2's provision that defines a "qualified elector" as a person who "resided in the state and the county where he or she offers to vote for the period of time provided by law, *if registered as provided by law*" (emphasis added), and

(b) Article III, § 6's provision that no person may be a Senator or a Representative in the Idaho Legislature "who has not been *for one year next preceding his election an elector* of the county or district whence he may be chosen" (emphasis added), taken together require every person who is a candidate for legislative office to be registered to vote in the legislative district in which he or she resides for one year before the general election.

4. The Secretary of State's Office has consistently applied the legal position stated in Paragraph 3 over the election cycles in which I have been involved. In the table on the next page I list the persons who have been disqualified from appearing on the ballot as candidates for the Legislature in the last five election cycles for failure to be a registered voter for one year before the general election.

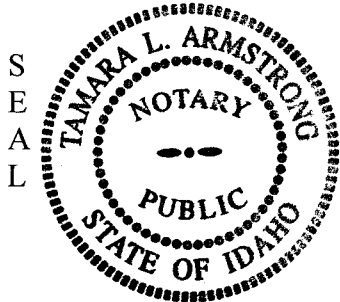
Year	Would-Be Candidate	Political Affiliation	Seat
2014	Andrea Christensen	Republican Party	Representative Seat A, District 18
2014	Caleb Hansen	Independent	Representative Seat B, District 19
2014	Robert Windsor	Republican Party	Representative Seat A, District 21
2012	Joni L. Sorenson	Democratic Party	Representative Seat A, District 18
2010	None		
2008	C. "Mac" MacCloud	Constitution Party	Senate, District 14
2008	Mark Watson	Democratic Party	Representative Seat B, District 14
2008	Matt Yost	Democratic Party	Senate, District 15
2008	Douglas McVey	Republican Party	Representative Seat A, District 17
2008	Lawrence Johnson	Republican Party	Senate, District 19
2008	Jacob Wilcox	Republican Party	Representative Seat A, District 30
2006	Rand Lewis	Democratic Party	Representative Seat B, District 2
2006	Ben Simpson	Republican Party	Representative Seat A, District 14

This concludes my affidavit.

*Ben Ysursa*

Ben Ysursa

SUBSCRIBED AND SWORN TO before me this 15<sup>th</sup> day of May, 2014.



*Tamara L. Armstrong*

Notary Public

Residing at: Boise, ID

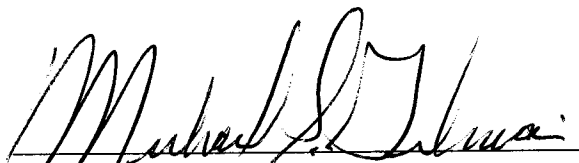
My Commission Expires: 12-26-18

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2014, I caused to be served a true and correct copy of the foregoing by the following method to:

Caleb Hansen  
280 North 8th Street, Apt. #306  
Boise, ID 83702

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail



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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
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CHRISTOPHER D. RICH, Clerk  
By ELYSHIA HOLMES  
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CALEB HANSEN,	)	
	)	Case No. CV OC 1407627
Plaintiff,	)	
	)	<b>MEMORANDUM IN</b>
vs.	)	<b>OPPOSITION TO APPLICATION</b>
	)	<b>FOR WRIT OF MANDAMUS</b>
BEN YSURSA, Idaho Secretary of State,	)	
	)	
Defendant.	)	

The Hon. Ben Ysursa, Secretary of State of the State of Idaho, files this Memorandum in Opposition to Plaintiff's Application for Writ of Mandamus. The Secretary of State's primary position is set forth in his Motion to Dismiss and its Supporting Memorandum: The Application for Writ of Mandamus should be dismissed because mandamus is not a substitute for appeal, and Plaintiff failed to pursue his right of appeal under Idaho Code § 34-215; further, if the Application for Writ of Mandamus is treated as an appeal, it should be dismissed as untimely. If how-

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ever, the Court denies the Motion to Dismiss and reaches the merits, this Memorandum explains why the Application for a Writ of Mandamus should be denied on the merits.

## I. INTRODUCTION

The issue presented by Plaintiff's Application is the meaning of the word "elector" as a requirement to be a legislative candidate. Specifically, the issue is whether an "elector" must be registered to vote, or whether any "resident citizen" is an elector. Plaintiff's Application in effect posits that the terms "elector" and "any person who could register to vote but has not" (*i.e.*, a "resident citizen") are synonymous; therefore if Plaintiff were a resident citizen in Legislative District 19 for one year before the general election of 2014, he would be entitled to run for a legislative seat.<sup>1</sup> But this argument would re-write the Idaho Constitution in two places.

