

CASE NO. CV 2009-00025

2009 FEB -9 PM 2: 35

CLERK OF DISTRICT COURT  
LATAH COUNTY

BY [Signature] DEPUTY

David Glasebrook

[Redacted]  
Moscow Idaho  
[Redacted]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

Dave Glasebrook,

Petitioner,

vs.

Governor C.L. Butch Otter,

Respondent.

Case No. CV-2009-00025

Response to Governor C.L. Butch  
Otter's Answer to Petition For Writ of  
Mandamus, February 3<sup>rd</sup>, 2009

STATE OF IDAHO            )  
                                      : ss  
County of Latah            )

0. I deny Governor Otter's statement that every allegation of fact not specifically admitted in his Answer is denied. For over eighteen months prior to my Petition for Writ of Mandate, Governor Otter failed to address my administrative appeal. I maintain the right to introduce evidence and material and to redirect as required.

1. I deny Governor Otter's Answer Paragraph 1. Governor Butch Otter did fail to faithfully enforce Idaho law.

The Idaho Constitution Article IV, Section 5 states:

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The supreme executive power of the state is vested in the governor, who shall see that the laws are faithfully executed.

I.C. 67-802 states:

The supreme executive power of the state is vested by section 5, article IV, of the constitution of the state of Idaho, in the governor, who is expressly charged with the duty of seeing that the laws are faithfully executed.

Governor Otter failed to demonstrate that he did fulfill his express duty of seeing that the laws are faithfully executed. I submitted to Governor Otter documentation demonstrating without doubt that the University of Idaho computing system was improperly used in violation of EX 2005-22, the University of Idaho Computer Use Policy and Federal statutes. I submitted evidence to Governor Otter that the University of Idaho allows individuals to use the computing system to send e-mail and post messages containing political, defamatory, threatening or otherwise prohibited activity. Governor Otter did not bother to respond via letter or e-mail. Governor Otter has only stated his opinion that he followed the Idaho Constitution and the Idaho statutes. He failed to demonstrate he faithfully executed the law. Governor Otter failed to show that the documentation and evidence I submitted to him was incorrect and that it did not require him to see the law faithfully executed.

2 I deny Governor Otter's Answer in both Paragraphs 2. Governor Otter does not lack sufficient information or knowledge to admit or deny that the University of Idaho violated the open meeting and public records laws. I provided Governor Otter with more than sufficient written evidence and documentation from the public arena to demonstrate that the laws were violated. I also provided a flash drive with electronic data, 768 written pages of machine language, explicitly showing Tom Hansen used his University of Idaho computer in violation of the law more than 31,000 times. I provided documentation that Tom Hanson publicly admitted using his computer at work. I provided documentation that showed the University of Idaho computer was used for campaigning and electioneering. I provided public documentation and evidence that individuals used the University of Idaho computing system to send political, defamatory, threatening or otherwise prohibited activity. The Idaho Constitution, Article IV, Section 8 states:

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The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time under oath, from all offices and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

The Governor is the head of the Executive Branch and can order more in depth investigation. Governor Otter feels that he does not have enough information, yet I provided more than enough public documentation and evidence to demonstrate that the law was broken. Governor Otter failed to use the powers of his office appropriately to ensure the law was faithfully executed. Governor Otter failed to demonstrate why he did not have enough information to verify that the law was violated.

3 I deny Governor Otter's Answer Paragraph 3. My personal appeal to Governor Otter stated the actions that were taken, the individuals contacted and the administrative run around that I received. Governor Otter's staff could have easily checked with the named parties to verify that information. Governor Otter will not admit knowledge to violations of Idaho law because he would incriminate himself, his staff and the University of Idaho. Yet the evidence demonstrating that the law was broken is irrefutable and obvious to the reasonable man. Governor Otter fails to offer any documentation or evidence that his office reviewed my appeal. I requested that information in my Petition, Paragraph 10, as authorized by Idaho Open Records. Governor Otter did not reply to my appeal. He only replied when this issue is before the court. My personal civil rights and liberties were violated. The Governor did breach public faith. The Governor failed to demonstrate why my personal civil rights and liberties were not violated. The Governor failed to demonstrate why my faith in Idaho Government and why the public trust was not violated by his inaction.

4. I deny Governor Otter's Answer Paragraph 4. My citations are accurate and Governor Otter's Answer denied everything except the Constitution, actual statutes, Response to Governor Otter's Answer February 3, 2009

Executive Orders and case law. Governor Otter offered no proof or documentation as to why any allegations inconsistent with the documents must be denied. He only denied everything.

