

Gregory L. Collett
21255 Lonkey Ln
Caldwell, ID 83607
208-505-1951

AUG 11 2014

CANYON COUNTY CLERK
S MAUND, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

Gregory L. Collett,

Plaintiff,

vs.

Patti Anne Lodge,

Defendant.

Case No. CV-2014-5506-C

AFFIDAVIT IN REPLY TO
PATTI ANNE LODGE

AFFIDAVIT IN REPLY TO PATTI ANNE LODGE

STATE OF IDAHO)
) ss.
County of Canyon)

I, Gregory L. Collett, being duly sworn, hereby declare the following in reply to the Affidavit of Patti Anne Lodge in Response to "Affidavit and Notice of Contest":

Note: I have responded paragraph by paragraph to the Affidavit of Patti Anne Lodge, and have numbered my response to match the numbering of her document for ease of reference. I ignored the initial two paragraphs from her document and used the subsequent numbering (which starts over at 1).

1. I maintain that the property located at 18500 Symms Rd does not qualify as a residence. A residence, as defined in Idaho Code 34-107, is a "home or place of abode... in which his habitation is fixed". There is no home on the site and the defendant has not lived there since October 2011.

2. The opinions of Chris Yamamoto, Canyon County Clerk, and Ben Ysursa, Idaho Secretary of State, are not proof of residency. I can appeal their actions and failure to act with respect to Patti Anne Lodge pursuant to Idaho Code 34-215. I also maintain that Chris Yamamoto, Canyon County Clerk, is in violation of Idaho Code 18-2321 and 18-2322 because he failed to cancel the registration of Patti Anne Lodge per Idaho Code 34-432(3). I also maintain that Ben Ysursa, Idaho Secretary of State, has violated Idaho Code 34-705 by certifying the candidacy of Patti Anne Lodge when, in fact, she is not qualified, and has directed the county clerk to uphold his decision, and thus, is in violation of Idaho Code 18-2301.

3. I am not contesting the intention of the defendant to return to her property when a new home has been built. I do maintain that since October 2011 her property does not qualify as a residence. As an elected state senator, if she wanted to claim a temporary absence in excess of 30 days, she must have obtained the consent of the governor, which she did not do, thus violating Idaho Code 59-104.

4. With years of planning before removing her home, the defendant could certainly have arranged to continue residency within the district during the time she would not be able to live on her property.

5. The existence of living quarters in the barn is a non-issue since the defendant chose not to use them and the homeowner's exemption on the property was removed.

6. The statements of the defendant ignores the fact that there are plenty of places that could meet U.S. Marshall security requirements within the district. The defendant willfully chose to live outside

the district.

7. It is not my intention to discount the personal trials that the defendant had to face; however, her narrative does not account for all the time that has transpired.

8. A property does not necessarily equal a residence. The first part of the definition in Idaho Code 34-107 is being ignored: “the principal or primary home or place of abode of a person”.

9. Many of the exhibits attached to the defendant’s affidavit are unreadable in my copy. Those that are readable show that they own property, receive mail, pay utilities, and so forth, at that address, but they do not demonstrate that it qualifies as a residence. In fact, Exhibit 3(e), Idaho Driver’s License, incriminates her on an infraction per Idaho Code 49-320 (Motor Vehicle Driver's Licenses, Notice of change of address).

10. In her affidavit, the defendant underlines part of the definition of “residence” as outlined in Idaho Code 34-107. This focus is shown throughout the affidavit with references to “temporary absence” and “intention”. It is the basis behind the decisions of the Canyon County Clerk and the Idaho Secretary of State, as well as the core of the defense. However, this underlined portion is completely dependent on the first part of the definition; it cannot be considered independently. The words “to which” and “therefrom” require that the first part of the definition of residence be met; that is, a residence is: “the principal or primary home or place of abode of a person... that home or place in which his habitation is fixed.” In addition, the underlined portion includes the phrase “regardless of the duration of absence”. She ignores the fact that if she claims a temporary absence, it cannot

extend past 30 days without the consent of the governor because she is an elected official, per Idaho Code 59-104.

11. The standard for determining a “principal or primary home or place of abode” is not subjective; intent only comes into play in the case of an absence from the home or place of abode.

12. I have never insinuated that the defendant’s move to 703 E Logan St was permanent. One does not have to have the intention of living somewhere for the rest of their life to establish a residence. She did move, and now lives at that address, making it her current residence. I do not dispute that the defendant wants to return to her property when her new home is built, but she currently lives in District 10 (as admitted in her affidavit). A residence can be temporary. The removal of the homeowner’s exemption on the Symms road property is prima facie evidence demonstrating that there is not a home on the site, a necessary requirement for residence as per Idaho Code 34-107.