First, Plaintiff's argument would effectively change the word "elector" in Article III, § 6 of the Idaho Constitution, which provides qualifications for members of the Legislature, to "resident," despite the fact that the Framers of the Idaho Constitution decided by motion and vote to substitute the term "elector" for "inhabitant" in that section. Second, Plaintiff's argument would render the phrase, "if registered as provided by law," in Article VI, § 2's definition of elector, a nullity. Neither of these phrases should be amended, diminished, rendered superfluous, or nullified. Plaintiff's Application should be denied consistently with the Idaho Constitution. Plaintiff's Application for a Writ of Mandamus should be denied for the following reasons, which are elaborated in the Argument:

- I. Idaho's Constitution expressly sets forth the qualifications for legislative office, including being an elector in the legislative district for a year before the election;
2. Plaintiff has not met the constitutional qualifications because he did not timely qualify as an elector;
3. Idaho Code § 34-614 cannot lessen the constitutional requirements for a legislative candidate to be an elector in the district for a year before the election;

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<sup>1</sup> Plaintiff has not alleged in the Application that he has been and continues to be a resident of Legislative District 19 beginning at least one year before the general election of 2014. The rest of this brief assumes that Plaintiff could provide such evidence before the hearing; if he cannot, that would be another reason to disqualify him from the general election ballot.

4. Case law confirms:
  - a. The Terms “elector” and “qualified elector” are interchangeable; and
  - b. Registration is required for a citizen to be an elector;
5. The Framers of the Idaho Constitution crafted a practical balance between the qualifications for legislative office and the ability of the elections officers to verify those qualifications, and the Court should defer to the Secretary of State’s reasonable interpretation of the election laws if these laws are ambiguous.

Accordingly, the Secretary of State asks this Court to deny Plaintiff’s Application for a Writ of Mandamus if it reaches the merits.

## **II. STATEMENT OF FACTS**

On March 12, 2014, Plaintiff submitted to the Office of the Secretary of State paperwork for his declaration of candidacy for the position of State Representative for District 19, Seat B. Application for Writ of Mandamus, third paragraph. Plaintiff, however, had registered to vote in District 19 the day before, on March 11, 2014. Verified Answer, ¶ 5, and Exhibit A to Verified Answer. Therefore, as shown in Appendix A to the Application, on March 12, 2014, the Office of the Secretary of State informed Plaintiff that he was not eligible to be a candidate for the Idaho Legislature in 2014, based upon the requirement of Idaho Constitution, Article III, § 6 that a candidate for a legislative office must be “for one year next preceding his election an elector of the county or district whence he may be chosen.” *Id.* In 2014 the Secretary of State similarly notified two other individuals that they did not meet this requirement and likewise were not qualified to be candidates for legislative office in 2014. Affidavit of Secretary of State Ben Yursa, ¶ 4. The Secretary of State has made this same determination for thirteen candidates for the 2006-2014 election cycles. *Id.*

### **III. ARTICLE III, § 6 REQUIRES CANDIDATES FOR LEGISLATIVE OFFICE TO BE AN ELECTOR IN THEIR DISTRICT FOR A YEAR BEFORE THE ELECTION**

#### **A. The Requirements of Article III, § 6 Are Express**

Plaintiff focuses his Application on the statutory qualifications to be a candidate for the legislature. He appears to argue that he should be placed on the ballot without regard to the



constitutional qualifications for a Legislator. See Application, ¶ 2 and its subparagraphs. The correct analysis must begin with the Idaho Constitution.

The “Court applies the rules of statutory construction to construe constitutional provisions.” *Wasden v. State Bd. of Land Com’rs*, 153 Idaho 190, 196, 280 P.3d 693, 699 (2012). “Where a statute or constitutional provision is clear, the Court must follow the law as written and, thus, when the language is unambiguous, there is no occasion for application for rules of construction.” *Hayes v. Kingston*, 140 Idaho 551, 553, 96 P.3d 652, 654 (2004).

Two sections of the Idaho Constitution directly bear on qualifications for the Legislature. The first, Article III, § 6, requires citizenship and a year’s duration as an elector in the district to qualify to be elected to the Legislature:

**§ 6. Qualifications of members.** — No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and an elector of this state, nor anyone who has not been for one year next preceding his election, an elector of the county or district whence he may be chosen.

Although being a citizen is a necessary condition for election to the Idaho Legislature, it is not sufficient. Any person wishing to be elected must also satisfy a second condition of local civic engagement: being an elector of his district for a year before the election.

Article VI, § 2 defines electors — indeed, its title is “Qualifications of electors”:

**§ 2. Qualifications of electors.** — 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 of time provided by law, if registered as provided by law, is a qualified elector.

This section has two requirements for a “qualified elector” in addition to age and citizenship: (1) residing in the county where he or she will vote for the time provided by law, and (2) not only residing in the county, but also being “registered as provided by law.”

These two sections can be simply and easily read together. They require candidates for the Legislature to be citizens, to be at least eighteen years old, and to be an elector of the county and the legislative district for one year before the general election, and to have been a registered

elector during that time. These two provisions should all be read together:

[C]onstitutional provisions cannot be read in isolation, but must be interpreted in the context of the entire document. [They] must be read to give effect to every word, clause and sentence ... [w]e will not construe [them] in a way which makes mere surplusage of the provisions included therein ...; [i]n construing the Constitution, ... provisions apparently in conflict must be reconciled if at all possible ... inasmuch as they relate to the same matter or subject ... [.] The particular words of a [Constitution] should be read in context; and the [Constitution] as a whole should be construed, if possible, to give meaning to all its parts in light of the legislative intent.

