

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAR 15 2002

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

STATE OF NORTH DAKOTA

Supreme Ct. No. 20020060

ON PETITION OF WRIT OF PROHIBITION
OR OTHER APPROPRIATE WRIT

BRIEF OF ALVIN A. JAEGER IN HIS
CAPACITY AS SECRETARY OF STATE

State of North Dakota
Wayne Stenehjem
Attorney General

By: Douglas A. Bahr
Solicitor General
State Bar ID No. 04940
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300

Attorneys for Respondent Alvin A.
Jaeger, Secretary of State.

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STATEMENT OF THE CASE

On March 5, 2002, Senator Jerome Kelsh (Senator Kelsh) filed with the North Dakota Supreme Court a Petition for Writ of Prohibition or Other Appropriate Writ, Motion for Expedited Review, Brief in Support and Appendix. On March 6, 2002, the Supreme Court issued an Order providing that briefs in response to the Petition are due Friday, March 15, 2002. This brief is filed pursuant to that Order.

STATEMENT OF THE FACTS

In a special session, which commenced on November 26, 2001, the North Dakota Legislative Assembly passed a redistricting bill, which amended N.D.C.C. § 54-03-01.8. The amendment provides, in part:

[I]f 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 upon this requirement, district twenty and twenty-six may be required to elect senators in 2002.

Passage of N.D.C.C. § 54-03-01.11 placed former District 27 state Senator Joel Heitkamp within the new District 26 boundaries. Senator Heitkamp's term expires December 1, 2002. Passage of N.D.C.C. § 54-03-01.11 also placed Senator Kelsh of former District 26 in the new District 26 boundaries. Senator Kelsh's term expires December 31, 2004. Accordingly, two incumbent senators are within the new District 26 boundaries.

Senator Heitkamp did not file by February 15, 2002, a written statement with the Secretary of State stating that there does not need to be an election for a District 26 senator in 2002 and that Senator Kelsh may continue his term. Accordingly, pursuant to N.D.C.C. § 54-03-01.8, District 26 must have an election in 2002 to elect a senator for a term of two years. This creates the possibility that Senator Kelsh's term will be truncated to two years.

ARGUMENT

The Secretary of State has statutory authority to enforce the state's election laws, including N.D.C.C. § 54-03-01.8. See N.D.C.C. §§ 16.1-01-01, 54-09-02(13). In doing so, the Secretary of State has no authority to rule on the constitutionality of statutory directives. Husebye v. Jaeger, 534 N.W.2d 811, 816 n.2 (N.D. 1995). Furthermore, "[a] statute carries a heavy presumption of constitutionality. . . . A legislative enactment is conclusively presumed to be constitutional unless it is clearly shown that the act contravenes the state or federal constitution." Caldis v. Board of County Comm'rs, Grand Forks County, 279 N.W.2d 665, 669-72 (N.D. 1979). In fact, four justices on the North Dakota Supreme Court must find that a statute violates the North Dakota Constitution before it may be declared unconstitutional. N.D. Const. art. VI, § 4.

Secretary of State Jaeger has no authority to interpret the constitutionality of N.D.C.C. § 54-03-01.8, and presumes the legislative enactment is constitutional. Rather than present separate and duplicative arguments regarding the constitutionality of N.D.C.C. § 54-03-01.8, Secretary of State Jaeger adopts the Brief of Wayne Stenehjem, Attorney General, State of North Dakota.


CONCLUSION

For the above reasons, the Secretary of State adopts the Brief of Wayne Stenehjem, Attorney General, State of North Dakota, and respectfully requests that this Court find N.D.C.C. § 54-03-01.8 constitutional and deny Senator Jerome Kelsh's Petition for Writ of Prohibition or Other Appropriate Writ.

Dated this 15th day of March, 2002.

State of North Dakota
Wayne Stenehjem
Attorney General

By:


Douglas A. Bahr
Solicitor General
State Bar ID No. 04940
Office of Attorney General
500 North 9th Street
Bismarck, ND 58501-4509
Telephone (701) 328-3640
Facsimile (701) 328-4300

Attorneys for Respondent Alvin A.
Jaeger, Secretary of State.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Jerome Kelsh,)	AFFIDAVIT OF SERVICE BY MAIL
Petitioner and, Relator,)	
v.)	Supreme Ct. No. 20020060
Alvin A. Jaeger, in his capacity as Secretary of State, State of North Dakota,)	
Respondent.)	
)	

STATE OF NORTH DAKOTA)
COUNTY OF BURLEIGH) ss.

Donna J. Connor states under oath as follows:

1. I swear and affirm upon penalty of perjury that the statements made in this affidavit are true and correct.

2. I am of legal age and on the 15th day of March, 2002, I served the attached **BRIEF OF ALVIN A. JAEGER IN HIS CAPACITY AS SECRETARY OF STATE** upon Joel Heitkamp, Thomas Dickson, Daniel Traynor, Jim Dotzenrod, Mike Martinson, and Terrell Dunn by placing a true and correct copy thereof in envelopes addressed as follows:

Honorable Joel Heitkamp
9457 West Ridge Road
Hankinson, ND 58041

Thomas A. Dickson
Attorney at Law
PO Box 1896
Bismarck, ND 58502-1896

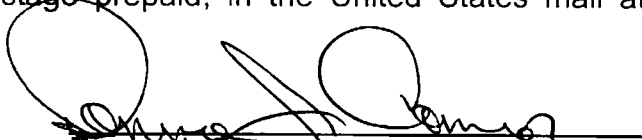
Daniel M. Traynor
PO Box 838
Devils Lake, ND 58301-2505

Jim Dotzenrod
PO Box 69
Wyndmere, ND 58081

Mike Martinson
8060 147th Avenue SE
Milnor, ND 58060

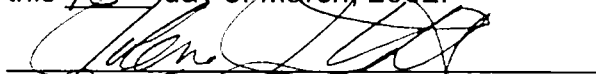
Terrell Dunn
PO Box 716
Ellendale, ND 58436

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.



Donna J. Connor

Subscribed and sworn to before me
this 15th day of March, 2002.



Notary Public
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JOLENE J. THIEL
Notary Public, State of North Dakota
My Commission Expires APRIL 5, 2005
- STATE OF NORTH DAKOTA
NOTARY PUBLIC SEAL

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Jerome Kelsh,
Petitioner and,
Relator,

v.

Alvin A. Jaeger, in his capacity
as Secretary of State, State of
North Dakota,
Respondent.

ADMISSION OF
PERSONAL SERVICE

Supreme Ct. No. 20020060

.....
I, _____, ~~as Secretary of State~~ ^{DB} David R. Bliss, hereby admit
personal service of the Brief of Alvin A. Jaeger in his Capacity as Secretary of State on
behalf of Jerome Kelsh in the above-captioned matter on this 15th day of March, 2002.

By:  _____