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STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

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CLERK DISTRICT COURT

DEPUTY _____

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

**CLIFFORD T. HAYES, in his official
capacity as KOOTENAI COUNTY
CLERK, KOOTENAI COUNTY, IDAHO;**

Petitioner,

vs.

**RECALL CDA, INC., an Idaho
corporation, and/or FRANK ORZELL,
individually and as registered agent;
the CITY OF COEUR D'ALENE, an
Idaho municipal corporation; MIKE
KENNEDY, WOODY McEVERS,
DEANNA GOODLANDER, AND SANDI
BLOEM, individually and in their
capacity as officers of the City of
Coeur d'Alene;**

Respondents.

Case No. CV-12-3135

**PETITION FOR
DECLARATORY JUDGMENT**

*Fee Category: A
Fee: Exempt*

COMES NOW, the Petitioner, Clifford T. Hayes, Kootenai County Clerk, by and
through his counsel of record, Barry McHugh, Kootenai County Prosecuting Attorney,
and R. David Ferguson, II, Civil Deputy Prosecuting Attorney, and does hereby petition

Assigned to Judge Simpson

PETITION FOR DECLARATORY JUDGMENT - 1 .

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this court, pursuant to Idaho Code § 10-1201, *et. seq.*, for an order for a Declaratory Judgment prescribing the Kootenai County Clerk's statutory duties to certify the Respondent Recall CDA's recall petitions, pursuant to Idaho Code § 34-1704, and Idaho Code § 34-1706. This matter directly affects and impacts the rights and status of the interested parties, Recall CDA/Frank Orzell, and the City of Coeur d'Alene, Idaho.

PARTIES AND JURISDICTION

1.

Petitioner, Clifford T. Hayes, is the duly elected Kootenai County Clerk.

2.

Petitioner is informed and believes that Recall CDA, Inc., an Idaho corporation, and/or Frank Orzell, individually or as registered agent for Recall CDA, Inc., have brought petitions, pursuant to Idaho Code § 34-1701, *et. seq.*, for the recall of members of the city council, and the Mayor of the City of Coeur d'Alene, Idaho. Petitioner is informed and believes that the rights, status, and interests of Recall CDA and/or Frank Orzell, are, and will be, substantially and materially affected by the certification of signatures of the recall petitions by the Kootenai County Clerk, as required by Idaho Code § 34-1704, and Idaho Code § 34-1706, respectively.

3.

Petitioner is informed and believes that the rights, status, and interests of the City of Coeur d'Alene, Idaho, are, and will be, substantially and materially affected by the certification of signatures of the recall petition by the Kootenai County Clerk, as required by Idaho Code § 34-1704, and Idaho Code § 34-1706, respectively.

4.

Petitioner is informed and believes that the rights, status, and interests of Mike Kennedy, Woody McEvers, Deanna Goodlander, and Sandi Bloem, are, and will be, substantially and materially affected by the certification of signatures of the recall petition by the Kootenai County Clerk, as required by Idaho Code § 34-1704, and Idaho Code § 34-1706, respectively.

5.

The subject matter of this action occurred, or is occurring, within Kootenai County, Idaho.

JURISDICTION AND VENUE

6.

This is an action for Declaratory Judgment brought pursuant to Idaho Code § 10-1201, *et. seq.*, seeking a determination prescribing the Kootenai County Clerk's statutory duties pursuant to Idaho Code § 34-1704, and Idaho Code § 34-1706, respectively.

7.

The District Court has jurisdiction, pursuant to Idaho Code §§ 10-1201, 1-705, and 5-514, to prescribe the Kootenai County Clerk's statutory duty pursuant to Idaho Code § 34-1704, and Idaho Code § 34-1706, respectively.

8.

Venue in this court is proper pursuant to Idaho Code § 5-404, in that one or more of the defendants reside in Kootenai County, Idaho, the same being the county in which the above stated request for Declaratory Judgment arises.

FACTS AND RELEVANT LAW

9.

Recall CDA, Inc., and/or Frank Orzell (Recall CDA) are the organization and/or the person responsible, and with the authority for, circulating a petition, or petitions, for the recall of the City of Coeur d'Alene City Council members Mike Kennedy, Woody McEvers, Deanna Goodlander, and City of Coeur d'Alene Mayor, Sandi Bloem.

10.