*Westerberg v. Andrus*, 114 Idaho 401, 403-04, 757 P.2d 664, 666-67 (1988) (citations and internal punctuation omitted; bracketed references to the Constitution replace references to statute in quoted materials). Thus, this Court should insure that the phrase “if registered as provided by law” is not rendered meaningless or surplusage.

To be an elector, one must meet the qualifications of Article VI, § 2. A person who does not meet all them does not have the “qualifications of [an] elector.” Giving effect to the words and clauses in Article VI, § 2, there are four requirements to be an elector, namely being (a) a citizen of the United States, (b) who is eighteen years old, (c) a resident of the county for the time period prescribed by law, and (d) registered to vote as provided by law. Plaintiff was not an elector for a year before the 2014 general election because he was not “register[ed] as provided by law” for that time. The only way that Plaintiff can qualify as a candidate for the Legislature is for this Court to render the fourth requirement for electors — to “register as provided by law” — as surplusage. That would write this requirement out of the Constitution.

Article VI, § 2 has been amended three times,<sup>2</sup> but the phrase: “if registered as provided by law, is a qualified elector” has not changed since its adoption in 1890. The original 1890 Idaho Constitution referred to voters as both electors and as qualified electors.<sup>3</sup> Thus, the Idaho

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<sup>2</sup> 1895 Idaho Session Laws (I.S.L.), S.J.R. No. 2 (extending franchise to women); 1961 I.S.L., S.J.R. No. 6 (providing limited franchise to recent residents to vote for president); 1982 I.S.L., H.J.R. No. 14 (extending franchise to eighteen-year-olds, repealing obsolete transition rules for women who held office under Territorial laws, and moving durational residency requirements from Constitution to statute).

<sup>3</sup> Idaho Const. Art. III, § 2; Art. V, §§ 6 & 23; Art. XII, § 1; Art. XX, §§ 1,2 & 3; Art. XXI, § 6 (“elector” used); Art. VI, § 2; Art. V, §§ 11 & 18; Art. VII, § 3; Art. XVIII, §§ 2 & 3; Art. XXI, § 9

Supreme Court made the near-contemporaneous observation that “after a most careful examination of the several provisions of the constitution in which the terms ‘elector’ and ‘qualified elector’ are used, we conclude that said terms are used interchangeably and that an elector is a qualified elector.” *Wilson v. Bartlett*, 7 Idaho 271, 276, 62 P. 416, 417 (1900) (emphasis added). As the Court elaborated: “We do not think that registration is intended as one of the substantive qualifications of an elector. Registration was intended only as a regulation of the exercise of the right of suffrage, and not a qualification for such right.” *Id.*

Registration is a regulation of the exercise of the right of suffrage; it likewise can be a regulation of the exercise of the right to run for office. Qualified electors must be registered to vote as provided by law, so the requirement that members of the Legislature be electors “for one year next preceding his election” means they do not become electors until they register to vote as required by law.

#### **B. The Term “Elector” Replaced “Inhabitant” at the Constitutional Convention**

The debates of the Constitutional Convention support the plain meaning of the language: Article III, § 6 was intended to require more than residence as to qualify for the Legislature. During the convention, a draft of Article III, § 6 was debated and amended. Delegate Heyburn moved to amend proposed Article III, § 6, to substitute the word “elector” for “inhabitant” just before the phrase “of the county or district.” *Proceedings and Debates of the Constitutional Convention of Idaho 1889*, Vol. I, p. 506. Mr. Heyburn explained:

The object of that is, that a man might not live in the county at all, he only needs to be an elector of this state and inhabitant of the county; inhabitant is not the term we should use, but a man who is going to be a candidate for the legislature should be an elector of the county and district he seeks to represent.

*Id.* The motion carried, and “elector” replaced “inhabitant.” *Id.* The Constitutional Convention clearly intended more than residency through this change in the wording of what would become Article III, § 6. This change has prevented “carpetbagging” by ensuring that legislators have a connection to their districts for at least a year before the election, as opposed to a mere residence (“qualified elector” used).

or inhabitation. Based upon this change in wording, “elector” does not have the same meaning as “resident” or its synonym “inhabitant”.<sup>4</sup>

In an instructive decision, the Idaho Supreme Court was asked to hold that the words “move” and “file” had the same meaning. *Wright v. Willer*, 111 Idaho 474, 725 P.2d 179 (1980). Recognizing that statutes must be read to give effect to every word, clause and sentence, *Wright* recognized a distinction between the two terms, identifying the difference between making a motion (when the motion was mailed) and filing a motion (when the motion was received and docketed) as discrete circumstances. *Id.* at 476, 725 P.2d at 181. Similarly, the terms “resident” and “elector” do not have the same meaning, but instead must be recognized as terms involving discrete circumstances, particularly as residence is a qualification of an elector. In other words, one must be a resident before one can be an elector, which makes the meaning of “resident” more expansive than the meaning of “elector.”

Being an elector requires a level of civic engagement and community involvement that exceeds merely residing in a district; the terms “elector” and “resident” are far from synonymous. Choosing the term “elector” over the term “resident” or “inhabitant” at the Constitutional Convention shows the Framers’ intent that candidates for the Legislature must have a degree of civic engagement via voter registration at least one year before an election.

