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MAR 5 '02

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORIGINAL

Jerome Kelsh,)
)
 Petitioner and)
 Relator,)
)
 vs.)
)
 Alvin A. Jaeger, in his capacity)
 as Secretary of State, State of)
 North Dakota,)
)
 Respondent.)

ORIGINAL PROCEEDING

Supreme Court No.

20020060

FILED
 IN THE OFFICE OF THE
 CLERK OF SUPREME COURT
 MAR 5 2002
 STATE OF NORTH DAKOTA

**PETITION FOR WRIT OF PROHIBITION OR OTHER APPROPRIATE WRIT,
 MOTION FOR EXPEDITED REVIEW, AFFIDAVIT OF JEROME KELSH, AND BRIEF
 IN SUPPORT OF PETITION**

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IN THE SUPREME COURT
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Jerome Kelsh.)	ORIGINAL PROCEEDING
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Petitioner and)	
Relator,)	
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vs.)	Supreme Court No.
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Alvin A. Jaeger, in his capacity)	
as Secretary of State, State of)	
North Dakota,)	
)	
Respondent.)	

**PETITION FOR WRIT OF PROHIBITION OR OTHER APPROPRIATE WRIT,
MOTION FOR EXPEDITED REVIEW**

Petitioner Jerome Kelsh respectfully states as follows:

PARTIES TO THE ACTION

1. Petitioner Jerome Kelsh (Kelsh) is the duly elected incumbent state senator of District 26, State of North Dakota.
2. Respondent Alvin A. Jaeger is the Secretary of State of North Dakota.

JURISDICTION

3. The Court has original jurisdiction with authority to issue, hear and determine such original and remedial writs as may be necessary to properly exercise its jurisdiction. N.D.Const. Art. VI, § 2; N.D.C.C. 27-02-04: State ex rel. Kusler v. Sinner, 491 N.W. 2d 382 (N.D.1992); State ex rel. Peterson v. Olson, 307 N.W. 2d 528, 530-31 (N.D.1981). The Court's original jurisdiction extends only to those cases where the

questions presented are publici juris and affect the sovereignty of the state, the franchises or prerogatives of the state, or the liberties of its people. State ex rel. Link v. Olson, 286 N.W. 2d 262 (N.D.1979). The interest of the state must be primary, not incidental, and the public must have an interest or right that is affected. State ex rel. Kusler v. Sinner, N.W. 2d (N.D.1992); State ex rel. Peterson v. Olson, 307 N.W. 2d 528, 530-31 (N.D.1981). At issue here is whether or under what circumstances the North Dakota legislature may truncate the terms of a sitting state senator of North Dakota, an issue of significant public interest to North Dakota voters, candidates and political parties. Senator Kelsh respectfully requests that the Court invoke its original jurisdiction to resolve this matter.

NATURE OF PROCEEDING

4. North Dakota's fifty-seventh legislative assembly passed Senate Bill No. 2456, a legislative redistricting bill which amended N.D.C.C. 54-03-01.8 to require that Senator Kelsh's four year term be truncated to two years as a result of the legislature's redistricting of District 26. See Section 2, N.D.C.C. 54-03-01.8 of the 2001 Supplement to the North Dakota Century Code.
5. Until 1983, then-Section 27 of the North Dakota Constitution provided that "senators shall be elected for the term of four years, except as hereinafter provided." N.D. Const.; See N.D. Const. art. IV, § 4. On June 12, 1984, the people of North Dakota approved the 1983 legislative assembly's revision to the Constitution which deleted the terms "except as hereinafter provided." N.D. Const., art. IV, § 4: 1981 N.D. Sess. Laws, ch. 804. The 2001 legislative assembly's amendment of N.D.C.C. 54-03-01.8

contravenes the plain language of N.D. Const. art. IV, § 4 which requires that a senator's term must be four years. Senator Kelsh respectfully requests this Court to find that Section 2, N.D.C.C. 54-03-01.8 as amended violates the plain meaning of N.D. Const., art. IV, § 4.

6. Section 2, N.D.C.C. 54-03-01.8 as amended requires that if, as a result of legislative redistricting, a senator elected in 1998 is placed in an even numbered district, there must be an election in 2002 for a term of two years unless the senator elected in 1998 files by February 15, 2002 a written statement with the secretary of state stating that the senator elected in 1998 agrees that there need not be an election for a senator in 2002 and that the senator elected in 2000 may continue that senator's term. Id. Senator Joel Heitkamp's township of residence borders the newly-created District 25 adjacent to District 26. and was placed within the newly-designated boundaries of Senator Kelsh's District 26. Heitkamp and Kelsh now both reside within the new District 26 boundaries. Section 2, N.D.C.C. 54-03-01.8 as amended requires that there be an election held in District 26 for a two (2) year term if Heitkamp did not decline to seek re-election by February 15, 2002. Heitkamp did not decline to seek re-election by February 15, 2002, thus creating a situation whereby Kelsh as the sitting District 26 senator must face re-election in the middle of his term and must run for a new term of only two years.
7. The District 26 Democrat-NPL party is scheduled to hold its district convention on March 10, 2002, at which time the District must conduct what may be an unconstitutional nomination process. This issue is one of exceptional public interest

which directly affects the constitutional rights of voters and elected officials and which requires immediate resolution by this Court.

