

APPENDIX

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[SEAL] STATE OF IDAHO
BUREAU OF OCCUPATIONAL LICENSES

700 West State Street
P.O. Box 83720
Boise, Idaho 83720-0063
(208) 334-3233
FAX (208) 334-3945
E-Mail ibol@ibol.idaho.gov
Website www.ibol.idaho.gov

August 14, 2014

GEORGE QUINN RICKS
13825 N LAUREN LOOP
RATHDRUM ID 83858

RE: APPLICATION FOR REGISTRATION

Dear Mr. Ricks:

The State of Idaho Contractors Board reviewed your application during its August 12, 2014 Board meeting.

The Board denied your application based upon Rule 150 which states the following:

Each applicant for registration shall submit a **complete** application on applications forms approved by the board together with the required fee(s). The applicant must provide or facilitate the provision of any supplemental third party documents that may be required. Applications on file with the Board where an applicant has failed to respond to a Board request or where the applications have lacked activity for twelve (12) consecutive months shall be deemed denied and shall be terminated upon thirty (30) days written notice unless good cause is established to the Board. (5-8-09)

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This is a final decision and order of the Board. You may ask the Board to reconsider this decision by filing a written request for reconsideration with the Board within fourteen (14) days from the service date of this letter. The Board will dispose of any such request for reconsideration within twenty-one (21) days, or such request will be deemed denied by operation of law. See Idaho Code § 67-5246(4). Further, you may appeal this decision by filing a Petition for Judicial Review with the Idaho state district court where you reside or in Ada County within twenty-eight (28) days from the service date of this decision, the issuance of any decision denying a request for reconsideration, or the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See, Idaho Code Section 67-5273.

If you have any questions, please contact me at (208) 577-2591 or at con@ibol.idaho.gov.

Sincerely,

/s/ Carol Klassen
Carol Klassen
Technical Records Specialist I
Bureau of Occupational Licenses

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Maurice O. Ellsworth, ISB #1842
Legal Counsel
Idaho Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, Idaho 83720-0063
Telephone: (208) 334-3233
Fax: (208) 334-3945
Email: maurie.ellsworth@ibol.idaho.gov
Attorney for Respondent, Idaho Contractors Board

IN THE DISTRICT COURT OF THE
FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR
THE COUNTY OF KOOTENAI

GEORGE QUINN RICKS,	)	Case No. CV 14-7034
Petitioner,)	
v.	)	MOTION TO DISMISS
IDAHO CONTRACTORS	)	PETITION FOR
BOARD,	)	JUDICIAL REVIEW
Respondent.	)	(Filed Dec. 1, 2014)
	)	<i>Filing fee waived where</i>
	)	<i>the State of Idaho is a</i>
	)	<i>party [I.C. § 31-3212])</i>

COMES NOW, Respondent, IDAHO CONTRACTORS BOARD, by and through its attorney, Maurice O. Ellsworth, Legal Counsel of the Idaho Bureau of Occupational Licenses, and pursuant to I.R.C.P. 84(o) and I.R.C.P. 84(n), moves this Court for an Order of Dismissal for lack of jurisdiction for failure to comply

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with Idaho Code § 67-5273 time limits governing the filing of a petition for judicial review.

DATED this 25th day of November, 2014.

/s/ Maurice O. Ellsworth
Maurice O. Ellsworth
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of November, 2014, I caused to be served a true and correct copy of the foregoing, by the method(s) indicated, upon the following:

George Quinn Ricks 13825 N. Lauren Loop Rathdrum, Idaho 83858	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input type="checkbox"/> Overnight Courier () <input type="checkbox"/> Facsimile: _____
---	---

/s/ Marcie Rightnowar
Marcie Rightnowar

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Maurice O. Ellsworth, ISB #1842
Legal Counsel
Idaho Bureau of Occupational Licenses
700 W. State Street
P.O. Box 83720
Boise, Idaho 83720-0063
Telephone: (208) 334-3233
Fax: (208) 334-3945
Email: maurie.ellsworth@ibol.idaho.gov
Attorney for Respondent, Idaho Contractors Board

IN THE DISTRICT COURT OF THE
FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR
THE COUNTY OF KOOTENAI

GEORGE QUINN RICKS,	)	Case No. CV 14-7034
Petitioner,)	
v.	)	MEMORANDUM IN
	)	SUPPORT OF
IDAHO CONTRACTORS	)	MOTION TO DISMISS
BOARD,	)	PETITION FOR
Respondent.	)	JUDICIAL REVIEW
	)	(Filed Dec. 1, 2014)
)	

Respondent, IDAHO CONTRACTORS BOARD,
by and through its attorney, Maurice O. Ellsworth,
submits this memorandum in support of its Motion to
Dismiss Petition for Judicial Review.

