

IDAHO, IN AND FOR THE COUNTY OF ADA

MAR 24 2016

CHRISTOPHER D. RICH, Clerk
By BETH MASTERS
DEPUTY

CAROL SAYLES, RUSSELL JOKI,) Case No.: CV OC 2016-02619
)
Plaintiffs,) DECISION AND ORDER
)
vs.)
CHRISTOPHER D. RICH, ADA COUNTY)
CLERK, CHRIS YAMAMOTO CANYON)
COUNTY CLERK)
)
Defendants.)
)

A hearing was held on March 9, 2016 on the plaintiffs’ application for a preliminary injunction and declaratory relief. The plaintiffs were represented by their counsel, Robert Huntley. The defendants were represented by Lorna Jorgensen and Zachary Wesley. For the reasons stated in this Decision, the motion for injunctive relief is denied.

I.
FACTS

The plaintiffs, Carol Sayles and Russell Joki are incumbent trustees of the West Ada Joint School District No. 2. The West Ada Joint School District is divided into zones-- Carol Sayles is the incumbent trustee for School Trustee Zone 3 and Russell Joki is the incumbent trustee for Zone 5. Both are the subjects of recall petitions and are scheduled for a recall election before the voters of their school trustee zones at the May 17, 2016 primary election. The defendant Christopher Rich is the Ada County Clerk. The defendant, Chris Yamamoto is the Canyon County Clerk.

The county clerks oversee all elections for their counties. Ada County held elections in May, 2013 for West Ada School Trustee Zones 1 and 3¹. Elections were held for the trustees of

¹ Formerly, West Ada School District Zone 1 and 2 were Meridian School District Zone 1 and 2.

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West Ada School District School Trustee Zones 2,4 and 5 in May, 2015. Declaration of Phil McGrane, Chief Deputy, Ada County Clerk. The Ada County Clerk's office also conducted elections for auditorium districts and sewer districts in the May, 2013 election and library districts in 2015 as well as for school district trustees by zone.

Recall petitions were filed seeking recall of the plaintiffs. The Ada County Clerk determined from the official records maintained by Idaho Statewide Voter Registration System that 50% of the electors who voted in the West Ada School Trustee Zone 3 which last had an election in May, 2013 would be 335 (total electors: 669). The Clerk determined that the required 50% of the electors who voted in West Ada School Trustee Zone 5 in May, 2015 would be 302 (total electors: 603). The Clerks concluded that the recall petitions were supported by the requisite number of qualified electors of the school trustee zones to force a recall election. The election is scheduled for May 17, 2016.

A supplemental levy election was also held in the West Ada School District on November, 2015. If the district supplemental levy election were used to determine the number of signatures required for the recall election, it would have been necessary for there to have been 2,546 signatories in School Trustee Zone 3 and 2,667 in Zone 5. Declaration of Phil McGrane, Chief Deputy Ada County Clerk. Recall petitions were submitted to recall the plaintiffs. Based upon the number of electors who voted in the trustee zones, it was determined that the statutory requirements had been met and a recall election was scheduled for May, 2016. If the supplemental levy election figures had been used, the recall effort would have fallen short.

II.

ISSUE

The sole issue before the Court is whether the county clerk used the correct method under the statute to determine that the required number of voters in each trustee zone had signed recall

petitions triggering a recall election. For the reasons stated hereafter, the Court concludes that the correct method was used.

III.

DISCUSSION

The Idaho Constitution authorizes recall elections for all elected officers in Idaho, other than judicial officers, by the “legal voters” of the state or “of the electoral district from which he is elected” with the implementation of the constitutional power of recall being committed to the legislature to establish the appropriate mechanism. Idaho Constitution, Art. VI, § 6. To carry out its constitutional responsibilities, the Idaho Legislature has enacted laws regulating the procedure for the recall of elected officers of all levels, from statewide office holders to those who hold city, county, district and other offices. I.C. § 34-1701 et. seq. A governor or other statewide official is subject to recall upon the filing of petitions with the secretary of state signed by 20% of the number of registered electors registered to vote at the last general election held for the election of the governor. I.C. § 34-1702(1). A legislator is subject to recall if a petition signed by 20% of the registered electors of his or her district as of the last general election for the legislative district which elected him or her is filed. I.C. § 34-1702(2). For a county official to be recalled, a recall petition must be signed by 20% of the electorate who voted in the last general election held in the county for the election of county officers at which the officer was elected. I.C. 34-1702(3). For city officials to be recalled, a recall petition must be signed by 20% of the registered voters of the city equal to the number of electors registered to vote at the last city election held for the position. I.C. §34-1702(4). Finally, recall for “[s]pecial district elected officers for whom recall procedure is not otherwise provided by law,” including school board trustees are governed by the provisions of I.C. § 34-1702(5) which reads, in pertinent part:

(5) ...the petition shall be filed with the county clerk of the county wherein the district is located. If the district is located in two (2) or more counties, the clerk in each county shall perform the functions within that county. The petition must be signed by registered electors of

the district or school trustee zone equal in number to fifty percent (50%) of the number of electors who cast votes in the last election of the district or school trustee zone. If no district election has been held in the last six (6) years, the petition must be signed by twenty percent (20%) of the number of electors registered to vote in the district or school trustee zone at the time the petition is filed.