### **C. The Constitution Provides Different Qualifications for Different Offices**

The Idaho Constitution’s other sections for qualifications for office show that “elector” and “resident” have different meanings. The Framers used the terms “elector” and “resident” for specific purposes. For example, Article IV, § 3 requires that the Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, and Attorney General “shall be a citizen of the United States and shall have resided within the state or territory two years next preceding his election.” In contrast, Article V, § 18 sets forth that the Prosecuting Attorney “shall be a practicing attorney

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<sup>4</sup> “Inhabitant” and “resident” have similar meanings. Webster’s Ninth New Collegiate Dictionary (1989) defines “inhabitant” as “one that occupies a particular place regularly, routinely, or for a period of time”, p. 622, and “resident” as “1: one who resides in a place ...,” p. 1003. The corresponding definition of “reside” is “1 ... b: to dwell permanently or continuously : occupy a place as one’s legal domicile.” *Id.*

at law, and *a resident and elector* of the county for which he is elected.” (Emphasis added). Article V, § 23 requires that a District Judge “shall have *resided* in the state or territory at least two years next preceding his election, nor unless he shall have been at the time of his election, an *elector* in the judicial district for which he is elected.” (Emphasis added).

The Framers could have provided that Legislators merely reside in the district they represent, as they did for Executive officers. Compare Art. III, § 6, with Art. IV, § 3. They did not. They chose, instead, to require a Legislator be an elector within the district for a year before his election, which is more than mere residency. The Framers also distinguished between a durational residency requirement for a District Judge and the requirement that he be an elector by the time he is elected, see Article V, § 23, and did the same for a Prosecuting Attorney, who must be both a resident and an elector, see Article V, § 18 — showing that an elector carries with it a qualification in addition to residency.

This Court should resist Plaintiff’s implicit invitation to revise Idaho’s Constitution. A straightforward comparison of the constitutional sections outlining the qualifications for office shows that the Framers intended that a Legislator be qualified beyond mere residency. Plaintiff cannot show that he has met the constitutional qualifications to be an elector for the time required by law, based upon a plain reading of the Constitution.

**D. Idaho Code § 34-614 Cannot Limit Article III, § 6**

Plaintiff says: “No statute in Idaho Code disqualifies the Applicant from holding the office of State Representative, or from being placed on the ballot for election to that office.” Application, ¶ 1.3. Plaintiff quotes Idaho Code § 34-614(2), which contains statutory qualifications for legislative office. Application, ¶ 2.2.2.2. Idaho Code § 34-614(2) has a residency requirement, but no requirement to be an elector:

(2) No person shall be elected to the office of representative or senator unless he shall have attained the age of twenty-one (21) years at the time of the general election, is a citizen of the United States and shall have resided within the legislative district one (1) year next preceding the general election at which he offers his candidacy.

The Legislature cannot amend or repeal the Constitution, or any part of it, by legislative act. *State v. Village of Garden City*, 74 Idaho 513, 522, 265 P.2d 328, 331-32 (1953). Therefore, the requirements of Idaho Code § 34-614 can add to, but cannot relax, those of Article III, § 6. The residency requirement of § 34-614(2) cannot reduce or eliminate the constitutional requirement that a Legislator be an elector for a year prior to the election.

#### IV. CASE LAW SUPPORTS THE SECRETARY OF STATE'S POSITION

##### A. "Elector" and "Qualified Elector" Are Synonymous

The terms "elector" and "qualified elector" have been used interchangeably throughout Idaho's history. Just ten years after adoption of the Idaho Constitution, *Wilson v. Bartlett*, 7 Idaho 271, 272, 62 P. 416, 417 (1900), held that "elector" and "qualified elector" are interchangeable. In *Wilson*, the court construed the term "elector" as it applied to eligibility to sign a petition for removal of a county seat pursuant to Article XVIII, § 2. The court held that registration was not "intended as one of the substantive qualifications of an elector" to avoid the following paradox: "If registration is one of the qualifications of an elector, the registrar is prohibited from registering any person who has not theretofore been registered." *Id.* at 276, 62 P. at 417. The Court reached this conclusion to clearly define who could sign a petition to move a county seat.

Additionally, *Wilson* noted that voters were then required to reregister every two years, and the clerks were only required to keep the registration lists for one year. *Id.* at 277-78, 62 P. at 418. *Wilson* held that for purposes of signing a petition to move a county seat, voter registration was not required, and the terms "elector" and "qualified elector" were interchangeable. The court did not hold that one could vote or hold office as an elector without registering, simply that the signing of a petition to exercise one's constitutional right to petition for a change in county seat did not require registration, particularly if the signature might come at a time when clerks were under no obligation to have preserved voter registration records.

##### B. Registration Is a Qualification of Electors

In *Kerley v. Wetherell*, 61 Idaho 31, 96 P.2d 503 (1939), the Court noted: "Thus it would appear that the constitutional definition of a 'qualified elector' includes registration as an element

thereof, where the municipal or statutory law requires registration.” *Id.* at 41, 96 P.2d at 508. After this observation, the court limited the holding of *Wilson*, noting in reference to *Wilson*: “It thus appears such decision is based upon an interpretation of the intention of the law there under consideration.” *Id.* at 42, 96 P. at 508. *Kerley* held that signers of a referendum petition under a Boise City ordinance were required to be registered voters. “The legislature clearly has the power to make registration an essential element.” *Id.* *Kerley* limited *Wilson* to the circumstances of that case and then reached the opposite conclusion of *Wilson*—namely that the Constitution required registration as an element of the qualifications of electors as provided for in Article VI, § 2, whenever registration was required by law.

