11-10-2014

Hansen v. Denney Appellant's Brief Dckt. 42285

IN THE SUPREME COURT OF THE STATE OF IDAHO

Caleb Hansen,	)	
Appellant Appearing Pro Se	)	Supreme Court Docket # 42285-2014
vs.	)	(District Court Case NO. CV OC 1407627)
Ben Ysursa Idaho Secretary of State	)	
Respondent	)	

APPELLANTS BRIEF

Appeal from the District Court of the 4th Judicial District for Ada County

Honorable Judge Steven Hippler presiding.

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Statement of the Case

Nature of the Case- On March 12, 2014 petitioner applied to the Secretary of State's office to be included on the 2014 General election ballot for the position of State Representative Seat B in Legislative District 19. The application was denied on the grounds that the petitioner had not been continuously registered to vote starting on or before Nov 4th 2013. Petitioner believed and maintains that the respondent inappropriately uses the definition of "qualified elector" in place of the term "elector" as used in the constitutional provision. Thus respondent interprets Article 3 Section 6 of the Idaho Constitution to require 1 full year of uninterrupted voter registration for inclusion on the general election ballot for legislative office. Petitioner believed and maintains that he met the constitutional qualifications for office and that the Respondent is creating additional requirements found neither in statute nor in the constitution. Namely, that in addition to meeting the constitutional definition of an elector by fulfilling requirements of age, citizenship, and residency, a legislative candidate must also have registered and thus become a "qualified elector" at least one year prior to the election.

Petitioner was informed on March 12th that Idaho Statute 34-215 allowed him the option of appealing the respondent's decision to the District Court. This notice contained no mention of a deadline for filing the appeal, and none was found in a review of the statute. Petitioner worked diligently to identify and exhaust any informal, administrative, and otherwise non-judicial means to resolve the issue. After a discussion on April 1st 2014 with Kriss Bivens Cloyd, (who is not an attorney, but was the only staff at the AG's office that petitioner was allowed access to)

petitioner decided that administrative remedies had been exhausted. Petitioner immediately turned to judicial remedies, and filed with the District Court 17 days later. At no time was petitioner informed that his right to appeal to the district court was the only available form of relief, or that there were no administrative remedies to exhaust.

Course of the Proceedings- A hearing was held on May 14th, 2014 at the District Court on petitioners appeal to the court to assess and correct respondent's use of the constitutional term "elector" in vetting candidates for state legislative office. Respondent argued that a writ could not be issued because an appeal under Statute 34-215 was an adequate remedy at law. Petitioner argued that the proceedings were in fact an appeal under Statute 34-215 as stated in the opening sentence of the petition and corroborated by the substance of the pleadings. Respondent maintained that even when viewing the petition as an appeal, it should be dismissed as untimely filed according to IRCP Rule 84(b). Petitioner asked the court to refer to Statute 67-5273 instead of Rule 84 to determine timeliness. Not taking into account Statute 67-5273, the Court ordered that the petition be dismissed, whether viewed as a writ of mandate or petition for judicial review. The writ would be dismissed for availability of other adequate remedies at law, and the appeal would be dismissed as untimely. It was not stated by the court why Rule 84 was given precedence over Statute.

Some arguments on the constitutional merits of the case were also heard, but the dismissal precluded a judgment on the merits. Empathy was expressed by the Court for the confusion created by the law, and it was suggested that the Secretary of State's Office appraise

the Legislature of this issue so that Idaho Code can be updated to remove the confusion caused by its variance from this interpretation of the Constitution.

Statement of Facts

Caption of the Appeal

A court evaluates a pleading by its substance not its caption. *State v. Blume* 743 P.2d 94 (1987) petitioner does not believe respondent disputes this fact, especially because they were the first to introduce it into the proceedings.

While the cause of the mislabeled appeal, accidentally captioned "Petition for Writ of Mandamus", was the result of confusion on the part of the Pro Se appellant, evaluating the pleading by its substance is standard procedure and no special leniency is being requested.