5. I deny Governor Otter's Answer Paragraph 5. Governor Otter's inaction allowed the University of Idaho to continue violating Idaho law. Anyone who has used the world wide web knows that computer web sites are volatile. That is why screen shots, the equivalent of copying a document, are taken. Governor Otter's inaction has prohibited timely recovery of computer data and other information that should be available to the public. For example, The NoSuperWalMart.com web site is now inactive making it more difficult to obtain the historical data. (Exhibit M) By his inaction, Governor Otter aided those who violated the law to avoid prosecution and to continue destroying my personal rights. Governor Otter failed to demonstrate that he lacked information and knowledge of these violations.

6. I deny Governor Otter's Answer Paragraph 6. I requested that Governor Otter provide the documents from his office concerning my administrative appeal and all information concerning how he handled that appeal. Those documents are public records as cited by I.C. 9-337. I requested that Governor order the Attorney General to subpoena appropriate information from computer registries and PayPal. I requested that the Governor order the University of Idaho to comply with Idaho law. I requested that the Governor assign a computer fraud knowledgeable ISP officer to investigate the University of Idaho computers and computing system or to authorize me to retain an appropriate individual to check the system. The evidence that I provided to Governor Otter showed each time I corresponded with the University concerning computer misuse the public data would change to exonerate the University of Idaho. (Exhibit N) It is imperative that a computer fraud expert examine the University of Idaho computing system. Through public records, the University of Idaho showed that they are not acting in good faith. Blanket denial and legal run around is exactly why I had to petition the governor for administrative relief in the first place and finally to appeal through the court with a Petition for Writ of Mandate. It is the right of every citizen to demand that his

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government follow the laws. It is the right of every citizen to demand that his government provide relief to him when his rights and civil liberties are violated. Governor Otter must enforce the law and make the University of Idaho responsive. Governor Otter must obtain that timely information that is held by out of state organizations who will only release the information when subpoenaed by high authority. If I am not entitled to relief, than who is? I am an Idaho citizen. The law protects the rights of individuals rather than destroying or denying those rights. Governor Otter failed to provide any citation, reason, documentation or evidence to support his blanket denial and to demonstrate that I am not entitled to the relief I asked for.

7. I deny Governor Otter's Answer Paragraph 7. Governor Otter has more than sufficient evidence to make a determination that the University of Idaho did break the law. As previously stated, I provided that evidence. Governor Otter failed to provide any documentation or evidence to support his claim that he lacks sufficient evidence.

8. I still maintain the right to introduce new evidence, cross-examine and redirect any statements, evidence or documentation that Governor Otter produces without further notice or legal process.

9. I deny Governor Otter's Answer Paragraph 9. I have exhausted all administrative remedies. The Governor denies that I have a clear legal right to ask him to do his sworn duties. The Constitution states that all political power is inherent in the people. I am a citizen and the Governor has a sworn duty to enforce the law. Governor Otter failed to demonstrate that there exists a viable administrative avenue remaining that will produce any results other than the stonewalls already demonstrated by the Governor and the University of Idaho. The Governor failed to demonstrate that as a citizen I do not have a clear legal right to require him to faithfully enforce the law. The Governor failed to demonstrate that he does not have a clear legal duty to follow the Idaho Constitution and Idaho statutes requiring that him to perform his duty to see that the law is faithfully executed.

10. I deny Governor Otter's Answer Paragraph 10. There is ample evidence showing that the law was broken, that the Governor failed to take action and legal reference that the Governor is required to see that the law is faithfully executed. The Writ of Mandate must be issued. Governor Otter produced no evidence or documentation to support his position.

11. I deny Governor Otter's First Defense. All viable administrative avenues have been exhausted. The last of those avenues is direct appeal to the Idaho Governor as the supreme executive power. For over eighteen months Governor Otter failed to even respond to my pleading when that administrative relief was sought.

12. I deny Governor Otter's Second Defense. There is no requirement in Idaho statutes or the I.R.C.P. to state a claim for the Petition for Writ of Mandate. I established through other documentation and evidence that my civil rights and liberties were violated. Governor Otter failed to provide any citation or documentation that my pleadings, documentation and evidence fail to state a claim for which relief can be granted.