NATURE OF RELIEF REQUESTED

8. This case represents issues essential to North Dakota's public interest and which directly affect its constituents. Whether the legislature may truncate a senator's four year term and require special elections to do so are issues vital to North Dakota voters, political candidates and their respective political parties as well as the election process itself. These issues require the Court's immediate attention since the District 26 nominating convention must be held shortly under the provisions of Section 2, N.D.C.C. 54-03-01.8 as amended.

This petition for a writ of prohibition or other appropriate writ and motion for expedited review is based upon the attached brief in support of petition, the affidavit of Jerome Kelsh, and all of the records and files in this case.

WHEREFORE, Petitioner Kelsh prays that:

1. This Court order Respondent Alvin A. Jaeger to serve and file a brief within an expedited time established by the Court.
2. This Court order that both petitioner and respondent appear before this Court at the earliest possible date and time to present arguments to the Court on the merits of these issues.
3. That this Court issue a writ of prohibition or other appropriate writ which declares unconstitutional Section 2, N.D.C.C. 54-03-01.8 as amended and issue a writ of prohibition or other appropriate writ which prohibits and enjoins the respondent from

administering an election for the office of District 26 state senator in the 2002 primary and general elections.

4. This Court grant such other and further relief as the Court deems appropriate under the circumstances.

Dated this 4th day of March, 2002.

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STATEMENT OF THE ISSUES

1. Whether it is appropriate for the Court to invoke its original jurisdiction in this case.
2. Whether Section 2, N.D.C.C. 54-03-01.8 as amended should be declared unconstitutional.
3. Whether the Court should issue a writ of prohibition or other appropriate writ which prohibits and enjoins the Secretary of State from administering an election for the office of District 26 state senator in the 2002 primary and general elections.

STATEMENT OF THE CASE

A. Nature of the Case.

Petitioner and state Senator Jerome Kelsh requests that the Court invoke its original jurisdiction to hear and resolve the issue as to whether Section 2, N.D.C.C. 54-03-01.8 as amended is constitutional. [See also App. 11-15]. Senator Kelsh has served in the North Dakota state senate from the 26th Legislative District since 1984. Senator Kelsh was re-elected to a four year senate term in the 2000 general election. This statute, amended by the North Dakota legislature in 2001, requires that Senator Kelsh's four year term be truncated to two years as the result of the legislature's redistricting of District 26. The respondent is the North Dakota Secretary of State, who has the statutory authority to enforce the state's election laws, and who must administer and enforce Section 2, N.D.C.C. 54-03-01.8 as amended. Senator Kelsh requests that the Court issue a writ of prohibition or other appropriate writ which prohibits and enjoins the Secretary of State from administering an election for the office of District 26 state senator in the 2002 primary and general elections.

B. Statement of Facts.

In a special session which commenced on November 26, 2001, the North Dakota legislature

passed a redistricting bill which amended N.D.C.C. 54-03-01.8 to require that Senator Kelsh's four year term in District 26 be truncated to two years. Legislative history is scant as to legislative intent in passing the bill. [App. 8-10]. Art. IV, § 4 of the North Dakota Constitution requires that senators must be elected for terms of four years.

On March 4, 1992, then-Attorney General Nicholas J. Spaeth issued an opinion which declared that a statute which limits the terms of state senators to two years is unconstitutional. [App. 1-2]. On July 13, 2001, Attorney General Wayne Stenehjem overruled General Spaeth's opinion when he issued a letter opinion which declared that the legislature has the authority to reduce the terms of one or more senators or representatives from four years to two years if necessary to effectuate an otherwise valid redistricting plan. [App. 3-7]. The legislature's passage of Senate Bill 2456 placed former District 27 state Senator Joel Heitkamp and Senator Kelsh within the same District 26 boundaries. Senator Heitkamp was elected to a District 27 four year senate term in 1998. Senator Heitkamp did not notify the Secretary of State that he would not seek re-election by February 15, 2002, pursuant to Section 2 of N.D.C.C. 54-03-01.8 as amended. As a result, Senator Kelsh, a sitting senator who has two years left of his senatorial term, must face a special election against former Senator Heitkamp, who until the redistricting plan went into effect was the state senator from an adjoining legislative district.

