



House of Representatives State of Idaho

May 26, 2021

Rep. Sage G. Dixon
House Ethics Committee

Re: Timely Response to Ethics Complaint of May 12, 2021
U.S. Supreme Court Precedent Affirms My Free Speech Rights

Rep. Dixon and House Ethics Committee:

I. SYNOPSIS

- A. This complaint is unfounded in both law and fact and is an attempt at unconstitutional censorship. I hereby timely respond to it.
- B. The complaint constitutes an attack on my Free Speech – specifically political speech – rights protected under Art. I Sec. 9 of the Idaho Constitution, the First Amendment to the United States Constitution, and clear United States Supreme Court precedent. For, “[T]he first amendment...protects the official statements of legislators.” (*Miller v. Town of Hull, Mass.*, 878 F.2d 523, 532–33 (1st Cir. 1989) quoting *Bond v. Floyd*, 385 U.S. 116 (1966)).
- C. The complaint stems from two common underlying acts: posting a link (a URL) and a hyperlink to an online newspaper article. Query: are Idaho State Representatives actually prohibited from posting, on non-official webpages, or in official e-newsletters, links or hyperlinks to published newspaper articles? The assertion that Representatives are so prohibited, is the underpinning of these accusations, and it smacks of an outright deprivation of First Amendment rights by the Idaho House of Representatives. Indeed, “speech concerning public affairs is more than self-expression; it is the essence of self-government.” *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964).

- D. Defense of free speech is imperative, “For if Men are to be precluded from offering their Sentiments on a matter, which may involve the most serious and alarming consequences, that can invite the consideration of Mankind, reason is of no use to us; the freedom of Speech may be taken away, and, dumb and silent we may be led, like sheep, to the Slaughter.” (George Washington, Address to the Officers of the Army, March 15, 1783.)
- E. Even the modern Trump-decrying, social-justice-supporting liberal left agrees: “The free exchange of information and ideas, the lifeblood of a liberal society, is daily becoming more constricted. While we have come to expect this on the radical right, censoriousness is also spreading more widely in our culture: an intolerance of opposing views, a vogue for public shaming and ostracism, and the tendency to dissolve complex policy issues in a blinding moral certainty. We uphold the value of robust and even caustic counter-speech from all quarters.” (Harpers Magazine, A Letter on Justice and Open Debate, July 7, 2020. It was signed by over 150 journalists and academicians. See <https://harpers.org/a-letter-on-justice-and-open-debate/>.)

II. OVERVIEW

- A. I am falsely accused of two instances of violations of “Conduct unbecoming a Representative which is detrimental to the integrity of the House as a legislative body.”
- B. The factual bases of the two allegations are that I:
 - 1. “Disseminated the identity and photo of [the accuser of Rep. Von Ehlinger].” (Also that I “appear[] to have made defamatory statements” myself.)
 - a) A subset of this allegation is that it could constitute unlawful retaliation under *I.C. 67-5911*.
 - 2. “Appeared to misrepresent [my] actions to the Ethics and House Policy Committee while under oath.”
- C. I deny all of the assertions of wrongdoing.

III. FACTS

- A. The underlying conduct constituting the subject of the complaint is the post on my Facebook page and e-newsletter of a link (a URL) to an April 16, 2021, Redoubt News article written by investigative journalist Shari Dovale.
1. Redoubt News (<https://redoubtnews.com>) is an online news source covering matters affecting Idaho and the surrounding area referred to by certain people as “the American Redoubt.”
 2. Shari Dovale started Redoubt News shortly before the 2016 Bundy incident in Burns, Oregon. She was, and is, an investigative journalist. She grew Redoubt News by covering that incident on the newspaper’s website.
 3. In March 2018, journalist Shari Dovale and Redoubt News received national attention when they were featured on the national internet radio show “The Pete Santilli Show.”
- B. The ethics complaint contains an attachment, which is a printout of the April 16, 2021, Redoubt News article by Shari Dovale titled “Idaho Swamp Trying To Unseat Another Conservative.”
1. The news article is hosted on the website “<https://redoubtnews.com>.” It is not hosted on my Facebook page, nor did I reproduce the contents of the article on my Facebook page or in my e-newsletter.
 2. The original news article contained several photos relevant to the article, as well as various advertisements, as are shown in the exhibits.
 3. One of those photos was a collage that includes the face of the accuser of Rep. Von Ehinger. Her photo has since been removed from the collage, as shown by the attached printout of the Redoubt News article.
 4. I did not take any of the photographs that were ever associated at any time with that news article, nor did I choose what photographs would be displayed on Facebook with that news article (nothing at all was displayed in my newsletter).
- C. I did not post the printout of the article on my Facebook page or in my e-newsletter. On Facebook I posted a link to the article (specifically, the URL

“<https://redoubtnews.com/2021/04/idaho-swamp-trying-to-unseat-another-conservative/>”). In my e-newsletter, I hyperlinked the word “article” to that URL.

