

SUMMARY STATEMENT

Regan v. Denney
Docket No. 46545

Petitioner Brent Regan filed a “petition for review” with the Idaho Supreme Court seeking a writ of mandamus or a declaration that Idaho Code section 56-267 is unconstitutional and asking for an order directing Secretary of State Lawrence Denney to remove section 56-267 from the Idaho Code. Chief Justice Burdick, writing for the majority of the Court, denied Regan’s requests and dismissed his petition. A majority of the Court held that, despite procedural issues, it would consider the merits of Regan’s petition due to the alleged constitutional violation and the urgent and compelling need for determination of the issue.

The majority opinion of the Court held that Idaho Code section 34-1809(4), the statute purporting to allow qualified electors of the state to challenge ballot initiatives, was unconstitutional as it purported to expand the Court’s original jurisdiction. The Court’s decision was consistent with Chief Justice Trout’s 2003 Order regarding the Indian Gaming Initiative, as well as concepts related to this Court’s jurisdiction articulated in *Noh v. Cenarrusa*, 137 Idaho 798, 803, 53 P.3d 1217, 1222 (2002).

Answering the merits of Regan’s petition, the majority of the Court held that section 56-267 is not unconstitutional. In so holding, the Court stated that section 56-267 does not delegate lawmaking authority to the federal government. In reaching its determination, the Court stated that section 56-267’s specific reference to two sections of the Social Security Act was consistent with Idaho case law instructing that such reference did not incorporate future amendments to the federal statute, but rather, adopted the federal statute as it existed at the time section 56-267 was passed. The Court also recognized the Legislature’s yearly role in appropriating funding for the ongoing nature of Medicaid.

Two members of the Court concurred and dissented. They determined the procedural issues present in the case warranted a dismissal, rather than a determination of the constitutionality of section 56-267.

Justice Robyn Brody opined that she agreed with the majority opinion that section 34-1809(4) is an unconstitutional expansion of the Court’s jurisdiction. She then stated a writ of mandamus could not issue as Secretary of State Denney has no “clear legal duty” to remove an unconstitutional statute from the Idaho Code. Justice Brody further argued the Court had no jurisdiction to rule on the constitutional question of Idaho Code section 56-267.

Justice Greg Moeller concurred with the majority opinion that section 34-1809(4) is unconstitutional but disagrees with the majority opinion that there was a compelling and urgent need to reach the constitutionality of section 56-267. Instead, he also focused on the procedural weakness of Regan's request. He found that Regan's position was nothing more than a political question under the guise of a court proceeding. He considers the case premature as the Court's proper role is to resolve only actual cases, not hypothetical ones.