C. Request for Expedited Review.

Senator Kelsh requests that the Court suspend any requirements or provisions of the North Dakota Rules of Appellate Procedure in this particular case pursuant to Rule 2, N.D.R. App. Pro., in order to expedite its review and resolution of this case. Senator Kelsh requests that the Court expedite its review so that the constitutionality of Section 2, N.D.C.C. 54-03-01.8 as amended can be determined prior to the initiation of the special election process required by this statute. This

issue represents a justiciable controversy and is one of significant public interest to North Dakota voters, political candidates and political parties. Its immediacy in this particular case stems in part from Senator Heitkamp's February 15, 2002 election not to decline a re-election bid in Senator Kelsh's District 26. District 26 legislative candidates, state and local election officials and voters each have rights and duties which would be affected by the enforcement of Section 2 of N.D.C.C. 54-03-01.8 as amended.

Senator Kelsh requests that the Court establish a date and time at which this matter can be heard at its earliest convenience so that the issue may be resolved prior to the March 10, 2002 District 26 district convention.

LAW AND ARGUMENT

A. THIS PROCEEDING IS ONE FOR WHICH THE COURT'S ORIGINAL JURISDICTION IS APPROPRIATE.

At issue is whether the Court may exercise its original jurisdiction and issue a writ of prohibition or other appropriate writ to resolve an election law controversy. The Court has original jurisdiction with authority to issue, hear and determine such original and remedial writs as may be necessary to properly exercise its jurisdiction. N.D. Const. art. VI. § 2. The Court may issue such original and remedial writs as are necessary for the proper exercise of its jurisdiction, and in such cases of strictly public concern as involve questions affecting the sovereign rights of this state or its franchises or privileges. N.D.C.C. 27-02-04; State ex rel. Link v. Olson, 286 N.W. 2d 262, (N.D. 1979).

The power vested in the Court to issue original writs is a discretionary power which may not be invoked as a matter of right. State ex rel. Kusler v. Sinner, 491 N.W. 2d 382 (N.D. 1992). It is well settled that the Court's power to exercise original jurisdiction extends only to those cases

where the questions presented are publici juris and affect the sovereignty of the state, the franchises or prerogatives of the state, or the liberties of its people. Id.; State ex rel. Link v. Olson, 286 N.W. 2d 262 (N.D. 1979); N.D.C.C. 27-02-04. The public must have an interest or right that is affected. State ex rel. Peterson v. Olson, 307 N.W. 2d 528 (N.D. 1981).

This issue represents essential public interests and rights. Those directly affected by the outcome of this case include District 26 legislative candidates, political parties who support those candidates, election officials who must administer the election process and voters themselves. This issue is one of vital public interest to the citizens of North Dakota.

The Court has exercised its original jurisdiction in other disputes where it was called upon to interpret statutes which relate to the voting process. In State ex rel. Kusler v. Sinner, 429 N.W. 2d 382 (N.D. 1992), the Court asserted its original jurisdiction to hear then-Secretary of State Jim Kusler's petition to exercise its original jurisdiction to issue a writ of certiorari or other appropriate writ to nullify then-Governor Sinner's writ of election which scheduled a special election for November 3, 1992 to fill the vacancy of deceased United States Senator Quentin N. Burdick. Secretary Kusler requested that the Court issue a writ of mandamus or other appropriate writ to compel Governor Sinner to schedule a special election so that candidates could file their certificates of nomination at least 60 days prior to the day of the election. Id. Governor Sinner's writ of election set the special election less than 60 days after Senator Burdick's death and 30 days after the political parties nominating conventions. Id. The Court found that the Kusler proceeding involved special circumstances which presented "questions of an urgent and emergency nature that need a speedy determination. We conclude, therefore, that this is a matter of public interest for our exercise of original jurisdiction." Kusler at 385. Similar circumstances exist in this case. District 26 voters, political candidates and election officials need the Court's guidance as to whether it is constitutional

to hold a special election to truncate a state senator's four year term based upon the legislature's reapportionment plan.

In State ex rel. Wefald v. Meier, 347 N.W. 2d 562 (N.D. 1984), the Court invoked its original jurisdiction to rule on a petition by then-Secretary of State Ben Meier who had prepared a proposed ballot and explanatory statement for a referred measure. Then-Attorney General Wefald rejected the ballot and explanation as contrary to law. The Court heard this matter and stated that the referendum process is one "whereby the people, through the exercise of their right to vote, determine the laws under which they will be governed. Few matters encompass more public interest than this process." Id. at 564.

This proceeding also presents issues of an urgent and emergency nature which require a speedy determination. Section 2, N.D.C.C. 54-03-01.8 as amended requires that a special election be held in District 26 since Senator Heitkamp did not file notice by February 15, 2002, that he would not run against Senator Kelsh, the sitting District 26 senator. The District 26 nominating convention is scheduled for March 10, 2002. These special circumstances present urgent issues which require the Court's speedy determination.

