

the Presidency must gather signatures for petition access, equally undermining the right to anonymous speech of the independent's candidate's supporters; and, (b) only an independent presidential candidate must gather 5900 signatures, almost six times as many as any other statewide independent candidate for any other office – mutually offends the Equal Protection Clause of the Fourteenth Amendment.

FACTS

1. An independent candidate for the presidency in Idaho cannot obtain ballot placement without submitting petitions signed by 1% of the electors from the last presidential campaign. *See* I.C. § 34-708A (2008). The signature requirement for independent candidates for the Presidency constitutes approximately 5,900 signatures, almost six times as large as the requirement for any other candidate for statewide office. *Compare* I.C. § 34-708 with I.C. § 34-708A (2008). Independent candidates for statewide elections other than presidency only require 1,000 signatures on a petition. *See* I.C. § 34-708 (2008).

2. Party candidates do not require petition drives to be placed on the primary ballot. *See* Idaho Code Ann. § 34-704 (2008). Also, presidential party candidates do not have to be designated until September 6, 2008. *See* I.C. § 34-711 (2008). Notably, all a partisan Presidential candidate needs to be placed on the ballot for the presidential primary is either national recognition or a \$1,000 filing fee. *See* I.C. § 34-732 (2008).

3. Independent presidential petitions must have verified signatures in accordance with I.C. § 34-1807. *See* I.C. § 34-708A (2008). A person cannot circulate a petition for an independent presidential candidate unless they are a “resident of the state of Idaho” at the time of circulation. *See* I.C. § 34-1807 (2008). The law already requires the county clerk to independently verify the signatures as valid electors. *See id.* Any signatures gathered by a non-

resident “shall be void.” *See id.* The definition of resident is located in 34-107. *See id.* Any person who violates these laws is subject to criminal penalties, up to two years in state prison. *See I.C. § 34-1822 (2008).*

4. Daien, a non-resident of Idaho, and like most potential independent presidential candidate circulators from across the country, legally cannot circulate Presidential petitions on behalf of an independent presidential candidate in the state of Idaho.

5. Daien wishes to circulate ballot nomination petitions in the state of Idaho on behalf of an independent presidential candidate, specifically Ralph Nader or other similarly-minded persons.

6. Plaintiff challenges as unconstitutional I.C. §§ 34-1807, 34-708A, and § 34-1822, to the extent these statutes criminalize core political speech, by threatening with a felony penalty and other penalties anyone who circulates nominating petitions on behalf of independent political candidates for President of the United States if they are not residents of the state of Idaho, in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. This law prohibits almost all potential petition circulators in the country from circulating presidential petitions in the state of Idaho, thereby prohibiting an independent candidate’s best potential circulators from associating with the candidate in one of the most potent means available (circulating petitions to get their candidate on the ballot) and curtailing their core political speech. Plaintiff further challenges the signature requirement and the number of signatures required when Idaho law provides other effective means of ballot control, as evidenced by its laws governing partisan presidential primary candidates, such as national recognition and filing fee provisions, and manifested by lower signature requirements for non-Presidential statewide candidates.

7. Many supporters of independent candidates desire to support their candidate in elections by circulating petitions for signatures, but, as expected with a candidate for national office, most of those supporters live outside the state of Idaho. The independent candidate could not circulate petitions for his own candidacy in Idaho under Idaho law. Idaho law prohibits the independent candidate from associating with others to circulate petitions of the Presidency and prohibits all non-residents from circulating Presidential petitions in the state of Idaho. Most supporters of independent candidates and petition circulators do not reside in the state of Idaho.

JURISDICTION AND VENUE

8. This is a civil action seeking declaratory, injunctive, and other legal and equitable relief, and the Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1343(a) and 2201.

9. Venue of this action is properly in this district, pursuant to 28 U.S.C. § 1391(b)(2), on the ground that a substantial part of the events or omissions giving rise to the claim occurred in the District of Idaho.

THE PARTIES

Plaintiff

10. Daien is a resident of the state of Arizona and is denied the right to circulate Presidential petitions on behalf of an independent candidate in the state of Idaho. Daien is also a voter of Arizona and his associational and voting rights are diluted if the independent Presidential candidate he supports is not on the ballot in Idaho due to the national nature of Presidential elections.