ARGUMENT

On August 12, 2014 the Idaho Contractors Board (“Board”) denied Petitioner’s application for contractor registration in Idaho. (August 12, 2014 Board Meeting Minutes, last page, Record No. 4 of the Agency Record.) On August 14, 2014, notice of the Board’s denial of his application was served on Petitioner by Carol Klassen of the Idaho Bureau of Occupational Licenses (“Bureau”). The denial letter informed Petitioner that “[t]his is a final decision and order of the Board” and that pursuant to Idaho Code § 67-5273 he could file a petition for judicial review of the denial within twenty-eight (28) days of the service date of the decision. (Record Index, No. 5 of the Agency Record.) Petitioner filed his Petition for Judicial Review of the State of Idaho Contractors Board Denial of Application for Contractor Registration (“Petition for Judicial Review”) in this Court on September 18, 2014.

On October 30, 2014, the Respondent transmitted the Agency Record on Appeal to the Court pursuant to Idaho Code §§ 67-5249 and 67-5275. There exists no agency transcript in this matter.

Pursuant to I.R.C. P. 84(n), automatic dismissal is required of a Petition for Judicial Review which fails to comply with time limits for filing established by Idaho Code § 67-5273. Petitioner had twenty-eight (28) days after the August 14, 2014 service date of the final decision and order of the Board to file a Petition for Judicial Review; thus, it was required that the Petition for

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Judicial Review be filed by September 11, 2014. Here the Petition for Judicial Review was not filed until September 18, 2014, thirty-five (35) days after the service date of the Board's final decision and order. The Petition for Judicial Review was not timely filed and must be dismissed by the Court for lack of jurisdiction. *City of Eagle v. Idaho Dept. of Water Resources*, 150 Idaho 449, 454 (2011).

For the foregoing reasons, Respondent, Idaho Contractors Board, requests that the Court grant its motion for dismissal of the above entitled matter.

DATED this 25th day of November, 2014.

/s/ Maurice O. Ellsworth
Maurice O. Ellsworth
Attorney for Respondent
Idaho Contractors Board

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of November, 2014, I caused to be served a true and correct copy of the foregoing, by the method(s) indicated, upon the following:

George Quinn Ricks 13825 N. Lauren Loop Rathdrum, Idaho 83858	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Certified Mail, Return Receipt Requested <input type="checkbox"/> Overnight Courier () <input type="checkbox"/> Facsimile: _____
---	---

/s/ Marcie Rightnowar
Marcie Rightnowar

**IN THE DISTRICT COURT OF THE
FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR
THE COUNTY OF KOOTENAI**

GEORGE QUINN RICKS,)
) Case No. CV 2014-7034
 Petitioner,))
) ORDER DISMISSING
 v.) PETITION FOR JUDI-
) CIAL REVIEW PURSU-
IDAHO CONTRACTORS)
BOARD,) ANT TO I.R.C.P. 84(n)
))
) (Filed Oct. 14, 2015)
 Respondent.))

On August 12, 2014, the Idaho Contractors Board denied Petitioner’s application for contractor registration in Idaho. On August 14, 2014, Petitioner was served with notice of this denial. Pursuant to Idaho Code § 67-5273, Petitioner had twenty-eight (28) days from the date he was served with the decision to file a petition for judicial review. Petitioner filed his petition for judicial review on September 18, 2014, thirty-five (35) days after he was served with the decision.

On December 1, 2014, Respondent moved to dismiss the petition pursuant to I.R.C.P. 84(n), which provides:

Effect of Failure to Comply With Time Limits. The failure to physically file a petition for judicial review or cross-petition for judicial review with the district court within the time limits prescribed by statute and these rules shall be jurisdictional and shall cause automatic dismissal of the petition for judicial

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review upon motion of any party, or upon initiative of the district court. Failure of a party to timely take any other step in the process for judicial review shall not be deemed jurisdictional, but may be grounds only for such other action or sanction as the district court deems appropriate, which may include dismissal of the petition for review.