B. SECTION 2 OF N.D.C.C. 54-03-01.8 AS AMENDED IS CONTRARY TO THE PLAIN MEANING OF N.D. CONST. ART. IV, § 4.

1. Art. IV, § 4 forbids truncation of a state senator's term to less than four years.

In 2001, North Dakota's 57th Legislative Assembly passed Senate Bill 2456, a legislative redistricting bill which amended N.D.C.C. 54-03-01.8 as follows:

A senator from an odd-numbered district must be elected in 2002 for a term of four years and a senator from an even-numbered district must be elected in 2004 for a term of four years. Except as otherwise provided in this section, a senator from an even-numbered district in which there is another incumbent senator as a result of legislative redistricting must be elected in 2002 for a term of two years. However, if as a result of legislative redistricting a senator elected in 1998 is placed in an even-

numbered district there must be an election in 2002 for a term of two years unless the senator elected in 1998 files by February 15, 2002, a written statement with the secretary of state stating that the senator elected in 1998 agrees that there need not be an election for a senator in 2002 and that the senator elected in 2000 may continue that senator's term; based on this requirement, districts twenty and twenty-six may be required to elect senators in 2002.

N.D.C.C. 54-03-08.1 (2).

The legislature's passage of this statute had the practical effect of forcing an incumbent state senator from an adjacent district whose term had expired to run for election in a district represented by a state senator with two years left on his term.

This statute as amended must be interpreted in light of North Dakota's constitutional mandate that senators be elected for terms of four years. N.D. Const. art. IV, § 4. Until December 1, 1986, N.D. Const. art. IV, § 4 provided for four year terms of state senators "except as hereinafter provided." *Id.* The Court in State ex rel. Williams v. Meyer, 127 N.W. 834 (N.D. 1910) referred to this additional language when the Court allowed senatorial terms to be staggered:

The phrase "except as hereinafter provided" referred to, relates not only to the senators of the even class elected in 1890, but it is applicable to those elected after any apportionment at which new districts are created, so far as necessary to bring them in harmony with the plan of the Constitution regarding the membership of the senate and the terms of office of the senators." (emphasis added).

Meyer at 836.

The Meyer court reconciled its staggering of legislative terms based upon the above language. This language was also present when the 1981 legislature truncated the terms of certain senators in its redistricting plan. See 1981 N.D. Sess. Laws ch. 804: N.D. Const., art. IV, § 3. The language was also present when four senators' terms were truncated to two years through the legislature's reapportionment plan after the 1970 census. Chapman v. Meier, 372F. Supp. 363 (D.N.D. 1972). North Dakota voters approved the deletion of this language on June 12, 1984 when they approved

the constitutional amendment to do so.

Section 2, N.D.C.C. 54-03-08.1 as amended, however, must now be interpreted in light of the N.D. Const. art. IV, § 4 which has since been stripped of the language to which the Meyer Court referred. Principles of construction applicable to statutes generally are available to construction of the Constitution. McCarney v. Meier, 286 N.W. 2d 780, 783 (N.D. 1979); Sanstead v. Freed, 251 N.W. 2d 898 (N.D. 1977). Expediency has no application nor does public clamor, majority desire, or apparent need (quoting State v. Olson, 176 N.W. 528, 534 (N.D. 1920). Id. When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. N.D.C.C. 1-02-05. The letter of a clear and unambiguous statute cannot be disregarded under the pretext of pursuing its spirit because the legislative intent is presumed clear from the face of the statute. Wills v. Schroeder Aviation, Inc., 390 N.W. 2d 545 (N.D. 1986). Words used in any statute are to be understood in their ordinary sense unless a contrary intention plainly appears. N.D.C.C. 1-02-02: Harding v. City of Dickinson, 33 N.W. 2d 626 (N.D. 1948).

In this case, it is difficult to perceive of a construction of N.D. Const. art. IV, § 4 which could mean anything other than the mandate that state senators be elected for four year terms. The rules of construction do not apply when the language of the statute can be plainly understood. As the Sanstead Court stated:

The legislature must be understood to mean what it has plainly expressed, and this excludes construction. The legislative intent being plainly expressed, so that the act read by itself, or in connection with other statutes pertaining to the same subject, is clear, certain, and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms.

Sanstead at 447.

When the clear meaning of N.D. Const. art. IV, § 4 is applied to this reapportionment statute, Section 2, N.D.C.C. 54-03-01.8 as amended is unconstitutional in that it requires a sitting state

senator run for and serve a two year term in his own district.

2. N.D. Const. art IV, § 3 can be interpreted harmoniously with N.D. Const. art. IV, § 4.

The Court in its construction of constitutional provisions must make every effort to take into account the entire Constitution. Sanstead v. Freed, 251 N.W. 2d 898, 908 (N.D. 1977). The Court must reconcile apparently inconsistent provisions when it construes and interprets the Constitution.

Id. Art. IV, § 3 of the Constitution provides as follows:

The legislative assembly shall establish by law a procedure whereby one-half of the members of the senate and one-half of the members of the house of representatives, as nearly as is practicable are elected biennially (emphasis added).

