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Jim's

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT IN AND
FOR THE COUNTY OF KOOTENAI, STATE OF IDAHO

JIM BRANNON,)
Plaintiff,)
)
Vs.)
)
CITY OF COEUR D'ALENE, IDAHO, a)
municipal corporation; SUSAN K. WEATHERS,)
in her capacity as the City of Coeur d'Alene)
City Clerk; MIKE KENNEDY, in his capacity)
as the incumbent candidate for the City of)
Coeur d'Alene Council Seat #2; LOREN RON)
EDINGER, DEANNA GOODLANDER, MIKE)
KENNEDY, A.J. AL HASSELL III, WOODY)
MCEVERS, and JOHN BRUNING in their)
Capacities as Members of the City Council of the)
City of Coeur d'Alene; SANDI BLOEM, in her)
Capacity as Mayor of the City of Coeur d'Alene;)
and JANE AND JOHN DOES A THROUGH Z)
whose true and correct names are unknown.)
_____)

CASE NO. CV09-10010

AMENDED
COMPLAINT PURSUANT TO
TITLE 50, CHAPTER 4, TO SET
ASIDE, VOID, ANNUL,
ALL OR PART,
CITY OF COEUR D'ALENE
NOVEMBER 3, 2009
GENERAL ELECTION

COMES NOW the Plaintiff Jim Brannon, by and through his attorney Starr
Kelso, and for causes of action against Defendants, does hereby complain and
allege as follows:

GENERAL ALLEGATIONS

1. The Plaintiff, Jim Brannon, at all times relevant hereto is and has been over the age of 18, competent, a resident of the City of Coeur d'Alene, Idaho, and is and was a duly qualified candidate for the City of Coeur d'Alene City Council Seat 2 in the November 3, 2009 City of Coeur d'Alene General Election.
2. The Defendant, City of Coeur d'Alene, State of Idaho, (hereafter the City) is an Idaho Municipality under the laws of the State of Idaho. The City of Coeur d'Alene was and is required pursuant to Title 50 Chapter 4 of the Idaho Code in general, and Idaho Code Section 50-405, in specific, to administer a General Election for officials on November 3, 2009. The City of Coeur d'Alene, as a municipality, is specifically exempted from the provisions of I.C. 34-1401 providing for political subdivisions, such as Kootenai County, from administering municipal elections.
3. The Defendant, Susan K. Weathers (hereafter Weathers) is and all times relevant hereto was the City Clerk of the City of Coeur d'Alene and the Chief Elections Officer of the City of Coeur d'Alene and responsible to, among other duties, exercise general election supervision of the election laws under and pursuant to Title 50 Chapter 4 of the Idaho Code.
4. Kootenai County, Idaho, is a political subdivision of the state of Idaho. (hereafter referred to as Kootenai County).
5. Daniel J. English (hereafter English) is the Clerk of the District Court of Kootenai County, Idaho, and the ex officio Auditor and Recorder of Kootenai County, Idaho.
6. Deedie Beard is and was at all time relevant hereto, based upon information and belief, the 'Elections Manager' for and on behalf of Kootenai County, Idaho, and acted in that capacity for the City of

Coeur d'Alene in the November 3, 2009 City of Coeur d'Alene General Election.

7. The Defendant, Mike Kennedy, (hereafter Kennedy) in addition to being a member of the City of Coeur d'Alene's City Council, is and at all times relevant hereto was a candidate for the City of Coeur d'Alene City Council Seat Number 2 in the City of Coeur d'Alene November 3, 2009 General Election.
8. The Defendant Sandi Bloem (hereafter the Mayor) is and at all times relevant hereto is and has been the Mayor of the City of Coeur d'Alene with election responsibilities under Title 50 Chapter 4 Idaho Code, including but not limited to conducting a canvass of the vote at City of Coeur d'Alene election held on November 3, 2009.
9. The Defendants Loren Ron Edinger, Deanna Goodlander, Mike Kennedy, A.J. Al Hassell III, Woody McEvers and John Bruning, (hereafter the Council) are and at all relevant times hereto are the Members of the City Council of the City of Coeur d'Alene with election responsibilities under Title 50 Chapter 4 of the Idaho Code, including but not limited to conducting a canvass of the vote at the City of Coeur d'Alene Election held on November 3, 2009.
10. Defendants John and Jane Doe A-Z are individuals whose true and correct names are not known who have, or may have, an interest in this matter as adversely affected persons under Title 50 Chapter 4 Idaho Code.
11. Defendants City, Council and Mayor, on or about August 18, 2009 passed a Resolution No. 09-033 and entered into a contract with Kootenai County, a political subdivision of the State of Idaho (hereafter Kootenai

County), under which the City purported to delegate its, and their, rights, responsibilities and authority to administer the November 3, 2009 City of Coeur d'Alene General Election. Pursuant to said contract Kootenai County was to perform the duties of the Chief Election Official for the City of Coeur d'Alene in the administration of the City of Coeur d'Alene in the city General Election to be held, and held, on November 3, 2009. A true and correct copy of the said Resolution and contract between the City and Kootenai County is attached hereto as Exhibit A, and incorporated herein by this reference as if fully set forth hereat word for word.

