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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

DONALD N. DAIEN,)	Case No. 09-022-S-REB
)	
)	
Plaintiff,)	DEFENDANT'S MOTION FOR
)	SUMMARY JUDGMENT
vs.)	
)	
BEN YSURSA, in his official capacity)	
as Secretary of State of the State of)	
Idaho,)	
)	
Defendant.)	

COMES NOW Defendant the Hon. Ben Ysursa, Secretary of State of the State of Idaho, by and through his undersigned counsel of record, and hereby moves that this Court pursuant to Rule 56(c) of the Federal Rules of Civil Procedure to:

(a) dismiss Plaintiff Donald Daien's claims against Defendant as a matter of law for failure to present a justiciable case or controversy, or,

(b) if the Court has jurisdiction to consider the merits, to deny all relief to Plaintiff and to enter Declaratory Judgment that:

(i) the requirement of Idaho Code § 34-1807, incorporated by reference by Idaho Code § 34-708A, that petitions for Independent candidates for President of the United States to appear on the general election ballot must be circulated by residents of Idaho does not violate the United States Constitution, and

(ii) the requirement of Idaho Code § 34-708A that Independent candidates for President of the United States must obtain signatures of qualified voters in a number not less than one percent of the number of voters for presidential electors in the previous presidential election to qualify for the general election ballot does not violate the United States Constitution .

This Motion is supported by the Statement of Material Facts that Defendant Contends are Not in Dispute, Memorandum in Support of Defendant's Motion for Summary Judgment, Affidavit of Counsel Michael S. Gilmore, and Affidavit of Defendant, the Hon. Ben Ysursa, Secretary of State of the State of Idaho, filed herewith.

DATED this 8th day of September, 2009.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By /s/ Karin D. Jones
MICHAEL S. GILMORE
KARIN D. JONES
Deputy Attorneys General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September 2009, I electronically filed the foregoing DEFENDANT'S MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to the following persons:

Robert E. Barnes
The Bernhoft Law Firm, S.C.
207 E. Buffalo St., Ste. 600
Milwaukee, WI 53202

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: (414) 276-2822
- ☒ CM/ECF

Christ T. Troupis
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- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: (414) 276-2822
- ☒ CM/ECF

And, I hereby certify that I served the foregoing document(s) to the following non-CM/ECF Registered Participant(s) in the manner indicated below:

N/A.

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____

/s/ Karin D. Jones
Michael S. Gilmore
Karin D. Jones
Deputy Attorneys General