N.D. Const. art. IV, § 3

N.D. Const. art. 4, § 4 does not conflict with the provisions of N.D. Const. art. 4, § 3 when these respective provisions are applied to the facts of this case. N.D. Const. art. 4, § 3 requires that one-half of the members of the senate are to be elected biennially, and that these senators so elected should serve a term of four years. In this case, Senator Kelsh was re-elected as District 26 state senator in the year 2000. His four year term expires in the year 2004. Senator Kelsh remains in his original district, District 26, which remains an even numbered district. Since all other legislative districts in which a legislator's terms may have been truncated have also resolved their respective situations, District 26 is the single remaining district to which Section 2, N.D.C.C. 54-03-01.8 as amended applies.

Senator Kelsh's term comports with the North Dakota constitutional provisions as to biennial elections and four year terms but Section 2, N.D.C.C. 54-03-01.8 as amended, does not. Section 2, N.D.C.C. 54-03-01.8 as amended should therefore be declared unconstitutional in that it denies the full force and effect of the constitutional mandate to require senators to be elected for four year

terms.

3. N.D. Const. art. IV, § 3 allows only practicable procedures by which experienced senate members are elected and maintained.

At issue is whether Section 2, N.D.C.C. 54-03-01.8 as amended is a practicable procedure by which to elect state senators. The legislative assembly shall establish by law a procedure whereby one-half of the members of the senate, as nearly as practicable are elected biennially. N.D. Const. art. IV, § 3. (emphasis added). It is well settled that the legislature must provide a senate composed of members one-half of whom are experienced in their duties. *Id.* As the Meyer court stated, “it was the clear intent of the constitutional convention to provide a Senate which should at all times as nearly as practicable, be composed of members one-half of whom were experienced in the duties of their offices.” Meyer at 836.

In this case, Senator Kelsh is one of the more experienced senators in the legislature, having served District 26 since 1984. There is a statutory presumption that the legislature’s intent was not to create absurd results or unjust consequences in the passage of a statute. Resolution Trust Corp. v. Dickinson Econ-Storage, 474 N.W. 2d 50, 52 (N.D. 1981). To require a sitting senator with seventeen years’ legislative experience to run for a two year term in the middle of his four year term serves neither constitutional mandates nor the voters of North Dakota.

Courts have struggled with the proper definition of the term “practicable.” In Fort Sumter Hotel v. South Carolina Tax Commission et al, 21 S.E. 2d 393 (S.C. 1942), the South Carolina court interpreted the phrase “as nearly as may be practicable” as “meaning what the words indicate to wit, that the procedure must be followed unless there is some valid reason why in some particular respect it is not practicable to do so.” *Id.* at 396. Webster’s Dictionary defines “practicable” as “capable of being done, effected or put into practice, with the available means; feasible.” Webster’s at 1517.

Corpus Juris Secundum defines the term, in part, as “capable of being done or accomplished with available means or resources: capable of being performed or effected: feasible; feasible, fair, and convenient: possible of execution or performance.” 72 C.J.S. 467.

The legislature could have passed a practicable reapportionment plan by which a sitting senator’s four year term would not be truncated and in the case of Senator Kelsh, there would be no loss of an experienced senator in the legislative body pursuant to the clear intent of the Constitution. Section 2, N.D.C.C. 54-03-01.8 as amended does not represent a fair and feasible plan which can pass constitutional muster.

C. THE COURT SHOULD ISSUE A WRIT OF PROHIBITION OR OTHER APPROPRIATE WRIT TO FORBID THE SECRETARY OF STATE TO ADMINISTER THE PROVISIONS OF SECTION 2, N.D.C.C. 54-03-01.8 AS AMENDED TO PREVENT AN UNCONSTITUTIONAL DISTRICT 26 ELECTION TO BE HELD.

The Court has invoked its original jurisdiction in proceedings which posed voting process issues. State ex rel. Kusler v. Sinner, 491 N.W. 2d 382. (N.D. 1992); State ex rel. Wefald v. Meier, 347 N.W. 2d 562 (N.D. 1984). A writ of prohibition is appropriate when there is no plain, speedy, and adequate remedy in the ordinary course of law. Old Broadway Corp. v. Backes, 450 N.W. 2d 734 (N.D. 1990).

In this case, Senator Kelsh asks this Court to prohibit the Secretary of State from administering an election pursuant to Section 2, N.D.C.C. 54-03-01.8 as amended, the statutory basis of which may be unconstitutional. The fifty-seventh legislature has passed a redistricting plan which is not narrowly tailored to accommodate the constitutional provisions as set forth in N.D. Const. art. IV, § 4 and art. IV, § 3, respectively. The letter and spirit of N.D. Const. art. IV, § 4 are to require state senators to be elected to four year terms if possible and, just as importantly, to maintain experienced senators in the senate body. Section 2, N.D.C.C. 54-03-01.8 as amended fails in both

these respects. To remedy these present circumstances, Senator Kelsh requests that this Court prohibit Section 2, N.D.C.C. 54-03-01.8 as amended from taking effect. Its practical purpose would enable Senator Kelsh to complete his four year term as required under the North Dakota constitution without the necessity of standing for a mid-term election.