13. I deny Governor Otter's Third Defense. Governor Otter failed to perform his duty. A Writ of Mandate is appropriate in this instance. Governor Otter's objections to the Writ of Mandate did not show valid reasons or citations as to why the Writ of Mandate should not be issued.

14. I deny Governor Otter's Fourth Defense. In my Petition, Paragraph 10, I asked that Governor Otter provide documents, phone logs, official and unofficial records, recollections to include those of his staff detailing exactly how he handled my administrative appeal. Governor Otter failed to produce those documents. I.C. 9-343 indicates that the individual denied access should institute proceedings in District Court. The Governor's defense cites the statute that forces me to Petition for Writ of Mandate.

15. I deny Governor Otter's Fifth Defense. The Governor is obligated to faithfully enforce the law. I.C. 67-802 states:

5. Whenever any suit or legal proceeding is pending in this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state.

6. He may require the attorney general or prosecuting attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

7. He may require the attorney general to aid any prosecuting attorney in the discharge of his duties.

The Governor has the authority to require the attorney general involvement. Clearly the Governor does have the authority to require the attorney general obtain information on NoSuperWalmart.com and on PayPal involvement with that web site. The University of Idaho is not excluded from executive control. I.C.67-802, states that the Governor may require any officer to make special reports to him in writing on demand. Clearly Governor Otter does have the authority to demand compliance from the University of Idaho. He is the supreme executive in the State of Idaho and has the authority, the responsibility and the obligation to act.

16. I deny Governor Otter's Sixth Defense. Idaho statutes do not restrict my right to demand that Governor Otter see the law faithfully executed. Governor Otter failed to provide any document, citation or reason demonstrating that I do not have a right to demand his performance.

17. I deny Governor Otter's Seventh Defense. This is not a civil lawsuit. This is a Petition for Writ of Mandate requesting the Governor answer why he is unwilling to faithfully execute the law as required by the Constitution, his oath of office, and Idaho statutes. I reserved the right to introduce documentation, evidence and other information as required and no other parties are required to be named right now. Governor Otter is named and he failed to demonstrate why any other party is required for this Petition for Writ of Mandate.

18. Take the example of NoSuperWalmart.com.  
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- I e-mailed President White to confirm the NoSuperWalmart.com information. (Exhibit N, Page 1)
- President White referred me to Harvey Hughett. (Exhibit N, Page 2)
- Harvey Hughett authoritatively stated that Ludmilla Saskova did not work at the University of Idaho and that the NoSuperWalmart.com information may have been altered to show University involvement. (Exhibit N, Page 3)
- I replied detailing Ludmilla Saskova's University employment showing a nice web page with her University activities emphasizing she worked for the University of Idaho and listed her contact information at the University of Idaho. (Exhibit N, Page 4, 5)
- Ludmilla Saskova's University of Idaho web page, <http://www.ag.uidaho.edu> . . . , was taken off line almost immediately.
- Harvey Hughett replied that after further review that Ludmilla Saskova did work at the University of Idaho and that they would investigate further. (Exhibit N, Page 6)
- The NoSuperWalmart.com registry information changed and the University of Idaho information was removed from the public registry information page before May 11, 2006 when Harvey Hughett gave a final response that there was no University information on the registry page. (Exhibit N, Page 7)
- I spoke with several knowledgeable individuals in industry and asked if there was any way that the head of a computer system could overlook an individual in his system. The answer was always no. When I explained the example they emphatically said that there was no way that Ludmilla Saskova could have been accidentally overlooked by Harvey Hughet.
- I requested Ludmilla Saskova's NoSuperWalmart.com e-mail and the University of Idaho provided different e-mail from that provided to another citizen who requested the same Ludmilla Saskova NoSuperWalmart.com e-mail. (Petition Exhibit C, page 2; Exhibit O, Pages 2-16)
- This computer use specifically violated the University of Idaho Counsel September 1, 2004 Memorandum (Petition Exhibit C, page 3,4) which states:



Any use of state or university funds, time, or resources for political or campaign activity is prohibited by the policies of the Regents of the University of Idaho and federal law.

And

. . . it is important to know that tax-exempt status is dependent upon the university qualifying as an institution organized and operated exclusively for educational purposes. It is this exclusivity of purpose that makes certain activities suspect and may cause the federal government to conclude that the university is lending its resources for non-educational purposes.

At the time that NoSuperWalmart.com was active, there was a large political campaign in Moscow to prohibit a Super Walmart from being built in Moscow.