ICRP 84 is a "catch-all" rule; it governs the procedure of the District Court's judicial review only where statute is silent. Judicial review in this particular case is governed by Title 67 Chapter 52 Idaho Code which addresses most of the issues associated with judicial review including timeliness. Wherever possible the statute should be used instead of Rule 84. Jurisdiction of this statute over the proceedings is addressed at great length in the arguments.

Exhaustion of non-judicial remedies

At the time petitioner received notice that he could appeal to the District Court, he was unfamiliar with the vocabulary and statutes surrounding exhaustion of administrative remedies. As a lay-person, he simply knew that it is wrong to use the judicial system as a first resort, and non-judicial remedies should be attempted before filing a case.

Distinction of the terms "elector" and "qualified elector"

It should be noted that there is no disagreement between the parties that "registration as provided by law" is one of the substantive qualifications of a "qualified elector"; the issue in contention is the definition of "elector". Petitioner makes the argument that an "elector" holds every substantive qualification of a "qualified elector", ***except*** registration as provided by law. While respondent contends that the two terms are synonyms.

Equal Protection

Respondent has not claimed to have disqualified a single incumbent legislator from running for or holding office by authority of the same legal theory used to disqualify petitioner and many other non-incumbent candidates over the 40 years he has worked at the Secretary of State's office. While obviously not definitive by itself, this strongly suggests that the law may not have been applied equally to incumbent candidates and non-incumbent candidates alike. If incumbents have been subject to the same scrutiny as non-incumbents, there should either be instances of incumbent disqualification in the previous 40 years, or documented verification for

every legislator who has changed addresses while in office, that they did indeed update their voter registration within 30 days as required.

Lack of Public Education Regarding Registration

Because Idaho voter registration laws allow same day voter registration, it is not surprising that the petitioner, like many voting residents of the state, did not pre-register after he moved into the district, simply because Idaho law allows the state's electors to register to vote at the polls on Election day. Petitioner, and likely the majority of Idaho's qualified electors, had never heard or imagined that there are rights that could be forfeited due to technicalities regarding voter registration even if the right and ability to vote was never impeded.

These questions now come before this court:

1) Should time have tolled for petitioner's attempts to exhaust administrative remedies as stated in Idaho Statute 67-5273(3), or was it correct for time to continue running during petitioners attempts because those attempts did not meet the specific criteria found in IRCP Rule 84(b)?

2) Should the Secretary of State continue to interpret the Idaho Constitution to read that unlike other state offices, an elector must also have been continuously registered to vote for over a year in order to be an Idaho legislator?

Issues Presented on Appeal

1) **Pleadings are a petition for judicial review:** The District Court contemplated that the pleading denominated "petition for writ of mandamus" could be judged by its substance to be an appeal under Statute 34-215. The court offered two different reasons for its dismissal of the petition, one that applied to the pleadings as a petition for mandamus, and another which applied to the pleadings as an appeal for judicial review. It is an issue on this appeal that the original pleadings should be evaluated by their substance rather than by their captions, and therefore treated as pleadings for judicial review rather than an extraordinary writ.

2) **Timeliness is addressed and governed by statute:** The District Court erred by ignoring Idaho Statute 67-5273 and instead relying on IRCP 84(b), a "catch-all" rule to determine the timeliness of the appeal. Appellant asserts that the catch-all rule is superseded by this statute, and it is the statute not the rule that should have been used to determine timeliness. Accordingly, the court's decision regarding timeliness should not have been affected by the very specific language of Rule 84 requiring a "motion for reconsideration" and time should have tolled by statute for "the pendency of the petitioner's timely attempts to exhaust administrative remedies", consisting of the 20 days from March 12th to April 1st 2014.

3) **Even according to the "catch-all" rule time should have tolled:** Even if the Court is somehow compelled to apply IRCP 84(b) when considering the timeliness of the appeal, time should have tolled for petitioners attempts to exhaust administrative remedies.

