

process and protocol shall be completed by Thursday, July 9.” (*Id.* at p. 4.) “Should counsel be unable to reach an agreement as to the process and protocol, Reclaim Idaho may implement an industry standard process and protocol. Such process and protocol must ensure the highest available standards are used to verify a signer’s identity, legislative district, and the authenticity of the signature.” (*Id.*)

Counsel met and conferred on Wednesday, July 1, 2020; Friday (a holiday), July 3, 2020; and Tuesday, July 7, 2020. Counsel for the Defendants also reviewed written proposals provided by Reclaim Idaho. An agreement is unable to be reached.

While Defendants understand the Court ordered that Reclaim Idaho be allowed to collect electronic signatures on its initiative petition, the Court’s order must be interpreted in the narrowest fashion possible. Reclaim Idaho’s proposal would sweep aside a myriad of Idaho statutes, would disrespect the Idaho Legislature’s policy judgments, and would undermine public confidence in the election process.

Based on the most recent communication from Reclaim Idaho outlining its proposal, Defendants see the following fundamental problems:

(1) Regarding authentication of signatures, Reclaim Idaho’s proposal provides no indication that DocuSign or Reclaim Idaho will, or even can, use the data that Reclaim Idaho proposes to collect during the electronic signature process to verify the authenticity of the “signatures” collected. Yet, Reclaim Idaho states in its proposal that it will withhold this information from the county clerks whose statutory role it is to verify the authenticity of signatures on initiative petitions, as well as from the Secretary of State. That is neither workable nor acceptable.

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(2) Reclaim Idaho's proposal places non-party county clerks in a Catch-22 situation whereby they are prevented from exercising their statutory duties yet at the same time are still bound by Idaho statute, not by the Court's order. Under Reclaim Idaho's proposal, the clerks would still be required by statute to verify signatures but would no longer have the information necessary to do so. Again, this is neither workable nor acceptable.

(3) The process Reclaim Idaho proposes invites opportunities for fraud and abuse. For example, the system proposed by Reclaim Idaho would allow a single person using one or different computers to sign the petition for themselves and on behalf of others. In addition, an individual could mask their IP address, GPS location, and time of signing to evade the detection of fraudulent "signatures." This is deeply troubling, particularly where the website facilitating the process was developed in a matter of days without any testing as far as Defendants are aware.

(4) Reclaim Idaho's proposal would collect Idaho citizens' highly personal information, e.g. their IP address and GPS location, and the last four digits of their social security number, which are not required to be disclosed when physical signatures are gathered. There are multiple privacy, data-use, and data-security concerns surrounding private parties collecting personal data for a political purpose. There is nothing in Reclaim Idaho's proposal that would prevent DocuSign or Reclaim Idaho from using any of the data collected for purposes other than verification of "signatures" on this particular initiative campaign, including from selling this data. Even more concerning, as stated above, the website collecting this information would have been developed in just a few days and would not undergo any security testing to Defendants' knowledge.

(5) Defendants have grave concerns about the protection of Idahoan's personal information. There is a possibility the information collected by Reclaim Idaho and DocuSign could be subject to a public records request. A protective order would not remedy this concern,

nor would it be appropriate. The State cannot enter into a protective order against itself. Moreover, a protective order could not protect against loss of the data collected via a data breach.

(6) Defendants are also concerned that the online form of the initiative petition and the language that Reclaim Idaho proposes to use to describe the initiative petition would not comply with Idaho law.

(7) The compressed schedule for creating an entirely new electronic “signature” collection system in a matter of days for initiative petitions has prevented the State from evaluating a number of other issues. These unresolved issues illustrate the fundamental inability of the State to be forced to partner with a private company that it did not select to provide these type of services on a compressed timeframe. For example, Defendants do not know how DocuSign is being compensated for its software and services; whether DocuSign has ever accepted signatures for a ballot initiative; or whether DocuSign has ever accepted signatures from persons it has no prior information about.

Ultimately, while Defendants engaged in good faith communications with Reclaim Idaho regarding a protocol that could be used for the collection of electronic signatures, Defendants’ grave concerns regarding electronic signature collection on initiative petitions were confirmed. Defendants cannot agree to Reclaim Idaho’s proposal for collecting electronic signatures on their initiative petition. To do so would undermine public faith in elections and disregard the will of Idaho’s elected representatives.

DATED this 9th day of July, 2020.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Megan A. Larrondo
MEGAN A. LARRONDO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2020, I electronically filed the foregoing with the Clerk of the Court using the CMF/ECF system which sent a Notice of Electronic Filing to the following persons:

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