12. Pursuant to said contract Kootenai County, English, and Beard proceeded to oversee and administer the City November 3, 2009 General Election for and on behalf of the City. That said oversight and administration of said election included conducting a 'canvass' of the vote which was not part of their agreement under said contract.
13. Kootenai County, English, and Beard in overseeing and administering the City November 3, 2009 General Election received, controlled, and counted various ballots cast in said election, and declared void, various ballots cast in said election. Thereafter Kootenai County, English, and Beard determined, among other matters, that 2051 absentee ballots were cast in CDA ABSENTEE PRECINCT 0073, that Jim Brannon received a total of 3160 votes, and Kennedy received a total of 3165 votes. A copy of the 'District Canvass' for the Kootenai County, Idaho, City General Election' conducted by Kootenai County, English, and Beard, is attached hereto as Exhibit B and incorporated herein by this reference as if fully set forth hereat word for word.

14. Plaintiff Jim Brannon is aggrieved by said actions of Defendant City Kootenai County, English, and Beard by, among other matters involved in administrating the election, counting the ballots by machine as opposed to hand counting said ballots, and by their further actions or inactions as set forth below.
15. That on or about November 9, 2009 Beard, in her capacity as 'Elections Manager', prepared, signed, and delivered a report to the City purported 'results' of the November 3, 2009 City General Election to the City, the Mayor, and the City. A copy of the 'report' presented is attached hereto as Exhibit C and incorporated herein by this reference as if fully set forth hereat word for word.
16. That upon receipt of said 'report' the Council upon motion of City Council members Loren Ron Edinger, seconded by Councilman John Bruning, "to accept the canvass of votes and authorize the City Clerk to sign the necessary documents" approved and adopted the canvass of the vote conducted by Kootenai County, English, and Beard. The "Motion carried." A copy of the minutes of the Meeting of the City Council of the City of Coeur d'Alene, Idaho held November 9, 2009, is attached hereto as Exhibit D and incorporated herein by this reference as if fully set forth hereat word for word. That said "canvass" and "motion" declared Kennedy as the "winner" in the election for Seat 2 by five (5) votes over Plaintiff Jim Brannon.
17. The City of Coeur d'Alene in the conduct of its said election utilized Precincts 0022, 0028, 0035, 0037, 0038, 0039, 0041, 0042, 0043, 0044, 0045, 0046, 0047, 0048, 0049, 0050, 0051, 0052, 0053, 0054, 0055, 0056, 0057, 0058, 0059, 0060, 0061, and 0073 (CDA ABSENTEE

PRECINCT). That some of these said precincts are 'consolidated' City of Coeur d'Alene and Kootenai County precincts. That pursuant to I.C. 50-408 the City Clerk, Weathers, only has authority to consolidate established precincts within the City of Coeur d'Alene and not in consolidation with Kootenai County precincts.

18. The City is required by such statutes as I.C. 50-428, to maintain 'poll books' for each precinct. That a copy of the form utilized for said "poll books" setting forth information to be maintained in said 'poll books' is attached hereto as Exhibit E, a copy of which is attached hereto and incorporated herein by this reference as if fully set forth hereat word for word. That some 'poll book' pages were not standard and did not contain necessary and important information. A copy of such page is attached hereto as Exhibit F and incorporated herein by this reference as if fully set forth hereat word for word.

19. Pursuant to Idaho Code Title 50 Chapter 4, and the said contract between the City and Kootenai County, a 'poll book' for each precinct for the said city election is required. That a 'poll book' for each City of Coeur d'Alene precinct except CDA ABSENTEE PRECINCT 0073 was prepared. No 'poll book' for said PRECINCT 0073 was prepared, or maintained, as required, and none is in existence. A copy of a letter from Deedie Beard, Election Manager, Kootenai County, setting forth that no such "poll book" for PRECINCT 0073 is in existence is attached hereto as Exhibit G and incorporated herein by this reference as if fully set forth hereat word for word.