NoSuperWalmart.com was a commercial web site to sway political opinion before a Moscow City Council vote. It appears that the University of Idaho allowed records to be altered after my initial discovery, I.C. Title 18, Chapter 26. Also, how much additional e-mail did the University of Idaho withhold? The University of Idaho was less than honest in this transaction. The University of Idaho did not act in good faith and did not comply with the open records statutes. Governor Otter has this information and more yet failed to see that the law was faithfully executed.

19. Take the example of Susan Mahoney.

Susan Mahoney posted partisan political information to the Moscow Junior High School Portal using the University of Idaho computing system and her University of Idaho e-mail address. The Moscow Junior High School Portal is an official site used by MJS to keep parents, teachers, administrators and others advised of MJS activity. It has been used since at least 2005 and is still active.(Exhibit P, Page 13) This site qualifies as a public record as defined by I.C. 9-337 which states:

(13) Public record" includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.

The University of Idaho Computing Policy states that it applies to all those who use university computers. The policy dictates that computer use must comply with Idaho law and the University Policies. It dictates that computers may not be used for political activity.

- Susan Mahoney's posts clearly violated Idaho law, the University of Idaho Computing Policy and Federal law concerning public computers and political activity and electioneering. (Petition Exhibit L, Exhibit P)
- Susan Mahoney is not an inexperienced student fresh from high school. She was recently awarded an Idaho Education Association Region 2 award. (Exhibit P, Page 14)
- I brought Susan Mahoney's posts to the attention of President White and was rebuffed.

These postings put the University of Idaho in the indefensible position of partisan politics. Using Idaho statutes or Federal statutes to cover up illegal activity is not a valid defense. Governor Otter was aware of this illegal activity and failed to see that the law was faithfully executed

#### 20. Take the example of Tom Hansen.

Tom Hansen was employed at the University of Idaho. Tom Hansen used his University of Idaho computer to make multiple posts on Vision 2020 and other web sites.

- He used his University of Idaho computer to access Right Mind and in 2006 accessed that web site over 31,000 times. (Exhibit Q, Page 1)
- Tom Hansen posted on Vision 2020 that he did in fact use his University computer. (Exhibit Q, Pages 1, 3)
- He advertised his web site Not On The Palouse, Not Ever, <http://www.tomandrodna.com/notonthepalouse>, on Vision 2020 at times that he normally would be working at the University of Idaho. That web site professes that it is "dedicated to documenting and exposing local ties to any organizations that preach racism, intolerance, or urge a theocratic form of government." In practicality and reality, it targets and attacks my faith and the way that I worship. (Exhibit Q, Pages 4,5; Pages 6-11)

- I brought Tom Hansen's activities to the attention of President White and was rebuffed.

Governor Otter was aware of this illegal activity and failed to see that the law was faithfully executed.

21. Take the example of Selina Lloyd and Nick Gier.

While a student at the University of Idaho, Selina Lloyd protested a Christian event held at the University of Idaho Student Union Building.

- Selina Lloyd posted flyers in the SUB. When the director of the SUB told her to stop posting the flyers inside the SUB, Selina Lloyd answered that she would continue posting them because she had to. She also felt that a preacher should not be able to spread his ideas that she deemed harmful and dangerous to students. (Exhibit R)
- In 2006, she also was instrumental in circulating Trinity Fest protest flyers in Moscow and the University of Idaho. Those flyers claimed incorrectly that my faith is racist, sexist and homophobic. (Exhibit R, Page 4) The dividing line between free speech and defamatory speech is not always clean cut, but in this example, there is no doubt that these flyers were defamatory.

The University of Idaho did not take action in this example. In 2002 after an attempted burning of the Gay Pride Flag, the University of Idaho took strong legal action arresting and prosecuting the involved individuals. (Exhibit T) The University of Idaho uses my faith as an easy religious target. The University of Idaho is adamant that my faith is harmful and could lead to violence. That is false. Out of all the houses of worship on the Palouse, the University of Idaho chose my faith and my place of worship to attack. (Exhibit R, Exhibit S) The University of Idaho's overwhelming force against my faith and my worship is in direct conflict with the Idaho Constitution and I.C. 73-4.

In addition to many other violations of the Computer Use Policy, Professor Nick Gier used the University of Idaho computing system to post articles, Vision 2020 comments and send Letters to the Editor to newspapers around the United States attacking my faith and my place of worship.

