

## **SUMMARY STATEMENT**

*Reclaim Idaho/Gilmore v. Denney*

Docket Nos. 48784 & 48760

### **I. Background**

The Idaho Supreme Court, acting in its original jurisdiction, has issued an opinion on two petitions challenging the constitutionality of recently enacted legislation related to the people's initiative and referendum powers enshrined in the Idaho Constitution. Each petitioner sought an extraordinary writ in order to prevent the statutory provisions at issue from being enforced.

The first petition was brought by Michael Stephen Gilmore. Gilmore argued that Idaho Code section 34-1805(2), as recently amended by SB 1110, violates the equal protection clause of the Idaho Constitution and unconstitutionally divides the people's legislative power. Gilmore also petitioned the Idaho Supreme Court for a writ of mandamus ordering the Idaho Secretary of State "not to implement" the statute as amended.

The second petition was filed by Reclaim Idaho ("Reclaim") and the Committee to Protect and Preserve the Idaho Constitution, Inc. ("the Committee"). They also sought a declaration that Idaho Code section 34-1805(2) violated the Idaho Constitution. Under the amended statute, organizers of initiatives and referenda must obtain signatures from 6% of qualified electors "in each of the thirty-five (35) legislative districts" in the state. The previous version of the statute only required a threshold number of signatures in 18 legislative districts. They also challenged the constitutionality of Idaho Code section 34-1813(2)(a), a statute amended in 2020, which states that an initiative may not become effective earlier than July 1 of the year following the vote in which it was passed. Reclaim and the Committee contended that both amended statutes nullify the people's fundamental constitutional right to legislate directly. They sought a writ of prohibition to prevent the Secretary of State from enforcing these statutory provisions.

Both petitions were opposed by the Idaho Secretary of State ("the SOS"), who was represented by the Attorney General, as well as Intervenor-Respondents Scott Bedke, as Speaker of the House of Representatives of the State of Idaho; Chuck Winder, as President Pro Tempore of the Idaho State Senate; and the Sixty-Sixth Idaho Legislature (collectively "the Legislature"), which retained independent counsel.

### **II. Rulings**

Justice Gregory W. Moeller, writing for the majority of the Court, dismissed Gilmore's petition for lack of standing, ruling that he failed to assert a "distinct and palpable injury" that is unique to him. However, the Court unanimously ruled that Reclaim and the Committee had standing because they alleged a particularized injury that is traceable to SB 1110. Further, the Court ruled that it should hear Reclaim and the Committee's petition because it (1) presented possible constitutional violations of an urgent nature, (2) did not raise a purely political question, and (3) fell within the Court's fundamental responsibility to pass on the constitutionality of legislation.

Addressing the merits, the Idaho Supreme Court unanimously concluded that section 34-1805(2) violates Article III, Section 1 of the Idaho Constitution. A majority of the Court held that the initiative/referendum power is a fundamental right, reserved to the people of Idaho, to which strict scrutiny applies. Applying strict scrutiny, the majority ruled that the SOS and the Legislature failed to present a compelling state interest for limiting that right. Further, even if there were a compelling state interest, the majority concluded that the Legislature’s solution—requiring a threshold amount of signatures from every legislative district—was not a narrowly tailored one. All five justices agreed that by giving “every legislative district veto power over qualifying initiatives and referenda for the ballot,” the ultimate effect of SB 1110 would be to “prevent a perceived, yet unsubstantiated fear of the ‘tyranny of the majority,’ by replacing it with an actual ‘tyranny of the minority.’ ” Accordingly, the Court restored the previous version of section 34-1805, which requires signatures from 6% of the qualified electors at the time of the last general election in each of at least 18 legislative districts, as well as signatures equal to or greater than 6% of the qualified electors in the state at the time of the last general election.

The Court also unanimously held that section 34-1813(2)(a), which sets July 1 as the effective date for initiatives, violates Article III, Section 1 of the Idaho Constitution because it infringes on the people’s reserved power to enact legislation independent of the legislature. Therefore, the Court granted the petition for a writ of prohibition barring both statutes from taking effect. Additionally, the Court unanimously ruled that Reclaim and the Committee, as the prevailing parties, should be awarded their reasonable attorney fees and costs pursuant to the private attorney general doctrine.

In a special concurrence, Justice John R. Stegner, noting that the “state constitution does not contain the same limitations as the U.S. Constitution,” expresses disagreement with the majority’s standing analysis regarding Gilmore’s petition. Nevertheless, Justice Stegner fully concurred in the outcome of the majority’s opinion.

In a dissenting opinion, Justice Robyn M. Brody asserts that rather than applying strict scrutiny to the statutes, the majority should have applied the “reasonable and workable” standard from *Dredge Mining Control-Yes!, Inc. v. Cenarrusa*, 92 Idaho 480, 484, 445 P.2d 655, 659 (1968). However, applying the “reasonable and workable” standard, Justice Brody reached the same conclusion as the majority: that Idaho Code sections 34-1805(2) and 34-1813(2)(a) are unconstitutional.

***\*\*\*This summary constitutes no part of the Court’s opinion. It has been prepared by court staff for the convenience of the public.\*\*\****