20. The statutes governing Idaho Municipal elections are set forth in Idaho Code Title 50 Chapter 4, "Idaho Municipal Election Laws." Said statutes

are incorporated herein by this reference as if fully set forth hereat word for word.

21. That pursuant to the "Idaho Municipal Election Laws" the following, among other matters, are set forth as election requirements:

- a. The city Clerk "may employ such persons" as he considers necessary to "facilitate and assist in his carrying out his functions in connection with administering the election laws. I.C. 50-404.
- b. "Any person adversely affected by any act or failure to act by the city clerk under any election law...may appeal therefrom to the district court for the county in which the act or failure to act occurred..." I.C. 50-406.
- c. "The city council shall establish a convenient number of election precincts within their city...The city council may establish an absentee voting precinct for the city..."
- d. "Any registered elector in a city may vote at any city election by absentee ballot as herein provided. I.C. 50-422.
- e. "Any registered elector may make written application to the city clerk for an official ballot or ballots of the kind or kinds to be voted at the election. The application shall contain the name of the elector, his home address and address to which such ballot shall be forwarded. The application for an absent elector's ballot shall be signed personally by the applicant...Application for an absentee ballot may be made by using a facsimile machine...A person in the United States service may make application for an absent elector's ballot by use of a properly executed federal postcard application as provided for in the laws of the United States known as "Federal

Voting Assistance Act of 1955.” The issuing officer shall keep as a part of the records of his office a list of all applications so received and the manner and time of delivery or mailing to and receipt of returned ballot.” I.C. 50-443. A true and correct copy of the application for absent elector’s ballot for the City of Coeur d’Alene is attached hereto as Exhibit H and incorporated herein as if fully set forth hereat word for word.

- f. “Upon receipt of an application for an absent elector’s ballot within the proper time, the city clerk receiving it shall examine the records of his office to ascertain whether or not such applicant is registered and lawfully entitled to vote as requested...” I.C. 50-445.
- g. “Upon receipt of an absent elector’s ballot the city clerk of the city wherein such elector resides shall write or stamp upon the envelope containing the same, the date and hour such envelope was received in his office, comparing to ensure that signatures correspond...” I.C. 50-447.
- h. “...In those cities which count ballots at a central location, absentee ballots that are received may, in the discretion of the city clerk, be retained in a secure place in the clerk’s office and such ballots shall be added to the precinct returns at the time of ballot tabulation. The clerk shall deliver a list of those absentee ballots received to the polls to record in the official poll book that the elector has voted.” I.C. 50-459.
- i. “Between the opening and closing of the polls on election day the judges of election of such precinct shall open the carrier envelope

only, announce the absent elector's name, check the (combination) election record and poll book to ascertain if the applicant is a duly registered elector of the precinct and that he has not heretofore, voted at the election, they shall open the return envelope and remove the ballot envelope and deposit the same in the proper ballot boxes and cause the absent elector's name to be entered on the poll books the same as though he had been present and voted in person. The ballot envelope shall not be opened until the ballots are counted." I.C. 50-450

- j. "The city clerk shall keep a record in his office containing a list of names and precinct numbers of electors making applications for absent elector's (electors') ballots, together with the date on which such application was made, and the date on which such absent elector's ballot was returned. If an absentee ballot is not returned or if it be rejected and not counted, such fact shall be noted on the record..." I.C. 50-451.
- k. "The ballot box shall be opened and the ballots found therein counted by the judges, unopened and the number of ballots in the box must agree with the number marked in the poll book or election register as having received a ballot, and this number, together with the number of spoiled ballots, must agree with the number of stubs in the books from which the ballots have been taken. If the number of ballots issued does not agree with the number of stubs the election judges shall have authority to make any decision to correct the situation; but this shall not be construed

to allow the judges to void all ballots cast at that polling place.”
I.C. 50-464.

- l. “The ballots and polls lists agreeing, the election personnel shall then proceed to tally the votes cast. Under each office title the number of votes for each candidate shall be entered in the tally books together with the total...” I.C. 50-465
- m. “The mayor and the council, within six (6) days following any election, shall meet for the purpose of canvassing the results of the election. Upon acceptance of tabulation of votes prepared by the election judges and clerks, and the canvass herein provided, the results of both shall be entered in the minutes of proceedings and proclaimed as final...” I.C. 50-467.