4) **Statutory and Constitutional merits should be ruled on:** Because the District Court did not reach the merits of the statutory and constitutional issue, stating that it would be best served to be addressed by another court in a position to set precedent, it becomes an issue to this appeal that the court should reach the merits of the case and issue an opinion clarifying for the Secretary of State's Office, and all Idaho citizens, the constitutional qualifications required to work as an Idaho legislator. Any and all unlisted issues and arguments related to the statutory and constitutional merits of the case shall be considered subsidiaries of this issue.

Arguments

1. The original pleadings should be evaluated by their substance rather than by their captions, and therefore should be viewed and treated as pleadings for judicial review rather than for an extraordinary writ.

   1.1. A court evaluates a pleading by its substance not its caption. In *State v Blume* 743 P.2d 94 (1987) the Court says "Although Blume's pleading was denominated a petition for a writ of review rather than for a writ of prohibition, we evaluate a pleading by its substance rather than by its caption. The substance, as we view it, was that Blume

wanted the district court to determine that Judge Heise was disqualified and no longer had jurisdiction in the case." The Court gives a great amount of deference to both the intent of the author, and the substance of the document, over its caption.

1.2. Opposing Council recognized that appellant's pleadings may be evaluated by their substance rather than their caption and be viewed as an appeal under Statute 34-215.

1.2.1. At the hearing, respondent stated "...we can treat the papers as mislabeled and they actually are an appeal..." (Tr Vol. I, p. 16, L. 9-14)

1.2.2. The entirety of pages 4 and 5 of MEMORANDUM IN SUPPORT OF SECRETARY OF STATE'S MOTION TO DISMISS address the petitioner's pleadings viewing them as an appeal under Idaho Statute 34-215. In fact, respondent has not sited any authorities or made any argument that the pleadings should be evaluated by their captions.

1.3. The District Court contemplated that the pleading denominated "petition for writ of mandamus" could be judged by its substance to be an appeal under Statute 34-215, but declined to commit the Court to stating whether or not it indeed viewed the pleading as a petition for judicial review. (Tr Vol. I, p. 36, L. 12-20) The court made no mention of statutes, rules, or authorities that suggest the pleadings should be evaluated by their caption.

1.4. The petition was initially mislabeled due to a simple misunderstanding, early on in the process appellant was misinformed that a "Writ of Mandamus" was the designation for any order from the courts compelling a state officer to perform a specific act. Appellant

used the term in the context of his then erroneous understanding of it, as is illustrated by some confusion at the hearing. Tr Vol. I, p. 11, L. 14-21, Tr Vol. I, p. 30, L. 12-13 In using the term, appellant did not intend to refer to an extraordinary writ, or anything outside the scope of an appeal under Statute 34-215. The Substance and intent of the pleadings are clearly in line with an appeal for judicial review, and not an extraordinary writ.

1.5. Viewing these pleadings by their substance as a petition for judicial review should not be confused with allowing a writ to function as the equivalent of an appeal as the court contemplated Tr Vol. I, p. 36, L. 9-12. If the pleadings are judged by their substance, than there is no writ in these proceedings; it is simply a mislabeled appeal functioning as an appeal.

1.5.1. For a writ to function as the equivalent of an appeal, it would first have to be judged by its substance to be a writ.

2. Procedures governing the original appeal for judicial review are in fact provided by statute; these procedures provided by statute supersede the IRCP Rule 84 and nullify the application of that rule to determine timeliness. The conclusions reached by the district court utilizing Rule 84 must be set aside and the issues must be reconsidered utilizing the statute.

2.1. Procedures governing judicial review are set by statute; only where no procedure or standard of review is provided by statute does the "Catch-all" rule, IRCP Rule 84, apply. While this case is authorized by Idaho Statute 34-215, the judicial review proceedings are also described and governed by Title 67 Chapter 52 Idaho Code. Since the

procedure and standards of review are provided by statute, IRCP Rule 84 does not apply and has no bearing on determinations of timeliness. The following definitions and authorities from Title 67 Chapter 52 Idaho Code clearly designate these proceedings as a judicial review of agency action to be governed by the provisions of this statute, not Rule 84.