Defendant

11. Defendant, Ben Ysursa ("Ysursa"), is the Secretary of the State of Idaho, and as

such, oversees the State's electoral processes. The Secretary of the State enforces the state laws at issue and despite request, refused to waive these requirements, ignoring the legal precedent of *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008), issued by the Ninth Circuit Court of Appeals. Ysursa is sued in his official capacity.

COUNT I
IDAHO LAWS VIOLATE FIRST AND FOURTEENTH
AMENDMENT RIGHTS TO FREE SPEECH AND FREE ASSOCIATION

12. Paragraphs 1 through 11 and the Introduction are incorporated within this count.

13. These laws and the actions of the Defendant violate the First Amendment and Fourteenth Amendment rights of Daien, including the right of free speech, free association, and equal protection of the laws, as they prohibit Daien from circulating petitions on behalf of an independent candidate in the state of Idaho, from associating with national non-Idaho resident supporters in circulating such petitions, and dilute Daien's voting rights by limiting the general election ballot access for an independent presidential candidate more than any partisan candidate for ballot access in the state of Idaho and more than any other independent candidate for statewide office in the state of Idaho.

14. The challenged statutes, which criminalize core political speech, represent a direct restraint of Plaintiff's political speech and severely burden the political speech and political association rights of Plaintiff, in violation of the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983.

15. By reason of the foregoing, the Defendant, acting under color of state law, has deprived Plaintiff of the rights, privileges and immunities secured to them under the First and Fourteenth Amendments to the United States Constitution and § 1983 of title 42 of the United States Code to participate in the democratic process free from unreasonable impediments, undue

restraints on core political speech, free and expressive associational rights, and the right to equal protection of the laws.

16. Plaintiffs have no adequate remedy at law for such deprivation of their rights, privileges and immunities.

COUNT II
IDAHO LAWS GOVERNING INDEPENDENT
PRESIDENTIAL CANDIDATES VIOLATE FOURTEENTH
AMENDMENT RIGHTS TO EQUAL PROTECTION OF THE LAWS

17. Paragraphs 1 through 16 and the Introduction are incorporated within this count.

18. These laws and the action of the Defendant violate the Fourteenth Amendment rights of Daien to equal protection of the laws by imposing a signature requirement only on Independent candidates for the Presidency (whereas partisan primary candidates require no signatures) and requiring nearly six times more signatures to be placed on the ballot than any other independent candidate for statewide office, diluting the effect of his vote for the national office of the Presidency.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully ask this Court:

(1) To enter a judgment declaring that the statutory schema limiting the rights of Independent candidates for President and limiting the circulation, speech, associational and voting of their supporters are in violation of the United States Constitution, including particularly (a) that the residency requirement for petition circulators for Independent candidates for the presidency violates the First and Fourteenth Amendment to the United States Constitution; and (b) that requiring Independent candidates for the Presidency obtain nearly six times more signatures than any other Independent candidate for statewide office and requiring such signatures when partisan Presidential candidates never have to obtain signatures for either access

to the primary ballot or the general election ballot violates the Fourteenth Amendment to the United States Constitution compelling equal protection of the laws for all;

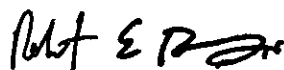
(2) To grant preliminary and permanent injunctive relief enjoining and restraining Defendant, his servants, agents, employees, and all other persons in active concert and participation with him from implementing and enforcing this statutory schema, including but not limited to, enjoining Defendant from requiring petition circulators be residents of the state and requiring signatures for statewide ballot access rather than national recognition tests or the lesser signature requirement of other independent statewide candidates;

(3) To award Plaintiff his costs and disbursements associated with the filing and maintenance of this action, including an award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and

(4) To award such other equitable and further relief as the Court deems just and proper.

Respectfully submitted on this the 14th day of January, 2009.

THE BERNHOFT LAW FIRM, S.C.
Attorneys for the Plaintiffs



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Pro Hac Vice Counsel (application pending)

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Donald N. Daien

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert E. Barnes, The Bernhoff Law Firm, S.C., 207 E. Buffalo Street, Suite 600, Milwaukee, Wisconsin 53202 (414) 276-3333

DEFENDANTS

Ben Yursa, in his official capacity as Secretary of State of Idaho

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983

Brief description of cause:
Injunctive Relief sought to allow non-Idaho-resident ballot access petition circulators

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

1-14-09

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____