If we are correct in our conclusion that the words “qualified elector” as used in said section was intended to mean electors of Boise City who are registered as required by law, then it follows that only such a qualified elector can verify such a petition, and the names of signers on a referendum petition, not so verified, cannot be counted.

*Id.* at 42, 96 P. at 508. Likewise, since registration is required to vote for Legislative candidates, then it follows that the only electors who may run for the Legislature are registered voters meeting the durational requirement, not mere residents meeting the durational requirement.

**C. *Dredge Mining Is Inconsistent With Plaintiff’s Position***

In *Dredge Mining Control - Yes!, Inc. v. Cenarrusa*, 92 Idaho 480, 445 P.2d 655 (1968), the Court explained the holding in *Kerley*: “[I]n considering the question whether signers of an initiative petition in the City of Boise were required to be registered electors in the city, [*Kerley*] held that registration was required.” *Id.* at 482-83, 445 P.2d at 657-58. *Dredge Mining* held that for a person to be qualified to sign an initiative petition, that person must be eligible to vote on the measure, and must thus be registered. *Id.* at 482, 445 P.2d at 657. The court further recognized that if a person has not registered to vote, it would be impossible for a clerk to verify that the person meets the qualifications of Idaho Code § 34-1814. *Id.* A similar analysis applies in this case. Absent registration, it would be impossible and impractical to determine the qualifications of legislative candidates regarding their time living in the district.

**V. IF THE LAW IS AMBIGUOUS, THE COURT SHOULD DEFER TO THE  
SECRETARY OF STATE'S PRAGMATIC INTERPRETATION, WHICH PROVIDES  
AN EASILY VERIFIABLE MEASURE OF ELIGIBILITY FOR THE BALLOT**

The Secretary of State "is the chief election officer of this state, and it is his responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election law." Idaho Code § 34-201(1). If the constitutional and statutory provisions regarding who has been an elector for a year before the general election are ambiguous, the Court should defer to the Secretary of State's interpretation:

Where an agency interprets a statute or rule, this Court applies a four-pronged test to determine the appropriate level of deference to the agency interpretation. This Court must determine whether: (1) the agency is responsible for administration of the rule in issue; (2) the agency's construction is reasonable; (3) the language of the rule does not expressly treat the matter at issue; and (4) any of the rationales underlying the rule of agency deference are present. There are five rationales underlying the rule of deference: (1) that a practical interpretation of the rule exists; (2) the presumption of legislative acquiescence; (3) reliance on the agency's expertise in interpretation of the rule; (4) the rationale of repose; and (5) the requirement of contemporaneous agency interpretation.

*Duncan v. State Bd. of Accountancy*, 149 Idaho 1, 3, 232 P.3d 322, 324 (2010).

The Secretary of State is not an "agency"; he is a constitutional officer. That is all the more reason that he should be given deference. When he is carrying out statutory duties assigned to him as the chief election officer of the State, including "responsibility to obtain and maintain uniformity in the application, operation and interpretation of the election law," the *Duncan* reasons for deference to his interpretation of Idaho constitutional and statutory provisions apply.

First, the Secretary of State is charged by law with being the State's chief election officer. Second, his construction of Article III, § 6's requirement to be an elector of the county or district for one year preceding the election is reasonable. Third, if there is an ambiguity in the law (and this portion of the Argument only applies if there is an ambiguity), the Secretary of State must resolve it. Fourth, four of the five rationales for deference are present: (A) The Secretary of State's interpretation solves a practical problem of how to readily resolve whether a candidate for



the Legislature has been an elector in the district for a year before the general election. (B) There is a presumption of Legislative acquiescence because there are few areas where the Legislature would be expected to be as well-informed as qualifications to run for the Legislature. (C) Potential and actual candidates have relied on the Secretary of State to administer access to the ballot fairly and transparently for decades. (D) The Secretary of State has taken a uniform position for at least forty years. *Ysursa Aff.*, ¶ 3. (E) Only the fifth rationale is missing because no one knows the contemporary practices of 1890.

To elaborate on the practical aspects of the Secretary of State's position, Article III, § 6's requirement that a legislative candidate be an elector of the district for one year prior to his or her election is easily checked if being an elector means being a registered voter. But what if being an elector merely requires residence? Here is how the Idaho Code defines residence:

**34-107. "Residence" defined.** — (1) "Residence," for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence.

(2) In determining what is a principal or primary place of abode of a person the following circumstances relating to such person may be taken into account: business pursuits, employment, income sources, residence for income or other tax pursuits, residence of parents, spouse, and children, if any, leaseholds, situs of personal and real property, situs of residence for which the exemption [the homestead allowance] in section 63-602G, Idaho Code, is filed, and motor vehicle registration.

(3) A qualified elector who has left his home and gone into another state or territory or county of this state for a temporary purpose only shall not be considered to have lost his residence.

