

BOISE, TUESDAY, JUNE 29, 2021, AT 10:00A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

In Re: Petition for Writ of Mandamus.)

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**MICHAEL STEPHEN GILMORE, a)
Qualified Elector of Ada County,)**

Petitioner,)

v.)

**LAWRENCE DENNEY, Idaho Secretary of)
State, in his official capacity,)**

Respondent,)

and)

**SCOTT BEDKE in his official capacity)
as Speaker of the House of)
Representatives of the State of)
Idaho; CHUCK WINDER, in his)
official capacity as President Pro)
Tempore of the Idaho State Senate;)
and the SIXTY-SIXTH IDAHO)
LEGISLATURE,)**

Intervenors-Respondents.)

In Re: Petition for Writ of Prohibition.)

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**RECLAIM IDAHO, and the COMMITTEE)
TO PROTECT AND PRESERVE THE)
IDAHO CONSTITUTION, INC.,)**

Petitioners,)

v.)

**LAWRENCE DENNEY, in his official)
capacity as the Idaho Secretary of State;)
and STATE OF IDAHO,)**

Respondents,)

Docket No. 48760

Docket No. 48784

and)
)
SCOTT BEDKE in his official capacity)
as Speaker of the House of Representatives)
of the State of Idaho; CHUCK WINDER, in)
his official capacity as President Pro Tempore)
of the Idaho State Senate; SIXTY-SIXTH)
IDAHO LEGISLATURE,)
)
Intervenors-Respondents.)

Petition for Writ of Mandamus.

Michael Stephen Gilmore, Boise, Petitioner Pro Se.

Ferguson Durham, PLLC, Boise, for Petitioners Reclaim Idaho and the Committee to Protect and Preserve the Idaho Constitution, Inc.

Lawrence G. Wasden, Idaho Attorney General, Boise, for Respondent Lawrence Denney, Idaho Secretary of State.

Holland & Hart, LLP, Boise, for Intervenors-Respondents Scott Bedke, Speaker of the House; Chuck Winder, President Pro Tempore; and Sixty-Sixth Idaho Legislature.

This case concerns two petitions. First, Michael Stephen Gilmore (“Gilmore”), a qualified elector from Ada County, seeks a declaration that Idaho Code section 34-1805(2) (also known as SB 1110) violates Article III, Section 1 of the Idaho Constitution, under which “[t]he people reserve to themselves the power” to qualify both initiatives and referenda for the statewide ballot. Gilmore also petitions the Idaho Supreme Court for a writ of mandamus ordering the Idaho Secretary of State not to enforce the provision. Section 34-1805(2), as recently amended, now requires proponents of an initiative or referendum to gather signatures from 6% of the qualified electors in every one of Idaho’s 35 legislative districts. The previous version of section 34-1805(2) only required 6% of qualified electors in 18 legislative districts. Gilmore argues the new signature requirement violates the equal protection clause of the Idaho Constitution because it treats differently those citizens organizing to place initiatives and referenda on the ballot from those citizens seeking access to the ballot for other purposes.

Gilmore further contends that the statute is unconstitutional because it divides the people's legislative power, interfering with their right to legislate independent of the legislature.

Gilmore's petition is opposed by the Idaho Secretary of State ("the SOS"), as well as Intervenor-Respondents Scott Bedke, in his official capacity as Speaker of the House of Representatives of the State of Idaho; Chuck Winder, in his official capacity as President Pro Tempore of the Idaho State Senate; and the Sixty-Sixth Idaho Legislature (together "the Legislature"). Both the SOS and the Legislature argue that the change enacted by section 34-1805(2) is an exercise of the legislature's constitutionally-defined power to prescribe the conditions and manner under which initiatives and referenda may be carried out. The SOS also asserts that Gilmore lacks standing and that a writ of mandamus is an improper remedy. The Legislature further avers that the nature of the conditions it sets under Article III, Section 1 is a nonjusticiable political question that the Idaho Supreme Court should not address and that original jurisdiction is not warranted.

Second, this case consolidates a subsequent petition filed by Reclaim Idaho and the Committee to Protect and Preserve the Idaho Constitution, Inc., (together "Reclaim"), which similarly seeks a declaration that the provision of Idaho Code sections 34-1805(2), described above, is unconstitutional. Additionally, Reclaim petitions the Idaho Supreme Court to declare Idaho Code section 34-1813(2)(a) is unconstitutional. Section 34-1813(2)(a), as amended, now states that an initiative may not contain an effective date earlier than July 1 of the year following the vote. Previously, section 34-1813(2)(a) allowed an initiative to set its own effective date. Reclaim contends the statutes nullify the people's fundamental constitutional right to legislate directly. They ask this Court to strike from section 34-1805(2) any geographic distribution requirement for signatures, and to strike from section 34-1813(2)(a) the condition that initiatives passed by voters cannot take effect until the July 1 following the vote. Additionally, Reclaim also seeks a writ of prohibition to prevent the Secretary of State from enforcing these statutory provisions.

Reclaim's petition is also opposed by the SOS and the Legislature. The SOS and the Legislature again argue that the challenged provisions fall within the legislature's power under Article III, Section 1 of the Idaho Constitution. The SOS adds that the writ of prohibition is an inappropriate remedy and that this Court lacks original jurisdiction. The Legislature further

contends that the content of the legislature's prescribed conditions under Article III, Section 1 of the Idaho Constitution is a nonjusticiable political question.