In each situation, the number of registered voters needed to recall an elected official is based upon the number of registered voters who voted for that position at the last election held for it.

The plaintiffs argue that I.C. § 34-1702(5) means that the required amount of signatures for a recall election for a school board trustee elected in a zone election should be based on the “last district election,” the district’s supplemental levy election in November, 2015. To support their position, they cite the legislative changes to the recall statutes over the years, focusing in particular on the 2012 amendment which added the language “or school trustee zone” to the statute.

The starting point for the interpretation of all statutes is the literal wording of the statute itself. The words of a statute are “given their plain, usual, and ordinary meaning” with the statute being construed as a whole. *Huber v. Lightforce USA, Inc.*, ___ P.3d ___, No. 41887, 2016 WL 824853, at *6 (Idaho Mar. 2, 2016)(citing *Paolini v. Albertson's Inc.*, 143 Idaho 547, 549, 149 P.3d 822, 824 (2006); *Hayes v. City of Plummer*, 159 Idaho 168, ___, 357 P.3d 1276, 1278-79 (2015); *Verska v. St. Alphonsus Regional Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011); *Callies v. O’Neal*, 147 Idaho 841, 847, 216 P.3d 130, 136 (2009). It is a very well-settled rule of construction that the words of a statute must be given their plain, usual and ordinary meaning, in the absence of any ambiguity. *Higginson v. Westergard*, 100 Idaho 687, 691, 604 P.2d 51, 55 (1979); *Nagel v. Hammond*, 90 Idaho 96, 100, 408 P.2d 468, 470 (1965). The plain, obvious and rational meaning is always to be preferred to any curious, narrow, hidden sense. *Id.* If a statute is unambiguous, then there is no resort to statutory construction and the statute’s plain meaning is applied. *Callies v. O’Neal, supra*. 147 Idaho at 847, 216 P.3d at 136. “Ambiguity of a statute is not established merely because different possible interpretations are presented to a

court.” *Ada County Prosecuting Attorney v. 2007 Legendary Motorcycle*, 154 Idaho 351, 354, 298 P.3d 245, 248 (2013). To analyze the meaning of the statute, a court “must look to the grammatical construction of the statute as the legislature intended the statute to be construed according to generally accepted principles of English grammar.” *Id.*

As noted in the Declaration of Phil McGrane, there are district elections—auditorium districts, sewer districts—which are scheduled at the same time as school trustee zone elections. The clearest reading of the statute—relying on its plain, ordinary meaning—is that the number of electors required to sign a recall petition is based upon the number of electors voting in the last election of that type. If it is a district position, district electors are counted. If it is a school trustee elected in a zone election, then a recall must have petitions signed by 50% of the electors of the zone based upon the number of electors who voted in the last election for the same school trustee zone. The interpretation of the statute by the county clerks is supported by the plain meaning of the statute. It is consistent with the statutory scheme of the recall statutes. It is also consistent with the Idaho Constitution’s requirement that a recall election can be called by the voters “of the electoral district from which [the elected official] is elected.” Idaho Constitution, Art. VI, § 6. The plaintiffs’ position that the number of signatories required for a recall election be based on the number of electors who voted for a district supplemental levy is not supported by a plain reading of the statute. It would effectively strike out the language added in 2012 which specifically referred to “school trustee zone.” The plaintiffs’ reading is not persuasive. There is no reason to resort to legislative history when the meaning of the statute is plain on its face.

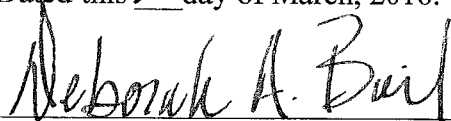
I.R.C.P. 65(e)(1) states that a preliminary injunction may be granted: “When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.” The plaintiffs are not entitled to injunctive relief. Their construction of the recall procedure for trustees previously elected in a school trustee zone

election is not supported by Idaho law. The interpretation of the statute by the defendant clerks is correct and will stand.

The motion for injunctive relief is denied.

It is so ordered.

Dated this 23rd day of March, 2016.

A handwritten signature in cursive script that reads "Deborah A. Bail". The signature is written in black ink and is positioned above a horizontal line.

Deborah A. Bail
District Judge

CERTIFICATE OF MAILING


I hereby certify that on this 25th day of March, 2016, I mailed (served) a true and correct copy of the within instrument to:

ROBERT HUNTLEY
ATTORNEY AT LAW
PO BOX 2188
BOISE ID 83701

LORNA JORGENSEN
DEPUTY PROSECUTING ATTORNEY
ADA COUNTY – CIVIL OFFICE
INTERDEPT MAIL

ZACHARY WESLEY
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1115 ALBANY ST
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CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho


Beth Masters, Deputy Court Clerk