(4) A qualified elector shall not be considered to have gained a residence in any county or city of this state into which he comes for temporary purposes only, without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(5) If a qualified elector moves to another state, or to any of

the other territories, with the intention of making it his permanent home, he shall be considered to have lost his residence in this state.

A quick look at this definition of "residence" shows the difficulty that the Secretary of State might have in determining the residence of Legislators and their challengers if registration were not dispositive of the issue of being an elector. If there were a challenge to a would-be candidate's residence in the district for a year before the election, the Secretary of State might have to look at his or her business pursuits, employment, income sources, residence for income or other tax pursuits, residence of other family members, if any, leaseholds, situs of personal and real property, situs of homestead exemption, and motor vehicle registration. How impractical. Instead, voter registration records provide a bright-line rule of law that is easily administered. If the Court determines that Constitution and statutes regarding being an elector for a year before the election are ambiguous, it should defer to the Secretary of State's practical administration of the issue.

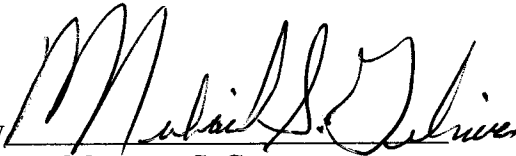
#### VI. CONCLUSION

As explained above, to give meaning and effect to each word in the Idaho Constitution, Plaintiff's Application for a Writ of Mandamus should be denied. Idaho's Framers established a neutral ballot qualification standard designed to insure that candidates are sufficiently tied to their districts. Plaintiff has advanced no reason to eliminate this qualification and thereby rewrite the Idaho Constitution. If his Motion to Dismiss is denied, Secretary of State Ysursa requests that this Court deny Plaintiff's Application for A Writ of Mandamus on the merits because Plaintiff failed to meet the constitutional qualifications for legislative office and affirm that persons who qualify for the ballot as a candidate for the Legislature must have been registered to vote in their district one year before the general election.

////////////////////////////////////

DATED this 1st day of May, 2014.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

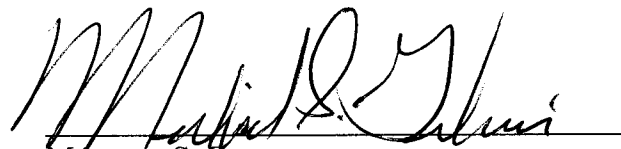
By   
MICHAEL S. GILMORE  
Deputy Attorney General

-----  
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 1st day of May, 2014, I caused to be served a true and correct copy of the foregoing by the following method to:

Caleb Hansen  
280 North 8th Street, Apt. #306  
Boise, ID 83702

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail

  
MICHAEL S. GILMORE  
Deputy Attorney General

LAWRENCE G. WASDEN  
ATTORNEY GENERAL

BRIAN KANE, ISB #6264  
Assistant Chief Deputy Attorney General  
Statehouse, Room #210  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Telephone: (208) 334-2400  
Facsimile: (208) 854-8071  
brian.kane@ag.idaho.gov

STEVEN L. OLSEN, ISB #3586  
Chief of Civil Litigation  
MICHAEL S. GILMORE, ISB #1625  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
Telephone: (208) 334-4130  
Facsimile: (208) 854-8073  
mike.gilmore@ag.idaho.gov  
Attorneys for Defendant

FILED  
MAY 16 2014

MAY 28 2014

CHRISTOPHER D. RICH, Clerk  
By BETH MASTERS  
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

_____	)	
CALEB HANSEN,	)	Case No. CV OC 1407627
	)	<b>ORDER AND JUDGMENT</b>
Plaintiff,	)	
	)	
vs.	)	
	)	
BEN YSURSA, Idaho Secretary of State,	)	
	)	
Defendant.	)	
_____	)	

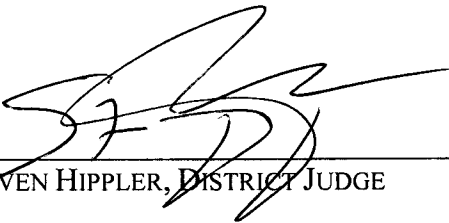
IT IS THE ORDER AND JUDGMENT of this Court that:  
  
The Application for a Writ of Mandamus is DENIED; and  
  
Treating the Application for a Writ of Mandamus as an Appeal pursuant to Idaho Code § 34-215, the Appeal is DISMISSED for lack of jurisdiction as untimely filed.

7

This is a FINAL JUDGMENT on all issues in this case from which an appeal may be taken as provided by the Idaho Appellate Rules.

Costs to Defendant.

DATED this \_\_\_\_\_ day of May, 2014.