2.1.1. 67-5201(2) "Agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

2.1.1.1. While the Respondent is one of the executive officers listed in section1, article 4, of the Idaho constitution, the powers delegated to the State's Chief Elections Officer are not derived directly or exclusively from the constitution, but rather from Statute 34-201. The Respondent fits the definition of an "Agency" enumerated in this Statute.

2.1.2. 67-5201(3) "Agency action" means:
(a) The whole or part of a rule or order;
(b) The failure to issue a rule or order; or
(c) An agency's performance of, or failure to perform, any duty placed on it by law.

2.1.2.1. The respondent's improper denial of appellant's application to be included on the 2014 general election ballot meets this statute's definition of "Agency Action" under 67-5201(3)(c).

2.1.3. 67-5270 RIGHT OF REVIEW (1) Judicial review of agency action shall be governed by the provisions of this chapter unless other provision of law is applicable to the particular matter.

2.1.3.1. Idaho Statute 34-215 contains some specific provisions applicable to particular matters in this judicial review, such as the right of either party to appeal the District Court decision to the State Supreme Court, and the guarantee that the remedy provided in this statute is cumulative and does not exclude any other remedy provided by law. Aside from these and any other such applicable provisions, this judicial review of agency action is governed by Title 67 Chapter 52 Idaho Code and there is no allowance or authority for IRCP Rule 84 to take precedence over the procedures codified in statute.

2.2. The District Court erred by applying IRCP Rule 84 to determine timeliness of the appeal; timeliness is addressed by Idaho Statute 67-5273(3):

2.2.1. 67-5273(3) A petition for judicial review of a final agency action other than a rule or order must be filed within twenty-eight (28) days of the agency action, except as provided by other provision of law. The time for filing a petition for review shall be extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies, if the attempts are clearly not frivolous or repetitious.

3. Appellant was engaged in efforts to identify and exhaust administrative remedies from March 12th through April 1st 2014 and time for filing the original appeal should have tolled for these attempts in accordance with Idaho Statute 67-5273(3)

3.1. *Petersen v. Franklin County*, 938 P.2d 1214, clearly addressed the tolling of time for good faith attempts to exhaust administrative remedies. Like the current appellant, the

landowners in the Petersen case also had no administrative remedies available to them, and also were not informed that they had no administrative remedies available to them. These appellants spent 51 days attempting to exhaust administrative remedies until they were informed that none existed. Time was found to toll for their misinformed and futile attempts, and the same should be found for this Appellant who used only 20 days for his attempts.

3.1.1. The court's written decision in *Petersen v. Franklin County supra,* stated the following:

> "Although the determination of a site was made at the January 26, 1994 meeting of the Commission, the time during which the Landowners could file a timely petition for judicial review of the Commission's site selection was tolled while they attempted to exhaust their administrative remedies. The Landowners continued their efforts with the Commission until they were informed that their administrative remedies had been exhausted on March 17, 1994. The Landowners timely filed their petition for judicial review on April 1, 1994, well within a twenty-eight (28) day period beginning March 17, 1994."

3.1.2. In hearing *Petersen v. Franklin County*, the following exchange occurred between Justice Johnson and counsel for the County.

> **Johnson, J.:** Were there any administrative remedies available to these plaintiffs after January 26, 1994, to challenge the selection?
>
> **Hall:** No.

3.1.2.1. Similar to the appellant in the current case, there were never any administrative remedies available for the landowners. The fact that the court found time to toll for 51 days during the pendency of their attempts to exhaust administrative remedies- even though no such remedies ever existed, shows that factors including the likelihood of successful remedy, actual availability of remedies, and procedural steps followed in the attempts are not considered when determining the tolling of time.

3.1.2.2. The District Court seemed to put a significant amount of consideration into the type of attempts made by appellant, the processes and procedure of the attempts, their likelihood of success, and who the attempts were directed at influencing; statute is clear though, none of these factors have any bearing on whether or not time tolls. If attempts are made and those attempts are clearly not frivolous or repetitious, statute provides that time will toll.

3.1.3. Idaho Code gives only 2 reasons that time might not toll for the appellant's attempts at administrative remedies; those are if the attempts are found to be "frivolous" or "repetitious". Idaho Statute. 67-5273 (3).