13. The insistence that the defendant did “make use of” the mobile home should not be construed to mean that she lived in it. The Canyon County Clerk, whose opinion she admittedly respects, informed me that the defendant never lived in the mobile home. Also, the defendant claimed in her affidavit that she chose not to live in one based on security concerns (paragraph 6).

14. The building permit is simply additional evidence that demonstrates the time line and continued lack of a home on the property.

15. In her own words the defendant refers to visiting the property she claims as a residence, not

living there, so the statement in my contest stands correct. It is neither misleading nor unfair.

16. Voter registration is not evidence of a place of residence in this case. The fact that the voter registration has not been updated is at the core of this case. The defendant, as well as the Canyon County Clerk and the Idaho Secretary of State, are all in violation of law regarding this case.

17. I am not narrowly defining Idaho Code; I am using both standard English language definitions and the intent of the law.

18. Unforeseen circumstances are understandable, but the length of time that has expired in this case has precluded using that as an excuse or a defense.

19. The Idaho Constitution and Idaho Code requires residency for voter registration. Cases that affect the loss or gain of residency for voting purposes are well outlined in both those documents. Idaho Code does allow for temporary absences when defining residency, but the intent of the law is certainly not to provide for someone to claim a residence while living elsewhere. The defendant focuses on the phrase “regardless of the duration of absence”. According to Idaho Code 59-104 (Qualifications and Restrictions on Residence, Absence of state officers prohibited -- Exemptions):

59-104. No state or district officer must absent himself from the state or district for more than thirty (30) days, unless upon business of the state, or with the consent of the governor. The consent of the governor shall not be necessary in the case of persons serving in the armed forces of the United States.

As an elected state senator, if she wanted to claim a temporary absence in excess of 30 days, she must have obtained the consent of the governor. She has never claimed to have received such consent, nor has she presented any evidence to that effect. The governor has never announced such

consent, nor has any election official ever stated that it exists. By her own admission of an extended “temporary absence”, the defendant is in violation of Idaho Code 59-104 and should be removed from office. Using her own defense, coupled with this violation of code, she was not eligible to the office at the time of election, which constitutes grounds for this contest per Idaho Code 34-2102(2).

20. I am not seeking to create a rule; I am simply reading the law. Prevailing in this contest does not benefit me any more than it benefits any other voter in the state of Idaho to have representation from the district in which they live. If the court annuls the election, that does nothing for me personally; I do not automatically become the replacement candidate. Per Idaho Code 34-715, the legislative district central committee will select a replacement candidate, and, knowing those who sit as precinct committeemen, the likelihood that it would be me ranges from extremely low to non-existent. It is true that I have not spoken to the defendant directly about her building project, but nothing she has stated in her affidavit changes the situation. I was aware of the security issues as they were mentioned to me by both the Canyon County Clerk and the Idaho Secretary of State. Also, my political views have no bearing on this case. I do not have an “extreme” interpretation of a statute that was written for “moderate” purposes, whatever that means. I just choose to read the entire law, not ignore part of it. Even though the defendant may consider the Canyon County Clerk and the Idaho Secretary of State to be experts in election law, it does not change the fact that they have both violated it, as has the defendant.

21. The defendant has blatantly and grossly misrepresented the reason I have challenged the election. This is not, and in fact cannot, be an opportunistic procedural move. I have no personal vendetta against the defendant; I have run against other candidates in the past. As explained earlier,

I do not stand to gain anything personally if the election is annulled. Her residency situation did not affect my decision to run against her, as I only became aware of the actual situation after filing. When I did educate myself about the situation, I realized I was running a primary race against a candidate that should not even be on the ballot. I tried to get that message out, but was not very successful. When I formally challenged the decisions of the Canyon County Clerk and the Idaho Secretary of State, I sent a press release to every newspaper, TV, and radio station across the state that I could find a contact for. Not a single news source covered the story. Voters were simply not informed, and it would be unfair to use the election as a measure to determine if the actions of the defendant were acceptable or not. Finally, "intent" does not establish a residence.

22. The defendant characterized this contest as frivolous and has asked to be reimbursed for attorney's fees and costs per Idaho Code 12-123. Under that section, frivolous conduct is defined:

(b) "Frivolous conduct" means conduct of a party to a civil action or of his counsel of record that satisfies either of the following:


(i) It obviously serves merely to harass or maliciously injure another party to the civil action;

(ii) It is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

This contest is not frivolous; it is a very serious matter, regardless of the final decision of the court.

I am not bringing this contest to harass or maliciously injure another party, but rather to ensure that the law is followed for the benefit of the citizens of Legislative District 11 and the state of Idaho.

My arguments are indeed supported by law, and it is the defendant, and those election officials who support her, who wish to ignore the law.



Gregory L. Collett

SUBSCRIBED AND SWORN before me on this 11 day of August, 2014.

Notary Public for Idaho

Residing at _____

Commission expires _____