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Attorney for Plaintiff: Idaho Republican Party

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

THE IDAHO REPUBLICAN PARTY, its)	
EXECUTIVE COMMITTEE, its STATE)	Case No.
CENTRAL COMMITTEE, and)	
CHAIRMAN, EXECUTIVE DIRECTOR;)	COMPLAINT
SIDNEY C. SMITH,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
BEN YSURSA, in his Official Capacity as)	
Secretary of State of the State of Idaho,)	
)	
Defendant.)	
_____)	

COME NOW THE PLAINTIFF, THE IDAHO REPUBLICAN PARTY (“Party”), by and through its attorney, JOHN ERIC SUTTON, and for its Complaint against Defendant BEN YSURSA, Secretary of State of the State of Idaho, alleges as follows:

I.

NATURE OF THIS PROCEEDING

1. The Idaho Republican Party, through its Executive Director brings this action to obtain a declaration that the Idaho Open Primary Election law is unconstitutional as applied to the Idaho Republican Party Primary Election. In addition the Idaho Republican Party seeks prospective injunctive relief against the State of Idaho and the State's Chief Elections Office, Idaho Secretary of State Ben Ysursa, compelling implementation of a closed party primary in accordance with party rules, for all primary elections conducted after 2008.

2. The First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983 guarantees the Party and its members the right to associate in a political party, the right to act together within that political party to select party nominees for public office, the right to limit participation in the process of selecting nominees to those voters who identify themselves as sharing the interests of the party, and the right to vote in Republican Party Primary Elections conducted in accordance with the directives of the Republican Party. These rights constitute core Federal Constitutional freedoms held individually and collectively by all members of the Idaho Republican party, and by the party itself.

3. In bringing this action the Idaho Republican Party is forced to concede that this Court cannot provide it any meaningful remedy in respect to the conduct of the May 2008 Idaho Republican Primary, which is scheduled to occur on Tuesday May 27, 2008, a little more than six weeks away at the time of this filing. This action is commenced at this time, as required by Idaho Republican Party Rule, in order to obtain necessary timely directives from this Court upon which either the Idaho Legislature will finally respond by taking the necessary legislative actions at its

2009 session to implement a closed primary in 2010, or upon which the Idaho Secretary of State will be compelled by court order, that is issued in a timely fashion, which will allow him to implement a closed primary for the 2010 primary election

II.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. Declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202. This case presents a federal question involving constitutionally protected rights.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because both the Plaintiff and Defendant reside in the District of Idaho, and the Defendants' conduct, which gives rise to Plaintiff's claims occurs repeatedly in every municipality and county within the State of Idaho, at every biennial primary election.

6. This action is brought pursuant to the First and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983 for declaratory and injunctive relief, for the purpose of protecting the associational rights of members of the Idaho Republican Party, in the selection of Republican Party candidates in Idaho's primary elections. As currently conducted under Idaho law, the open party primary infringes upon the associational rights of the Party and its members, and supporters.

III.

PARTIES

7. The Plaintiff, the Idaho Republican Party, is an unincorporated association established under Title 34 of the Idaho Code. The Republican State Central Committee and the State

Executive Committee and its Executive Director are the governing bodies of the Idaho Republican Party. Sidney C. Smith is the current Executive Director of the Idaho Republican Party.

8. Defendant Ben Ysursa is the duly elected and acting Idaho Secretary of State and issued in that capacity. As the Idaho Secretary of State, Ben Ysursa is Idaho's chief election officer.

IV.

IDAHO'S PRIMARY ELECTION LAW

9. The Idaho Secretary of State is responsible for the administration of Idaho's Election process, including canvassing and certifying election returns of all primary elections for candidates for State office, United States Senators and Congressional Representatives, the President of the United States, and all other candidates whose districts extend beyond the limits of a single county within the State of Idaho.

10. The Idaho Secretary of State is designated by Idaho statute as the Chief Election Officer of the state and pursuant to Idaho Code §34-740 is empowered to "adopt such rules and regulations as are necessary to facilitate the operation, accomplishment and purpose of the Idaho Elections law."

11. The Secretary of State has adopted rules setting standards for the design, layout and production of the election ballot. These rules include standards and procedures for the accurate tabulation and canvassing of ballots, providing consistency among the counties of Idaho in ballot preparation and canvassing of primary elections.

12. Idaho law provides that the selection of party nominees for Idaho and national public office may be made through the Idaho Primary Election process established under Idaho Code

§34-101 et. seq. That election process is authorized and administered under color of law by the Idaho Secretary of State. By reason of these facts, the use of that election process by the Idaho Republican Party and its members is a constitutionally protected activity.

