

CASE NO. CV 2009-00025 NO. 4433 P. 2

2009 FEB -3 PM 4:00

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LATAH COUNTY
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Attorney for the Defendant Governor C.L. "Butch" Otter

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

DAVID GLASEBROOK,)	Case No. CV-2009-00025
)	
Plaintiff,)	
)	RESPONDENT GOVERNOR C.L.
v.)	"BUTCH" OTTER'S ANSWER TO
)	PETITION FOR WRIT OF MANDAMUS
C. L. "BUTCH" OTTER, Governor,)	
)	
Defendant.)	
)	

Respondent the Governor of the State of Idaho, C.L. "Butch" Otter, answers the Petition for a Writ of Mandamus ("Petition") as follows. Every allegation of fact not specifically admitted in this Answer is denied.

1. With respect to the allegations contained in paragraph 1 of the Petition, the Governor of the State denies the allegation set forth that he has failed to enforce Idaho law.

2. With respect to the allegations set forth in paragraph 2 of the Petition, the Governor lacks sufficient information or knowledge to admit or deny the allegation that

2. With respect to the allegations set forth in paragraph 2 of the Petition, the Governor lacks sufficient information or knowledge to admit or deny the allegation that enough evidence exists to show that the University of Idaho violated the open meeting and public records laws. The Governor neither admits nor denies the remainder of the allegations set forth in the paragraph because they are legal conclusions.

3. Regarding the allegations set forth in the paragraph 3 of the Petition, the Governor lacks sufficient information or knowledge to admit or deny the allegation that the Attorney General or City of Moscow Prosecutor is knowledgeable of the events in this case. The Governor admits the Petitioner has contacted his office; however, he denies knowledge of any violations of Idaho law. The Governor further denies the allegation that his office did not review the information submitted by Petitioner or is refusing to enforce the laws of Idaho. The Governor neither admits nor denies the remainder of the allegations set forth in the paragraph because they are legal conclusions.

4. The Governor neither admits nor denies paragraphs 4, 5, 6, 7 and 8 as they are citations to provisions of the Idaho Constitution, state law, an executive order and case law and as such are documents that speak for themselves and are the best evidence of their content. To the extent any allegations are inconsistent with the documents, the Governor denies those allegations.

5. Regarding the allegations set forth in the paragraph 9 of the Petition, the Governor lacks sufficient information or knowledge to admit or deny the allegations contained therein.

6. The Governor denies that Petitioner is entitled to the relief he seeks, as set forth in paragraphs 10-18 of the Petition.

7. Regarding the allegations set forth in paragraph 19 of the Petition, the Governor lacks sufficient information or knowledge to admit or deny the allegations contained therein.

8. Regarding the allegations set forth in paragraphs 20 and 21 of the Petition, these are legal conclusions and require no response.

9. With respect to the allegations set forth in paragraph 22 of the Petition, the Governor denies that the Petitioner has exhausted all administrative remedies. Moreover, the Governor also denies that the Petitioner has a clear legal right to demand the performance he has of the Governor or that the Governor has a clear legal duty to act as the Petitioner suggests.

10. With respect to the allegations in paragraph 23 of the Petition, the Governor denies the assertion that this Writ of Mandamus must be issued to preclude further breakdown of administrative and judicial responsibility.

FIRST DEFENSE

The Court lacks subject matter jurisdiction in this case since the Petitioner has failed to exhaust his administrative remedies under the public records laws.

SECOND DEFENSE

The Petitioner has failed to state a claim upon which relief can be granted.

THIRD DEFENSE

A Writ of Mandamus is not an appropriate remedy for the Petitioner under these circumstances.

FOURTH DEFENSE

A plain, speedy and adequate remedy in the ordinary course of law is available to Petitioner, pursuant to Idaho Code § 9-343.

FIFTH DEFENSE

No legal duty exists for the Governor to compel the Attorney General to subpoena information from private entities or force the University of Idaho to release public records.

SIXTH DEFENSE

The Petitioner does not have a legal right to demand the performance he seeks of the Governor.

SEVENTH DEFENSE

Petitioner has failed to join an indispensable party to these proceedings.

WHEREFORE, Respondent Governor C.L. "Butch" Otter prays for relief as follows:

1. for denial of the Petition for a Writ of Mandamus;
2. for costs as the Court may find just in this matter; and
3. for such other and further relief as the Court may find just under the circumstances.

DATED this 3rd day of February 2009.

By: 

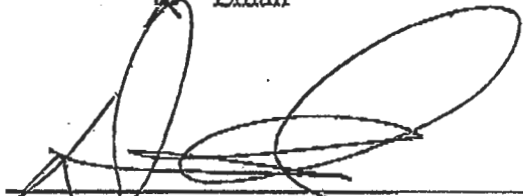
DAVID F. HENSLEY
Counsel to the Governor
Office of the Governor

CERTIFICATE OF SERVICE

I certify that on the 3rd day of February 2009 I caused to be served a true and correct copy of the foregoing upon the following party by the method listed below:

David Glasebrook
[REDACTED]
Moscow, ID 83843
[REDACTED]

- U.S. Mail, postage prepaid
- Hand Delivery
- Federal Express
- Statehouse Mail
- Email



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