  
STEVEN HIPPLER, DISTRICT JUDGE

-----  
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28<sup>th</sup> day of May, 2014, I caused to be served a true and correct copy of the foregoing by the following method to:

CALEB HANSEN  
280 North 8th Street, Apt. #306  
Boise, ID 83702

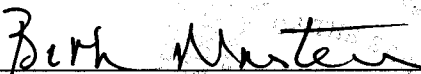
- U.S. Mail
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- Overnight Mail

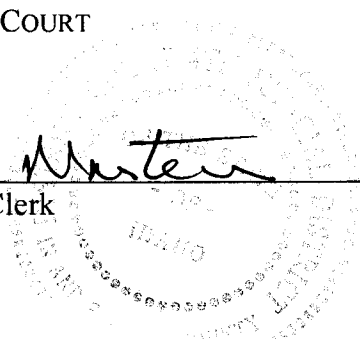
MICHAEL S. GILMORE  
Deputy Attorney General  
954 W. Jefferson Street, 2nd Floor  
P.O. Box 83720  
Boise, ID 83720-0010

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: 208-854-8073

**CHRISTOPHER D. RICH**

CLERK OF THE COURT

By   
Deputy Clerk



JUL 08 2014

CHRISTOPHER D. RICH, Clerk  
By JAMIE MARTIN  
DEPUTY

Caleb Hansen, Appellant Appearing Pro Se  
280 North 8<sup>th</sup> Street Apt # 306  
Boise, ID 83702  
208-861-4658

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Caleb Hansen,	)	Case NO. CV OC 1407627
Appellant Appearing Pro Se	)	
Vs.	)	NOTICE OF APPEAL
Ben Ysursa Idaho Secretary of State	)	
Respondent	)	

TO: THE ABOVE NAMED RESPONDENT, BEN YSURSA AND THE PARTY'S ATTORNEYS,  
LAWRENCE G. WASDEN ATTORNEY GENERAL, BRIAN KANE STATEHOUSE ROOM #210 P.O. BOX  
83720, STEVEN L. OLSEN AND MICHAEL S. GILMORE 954 W. JEFFERSON STREET 2<sup>ND</sup> FLOOR P.O.  
BOX 83720, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

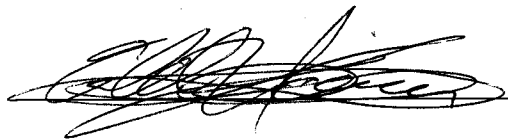
1. The above named appellant, Caleb Hansen, appeals against the above named respondent to the Idaho Supreme Court from the final judgement, titled Order and Judgment, which ruled that treating the Application for a Writ of Mandamus as an Appeal pursuant to Idaho Code 34-215, the Appeal is DISMISSED for lack of jurisdiction as untimely filed, entered in the above entitled action on the 28<sup>th</sup> day of May 2014, Honorable Judge Steven Hippler presiding.
2. The appellant has a statutory right to appeal to the Idaho Supreme Court, Idaho Code 34-215(2). The Order and Judgment described in paragraph 1 above are appealable under and pursuant to Rule 11 I.A.R.

BT

3. Appellant pleads that this Court rules the District Court erred in dismissing the original appeal as untimely filed because time was extended by attempts to exhaust administrative remedies as provided in Idaho Code 67-5273, and Rule 84(b) I.R.C.P. Appellant may still assert additional issues on appeal.
4. No order has been entered sealing all or any portion of the record.
5. A reporter's transcript, in electronic format, has been requested for the Hearing on Motion to Dismiss held May 14<sup>th</sup> 2014 at 3:30, Honorable Judge Steven Hippler presiding.
  - a. Court reporter: Valsich as listed in the repository (believed to be Christie Valcich)
  - b. Estimated number of transcript pages: 200
6. Appellant requests that the following documents be included in the clerk's record in addition to those automatically included under Rule 28 I.A.R.
  - a. Appellant's original petition for appeal with incorrect caption "Application for Writ of Mandamus" (and all attached exhibits) filed 4-18-2014
  - b. Appellant's "Affidavit in support of Application for Writ of Mandamus" (and all attached exhibits) filed 4-18-2014
  - c. "Secretary of State's Motion to Dismiss" (and all attached exhibits) filed 4-24-2014
  - d. "Memorandum in Support of Secretary of State's Motion to Dismiss" (and all attached exhibits) filed 4-24-2014
  - e. "Verified Answer of Secretary of State Ben Ysursa" (and all attached exhibits) filed 5-1-2014
  - f. "Affidavit of Secretary of State Ben Ysursa" (and all attached exhibits) filed 5-1-2014
  - g. "Memorandum in Opposition to Application for Writ of Mandamus" (and all attached exhibits) filed 5-1-2014
  - h. "Order and Judgement" filed 5-28-2014
7. I certify:
  - a. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

- i. Christie Valcich, Transcripts Dept, 200 w. Front Street room 4172 Boise, ID 83702
- b. That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.
- c. That the estimated fee for preparation of the clerk's record has been paid.
- d. That the appellate filing fee has been paid.
- e. That service has been made upon all parties required to be served pursuant to Rule 20 I.A.R. and the Attorney General of Idaho pursuant to Section 67-1401(1) Idaho Code.

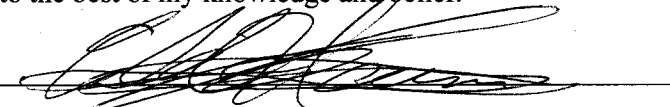
DATED THIS 8<sup>th</sup> day of July, 2014.



Caleb Hansen, Appellant appearing Pro Se

I, Caleb Hansen, being sworn, depose and state:

That I am the appellant in the above titled appeal and that all statements in this notice of appeal are true and correct to the best of my knowledge and belief.