13. Primary elections in Idaho are established and administered pursuant to state law. Idaho Code §34-102 defines Primary Elections as follows:

34-102. PRIMARY ELECTION DEFINED -- PURPOSES.

“Primary election” means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties. Primary elections shall be held on the fourth Tuesday of May in each even-numbered year.

“Presidential primary” or “presidential preference primary” means an election held for the purpose of allowing voters to express their choice for candidates for nominations for president of the United States. Presidential primary elections shall be held in conjunction with the primary election, on the fourth Tuesday of May in each presidential election year.

14. Pursuant to the laws of Idaho, the Idaho Republican Party is required to nominate its candidates for Congressional, State and County offices by means of political primaries that are administered by the Secretary of State and by other election officials under his supervision.

15. Neither Idaho law nor the rules adopted by the Idaho Secretary of State provide any mechanism for the Party or its members to effectively exercise their rights of association in connection with the partisan primary election in which they are forced to participate by State law.

V.

RECENT LEGISLATIVE ACTION

16. Two bills proposing revision to the conduct of the Idaho Primary election were introduced in the 2007 legislative session of the Idaho Legislature — House Bill 185 and Senate Bill

1244. The State Affairs Committee held a hearing on House Bill 185, but it was never brought to a vote in either the Committee or before the full House. Senate Bill 1244 did not have a hearing in Committee and therefore was never brought to a vote in either Committee or before the full Senate.

17. In the 2008 Idaho Legislature three bills were introduced that would have affected the conduct of the primary election and provided, in different aspects, implementation of a closed primary, or a variation thereof. S.B. 1258, S.B. 1506, and S.B. 1507. None of these bills was enacted.

VI.

THE IDAHO REPUBLICAN PARTY'S ADOPTION OF THE CLOSED PRIMARY RULE

18. On June 17, 2006, one year prior to the State Republican Central Committee's eventual adoption of the Closed Republican Party Primary Rule that is at the center of this case, the Idaho Republican Party held its State Convention. Pursuant to Article III, §4(b) of the Idaho Republican Party Rules of the Convention, the following Rule was proposed and passed by the Convention for presentation to the State Central Committee for final adoption.

Article I Section 24:

Party Registration Required to Vote in a Republican Primary Election.

“Primary elections in the Idaho Republican Party shall be open to all people who have registered as a Republican prior to the Primary election.”

With minor variation in its final wording, and placement in Article IX, §4, this Rule was eventually adopted by the State Central Committee on June 2, 2007.

19. The following Resolution was also passed at the 2006 State Convention:

“Resolution to De-Regulate the Idaho Republican Party”

Whereas, the Idaho Republican Party is a private political party and not an agent for the state of Idaho; and Whereas, the State of Idaho has passed certain laws to regulate and dictate to the Idaho Republican Party the rules for candidate selection and other matters; and

Whereas, the Idaho Republican Party believes the best way to achieve its' goals and objectives as represented by the Party Platform and Party Resolutions is to have as much self determination as possible and the least amount of state interference and regulation as practicable; and

Whereas, recent U.S. Supreme Court rulings provide that state regulation of private political parties deprives such parties and their members of the rights of free speech and free association guaranteed by the First and Fourteenth Amendments to the U.S. Constitution;

NOW THEREFORE, BE IT RESOLVED that the Idaho Republican Party petition the Governor of the State of Idaho and members of the Idaho legislature to repeal laws that regulate political parties and enact such laws that will provide for maximum self-determination, including, but not limited to methods of candidate selection, and access to Republican Party primary ballots.

BE IT FURTHER RESOLVED that the Idaho Republican Party should use all means available to provide for such maximum self-determination.

20. The following Platform Position was also passed at the 2006 State Convention.

XXIV. CITIZEN INVOLVEMENT IN GOVERNMENT

The Idaho Republican Party believes that Primary elections in the Idaho Republican Party should be open to all people who have registered as a Republican prior to the Primary election and that the Idaho Legislature should pass legislation that would provide for the same. To allow those who have no loyalty or allegiance to the Idaho Republican Party or its' Platform and Resolutions to select our candidates is simply not proper.

21. On June 2, 2007, the Idaho Republican Party State Central Committee adopted Section 4 of the following rule requiring persons to register as a Republican prior to the Primary Election in order to vote on an Idaho Republican Party ballot in that Primary Election. Section 4 of the following Rule, hereinafter referred to as the "Closed Republican Party Primary Rule" states:

ARTICLE IX. CENTRAL COMMITTEE ENDORSEMENT AND

**REPUBLICAN PARTY REGISTRATION REQUIRED TO VOTE IN A
REPUBLICAN PRIMARY ELECTION.**

Section 1: County Central Committees may determine the political affiliation of candidates filing or declaring an intent to file as Republican candidates for county political offices and may endorse Republican candidates for their respective positions.