3.1.3.1. The appellant's attempts to achieve administrative remedy through the AG's office cannot be found to be "frivolous" because they were partially effective.

3.1.3.1.1. The documents at the center of this case, which were filed by the appellant in his effort to register as a candidate for legislative office, and

were rejected by the Respondent on March 12th included "Form C-1 Appointment and Certification of Political Treasurer". There has been no directive from the courts for the Respondent to accept and file Form C-1 from the appellant. Yet based on a statement from the Attorney General's Office obtained by the appellant, this form was accepted and filed by the Respondent on June 6th 2014. This change in position from the respondent's office shows good cause for the appellant's belief that administrative relief could be obtained through efforts to seek clarification from the AG's office.

3.1.3.2. The appellant's attempts to achieve administrative remedy through the AG's office cannot be found to be "repetitious" because as soon as it was made clear on April 1st that the AG's office was either unwilling or unable to work with the appellant, he abandoned attempts at administrative remedy and immediately began working to file with the district court, which was completed in 17 days, well ahead of the 28 day deadline.

3.1.4. Exhausting administrative remedies is a statutory requirement every appellant must complete before filing for judicial review.

> 67-5271. EXHAUSTION OF ADMINISTRATIVE REMEDIES. (1) A person is not entitled to judicial review of an agency action until that person has exhausted all administrative remedies required in this chapter.

The fact that there is no clear process for administrative relief, nor a clear statement regarding whether or not relief even exists, does not relieve an appellant of this responsibility; it simply makes that responsibility more difficult and time consuming, further necessitating the tolling of time for attempts to exhaust administrative remedies.

3.1.5. Idaho Statute 67-5241(1)(c) states "Informal settlement of matters is to be encouraged." The appellant should not be punished for first attempting to resolve the issue through administrative, informal, and non-judicial means as statute requires. Allowing time to toll for attempts at administrative/informal remedies encourages informal settlement of matters as required by statute; conversely, preventing the tolling of time will discourage informal settlement of matters and deter attempts to exhaust administrative remedies.

4. Even if Rule 84 is applied, the appeal should be found to be timely.

4.1. IRCP Rule 84(b) is written as if there is a standard universal procedure for exhausting administrative remedies prior to appealing for judicial review. Since the Secretary of State has authority to reconsider the decisions of his office, but does not have any process in place for handling a "Motion for Reconsideration" this rule, as written, would burden the appellant with the responsibility of exhausting administrative remedies, while denying the tolling of time for those attempts, since they differ from the specific action allowed by rule.

4.2. Respondent should not accrue a benefit by muddying the waters.

4.2.1. Any deadline for filing the appeal should have been included with the notice provided by respondent of appellant's right to appeal. Respondent benefitted by omitting important information regarding appellant's rights that cannot be found in statute and was essentially hidden from appellant until after it was too late.

4.2.2. Instead of informing the appellant that the decision was final and the only remedies available were judicial, respondent's office muddied the waters by bringing an Attorney General's opinion into the conversation and creating the impression that the AG's office was somehow involved, or at least could be. This letter characterized addressing the issue with the AG as the only form of relief that had actually been attempted; it seemed to be written as if it is standard procedure to take an issue like this to the AG. It is still unclear why the AG's office involved themselves in this issue at the request of the wrongfully disqualified party in 1998 but refused to address the situation in any way whatsoever with the current appellant unless he first brought a suit against the State or one of its Officers.

4.2.3. The confusion created by the respondent's office resulted in the appellant spending 20 days trying to communicate with the AG's office in an attempt to identify possible administrative remedies to exhaust. Without this delay, there would not be an issue of timeliness. Dismissing this case because of that delay would be contrary to the interest of Justice, and of the State. State Agencies should not be incentivized to create confusion for people considering appealing their decisions.

5. Petitioner asserts that the terms "elector" and "qualified elector" are each separately defined in the Idaho Constitution, Article 6 Section 2. This understanding is in line with Dredge and other case law.

> Article 6 Section 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 provided by law, if registered as provided by law, is a qualified elector.