Pursuant to Idaho Code § 34-1704, the Kootenai County Clerk (Petitioner), is responsible to certify the signatures on the prospective recall petitions. Idaho Code § 37-1704(2) states:

The secretary of state, county clerk, or city clerk, as the case may be, shall indicate in writing on the prospective recall petition that he has approved it as to form and the date of such approval. Upon approval as to form, **the secretary of state, county clerk, or city clerk, shall inform the person or persons, organization or organizations under whose authority the recall petition is to be circulated, in writing, that the petition must be perfected with the required number of certified signatures within seventy-five (75) days following the date of approval as to form.** Signatures on the prospective petition shall not be counted toward the required number of certified signatures. **Any petition that has not been perfected with the required number of certified signatures within the seventy-five (75) days allowed shall be declared null and void ab initio in its entirety.** (emphasis added).

The county clerk must therefore perfect the recall petitions, by certifying in writing, that the signatures on the petitions are those of persons who were eligible to vote in the City of Coeur d'Alene at the time of the last general election.¹

¹ See Idaho Code § 34-1702 which provides: "If the petition seeks recall of [city officers], the petition... must be signed by registered electors of the city equal in number to twenty percent (20%) of the number of electors registered to vote at the last general city election held in the city for the election of officers."

11.

Idaho Code § 34-1706 provides:

All petitions with attached signature sheets shall be filed on the same day with the secretary of state, county clerk, or city clerk, as the case may be. The secretary of state or the city clerk shall promptly transmit the petitions and attached signature sheets to the county clerk. An examination to verify whether or not the petition signers are qualified electors shall be conducted by the county clerk as provided in section 34-1807, Idaho Code. This examination shall not exceed fifteen (15) business days from the date of receipt of the petitions. (emphasis added).

The county clerk must therefore complete the examination (the certification) of all the recall petitions within fifteen business days after the city clerk transmits the petitions to the county clerk.

ANALYSIS AND
GROUND FOR DECLARATORY RELIEF

12.

When read together, Idaho Code §§ 34-1704(2) and 1706 are conflicting and ambiguous. It is unclear if the fifteen business day time limit for completing the examination of recall petitions is or is not inclusive of the seventy-five day perfection limit. Neither code section addresses the question of precisely when the recall petitions must be submitted to the county clerk for examination. Likewise, the seventy-five day limit of Idaho Code § 34-1704(2) does not address the actual time that may be required to examine the recall petitions, the length of time the city clerk has to submit the recall petitions to the county clerk ("promptly" is ambiguous), and, both of which in turn affect the date the recall petitions must be submitted to the Petitioner in order for him to comply with the apparent seventy-five day window for perfection required by Idaho Code § 34-1704(2).

This ambiguity creates a “moving target date” for the submission of the recall petitions for examination by the county clerk. The Kootenai County Clerk is therefore in a position of uncertainty, and likely subject to legal question, as to his duty to perform the examination and certification of the recall petition signatures within the seventy-five day window stated in Idaho Code § 34-1704(2). Moreover, depending on the date the recall petitions are actually submitted for examination, Petitioner may not have sufficient time and resources in which to examine and certify the signatures within the seventy-five day window. The result, therefore, is likely to produce incomplete and/or inaccurate results.

13.

Here, the Coeur d’Alene City Clerk approved the Recall CDA petitions for circulation on April 5, 2012. The date seventy-five days subsequent is June 19, 2012. Assuming that the fifteen business day limit is included in the seventy-five day limit, and that the petitions require the full fifteen business days for examination and certification afforded by Idaho Code § 34-1706, the recall petitions must be submitted to the Kootenai County Clerk for examination no later than May 29, 2012.

However, also assuming *arguendo*, that the recall petitions are submitted to the Kootenai County Clerk some time *after* May 29, 2012, the Clerk will no longer have fifteen business days available to complete the examination and certification. In that event, the examination and certification must necessarily be completed in less than the fifteen business days afforded by Idaho Code § 34-1706, absent definitive direction by the Court.

14.

As a result of the inherent ambiguity and conflict between Idaho Code §§ 34-1704(2), and 1706, the Kootenai County Clerk is left in a position where he cannot effectively allocate, nor manage, his resources effectively in order to comply with the seventy-five day deadline of Idaho Code § 34-1704(2). The result is likely to lead to an incomplete, inaccurate, or legally questionable certification process, and in turn, is likely to lead to litigation to determine the rights of the parties after the fact. A determination by this Court before examination and certification begin will resolve the inherent ambiguity in the date required for submission of the recall petitions to the Petitioner.