Section 2: The Legislative District Central Committees may determine the political affiliation of candidates filing or declaring an intent to file as Republican Party Candidates for the State Legislature, and the Committee may endorse Republican candidates for legislative positions.

Section 3: The State Central Committee may determine the political affiliation of candidates filing or declaring intent to file as Republican Party Candidates for state political offices and U.S. Congressional offices, and may endorse Republican Party candidates for the various positions. Endorsement of Congressional District Candidates shall be by voting members from the respective Congressional Districts.

Section 4: Only persons who have registered as a Republican prior to the Primary Election will be allowed to vote on an Idaho Republican Party ballot in that Primary Election.

(Emphasis added).

22. The Closed Republican Party Primary Rule was adopted as a direct response to the infiltration of non-Republicans into the selection process for Idaho Republican Party candidates. Proponents of the Rule perceived that the cross-over of non-Republicans voting for persons who would represent the Idaho Republican Party in a general election posed a direct and immediate threat to the integrity of the Party.

VII.

**THE CONFLICT BETWEEN IDAHO ELECTION LAW AND
THE IDAHO REPUBLICAN PARTY'S CLOSED PRIMARY RULE**

23. The purpose of conducting the Idaho Republican Primary election is to select the candidate who most closely represents the views, ideals and interests of members of the Republican

Party, as opposed to members of the Democratic Party, or other voters.

24. Permitting non-Republicans to select the Republican candidate weakens, dilutes and obstructs that process by forcing the Idaho Republican Party to associate with nonparty members, and forcing its candidates to modify their political message, ideology and positions on public policy issues in order to persuade non-Party members to vote for them in the primary election.

25. The Closed Republican Party Primary Rule directly conflicts with Idaho's Open Primary Election system. The Idaho election laws require open primary elections, and do not provide for voter party registration.

26. Idaho Code § 34-904 provides for a single primary election ballot to be provided to all electors, whether or not the elector is affiliated with any political party. Any elector can then choose which party candidates for whom they will cast a vote. That statute provides in pertinent part:

34-904. PRIMARY ELECTION BALLOTS.

There shall be a single primary election ballot on which the complete ticket of each political party shall be printed; however, a county may use a separate ballot for the office of precinct committeeman. Each political ticket shall be separated from the others by a perforated line that will enable the elector to detach the ticket of the political party voted from those remaining. . . .

27. By operation of Idaho Code §34-904, and acting under color of law, the Idaho Secretary of State and other election officials force the Party and its supporters to permit any voter to participate in the Party's nomination process without regard to the voter's partisan affiliation or political beliefs.

28. The Idaho Republican Party is bound by Idaho law to conduct its Idaho Republican Party Primary Elections under the supervision of the Idaho Secretary of State and in accordance with

Idaho statutes, and the rules, regulations, standards and procedures adopted by the Idaho Secretary of State to implement its election law.

29. The Idaho Election law forces the Idaho Republican Party and its supporters to select their nominees in primaries administered by election officials who allow members of the Democratic, Libertarian, Constitution and other parties, as well as independent voters to participate in the Idaho Republican Party Primary Election.

30. The State of Idaho, through administration of the Idaho Primary Elections law, forces the Party and its members to include supporters of other parties and political interests in the process of selecting the persons who will then represent the Idaho Republican Party as its nominees for Idaho and national public office.

31. The State of Idaho forces the Party and its members to associate with those persons who do not share their political beliefs and who are openly antagonistic to the ideology and principles of the Idaho Republican Party.

32. No mechanism is provided under Idaho law for the Party to exercise its right to limit participation in the nomination process and thereby protect its members' right of association from forced dilution and party raiding by Democratic voters and other non-party members. Many Idaho Democratic and independent voters cross-over to participate in and raid the Idaho Republican Party's primary elections.

33. Although the Idaho Republican Party has adopted the Closed Republican Party Primary Rule, the Party is powerless to implement the Rule because the Idaho Secretary of State administers all Idaho Primary Elections as the Chief Election Officer of the State of Idaho.

34. By enactment of the Closed Republican Party Primary Rule, the Idaho Republican Party chose to close its candidate selection process to all non-party members. As a result of enactment of this rule, an immediate conflict has been created with Idaho's Open Primary Election laws.