CONCLUSION

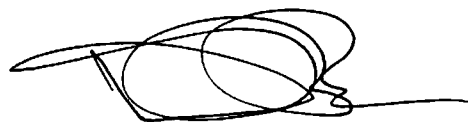
Petitioner Kelsh respectfully requests that the Court grant his petition which requests that the Court declare as unconstitutional Section 2, N.D.C.C. 54-03-01.8 as amended, to issue a writ of prohibition or other appropriate writ which prohibits and enjoins the Secretary of State from administering an election for the office of District 26 state senator in 2002 pursuant to this statute. and for other and further relief as the Court deems appropriate under the circumstances.

CERTIFICATION OF COMPLIANCE

The undersigned, as attorney for the petitioner in the above matter, and as the author of the above brief, hereby certifies, in compliance with Rule 28(g) of the North Dakota Rules of Appellate Procedure, that the above brief was prepared with proportional typeface and that the total number of words, excluding words in the table of contents and table of authorities, does not exceed 10, 500 words.

Dated this 4th day of March, 2002.

BLISS LAW OFFICE
Counsel for the Petitioner
316 North 5th Street, Suite 104
PO Box 1854
Bismarck, ND 58502-1854
(701) 255-6820



BY: David R. Bliss ID #04729

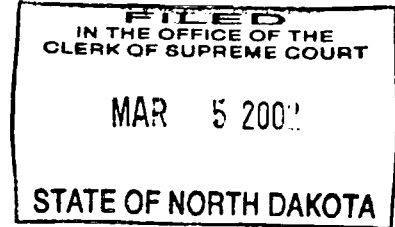
IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Jerome Kelsh,)
)
Petitioner and)
Relator,)
)
vs.)
)
Alvin A. Jaeger, in his capacity)
as Secretary of State, State of)
North Dakota.)
)
Respondent.)

ORIGINAL PROCEEDING

20020060

Supreme Court No.



AFFIDAVIT OF PERSONAL SERVICE

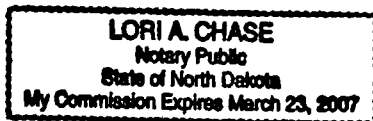
I, Francine Johnson, am a citizen of the United States, over the age of eighteen, and not a party to this action. Within the boundaries of the state where service was made, I am authorized by law to perform said service.

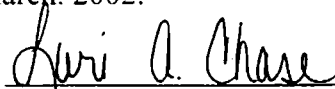
Service was made upon Secretary of State Alvin A. Jaeger, 600 East Boulevard Avenue, Bismarck, North Dakota on March 4, 2002 at 4:54 PM. Mary Feist accepted the documents. (petition for writ of prohibition or other appropriate writ, motion for expedited review, affidavit of Jerome Kelsh, brief in support of petition and appendix).

Dated this 4th day of March, 2002.


Francine Johnson, Process Server

Subscribed and sworn to before me this 4th day of March, 2002.




Lori A. Chase, Notary Public
Burleigh County, North Dakota
My commission expires: 3-23-07

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20020060

Jerome Kelsh,)
)
 Petitioner and)
 Relator,)
)
 vs.)
)
 Alvin A. Jaeger, in his capacity)
 as Secretary of State, State of)
 North Dakota,)
)
 Respondent.)

ORIGINAL PROCEEDING

Supreme Court No. 20020060

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT


MAR 18 2002

STATE OF NORTH DAKOTA

ADMISSION OF SERVICE

Thomas A. Dickson, Chair of the N.D. Democratic-NPL Party, hereby admits service of
Petitioner Kelsh's petition, motion, brief and appendix in regard to the above mentioned matter.

Dated this 8th day of March, 2002.



 Thomas A. Dickson
 Chair, N.D. Democratic-NPL Party

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20020060

Jerome Kelsh,)
)
 Petitioner and)
 Relator,)
)
 vs.)
)
 Alvin A. Jaeger, in his capacity)
 as Secretary of State, State of)
 North Dakota,)
)
 Respondent.)

ORIGINAL PROCEEDING

Supreme Court No. 20020060

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

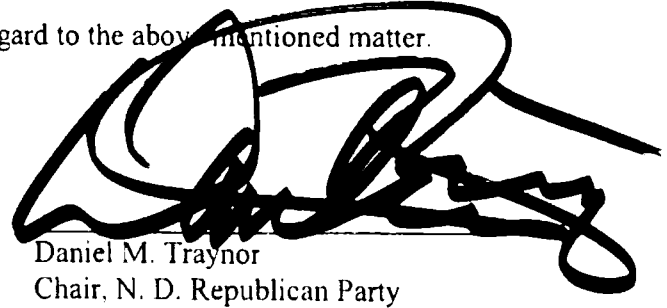
MAR 18 2002

STATE OF NORTH DAKOTA

ADMISSION OF SERVICE

Daniel M. Traynor, Chair of the N.D. Republican Party, hereby admits service of Petitioner Kelsh's petition, motion, brief and appendix in regard to the above mentioned matter.