15.

STANDING AND CONTROVERSY

I. Petitioner Has Standing to Bring this Action.

Petitioner has standing to bring this action as an actual controversy exists as to whether the time frame for certification of the recall petitions is inclusive of the seventy-five day limit of Idaho Code § 34-1704, or whether the fifteen day time period for certification in Idaho Code § 34-1706 should be added to the seventy-five day perfection period. "A declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists." State v. Rhoads, 119 Idaho 594, 597, 809 P.2d 455, 458 (1991). The court explained in Wylie v. Idaho Transp. Bd., 151 Idaho 26, ___, 253 P.3d 700, 705:

The right or status at issue may invoke either remedial or preventative relief; it may relate to a right that has either been breached or is only yet in dispute or a status undisturbed but threatened or endangered; but, in either or any event, it must involve actual and existing facts.

quoting Harris v. Cassia County, 106 Idaho 513, 516–17, 681 P.2d 988, 991–92 (1984)

(internal quotation omitted).

16.

The existing facts are that a moving target date for submission of the recall petitions does not afford the Kootenai County Clerk any opportunity to rely upon the fifteen day time period afforded by Idaho Code § 34-1706. Without knowing a date certain for the submission of the recall petitions, the Kootenai County Clerk will be unable to prepare his office and staff to actually examine the recall petitions. Likewise, without a set date for submission of the recall petitions, the Kootenai County Clerk is put in a precarious position of uncertainty regarding potentially hiring additional qualified staff on such short notice that certifying the petitions will become a practical impossibility.

17.

For example, submission of the recall petitions to the Clerk on June 17, 2012, (day seventy-three of the apparent seventy-five perfection window of Idaho Code § 34-1704) would leave the Kootenai County Clerk with no ability to actually certify within seventy-five days after approval of the recall petitions. Absent clarification from the Court, the Clerk will be faced with the decision to continue with the certification process after the 75 days have expired or invalidate the recall petitions even though only two business days remain in which to "certify." The harm to the parties in that example would be irreparable.

II. The Issue is One of Great Public Importance and is Ripe for a Declaratory Judgment.

"An exception to the mootness doctrine...is the public interest exception." Idaho Schs. for Equal Educal. Oppty. v. Idaho St. Bd. of Educ., 128 Idaho 276, 284, 912 P.2d 644, 652 (1996). "Even if the case is determined to be moot, if the issue presented is one of substantial public interest, the court may address the issue for future direction and guidance." *Id. citing Johnson v. Bonner County Sch. Dist. No. 82*, 126 Idaho 490, 492, 887 P.2d 35, 37 (1994). Where the matter is of great fundamental importance, the court should hear the case even if technically moot. *Id.*

Here, the issue of mootness is inverse to the issue of ripeness. On one hand, if the recall petitions are submitted before May 29, 2012, the issue would appear to be moot, because fifteen business days will remain available within which the Kootenai County Clerk can certify the petitions. Nonetheless, if the recall petitions are submitted *after* May 29, 2012, the Clerk is left with less than fifteen business days to certify the recall petitions and will require a determination whether or not fifteen business days continue to remain available pursuant to Idaho Code § 34-1706, thereby pushing the certification beyond seventy-five days. In other words, waiting to rule on this matter until the Kootenai County Clerk cannot actually certify the recall petitions will be too late to determine if the fifteen day limit can exceed the seventy-five day perfection window.

This is a matter of great importance to the individual parties, and moreover of great public importance to the voters of the City of Coeur d'Alene in general. Recall

CDA is attempting to gather signatures of approximately twenty percent of the registered electors of the City of Coeur d'Alene. The Kootenai County Clerk believes that Recall CDA will ultimately present approximately seventeen thousand signatures for certification.

21.

A determination of the time window within which Recall CDA has to gather signatures therefore directly impacts a great number of the residents of Coeur d'Alene in general, as well as directly impacts Recall CDA, and the Coeur d'Alene city officials who are parties to this action. Without a determination of the length of time Recall CDA has to gather signatures, the Kootenai County Clerk is highly likely to be the subject of litigation questioning his, and his offices', conduct in actually certifying the recall petitions signatures. Such legal questions are likely to impugn the Clerk's planning and staffing, the qualifications of his staffing, and his ability to verify signatures under a deadline, which may ultimately be so short that meaningful review of the recall petitions becomes impracticable.