- The Idaho Statesman newspaper published one such letter with the headline falsely indicating that my faith is Neo-Nazi.
- In articles posted on the University of Idaho computer, Nick Gier likens my faith to the Taliban, a terrorist organization. He likens my faith to the Chinese Taiping Rebellion, a large and violent Chinese civil war. Nick Gier has an entire section of factually incorrect articles directly targeting and attacking my faith and my place of worship. These articles frequently reference Neo-Confederates, Nazis, fundamental terrorists and allude to violence. (Exhibit V)
- Nick Gier posted on Vision 2020 that my place of worship is the KKK stirring public hatred of my faith and my place of worship. (Exhibit V, Page 11)

The University of Idaho hosts all of these articles and web searches point directly to the University of Idaho IP address. At the end of the Moscow Taliban article, Nick Gier states "Visit this website for all that has happened in Moscow since the discovery of the slavery booklet in October 2003." That link goes to the inflammatory and factually incorrect web site Not On the Palouse, Not Ever web site. Some may claim that the articles fall under academic freedom but those articles falsely associate my faith with violence, terrorism, destruction of other's personal rights and are clearly outside the realm of material authorized by the University of Idaho Computer Use Policy or by academic freedom. They do incite people to take prohibited action against my faith as evidenced by the actions of Selina Lloyd, Tom Hansen and others. Governor Otter is aware of this material and does not see that the law is faithfully executed.

22. Governor Otter did not answer my administrative appeal and did nothing until he received the summons for this action. Previously I each time I contacted his office about my administrative appeal I was told that they would get back to me. That never happened. His answer maintains that there is no wrong. When are my rights violated? Do my tires have to be slashed or my house vandalized or burned before my rights are violated? Must an individual who disagrees with my faith and my worship, and who "just has to do it," murder me before my rights are violated? When the government uses public funds and equipment to participate in and direct partisan debates to set public policy limiting commercial activity, my personal rights and liberties are violated. When

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the government is directing partisan politics using public funds and equipment to tilt a binding public vote, my personal rights and liberties are violated. When the government uses public funds and equipment to target and attack my faith and my worship, my rights and liberties are severely violated. When the University of Idaho refuses to release information guaranteed by Idaho statutes, my personal rights are violated. When Governor Otter tells me to wait for his response and yet does not respond to my last administrative appeal, my personal rights and liberties are violated.

23. The Attorney General told the Latah County Prosecuting Attorney that the illegal computer uses I highlighted were misdemeanor offenses and directed that the City of Moscow Prosecuting Attorney take action. The City of Moscow is unable to take any action because of conflicts of interest. That is an orchestrated judicial dead end rather than the relief I am due. The Governor is aware of that judicial dead end and will take no action to see that the law is faithfully executed.

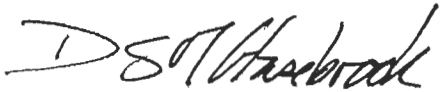
24. Governor Otter's answer is exactly the legal stonewall that I mentioned in my Petition, Paragraph 16. He is obligated by the Constitution, Idaho statutes and his oath to see that the law is faithfully executed. It is not the citizen's duty to see that the law is carried out. That is the responsibility of our government. It is the citizen's duty, if his rights are denied, to request that the government do what is supposed to do. Even now, the Governor Otter's answer shows that the government is not interested in protecting my civil rights and liberties. David Hensley's Certificate of Service shows that he sent the Governor's Answer by Federal Express and e-mail. However my e-mail address was typed incorrectly dkgfaseboork instead of dkgfasebrook. That mistake would have generated an e-mail error message and the reasonable man would have checked the e-mail address and resent the message properly. I never received that e-mail from David Hensley. That illustrates what is wrong here. On the outside everything looks correct. However after closer inspection it is obviously incorrect. Governor Otter has time to participate in Team Roping events and other non-governmental activities but he cannot spend the time to care for my rights and liberties. After more that eighteen months of waiting for his response it is past time to settle this

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matter. All of this would have been avoided had Governor Otter been willing to take even the smallest step toward answering my original administrative appeal.

25. Governor Otter has the entire weight of the state to help his pleadings. He has his staff and the entire Idaho administrative branch to back him. I still request that each of us bear our own costs in this matter. This is not a frivolous petition.

26. I request that this Writ of Mandate be issued.

A handwritten signature in black ink, appearing to read "D. Glasebrook". The signature is written in a cursive, somewhat stylized font.

Dave Glasebrook

February 9, 2009