35. The State of Idaho's continued enforcement of the Idaho Open Elections Law with respect to the Idaho Republican Party Primary will unconstitutionally infringe upon the right of Republican party members, supporters, and voters to freely associate with their political party with respect to the selection of candidates for public office, and will cause immediate and irreparable harm to the Idaho Republican Party and its members, and to all Idaho voters.

36. By reason of the Party's enactment of the Closed Republican Party Primary Rule, if the State of Idaho is permitted to continue to conduct the Idaho Republican Party Primary Election in accordance with existing Idaho Open Primary Election laws and the rules, regulations and standards adopted by the Idaho Secretary of State, the Party, and its members and supporters, will be denied their First Amendment rights of association and will be irreparably injured.

37. These injuries and deprivations are the direct result of the State of Idaho's forced impairment of the Party's nomination process under election procedures that allow all voters to participate in the Idaho Republican Party Primary election. These injuries include not only the selection of different party nominees than would otherwise be selected, but the alteration and suppression of the political message presented by those nominees to the electorate.

38. If the State of Idaho is permitted to continue to conduct the Idaho Republican Primary Election in accordance with Idaho's Open Primary Election Law, and contrary to the dictates of the Closed Republican Party Primary Rule, the conduct of such elections may be held to be

unconstitutional, creating a substantial risk that the results of those primary elections will not be valid and may be called into question by unsuccessful candidates or other persons.

39. This could result in multiple successful legal challenges by losing candidates, requiring the State of Idaho to conduct additional primary elections and general elections at great expense to the State of Idaho. The costs, delays, and uncertainties in the political process engendered by such events will irreparably injure the Party, its members and supporters, and all other voters in the State of Idaho.

40. Implementation of the Idaho Republican Party's Closed Primary Rule by court order is the only means to fairly and adequately represent the interests and rights of the Idaho Republican Party and its members because the Rule change mandates that participation in any Idaho Republican Primary be limited to declared Republicans.

VIII

CLAIMS FOR RELIEF

COUNT I

For Declaratory Relief Establishing Plaintiff's Right To Freedom Of Association And The Unconstitutionality Of Idaho's Open Primary Election Law As Applied To The Idaho Republican Party Primary Election

41. The Idaho Republican Party realleges and incorporates by reference the allegations of Paragraphs 1-40, inclusive, as though set forth herein in full.

42. An actual controversy exists between the Idaho Republican Party and the State of Idaho with regard to the exercise of constitutionally protected First Amendment associational rights. The Idaho Republican Party is entitled to declaratory judgment establishing the unconstitutionality of the Idaho Open Primary Election Law as applied to all Idaho Republican Party Primary Elections

conducted after 2008.

43. The Idaho Republican Party is entitled to further declaratory relief establishing its right to identify those who associate with the Party, and to exclude those who do not associate with the Party, from participating in the Party's nominee selection process in all Idaho Republican Party Primary Elections. In particular, the Idaho Republican Party is entitled to a declaratory judgment that the State of Idaho is required to honor and implement the Closed Republican Party Primary Rule adopted by the Idaho Republican Party.

44. The Idaho Open Primary Election Law, Idaho Code §34-904, violates the right to freedom of association as guaranteed by the First and Fourteenth Amendment to the United States Constitution of the Party, its members and supporters, and is therefore unconstitutional to the extent that it authorizes and directs the Idaho Secretary of State and other election officials to permit non-party members to participate in the Party's nominee selection process, including but not limited to, the following ways:

- a. By allowing persons not registered as a member of the Republican Party to vote in Idaho Republican Party Primary Elections over the objection of the Party and its members, and by so doing to select the Republican Party candidate who will run in the general election;
- b. By not requiring persons to declare and identify themselves as a member of the Republican Party prior to voting in Idaho Republican Party Primary Elections and by failing to establish mechanisms and procedures to prevent those not expressly affiliated with the Republican Party from voting in all future Idaho Republican Party Primary Elections in violation of the associational rights of the Party, and its

members and supporters.

- c. By placing upon any future general election ballots as the nominee of the Idaho Republican Party for any office the name of an individual who has been selected through the existing Idaho Open Primary Election law over the objection of the Party and its members, and through a voting system in which the Party has been deprived of the ability to limit participation in nominee selection to those the Party has determined should be included.

45. The conduct of any partisan primary by State officials without implementation of an effective mechanism for the Party to exercise its right to limit participation to Party members and supporters in connection with that primary is action taken by those State officials under law, and by color of law, that deprives the Party, and its members and supporters, of their constitutionally protected right to freedom of association, and of their civil rights.

46. Pursuant to 42 U.S.C. §1983 *et. seq.*, the Idaho Republican Party is entitled to a declaratory judgment declaring these rights, and to an award of reasonable attorneys' fees and costs in this action.