22.

These legal questions can be alleviated by this Court issuing an order providing certainty that there is a hard deadline where the recall petitions must be submitted to the Kootenai County Clerk. With such a deadline, Recall CDA will be able to prepare to submit the recall petitions to the Coeur d'Alene City Clerk, who can in turn plan accordingly to submit the recall petitions to the Kootenai County Clerk, both by a date certain. A deadline for submission of the recall petitions to the Petitioner will ensure that the Kootenai County Clerk can adequately prepare to certify such a large number of

signatures.

23.

Finally, even if this matter is ultimately rendered moot, the parties have a right to a determination of the respective deadlines for submission of the recall petitions before May 29, 2012. Currently, the parties have no assurance that the recall petitions can ultimately be certified without guidance from the Court resolving the inherent ambiguity between the relevant statutes. The ambiguity therefore should be resolved in order to provide guidance in the event Recall CDA, or other similar entities, undertake recall actions in the future. See Idaho Schs. for Equal Educal. Oppty. v. Idaho St. Bd. of Educ., 128 Idaho 276, 284, 912 P.2d 644, 652 (1996); Johnson v. Bonner County Sch. Dist. No. 82, 126 Idaho 490, 492, 887 P.2d 35, 37 (1994).

24.

As this is a matter of great public importance, this matter is ripe for a determination resolving when the recall petitions must be submitted to the Kootenai County Clerk pursuant to Idaho Code §§ 34-1704, and 34-1706.

25.

Based on the foregoing, the Kootenai County Clerk seeks a determination of the following:

A. That this Court set the deadline date for submission of the recall petitions to the Kootenai County Clerk for examination and certification, and determine whether the recall petition perfection process must be completed no later than June 19, 2012;

B. That this Court set the deadline date for submission of the recall petitions to the Kootenai County Clerk if the Clerk has fifteen business days to complete the

examination and certification process, regardless of whether certification will be completed *after* June 19, 2012;

C. That this court determine the time the Coeur d'Alene City Clerk has after receipt to submit the recall petitions to the Kootenai County Clerk.

PRAYER FOR RELIEF

WHEREFORE, in order to determine the rights and interests of the parties, Petitioner respectfully requests this Court:

1. Issue a declaratory judgment on the following legal questions pursuant to Idaho Code § 10-1201, *et. seq.*;

A. That this Court set the deadline date for submission of the recall petitions to the Kootenai County Clerk for examination and certification, and if the recall petition perfection process must be completed no later than June 19, 2012;

B. That this Court set the deadline date for submission of the recall petitions to the Kootenai County Clerk if the Clerk has fifteen business days to complete the examination and certification process, regardless of whether certification will be completed *after* June 19, 2012;

C. That this court determine the time the Coeur d'Alene City Clerk has after receipt to submit the recall petitions to the Kootenai County Clerk.

2. Petitioner further respectfully requests that this Court hear this matter in as speedy setting as practicable pursuant to Idaho Rule of Civil Procedure 57, as the rights of the parties will be materially and adversely affected unless this matter is heard and decided by this Court no later than May 28, 2012;

3. For such other and further relief, at law or in equity, as the Court deems just and proper.

DATED this 24 day of April, 2012.

Kootenai County Prosecuting Attorney



R. David Ferguson, II, Civil Deputy
Attorney for Petitioner

VERIFICATION

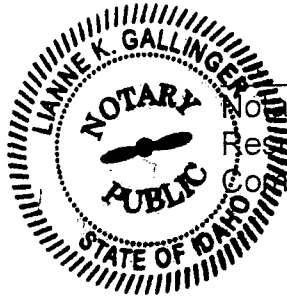
STATE OF IDAHO)
 ss.
COUNTY OF KOOTENAI)

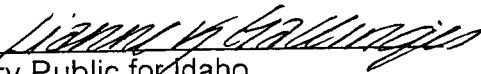
Clifford T. Hayes, being first duly sworn, deposes and states that I am the duly elected Clerk for Kootenai County; that I have read the foregoing Petition and acknowledge that the facts set forth therein are true and accurate to the best of my knowledge and belief.



CLIFFORD T. HAYES

SUBSCRIBED AND SWORN to before me this 24th day of April, 2012.




Notary Public for Idaho
Residing at: Coeur d'Alene
Commission Expires: 7/27/2013