Dated this 8th day of March, 2002.



Daniel M. Traynor
Chair, N. D. Republican Party

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20020060

Jerome Kelsh,)
)
Petitioner and)
Relator,)
)
vs.)
)
Alvin A. Jaeger, in his capacity)
as Secretary of State, State of)
North Dakota.)
)
Respondent.)

ORIGINAL PROCEEDING

Supreme Court No. 20020060

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT


MAR 18 2002

STATE OF NORTH DAKOTA

ADMISSION OF SERVICE

Douglas A. Bahr, Solicitor General, Office of the Attorney General, hereby admits service of Petitioner Kelsh's petition, motion, brief and appendix in regard to the above mentioned matter.

Dated this 8th day of March, 2002.


Douglas A. Bahr
Solicitor General

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20020060

Jerome Kelsh,)
)
 Petitioner and)
 Relator,)
)
 vs.)
)
 Alvin A. Jaeger, in his capacity)
 as Secretary of State, State of)
 North Dakota,)
)
 Respondent.)

ORIGINAL PROCEEDING

Supreme Court No. 20020060

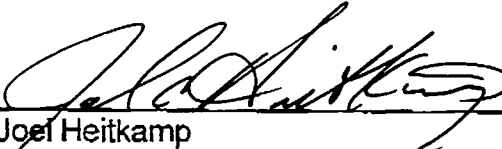
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAR 18 2002

STATE OF NORTH DAKOTA

ADMISSION OF SERVICE

Senator Joel Heitkamp herewith admits service of a copy of the Petition for writ of prohibition or other appropriate writ, Motion for expedited review, Affidavit of Jerome Kelsh, Brief in support of Petition, Opinion of Attorney General Nicholas J. Spaeth dated March 4, 1992, Opinion of Attorney General Wayne Stenehjem dated July 13, 2001, Joint Constitutional Revisions Committee minutes of March 7 and 15, 1983, and North Dakota Supreme Court Order dated March 6, 2002 in the above-entitled action this 7th day of March, 2002, at 2 o'clock P.M.



 Joel Heitkamp

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20020060

Jerome Kelsh,)
)
Petitioner and)
Relator,)
)
vs.)
)
Alvin A. Jaeger, in his capacity)
as Secretary of State, State of)
North Dakota,)
)
Respondent.)

ORIGINAL PROCEEDING

Supreme Court No. 20020060

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAR 18 2002

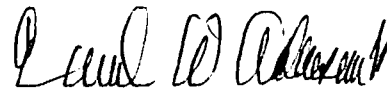
STATE OF NORTH DAKOTA

AFFIDAVIT OF PERSONAL SERVICE

I, Earl W. Anderson, Jr., am a citizen of the United States, over the age of eighteen, and not a party to this action. Within the boundaries of the state where service was made, I am authorized by law to perform said service.

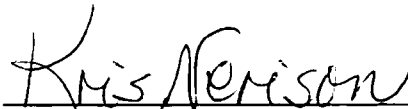
Service was made upon Senator Joel Heitkamp, 16543 95½ ST SE, Hankinson, North Dakota on March 7, 2002 at 2:00 P.M.

Dated this 11th day of March 2002.



Earl W. Anderson, Jr.

Subscribed and sworn to before me this 11th day of March, 2002.



Kris Nerison, Notary Public
Sargent County, North Dakota
My commission expires: 3-30-04

KRIS NERISON
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires MAR. 30, 2004

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORIGINAL

20020060

Jerome Kelsh,)
)
Petitioner and)
Relator,)
)
vs.)
)
Alvin A. Jaeger, in his capacity)
as Secretary of State, State of)
North Dakota,)
)
Respondent.)

ORIGINAL PROCEEDING

Supreme Court No. 20020060

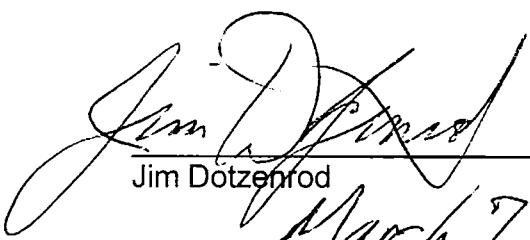
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAR 18 2002

STATE OF NORTH DAKOTA

ADMISSION OF SERVICE

District 26, N.D. Democratic-NPL Party Chairman, Jim Dotzenrod herewith admits service of a copy of the Petition for writ of prohibition or other appropriate writ, Motion for expedited review, Affidavit of Jerome Kelsh, Brief in support of Petition, Opinion of Attorney General Nicholas J. Spaeth dated March 4, 1992, Opinion of Attorney General Wayne Stenehjem dated July 13, 2001, Joint Constitutional Revisions Committee minutes of March 7 and 15, 1983, and North Dakota Supreme Court Order dated March 6, 2002 in the above-entitled action this 7th day of March, 2002, at 5:30 o'clock P.M.



