

## Law Relating to Election Contest

## Overview

- Contest filed 11/28/2016
- Bond as provided for in Idaho Code sec. 34-2120 filed with Secretary of State
- Procedural Order Issued by Pro Tem
  - All evidence submitted by December 29, 2016 (Idaho Code sec. 34-2107)
  - Briefs in support or opposition to contest filed on January 4, 2017 (Responses—January 9, 2017)
  - Hearing before \_\_\_\_\_ Committee
    - Each side 20 minutes to present their case
    - No additional testimony
    - Committee may decide whether to hear from AG's office, Secretary of State and such other officials as it designates
    - No examination or cross examination by parties
    - Committee to vote and make recommendations to full Senate
    - No ex parte communication with Senators regarding merits
    - Senate has discretion above and beyond procedural order

## Relief Options: Idaho Code 34-2121

## Definitions & Proof

- Committee hears the contest and makes a recommendation to Senate
  - Two outcomes:
    - 1. Confirm the election result
    - 2. Annul the election result
      - If votes counted result in a tie—result determined by lot of legislature's choosing.
      - If legislature finds person elected to be disqualified or for other reasons should not be declared winner, the legislature declares the election VOID.
        - If void—then legislature can declare the office vacant and have it filled as provided for in Chapter 9, Title 50, OR.
        - Call for a special reelection if an accurate vote count cannot be obtained or discovered. legislature sets the time of the election and candidates to be placed on the ballot.
- Assessment of Costs (34-2120)
  - Legislature may assess costs against either contestant or contestee
    - If election confirmed against Contestant
    - If election annulled against contestee
    - Witness fees and costs of discovery are provided by Code.
    - Up to Senate whether it includes Attorney Fees as part of costs. Traditionally Courts do not include Attorney Fees with costs.

- Incumbent = Holder of the seat/declared winner of the election (also contestee). In this instance—Senator Nye
- Contestant = person challenging the result of the election. In this matter, Mr. Katsilometes
- Burden of Proof—The Contestant bears the burden of proving that either Senator Nye is disqualified, or that sufficient votes were either cast or counted that could have changed the result. *Noble v. Ada County Elections Board, 135 Idaho 495, 501 (2000).*

## Senate Ballot Qualification

## Art. III, sec. 9

- Art. III, sec. 6 & Idaho Code sec. 35-614
  - 21 years of age
  - Citizen of the U.S.
  - Resided in district 1 year preceding general election in which candidacy offered
  - 1 year prior to election be an elector within the district
  - Declaration and fee (\$30.00) with Secretary of State

• **SECTION 9. POWERS OF EACH HOUSE. Each house when assembled shall choose its own officers; judge of the election, qualifications and returns of its own members, determine its own rules of proceeding.**

### Chapter 21, Title 34

- Grounds listed in this contest:
  - (4) When the incumbent...has committed any violation as set out in chapter 23, title 18, Idaho Code;
  - (5)When illegal votes have been received or legal votes rejected at the polls sufficient to change the result;
  - (6) For any error in any board of canvassers in counting votes or in declaring the result of the election, if the error would change the result;

### Violation of Title 18, Chapter 23

- Alleged violation is of 18-2315:
  - ELECTION OFFENSES NOT OTHERWISE PROVIDED FOR. Every person who willfully violates any of the provisions of the laws of this state relating to elections is, unless a different punishment for such violation is prescribed by law, punishable by fine not exceeding \$1,000, or by imprisonment in the state prison not exceeding five (5) years, or by both.

### Not Otherwise Provided For

- Idaho Code 67-6625. VIOLATIONS — CIVIL FINE — MISDEMEANOR PENALTY — PROSECUTION — LIMITATION — VENUE. (a) Any person who violates the provisions of section 67-6603 through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(a), 67-6624, 67-6629 or 67-6630, Idaho Code, shall be liable for a civil fine not to exceed two hundred fifty dollars (\$250) if an individual, and not more than two thousand five hundred dollars (\$2,500) if a person other than an individual. The burden of proof for such civil liability shall be met by showing a preponderance of the evidence.
- (b) Any person who violates section 67-6605 or 67-6621(b), Idaho Code, and any person who knowingly and willfully violates section 67-6603 through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(a), 67-6624, 67-6629 or 67-6630, Idaho Code, is guilty of a misdemeanor and, upon conviction, in addition to the fines set forth in subsection (a) of this section, may be imprisoned for not more than six (6) months or be both fined and imprisoned.

### Counting and Canvassing Errors

- Idaho Code sec. 34-2103:
  - MISCONDUCT OF ELECTION JUDGES — WHEN SUFFICIENT TO VITIATE ELECTION. When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election unless the vote of the precinct, township or ward would change the result as to that office.

Now before the committee...