



March 13, 2022

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Dear Jason,

We write to follow up on our discussions regarding Mayor Shelby Rognstad's access to the ballot for the upcoming Democratic primary elections for statewide office in Idaho.

As you know, Mayor Rognstad is a Democratic candidate for governor. He filed his declaration of candidacy with the Secretary of State's office before 5 p.m. on Friday, March 11, 2022, as required by law. *See* Idaho Code § 34-704. In his declaration of candidacy, Mayor Rognstad declared that he is affiliated with the Democratic Party.

At the time he filed his declaration of candidacy, Mayor Rognstad understood that he was registered as a Democrat because he had changed his party registration from Republican to Democrat on or about the beginning of October 2021. In an abundance of caution, however, Mayor Rognstad double-checked the party registration records within hours of filing his declaration of candidacy on March 11. At that point, he learned for the first time that the records had not been updated to reflect his change of party registration to Democrat.

Immediately upon learning that the records did not accurately reflect his party registration, Mayor Rognstad used the Secretary of State's online tool to change his party registration—again—to reflect that he is registered as a Democrat. *See* Ex. A (screenshot showing Mayor Rognstad's party registration). To be clear, Mayor Rognstad ensured that he was registered as a Democrat before midnight on Friday, March 11—the same day that he filed his declaration of candidacy, and before the deadline for changing party registration ahead of the primary elections. *See* Idaho Code § 34-411A(1).

In short, on Friday, March 11, 2022, Mayor Rognstad timely filed his declaration of candidacy and timely ensured that he was registered as a Democrat, consistent with his declaration of candidacy.

We were therefore surprised and disappointed to see that the Secretary of State's office declined to include Mayor Rognstad on the "Unofficial list of All Candidate Declarations for 2022," which was released on March 11 at 8:40 p.m. *See* Ex. B. As you know, we have repeatedly asked the Secretary of State's office to explain its reasoning for excluding Mayor Rognstad from the

unofficial list of candidates. Thus far, we have been told only that Mayor Rognstad was excluded from the list because the Secretary of State believes that Section 34-704 of the Idaho Election Code requires that a candidate's party registration, as reflected in the registration records, must match the candidate's party affiliation in the candidate's declaration of candidacy at the time the candidate files his declaration of candidacy.

For the following reasons, we strongly disagree with that reasoning, and we respectfully request that the Secretary of State's office accept Mayor Rognstad's lawful declaration of candidacy and include him on the official list of candidates for Idaho governor.

**First**, as explained above, Mayor Rognstad changed his party registration to Democrat approximately 6 months before he filed his declaration of candidacy on March 11. At this time, we do not know why the registration records were not updated to reflect that change, and we continue to investigate the matter. But in any case, to the extent that Idaho law requires a candidate's party registration to match his declaration of candidacy at the time the declaration is filed, Mayor Rognstad met that requirement.

**Second**, and more fundamentally, Idaho law does not require a candidate's party registration to match the candidate's declaration of party affiliation at the exact moment the candidate's declaration of candidacy is filed. Again, we understand that the Secretary of State's contrary view is based on Section 34-704 of the Election Code. But nothing in that provision supports the Secretary of State's position. To the contrary, Section 34-704 makes clear that "[a] candidate *shall be deemed affiliated with the political party* [of his choosing] if the candidate submits a party affiliation form along with the declaration of candidacy to the filing official." Idaho Code § 34-704 (emphasis added). As you know, Mayor Rognstad did identify his party affiliation as part of his declaration of candidacy, indicating that Mayor Rognstad is affiliated with the Democratic Party. Thus, by operation of Section 34-704, Mayor Rognstad must be "deemed affiliated with" the Democratic Party, and the status of his party registration records is irrelevant to the validity of his declaration of candidacy. *See Teton Cty. Republican Cent. Comm. v. Hansen*, No. 4:16-CV-00160-CWD, 2016 WL 1574028, at \*8 (D. Idaho Apr. 19, 2016) ("Section 704 indicates the party affiliation form is all that is necessary for the Clerk to deem a person affiliated with the political party designated on the party affiliation form.").

Had the legislature meant to require candidates' party registration records to match their statements of party affiliation at the time their declarations of candidacy were filed, then the legislature easily could have said as much. Tellingly, it did not. Instead, Section 34-704 requires only that a candidate be "affiliated with a political party" at the time he files his declaration of candidacy, Idaho Code § 34-704 (emphasis added)—not *the same* political party for which the candidate is declaring his candidacy. Here, Mayor Rognstad was indisputably affiliated with a political party at the time he filed his declaration of candidacy. As a result, his declaration of candidacy is valid under the plain language of Section 34-704.

**Third**, even if Section 34-704 or some other provision of Idaho law requires a candidate's party registration to match the statement of party affiliation in the candidate's declaration of candidacy, Mayor Rognstad complied with that requirement. As noted above, the party registration records

reflected that Mayor Rognstad was registered as a Democrat within hours of the filing of his declaration of candidacy, and *before* the deadline for changing party registration. To exclude Mayor Rognstad from the ballot merely because the party registration records did not match his declaration of candidacy for a few hours—at most—is both unfair and unjustified, especially considering that Mayor Rognstad had attempted to change his party registration months earlier. It is also supported by any legal authority of which we are aware.

**Fourth**, and perhaps most importantly, the Secretary of State’s position threatens to violate the fundamental constitutional rights of Mayor Rognstad, the Idaho Democratic Party, and Idaho voters. “A state must act within constitutional limits when it regulates a political party’s internal processes. Among those constitutional limits is the First Amendment right to freedom of association, which protects the freedom to join together in furtherance of common political beliefs.” *Hansen*, 2016 WL 1574028, at \*5. “For this reason, the Supreme Court consistently ‘affirm[s] the special place the First Amendment reserves for, and the special protection it accords, the process by which a political party select[s] a standard bearer who best represents the party’s ideologies and preferences.’” *Id.* (quoting *California Democratic Party v. Jones*, 530 U.S. 567, 575 (2000)).

Here, the Idaho Democratic Party wishes for Mayor Rognstad to have the opportunity to represent its interests in the upcoming primary elections for governor, and Mayor Rognstad wishes to be the Democratic Party’s “standard bearer” in those elections. Refusing to accept Mayor Rognstad’s declaration of candidacy would therefore “severely impair [Mayor Rognstad’s] right to associate with the political party of his . . . choosing and run for political office, and thereby impact the right of [the Idaho Democratic Party] to affiliate with electors and endorse individuals running for political office under the [Democratic] Party ticket during the primary election.” *Hansen*, 2016 WL 1574028, at \*7 (rejecting interpretation of Idaho law that would have excluded candidate from ballot based on timing of party registration change).

On the other side of the ledger, the Secretary of State’s office has not identified and could not identify any valid state interest in requiring a candidate’s party registration to match the candidate’s statement of party affiliation at the exact moment the candidate’s declaration of candidacy is filed. Nor is that surprising, because nothing in Idaho law supports any such requirement. And even if there was some legal support for that requirement, it would elevate form over substance (to put it mildly) to exclude Mayor Rognstad from the ballot given that his party registration was changed to Democrat no later than the same day that he filed his declaration of candidacy and before the deadline for changing party registration.

For all these reasons and others, we reiterate our request that the Secretary of State’s office accept Mayor Rognstad’s lawful declaration of candidacy and include him on the official list of candidates for Idaho governor ahead of the upcoming primary elections. We look forward to hearing from you as soon as possible.



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