CAUSE OF ACTION TO SET ASIDE, VOID, ANNUL
THE ELECTION ALL OR IN PART

22. The above paragraphs 1 through 21 are realleged hereat as if fully set forth hereat word for word.
23. Plaintiff, Jim Brannon, is an elector in the said City of Coeur d’Alene election, is and was a candidate in said election for Seat Number 2 held by Kennedy, and is aggrieved by the acts or failure to act on the part of the Defendants City, Mayor, Council, Weathers, and County of Kootenai, English, and Beard as more fully set forth herein below, and is entitled to appeal the above said election, and election results, and obtain an Order of this Court setting aside, voiding, and/or annulling the said election pursuant to I.C. 50-406.

24. That the Defendants failed to follow and comply with the “Idaho Municipal Election Laws” and as a direct and proximate result of said failures erroneously, because by the resultant casting and counting of improper ballots in a number that would change the election results, awarded Kennedy votes totally 3165 and Plaintiff, Jim Brannon, 3160, and declared Kennedy the winner of the election for Seat 2.

25. The Defendants failures include, but are not limited to, the following:

- a. Illegally attempted to delegate the statutory election duties of Weathers, as City Clerk for the City of Coeur d’Alene, and the Mayor and City Counsel to Kootenai County and Daniel J. English and/or Deedie Beard;
- b. Failed to require that absent electors furnish timely and appropriate requests for absentee ballots and erroneously utilized outdated and inappropriate request forms for absentee ballots;
- c. Failed to verify upon receipt of every application for absentee ballots whether the requestor is registered and lawfully entitled to vote. This occurred, apparently, based upon a misunderstanding that they, collectively, “are not the residency police,” and that such failure resulted in ballots illegally being cast and counted in a number that exceeds the difference in the vote totals counted in favor of Plaintiff Jim Brannon and Kennedy in said election and said difference would change the outcome of the election. It is alleged upon the information available to Plaintiff Jim Brannon at this time, and belief, that ballots that should not have been counted include, but are not limited because others may be identified through discovery or trial, the following; John and/or Jane Doe

- representing the two absentee ballots that were counted but to which there is no known name or accounting; Tammy Farkes Precinct numbers 0048 and/or 0073; Monica Pacquin Precinct numbers 0055 and/or 0073; Gregory Proft Precinct numbers 0054 and/or 0073; and Alan Friend Precinct numbers 0051 and/or 0073.
- d. Failed to properly handle, process, and account for absentee ballots in the manner prescribed by Idaho statutes;
 - e. Failed to maintain proper and official “poll books” for various precincts including but not limited to CDA ABSENTEE PRECINCT 0073 from which an accurate account of City of Coeur d’Alene ballots, and absentee ballots requested and timely received, can be identified and verified in a number that would change the election results;
 - f. Failed to confirm that the number of absentee ballots received and counted were properly accounted for and verified. That such failure resulted from a failure, in part, to maintain proper and accurate ‘poll books’ in a number that alone, or in combination with illegal absentee ballots cast and counted, would change the election outcome.
 - g. Counted at least two (2) more absentee ballots in the final vote tally than were actually documented, accepted, and not voided as a result of the failure to keep and maintain a proper “poll book” or accounting of ballots for Precinct 0073, and that such failure prevents Plaintiff, Jim Brannon, from verifying the validity of absentee vote totals. That such failure in connection with other failures of Defendants amount to a total that would change the

election outcome. Additionally, the “Absentee Ballot Report-Kootenai” in existence on November 6, 2009, (attached hereto as Exhibit I which is incorporated herein as if fully set forth hereat word for word) three days after the said election, reports that 2047 absentee ballots were received with five (5) ballots voided. Further, the “Absentee Ballot Report-Kootenai” in existence on November 16, 2009 (attached hereto as Exhibit J which is incorporated herein as if fully set forth hereat word for word) seven days after the approval of the canvass by the Mayor and City Council, reports that 2049 absentee ballots were received with seven (7) ballots voided. Both the November 6, 2009 and the November 16, 2009 “Absentee Ballot Report-Kootenai” report that 2042 absentee ballots were cast and counted when the canvass prepared by Kootenai County, English, and Beard, and adopted by the Mayor and City Counsel reflect that 2051 absentee ballots were cast and counted. The difference in these absentee ballot totals would change the outcome of the election.

- h. Failed to properly maintain the poll books for various precincts including, but not limited to, Precinct numbers, 22, 28, 35, 38, 46, 49, 50, 57, and 61, which are ‘consolidated City of Coeur d’Alene and Kootenai County precincts, so that Plaintiff, Jim Brannon, can not verify whether the proper ballots for the said election were issued to and cast by a significant number of recorded voters, which is far in excess of the five (5) vote difference between him and Kennedy, and would change the outcome of the election.

