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STATE OF IDAHO
COUNTY OF KOOTENAI
FILED:

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CLERK DISTRICT COURT

DEPUTY

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

JIM BRANNON,
Appellant

vs.

CITY OF COEUR D'ALENE, IDAHO
a municipal corporation, et.al.
Respondents.

Case No. CV-09-10010

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENTS CITY OF COEUR D'ALENE; SUSAN K. WEATHERS in her capacity as the City of Coeur d'Alene City Clerk; AND MIKE KENNEDY in his capacity as the incumbent candidate for the City of Coeur d'Alene Council Seat # 2; and THE PARTIES RESPECTIVE ATTORNEYS MICHAEL HAMAN, SCOTT REED, AND PETER ERBLAND

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Jim Brannon appeals against the above named respondents to the Idaho Supreme Court from the final Judgment entered on November 4, 2010, Senior District Court Judge Charles W. Hosack presiding and all interlocutory orders entered by the Court prior thereto, simultaneously therewith, and subsequent thereto.
2. That the appellant has the right to appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is an appealable order under and pursuant to Rule 11 (a) (1) I.A.R. and Idaho Code section 34-2025 (b).
3. Preliminary Issues on Appeal:
    1. Whether the district court erred in holding that the City and City Clerk were permitted in 2009 to enter into a contract with Kootenai County and the Clerk of the Court

whereby all responsibility for the conduct of the City's election, and duties of the City Clerk, were delegated to the County and Clerk.

2. Whether the district court erred in dismissing the complaint to set aside the entire 2009 City of Coeur d'Alene General Election and only retaining the contest for Seat 2?
3. Whether UOCAVA residency statutes are applicable to municipal elections?
4. Whether the failure of the County and Clerk to maintain an I.C. 34-1011 and I.C. 50-451 absentee ballot record constitutes misconduct.
5. Whether the district court erred in holding that mere return envelopes, some of which or marked "void" and some of which have no date and time stamp recording their receipt, is compliance with the absentee ballot record required to be kept by the Clerk pursuant to I.C. 34-1011 and/or I.C. 50-451.
6. Whether the district court erred by not adopting the November 6, 2009 absentee ballot record (Exhibit 5) as being prima facie proof that more absentee ballots were counted than were actually received by the Clerk by the close of the polls?
7. Whether the district court erred in holding, without any evidence in the record, that the 2050 return envelopes counted by Judge Marano each contained a legal and valid absentee ballot when the absentee ballot record printed on November 6, 2009 (Exhibit 5) documents that only 2041 valid absentee ballots were received prior to the close of the polls.
8. Whether the district court erred by only requiring that the board of canvassers accept a print-out of machine vote totals to meet their responsibility to "count votes" pursuant to I.C. 34-2001 (6)?
9. Whether the district court erred by not entering its order requiring voters that cast absentee ballots, who were not able to located within the city or the county for service of process, to appear at the trial as permitted by I.C. 34-2013?
10. Whether the district court erred in not considering prior recorded statements of voters as substantive proof of who they cast their respective ballots for when they testified at trial that, at that time, they can not remember who they voted for in the election?
11. Whether the district court erred in holding that Denise Dobslaff, a landed immigrant in Canada, was a resident for the purpose of voting in the City's municipal election?

12. Whether the district court erred in holding that the Clerk does not have an obligation under I.C. 50-445 to determine whether an applicant for an absentee ballot is registered and lawfully entitled to vote as requested by the applicant. (e.g. a resident of the city)?
13. Whether the district court erred in holding that Kimberly Gagnon, who has never resided in the city, esd a qualified voter simply because she is the spouse of a current member of the military?
14. Whether the district court erred in holding that Alan Friend, who listed his residence as a commercial building and whose internet advertising claims he is a permanent resident of Canada, was a qualified voter?
15. Whether the district court erred by not requiring, under I.C. 50-402 "residence", that a voter living outside of the city must have a "fixed" principal or primary home or place of abode within the city, to which he intends to return to as opposed to a general intent to possibly someday return to the City?
16. Whether erred, when the evidence establishes that at least two voters were provided the wrong ballots at polling places, by holding that in a "combined" election where more than one ballot is to be voted and the poll books are to document which type of ballot a person receives, that the fifty three "in-person" voters, for whom there are no records documenting which ballot they were respectively given, that the each were provided the correct ballot to cast their vote on when they appeared at the polls.
17. Whether there is substantial competent evidence that supports the district court's holding that Judge Marano counted 2051 absentee ballots as being received.
18. Whether the district court erred by not shifting that the burden of proof to Defendants, once the Plaintiff established that the only reliable absentee ballot record database documented that only 2041 valid absentee ballots were received by the Clerk and the machine reflects 2051 absentee ballots were counted which difference in number is five more than the difference in the vote totals attributed to Appellant Brannon and Defendant Kennedy?
19. Whether the district court judge erred in not disqualifying himself given his pretrial statements in open court, on the record, that election challenges established is bias if election challenges were permitted would cause anarchy reign?

3 NOTICE OF APPEAL.

20. Whether the district court erred in holding that the proposed, but previously denied, requested amended complaint failed to state a claim for malconduct under I.C. 34-2001?

21. Whether the district court erred in confirming the 2009 City of Coeur d'Alene General Election?

22. Whether the district court erred in declaring Defendant Kennedy as duly elected to Seat 2 in the 2009 City of Coeur d'Alene General Election?

23. Whether the district court (Judge Simpson) erred in requiring Plaintiff to file a $5,000.00 bond.

4. An order has not been issued sealing all or a part of the record.

5. (a) A reporter's transcript is requested.

(b) The appellants request the preparation of the reporter's transcript, including opening statements and closing arguments. Also a transcript of the oral argument all pre-trial hearings held except for the January 5, 2010 hearing.

6. The appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.: all motions for summary judgment, memorandums of law/briefs, affidavits, and exhibits filed in support thereof, or in opposition thereto, in this matter.

7. I certify:

(a) That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested:

(b) The clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the Clerk's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 15th day of November, 2010.

Starr Kelso, Attorney for Appellant

CERTIFICATE OF SERVICE: I certify that a copy of the foregoing was faxed on the 15th day of November, 2010 to:

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