5.1. **Elector:** Every male or female citizen of the United States, eighteen years old, who has resided in this state, and in the county where he or she offers to vote for the period provided by law.

5.2. **Qualified Elector:** An Elector who has also registered as provided by law.

5.3. 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.

5.3.1. **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.

6. Tr Vol. I, p. 19, L. 24 – p.20, L. 8. Respondent characterizes petitioner as arguing that the term "elector" is the same as "resident" or "inhabitant", and lays out why that would be incorrect. This characterization completely ignores petitioner's actual argument that the terms "elector" and "qualified elector" have unique definitions, and are both defined in

Article 6 Section 2 of the Idaho Constitution. Neither term is synonymous with the words "resident" or "inhabitant".

7. No statute in Idaho Code disqualified the Applicant from holding the office of State Representative, or from being placed on the ballot for election to that office. The applicable statute reads:

> 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.

7.1. The respondent stipulated this, and the District Court seemed to find this fact troubling at the hearing, Tr Vol. I, p. 18, L. 10-24, Tr Vol. I, p. 19, L. 9-15

> THE COURT: Why -- and maybe it's not clear why -- why doesn't the statute -- do you have any understanding why the statute doesn't list that as a requirement?
> MR. GILMORE: I wish I could answer that question, your Honor. I don't know why the statute doesn't list the constitutional requirement.
> THE COURT: It seems to me it's a set-up for the non-legally trained, and perhaps even the legally trained, to miss a deadline to file without knowledge, intricate knowledge of the constitutional requirements that are not set forth in the statute. Does your office do anything in terms of education with a packet that would identify that for prospective candidates?
> MR. GILMORE: If anyone asks, they are told that's the requirement.
> THE COURT: Which begs the question if they don't know to ask how --
> MR. GILMORE: How do you find out.

7.2. Petitioner contends that the statute *does* list all of the constitutional requirements, and this is evidence that the legislature would concur with the petitioner's view of the constitutional requirements enumerated in Art. 3 Sec 6 Idaho Constitution.

7.3. 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 simply the way they have done things for the last 40 years.

8. Portraying the use of words as "haphazard" and "interchangeable" only serves to protect the status quo by providing an excuse not to shoulder the burden ascribed by *Westerberg v. Andrus*, 114 Idaho 401, 403-04 to reconcile constitutional provisions if at all possible inasmuch as they relate to the same subject matter in a manner that will give effect to every word in the constitution.

8.1. To note that the two terms "elector" and "qualified elector" may be used interchangeably is not to say that they share the same definition or are synonymous; interchangeability is still dependent on context. Many electors are also qualified electors, this makes the words somewhat interchangeable, but by no means makes them synonyms.

8.2. Some interchangeability is to be expected between 2 words when one of the words represents a more specific subdivision of the other. It is fallacy to assume that this means the terms are synonyms, or universally interchangeable. Here is a sentence substantially echoed throughout the respondent's case law where the terms are clearly ***not*** interchangeable: A "qualified elector" is an "elector" who is also registered

according to law. If these terms are viewed as universally interchangeable then this sentence loses any meaning, it becomes absurd and confusing.

8.3. Likewise, the appearance of a word being used haphazardly is dependent on context. If the difference between the two terms is not significant to the context of a particular case or conversation, then their use will appear haphazard, no matter how clearly organized and intentional it is in the broader context.

8.4. Labeling a word or words as "interchangeable" and "used haphazardly" is all that is required to render them without effect and "mere surplusage" contrary to Westerberg.

8.5. What takes precedence- The mandate to give effect to every word when interpreting the constitution; or the excuse that some words are used haphazardly and should have no effect?

9. 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, while causing clear harm to the state by creating a barrier for qualified legislative candidates.

9.1. 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 employees 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 following this advice should disqualify most electors from running for

State Representative or Senator for some time beyond the actual required residency term, because if the electors address is not updated within 30 days of change they are no longer legally registered to vote.

9.2. November 5th 2013 was Election Day, so anyone who registered at a polling site and voted would be disqualified from running for State Representative in 2014 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.