- i. Failed to prevent the receipt of illegal votes cast and counted in a number and amount in excess of five (5) and that total, due to the receipt and counting of said ballots, would change the result of the election for Seat 2. The identification of the purported electors who, it is alleged upon information and belief based upon the information available to Plaintiff Jim Brannon, will be set forth at the time of trial in this matter with appropriate notice to the Defendants.
- j. Failed to prevent at least one Kootenai County resident from voting in a City of Coeur d'Alene precinct on a City of Coeur d'Alene ballot. Plaintiff Jim Brannon alleges upon the information available to him at this time, and belief, that the ballot of Rahana Zellars should not have been counted as a City of Coeur d'Alene election ballot but rather should have been a Kootenai County ballot based upon her address listed in the 'poll book' for Precinct 56 when said address reflects a Kootenai County address as opposed to a City of Coeur d'Alene address. This would indicate that she should have voted in Precinct 57 on a Kootenai County election ballot. This vote, in conjunction with other illegal votes cast, would change the result of the election for Seat 2.
- k. Failed to conduct a canvass of the election and the ballots cast and when the purported and documented vote tally presented to them reflected that more absentee votes than the number actually accounted for as having been received were counted. Said number, nine (9), (or two in combination with the other votes cast and counted illegally) is in excess of the difference between the total

votes deemed voted for Plaintiff, Jim Brannon, and Kennedy, which was five (5) votes, and thus the errors in, conducting the election, canvassing, counting votes and in declaring the result of the election would change the vote totals in an amount that would change the election results.

1. Defendants failed to properly administer the City of Coeur d'Alene November 3, 2009, election pursuant to Title 50 Chapter 4 Idaho Code and said failure and compounding failures including, but not limited to, improperly attempting to delegate authority to Kootenai County, English, and Beard, no preparation of a 'poll book' for Precinct 0073, consolidation of City of Coeur d'Alene and Kootenai County precincts with no record of the type of ballot provided and cast by numerous electors, no verification of respective applicants' for absentee ballots legal status to vote, and permitting at least one Kootenai County resident to vote in a City of Coeur d'Alene precinct and to vote a City of Coeur d'Alene ballot constitutes such malconduct on the part of Defendants to a degree that the ballot count is incorrect in a number that would change the election for at least Seat 2 that the election should be set aside, voided, and or annulled all or in part.

INJUNCTION

26. The above paragraphs 1-25 are realleged hereat as if fully set forth hereat word for word.
27. That pursuant to Title 50 Chapter 6 and Chapter 7, respectively, Idaho Code, I.C. 50-601 and I.C. 50-702, the City is to install at its first meeting in January following an election the successor councilman and mayor of the City.
28. That pursuant to I.C. 50-702 and I.C. 50-601 each City councilman and the Mayor shall hold office until his successor is elected.
29. That the said "canvass" and "motion" as recorded in Exhibit D declare Kennedy and the other "incumbents" and the current mayor the "winner" in all the said City elections. That both I.C. 50-702 and I.C. 50-601 provide that each City councilman and the mayor shall hold office until their respective successor is elected and because all of the "incumbents" were purportedly reelected the Court should enter an injunction restraining the City, Council, and Mayor from installing the councilman and mayor declared by the City in Exhibit D to be the "winners," pending the Court's ruling on this election challenge, and the occurrence of any relief granted, such as requiring a new election.

BOND

30. There is no "bond" requirement, or amount, for the appeal of an aggrieved person from a municipal election, such as Plaintiff Jim Brannon, pursuant to Title 50 Chapter 4 Idaho Code, I.C. 50-406, or any other provision of the "Idaho Municipal Election Laws."
31. That in a good faith effort to comply with any "bond" requirement deemed applicable by the Court in this matter a "bond" in the sum of Five Hundred Dollars (\$500.00), which is a sum equal to the bond required under I.C. 34-2031 is filed herewith.

PRAYER FOR RELIEF

WHEREFORE PLAINTIFF prays for relief from the Court as follows:

1. For Judgment declaring that the 2009 City of Coeur d'Alene municipal election is set aside, void, and annulled in total; and
2. For Judgment declaring the 2009 City of Coeur d'Alene municipal election for Seat 2 is set aside, void, and annulled;
3. For an injunction restraining the City, Council, and Mayor from installing anyone declared by the City to be a "winner" in said election, or at least Seat 2, until after this Court's ruling on this contest and the occurrence of any relief granted, such as requiring a new election.
4. For return of the posted cost bond and, if deemed appropriate by the Court, costs against Defendant City of Coeur d'Alene;
5. For such further and other relief as the Court deems just.