I.R.C.P. 84(n). Petitioner has not responded to this motion.

IT IS HEREBY ORDERED that Petitioner's Petition for Judicial Review is dismissed pursuant to I.R.C.P. 84(n) because it was filed after the deadline provide [sic] by Idaho Code § 67-5273.

DATED this 9th day of October, 2015.

/s/ Rich Christensen
Rich Christensen, District Judge

NOTICE OF RIGHT TO APPEAL

YOU, GEORGE QUINN RICKS, ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

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CERTIFICATE OF MAILING

I hereby certify that on the day of October, 2015, a true and correct copy of the foregoing ORDER DISMISSING PETITION FOR JUDICIAL REVIEW PURSUANT TO I.R.C.P 849n) [sic] was delivered as follows:

Maurice Ellsworth
FAX 208-334-3945

George Quinn Ricks
13825 N. Lauren Loop
Rathdrum, ID 83858

JIM BRANNON, Clerk of the Court,
by Susan McCoy Deputy Clerk [SEAL]

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[SEAL] **Idaho Statutes**

TITLE 54

PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 52

IDAHO CONTRACTOR REGISTRATION ACT

54-5205. EXEMPTIONS FROM REGISTRATION.

(1) Nothing in this chapter shall be construed to restrict any person licensed, registered, or otherwise regulated by the state of Idaho from engaging in the profession or practice for which they are licensed, registered or otherwise regulated by the state of Idaho including, but not limited to, persons licensed pursuant to chapters 3, 10, 12, 19, 26, 45 and 50, title 54, Idaho Code, nor shall this chapter require such persons otherwise licensed, registered or regulated to obtain such registration as required by this chapter, so long as such person is not acting with the intent to evade this chapter. No such person exempt hereunder may hold himself out as a registered contractor.

(2) In addition to the exemption set forth in subsection (1) of this section, registration as provided for in this chapter shall not be required for the following, so long as such person is not acting with the intent to evade this chapter and so long as such person does not hold himself out as a registered contractor:

(a) A person who only performs labor or services for wages or a salary as an employee of a contractor, or as an employee of a person otherwise exempt by the provisions set forth in this chapter, or strictly as a volunteer or as part of a bona fide educational curriculum or nonprofit charitable

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activity for which no wages or salary shall be paid; provided however, that such exemption shall not apply to any subcontractor or other independent contractor who is not otherwise exempt;

(b) An authorized representative of the United States government, the state of Idaho, or any incorporated municipality, county, alternative form of local government, highway district, reclamation district, or other municipal or political corporation or subdivision of this state;

(c) A public utility operating under the regulation of the Idaho public utility commission as set forth in title 61, Idaho Code, in the construction, maintenance, or development work incidental to its own business;

(d) A person who performs repair or operation incidental to the discovery or production of oil, gas or minerals or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit;

(e) A person who only furnishes materials, supplies or equipment without that person installing or fabricating them into or consuming them in the performance of the work of the construction contractor;

(f) A person performing work on one (1) undertaking or project considered casual, minor, or inconsequential, whether by one (1) or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than two

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thousand dollars (\$2,000). The exemptions prescribed in this paragraph (f) shall not apply when the work or construction is part of a larger construction project, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than two thousand dollars (\$2,000) for the purpose of evasion of this chapter or otherwise;

(g) A farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;

(h) A person who engages in the construction of an agriculture building which is exempt from the Idaho building code act as set forth in section 39-4116, Idaho Code;

(i) An irrigation district, canal company, reservoir district, ground water district, water district, water measurement district, recharge district, flood control district, drainage district, or other water delivery or water management entity, or an operating agent of irrigation districts whose board consists of directors of its member districts;

(j) An operation related to clearing or other work upon land in rural districts for fire prevention purposes;

(k) An owner who contracts for work to be performed by a registered contractor on his own property, provided however, this exemption shall not apply to an owner who, with the intent to evade this chapter, constructs a building, residence or other improvement on the owner's property with

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the intention and for the purpose of selling the improved property at any time during the construction or within twelve (12) months of completion of such construction;

(l) An owner performing construction on the owner's personal residential real property, whether or not occupied by the owner, provided however, this exemption shall not apply to an owner who is otherwise regulated by this chapter who constructs a building, residence or other improvement on the owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for not less than twelve (12) months prior to the sale of such property;