10. The respondent should not receive deference from the court on his constitutional interpretations. Respondent claims he should be given deference based on *Duncan v. State Bd. Of Accountancy,* 149 Idaho 1, 3, 232 P.3d 322, 324 (2010) which states that deference is granted where an agency interprets a statute or a rule; this is instead a question of state constitutional interpretation and is appropriately decided by Idaho's highest court.

11. Respondent draws on two pieces of case law to support his claim that the terms "elector" and "qualified elector" are synonyms, and registration by law is a requirement for both; *Wilson v. Bartlett*, 7 Idaho 271, 272, 62 P. 416,417 (1900) and *Kerley v. Wetherell*, 61 Idaho 31, 96 P.2d 503 (1939).

11.1. Wilson held that registration is not a substantive part of being an elector. That must be taken to mean that in the context of article 3 section 6 registration is not a substantive qualification for membership in the legislature.

11.2. Kerley is characterized by the respondent as stating that "electors" must be registered, when like any of the case law sited by the respondent, it does not even address the term "elector". Kerley states that since the law specifically used the term "qualified electors" registration is a requirement. This is something we all agree on.

12. At the hearing Tr Vol. I, p. 20, L. 16-22, and throughout the record, Respondent references Dredge Mining Control-Yes!, Inc. v. Cenarrusa, 445 P.2d 655 as if it makes a statement on the definition of "elector". The truth of the matter is that the Dredge case does not address the definition of elector, it addresses the definition of "Legal Voter". The terms "elector" and "qualified elector" as well as "registered elector" are all used throughout the Court's opinion in dredge; however, they are used wholly within the context of the petitioners definition of those words described in these arguments. There is no statement in the decision which represents, as the respondent suggests it does, the theme that when you refer to an elector, you are referring to a registered or qualified elector.

13. There is a systemic barrier to new candidates running for legislature that is not applied to incumbents. This barrier is created not by statute or constitutional provision, but by the inconsistent manner in which the Secretary of State is enforcing the law. Clearly, sitting legislators are not exempt from meeting the qualifications to hold their office, yet that is the effect of the manner in which the law is currently being applied.

13.1. No record has been shown to indicate that there is any verification process to ensure that incumbents' registration has not lapsed at any point during the year prior to the election, or at any time during their tenure in office.

13.2. If a qualified elector moves, even within the same precinct, their registration is canceled unless it is updated within 30 days of the address change. It is not uncommon for sitting legislators to move within their district; appellant is personally aware of several incumbent legislators who changed addresses during the year preceding the 2014 election. With the focus that Idaho has on same day registration, it is conceivable and even likely that some of Idaho's legislators who move do not update their voter registration with 30 days of their address change- especially if they are already on the ballot.

13.3. The fact that the respondent states he has disqualified 12 challengers and 0 incumbents on these grounds over the last 10 years suggests that challengers may not be receiving equal protection under the law.

14. The respondent must show that incumbent voter registration records are investigated and reviewed with the same scrutiny that challengers records are.

Conclusion

Appellant requests a comprehensive hearing on the Constitutional merits of this case, and a decision by the court offering the instruction and constitutional clarification necessary to ensure that the Secretary of State ceases to disqualify legislative candidates due to the current confusion regarding the terms "elector" and "qualified elector". The Chief Elections Officer, the People of Idaho, and the petitioner in this case require and deserve this clarification from the state's highest court.

If the court somehow determines that an "elector" must be registered to vote in order to be called an "elector", petitioner requests that the decision offer instruction and constitutional clarification necessary to guarantee equal protection under the law for challenger legislative candidates by ensuring that incumbent legislative candidates receive the same scrutiny as challengers in the review of their voter registration history, and are disqualified from holding office according to the same standards as challenger candidates.

Dated this 10th day of November, 2014. By_____

Caleb Hansen, Appellant appearing Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2014, I caused to be served a true and correct copy of the foregoing by hand delivery to:

Michael S. Gilmore
Deputy Attorney General
954 W. Jefferson Street 2nd floor
Boise, ID 83702

Dated this 10th day of November, 2014.

By_____

Caleb Hansen