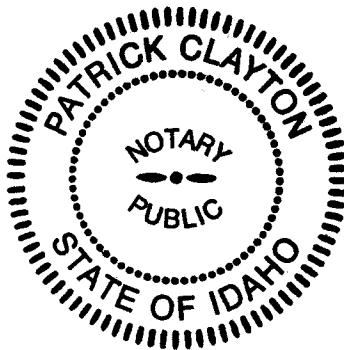
Signed: 

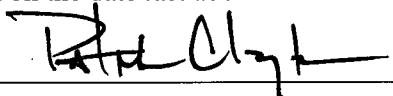
Date 7, 8, 2014

STATE OF IDAHO     )  
                                   ) ss:  
 County of Ada        )

On this 8<sup>th</sup> day of July, 2014, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared Caleb Hansen, known or identified to me to be the person whose name is subscribed to the within instrument, and executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date last above written.



  
 \_\_\_\_\_  
 Notary Public for Idaho  
 Residing at ADA COUNTY  
 Commission Expires 7/17/18



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IN THE SUPREME COURT OF THE STATE OF IDAHO

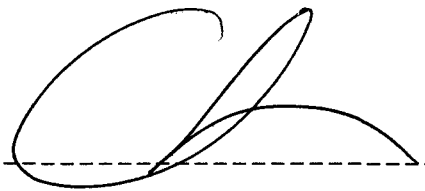
Supreme Court No. 42285

CALEB HANSEN, )  
 )  
Petitioner-Appellant )  
 )  
v. )  
 )  
BEN YSURSA IDAHO SECRETARY OF )  
STATE, )  
 )  
Respondent. )

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_  
FILED  
P.M. 1:00  
SEP 03 2014  
CHRISTOPHER D. RICH, Clerk  
By BRADLEY J. THIES  
DEPUTY

LODGEMENT OF REPORTER'S TRANSCRIPT ON APPEAL

Notice is hereby given that on August 14,  
2014, I lodged a transcript, 39 pages in length, for  
the above-referenced appeal with the District Court  
Clerk of Ada County in the Fourth Judicial District.



(Signature of Reporter)  
Christie Valcich, CSR-RPR

August 14th, 2014

Hearing Date: May 14, 2014

BT

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CALEB HANSEN,

Plaintiff-Appellant,

vs.

BEN YSURSA, Idaho Secretary of State,

Defendant-Respondent.

Supreme Court Case No. 42285

CERTIFICATE OF EXHIBITS

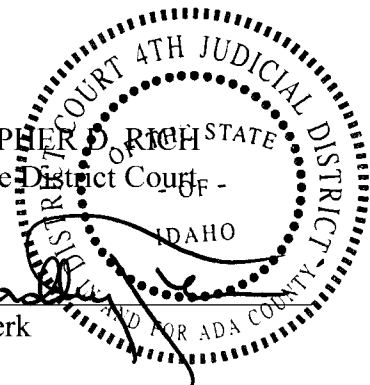
I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 3rd day of September, 2014.

CHRISTOPHER D. RICH  
Clerk of the District Court of -

By *Bradley*  
Deputy Clerk



CERTIFICATE OF EXHIBITS

000089

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CALEB HANSEN,

Plaintiff-Appellant,

vs.

BEN YSURSA, Idaho Secretary of State,

Defendant-Respondent.

Supreme Court Case No. 42285

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

CALEB HANSEN

APPELLANT PRO SE

BOISE, IDAHO

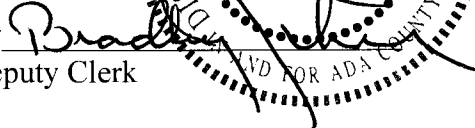
MICHAEL S. GILMORE

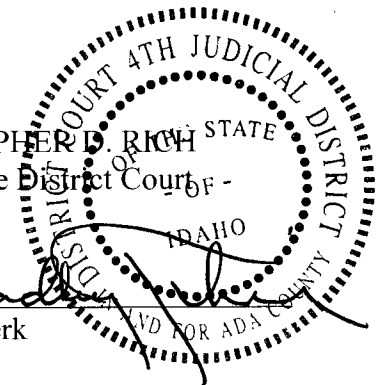
ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Date of Service: SEP 03 2014

CHRISTOPHER D. RICH  
Clerk of the District Court of -

By   
Deputy Clerk



CERTIFICATE OF SERVICE

000090

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CALEB HANSEN,

Plaintiff-Appellant,

vs.

BEN YSURSA, Idaho Secretary of State,

Defendant-Respondent.

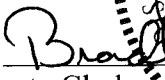
Supreme Court Case No. 42285

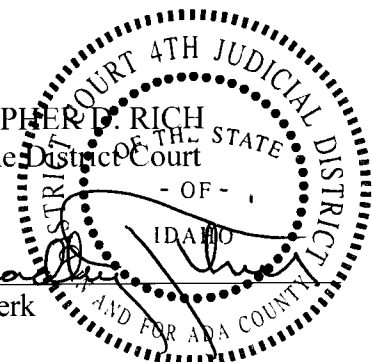
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, 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 and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 8th day of July, 2014.

CHRISTOPHER D. RICH  
Clerk of the District Court

By   
Deputy Clerk



CERTIFICATE TO RECORD

000091