Jim Dotzenrod
March 7, 2002


STATE OF NORTH DAKOTA

COUNTY OF SARGENT

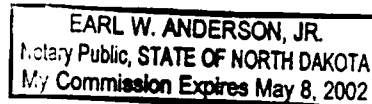
On the 7th day of March, 2002, Jim Dotzenrod personally appeared before me,

who is personally known to me
 whose identity I proved on the basis of _____
 whose identity I proved on the oath/affirmation of _____
a credible witness

to be the signer of the above document, and he/she acknowledged that he/she signed it.



Earl W. Anderson, Jr., Notary Public
Sargent County, North Dakota
My commission expires: 5-08-02



IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20020060

Jerome Kelsh,)
)
Petitioner and)
Relator,)
)
vs.)
)
Alvin A. Jaeger, in his capacity)
as Secretary of State, State of)
North Dakota,)
)
Respondent.)

ORIGINAL PROCEEDING

Supreme Court No. 20020060

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAR 18 2002

STATE OF NORTH DAKOTA

AFFIDAVIT OF PERSONAL SERVICE

I, Earl W. Anderson, Jr., am a citizen of the United States, over the age of eighteen, and not a party to this action. Within the boundaries of the state where service was made, I am authorized by law to perform said service.

Service was made upon Mr. Jim Dotzenrod, Chair, District 26, N.D. Democratic-NPL Party, 507 5th ST, Wyndmere, North Dakota on March 7, 2002 at 5:30 P.M.

Dated this 11th day of March 2002.



Earl W. Anderson, Jr.

Subscribed and sworn to before me this 11th day of March, 2002.



Kris Nerison, Notary Public
Sargent County, North Dakota
My commission expires: 3-30-04

KRIS NERISON
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires MAR. 30, 2004

ORIGINAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20020060

Jerome Kelsh,)
)
Petitioner and)
Relator,)
)
vs.)
)
Alvin A. Jaeger, in his capacity)
as Secretary of State, State of)
North Dakota,)
)
Respondent.)

ORIGINAL PROCEEDING

Supreme Court No. 20020060


FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAR 18 2002

STATE OF NORTH DAKOTA

ADMISSION OF SERVICE

District 26, N.D. Republican Party Chairman, Mike Martinson herewith admits service of a copy of the Petition for writ of prohibition or other appropriate writ, Motion for expedited review, Affidavit of Jerome Kelsh, Brief in support of Petition, Opinion of Attorney General Nicholas J. Spaeth dated March 4, 1992, Opinion of Attorney General Wayne Stenehjem dated July 13, 2001, Joint Constitutional Revisions Committee minutes of March 7 and 15, 1983, and North Dakota Supreme Court Order dated March 6, 2002 in the above-entitled action this 8th day of March, 2002, at 10 o'clock A.M.



Mike Martinson

STATE OF NORTH DAKOTA

COUNTY OF SARGENT

On the 8th day of March, 2002, Mike Martinson personally appeared before me,

X who is personally known to me
____ whose identity I proved on the basis of ____
____ whose identity I proved on the oath/affirmation of _____
a credible witness

to be the signer of the above document, and he/she acknowledged that he/she signed it.

Kris Nerison

Kris Nerison, Notary Public
Sargent County, North Dakota
My commission expires: 3-30-04

KRIS NERISON
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires MAR. 30, 2004

STATE OF NORTH DAKOTA

COUNTY OF SARGENT

On the 8th day of March, 2002, Mike Martinson personally appeared before me,

who is personally known to me
 whose identity I proved on the basis of _____
 whose identity I proved on the oath/affirmation of _____
a credible witness

to be the signer of the above document, and he/she acknowledged that he/she signed it.

Kris Nerison

Kris Nerison, Notary Public
Sargent County, North Dakota
My commission expires: 3-30-04

KRIS NERISON
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires MAR. 30. 2004

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

20020060

Jerome Kelsh,)
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Petitioner and)
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as Secretary of State, State of)
North Dakota,)
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Respondent.)

ORIGINAL PROCEEDING

Supreme Court No. 20020060

FILED
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MAR 18 2002

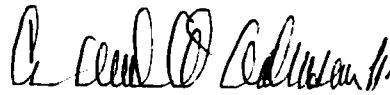
STATE OF NORTH DAKOTA

AFFIDAVIT OF PERSONAL SERVICE

I, Earl W. Anderson, Jr., am a citizen of the United States, over the age of eighteen, and not a party to this action. Within the boundaries of the state where service was made, I am authorized by law to perform said service.

Service was made upon Mr. Mike Martinson, Chair, District 26, N.D. Republican Party, 8060 14th AV SE, Milnor, North Dakota on March 8, 2002 at 10:00 A.M.

Dated this 11th day of March 2002.



Earl W. Anderson, Jr.

Subscribed and sworn to before me this 11th day of March, 2002.



Kris Nerison, Notary Public
Sargent County, North Dakota
My commission expires: 3-30-04

KRIS NERISON
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires MAR. 30, 2004