(m) Owners of commercial properties, or lessees of commercial properties with the consent of the owner, who, whether themselves or with their own employees, perform maintenance, repair, alteration or construction work in or upon the properties;

(n) A real estate licensee acting within the scope of his license pursuant to chapter 20, title 54, Idaho Code, who, incident to a regulated real estate transaction, assists his clients in scheduling or performing nominal maintenance and repairs upon such properties being transferred; provided however, nothing in this section shall otherwise authorize a real estate licensee or a property manager to act in the capacity of a contractor unless registered with the board;

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(o) A contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(p) A person working on the person's own residence, if the residence is owned by a person other than the resident;

(q) A person who engages in the construction of buildings to be used primarily for industrial chemical process purposes as set forth in section 39-4103, Idaho Code; or

(r) A person who engages in the construction of a modular building as defined in section 39-4301, Idaho Code, that is constructed in the state of Idaho for installation on a building site outside the state.

History:

[54-5205, added 2005, ch. 153, sec. 1, p. 472; am. 2007, ch. 252, sec. 13, p. 748.]

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[SEAL] **Idaho Statutes**

TITLE 54

PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 52

IDAHO CONTRACTOR REGISTRATION ACT

54-5202. DECLARATION OF POLICY. The legislature finds and declares that the practice of construction in the state of Idaho affects the public health, safety and welfare of its citizens. The legislature further finds that it is in the public interest to provide a mechanism to remove from practice incompetent, dishonest, or unprincipled practitioners of construction. To aid in fulfilling these purposes, this chapter provides for the registration of construction contractors within the state of Idaho.

History:

[54-5202, added 2005, ch. 153, sec. 1, p. 471.]

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[SEAL] **Idaho Statutes**

TITLE 73

GENERAL CODE PROVISIONS

CHAPTER 4

FREE EXERCISE OF RELIGION PROTECTED

73-402. FREE EXERCISE OF RELIGION PROTECTED. (1) Free exercise of religion is a fundamental right that applies in this state, even if laws, rules or other government actions are facially neutral.

(2) Except as provided in subsection (3) of this section, government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability.

(3) Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both:

(a) Essential to further a compelling governmental interest;

(b) The least restrictive means of furthering that compelling governmental interest.

(4) A person whose religious exercise is burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. A party who prevails in any action to enforce this chapter against a government shall recover attorney's fees and costs.

(5) In this section, the term "substantially burden" is intended solely to ensure that this chapter is

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not triggered by trivial, technical or de minimis infractions.

History:

[73-402, added 2000, ch. 133, sec. 2, p. 353.]

STATEMENT OF PURPOSE
RS 09829C1

The purpose of this legislation is to reestablish a test which courts must use to determine whether a person's religious belief should be accommodated when a government action or regulation restricts his or her religious practice. The test, known as the "compelling interest test," requires the government to prove with evidence that its regulation is (1) essential to achieve a compelling governmental interest and (2) it is the least restrictive means of achieving the government's compelling interest.

Prior to 1990 the U.S. Supreme Court used the above test – the "compelling interest test" – when deciding religious claims. However, in a 1990 decision (*Employment Div. of Oregon v. Smith*) the Court tipped the scales of justice in favor of government regulation by throwing out the compelling interest test, which had shielded our religious freedom from onerous government regulation for more than 30 years. The Smith decision reduced the standard of review in religious freedom cases to a "reasonableness standard." While all other fundamental rights (freedom of speech, press, assembly, etc.) remain protected by the stringent "compelling interest test," the Court singled out religious freedom by reducing its protection to the weak "reasonableness test."

A widely recognized principle of law is that states are free to protect an individual's right with a much higher standard than the U.S. Constitution itself

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affords. Thus, in light of this principle in conjunction with the Boerne decision, states are free to enact their own RFRA's thereby choosing to apply the higher "compelling interest test" standard in their own religious freedoms cases.

FISCAL IMPACT

There is no fiscal impact.

Contact

Name: Senator Grant Ipsen

Phone: (208) 332-1326

Name: Representative Bert Stevenson

Phone: (208) 332-1000

Name: Senator Gordon Crow

Phone: (208) 332-1330

Name: Representative Dan Mader

Phone: (208) 332-1000

STATEMENT OF PURPOSE/FISCAL NOTE

S 1394