COUNT II

For Injunctive Relief To Prevent The Deprivation Of Plaintiff's Right To Freedom Of Association And Deprivation Of Due Process Of Law

47. The Idaho Republican Party realleges and incorporates by reference the allegations of Paragraphs 1- 46, inclusive, as though set forth herein in full.

48. The continued implementation and enforcement of Idaho's Open Primary Election Law, as applied to the Idaho Republican Party Primary Election, constitutes an imminent and ongoing threat by the State of Idaho, acting by and through the Defendant Ben Ysursa, Secretary of

State, to deprive the Party, and its members, supporters, and the voters of their civil rights and constitutionally protected right to freedom of association by requiring Party supporters to select the nominees of the Party through a primary process in which the Party, and its members and supporters, are not permitted to exercise their First Amendment rights of association and disassociation.

49. The Idaho Republican Party, and its members will suffer irreparable injury if the Party's nominees are selected in a primary in which the Party and its members and supporters are deprived of the right to define and limit the right to participation in that primary in accordance with the Closed Republican Party Primary rule.

50. The Idaho Open Primary Election Law, Idaho Code §34-904, and the Rules and Regulations adopted by the Idaho Secretary of State pursuant to Idaho Code §34-740, deprives the Idaho Republican Party, and its members and supporters, of the right to due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution, in that this law mandates an Open Republican Primary Election upon conditions that conflict with Constitutionally mandated procedures that include, but are not limited to, the following ways:

- a. By allowing persons not registered as a member of the Republican Party to vote in Idaho Republican Party Primary Elections, and by so doing to select the Republican Party candidate who will run in the general election;
- b. By not requiring persons to declare and identify themselves as a member of the Republican Party prior to voting in Idaho Republican Party Primary Elections.
- c. By not providing a reasonable mechanism for the Party to verify that the persons who participated in that primary were registered Party members, and to be able to communicate with its supporters and members who identified themselves by

participating in the primary election with regard to Party issues and actions.

51. The Idaho Republican Party is entitled to permanent injunctive relief, restraining the

State of Idaho, acting by and through Ben Ysursa, Secretary of State, from:

- a. conducting any primary election after 2008 without affording the Party the right to party registration;
- b. conducting any primary election after 2008 without implementing a reasonable mechanism for that primary to effectuate the Party's exercise of its right to limit those who participate in that primary, and without providing a means for the Party to verify that the persons who participated in that primary were registered Party members, and to be able to communicate with its supporters and members who identified themselves by participating in the primary election with regard to Party issues and actions; and
- c. encouraging or facilitating, directly or indirectly, party raiding by non-party members, including members of the Democratic party and independent voters to the extent that it conflicts with the Closed Republican Party Primary Rule adopted by the Party.

52. Pursuant to 42 U.S.C. §1983 *et. seq.*, Plaintiff is entitled to declaratory judgment declaring these rights, and to an award of reasonable attorneys' fees and costs in this action.

PRAYER FOR RELIEF

WHEREFORE, the Idaho Republican Party, as Plaintiff, requests that this Court:

1. Issue a declaratory judgment that the Idaho Open Primary Election Law, Idaho Code §34-904 as implemented by the Idaho Secretary of State under the provisions of Idaho Code §34-740

with respect to the conduct of all future Idaho Republican Party Primary elections is unconstitutional;

2. Issue permanent injunctive relief, without bond, restraining and enjoining the State of Idaho, acting by and through Defendant Secretary of State, together with his agents, employees, appointees or successors and all those acting in concert and participation with him from the enforcement, operation, and execution of Idaho Code §34-904 as implemented by the Idaho Secretary of State under the provisions of Idaho Code §34-740, as applied to all Idaho Republican Party Primary Elections;

3. Grant Plaintiff its attorneys' fees, costs and expenses pursuant to 42 U.S.C. §1988; and

4. Grant such further relief as this Court deems just and proper.

Dated this ____ day of April, 2008.

John Eric Sutton
Attorney for the Plaintiff
Idaho Republican Party

Charles Crafts
Attorney for the Plaintiff
Idaho Republican Party

VERIFICATION

STATE OF IDAHO)
 : ss.
County of Ada)

SIDNEY C. SMITH, being first duly sworn, upon oath deposes and says:

That he is the duly appointed Executive Director of the Plaintiff, Idaho Republican Party, that he has read the foregoing COMPLAINT, knows the contents thereof, and believes the same to be true.

SIDNEY C. SMITH

SUBSCRIBED AND SWORN to before me this ____ day of April, 2008.

Notary Public for the State of Idaho
Residing at: _____
Commission Expires:_____