1. I posted or hyperlinked a link (URL), not a screen shot of the article.
 2. I posted or hyperlinked a link (URL), not a “copy and paste” of the article.
 3. I posted or hyperlinked a link (URL), not any photographs of anyone.
 - a) When I posted the URL to Facebook, Facebook displayed what is called a “thumbnail.” (My e-newsletter contained no images at all.)
 - b) I did not create the thumbnail.
 - c) I did not chose the thumbnail and I did not even notice the thumbnail when I posted the URL to Facebook.
 - d) I am uncertain whether Facebook or Redoubt News or the browser controls the appearance of thumbnail displays.
 - e) I note now, as evidenced by the attachment to the complaint, that the thumbnail simply displayed the first photograph contained in the article.
 - f) Thumbnails are commonplace with computers generally, and with the Internet specifically. They are so common, in fact, that the Ninth Circuit ruled that it is “fair use,” and thus not a copyright infringement, for search engines to use thumbnails of images in their search indexes. See *Kelly v. Arriba Soft Corporation*, 336 F.3d 811 (9th Cir. 2003).
- D. I did not post any information that was not already available to the online community.
1. Redoubt News had already published the article.
 2. The article, according statements made therein citing the author’s sources, was produced by reviewing public-record source documents.

3. Redoubt News is online, and thus is available around the world to anyone with uncensored internet access – such as everyone who would see the link on my Facebook page or receive my e-newsletter.
 4. Redoubt News ranks “# 644,433 in global internet engagement” according to the Amazon internet analysis company Alexa (<https://www.alexa.com/siteinfo/redoubtnews.com>), indicating that it has a material reach.
 5. Before posting the link and hyperlink to the article, I also asked the Chief of the Legislative Services Office if it was his opinion that both the complaint and counter complaint were part of the Ethics Committee’s process that had gone public and he opined that they were. This same body had made the subject public; only then did I share the news article via link on my Facebook page and hyperlink in my e-newsletter.
- E. The second allegation is that I committed perjury when I stated under oath, in response to an assertion that I had posted a picture, “That is not correct.” As noted above, I did *not* post a picture. I posted a URL to a pre-existing news article, and either the news agency or Facebook or the browser (I don’t know which) created and displayed an ordinary and commonplace thumbnail in place of the URL. I explained this in my testimony, a rough draft transcript of which is attached to the complaint.
- F. Indeed, even the line of questioning as to the photograph begins with the statement by Leslie Hayes, “And after these ethics proceedings became public, you posted....” (Emphasis added.) I posted a link and a hyperlink to an online newspaper article about a matter that this Committee had already made public.

IV. LAW – FREE SPEECH IS FUNDAMENTAL TO OUR REPUBLIC

A. Article 1, Section 9, Idaho Constitution

1. Ironically, it is our very own body – the Idaho State Legislature – whose website hosts the text of the Constitution of the State of Idaho that my accusers are violating: <https://legislature.idaho.gov/statutesrules/idconst/>.
2. Our state constitution guarantees, “FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty.”

B. U.S. Constitution, Amendment 1

1. The First Amendment to the U.S. Constitution likewise guarantees freedom of speech and freedom of the press. It reads in pertinent part: “Congress shall make no law...abridging the freedom of speech, or of the press....”
2. The United States Supreme Court has, through the Fourteenth Amendment, held that the First Amendment applies to the States. Thus, it applies to the Idaho government.
3. The United States Supreme Court has also held, in numerous cases, that these protections apply to both the speech of state representatives specifically and to general speech critical of public officials and official conduct. (Citations below.)
4. I note that my exercise of my right to free speech was by posting a link to a pre-existing newspaper article – “the press.” To say that posting a link to a newspaper article is unbecoming of a Representative is to deny both the U.S. Constitution and the Idaho Constitution.

C. Rules of Evidence: Judicial Notice of Matters Generally Known

1. Relevant to this complaint, my Facebook post and e-newsletter contained one item: a link to a news article published by the press.
2. The contents of the news article published by the press are protected by the state and federal guarantees of freedom of both speech and the press, and moreover are of the sort of which a court of law can take “judicial notice.”
3. Rule 201 of the Idaho Rules of Evidence and Federal Rules of Evidence contain the same language allowing courts to take judicial notice of facts in the public knowledge. The Rules read:

The court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court’s territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

4. See, e.g., *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (the circuit court took judicial notice of the content of newspapers); *Caesar v. Williams*, 84 Idaho 254, 269 (Idaho 1962) (our state supreme court took judicial notice of the content of newspapers).
5. As noted above, Redoubt News is available online and has a material website ranking (akin to “circulation” of a printed newspaper).
6. The material contained in the article linked in my Facebook post and e-newsletter is, by definition and as a matter of fact, already public, because it was, obviously, already published before I posted its link.
7. It is also, by definition and as a matter of fact, already public because this Committee had made its proceedings, and the underlying documents referenced in the article, public.
8. Because the information was already in online circulation in Redoubt News, it is by definition and as a matter of fact already “generally known” within the online community that would visit and engage with my Facebook page or e-newsletter.
9. Because the proceedings of this Committee, and the underlying documents, were already made public by this very Committee, they are by definition, and as a matter of fact, already “generally known” within the community that would visit and engage with my Facebook page or e-newsletter.
10. In point of fact, an Idaho voter sent me the link. Restated, my public audience was my source for the news article!

V. APPLICATION OF LAW TO FACTS

- A. My posting of a link (a URL) to an article is protected political speech. The U.S. Supreme Court has held that state representatives have the constitutionally protected right to post links to newspaper articles:
 1. “The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy.” *Bond v. Floyd*, 385 U.S. 116, 135-136.

2. “The central commitment of the First Amendment, as summarized in the opinion of the Court in *New York Times v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964), is that ‘debate on public issues should be uninhibited, robust, and wide-open....Just as erroneous statements must be protected to give freedom of expression the breathing space it needs to survive, so statements criticizing public policy and the implementation of it must be similarly protected.’” *Id.*
 3. “The interest of the public in hearing all sides of a public issue is hardly advanced by extending more protection to citizen-critics than to legislators. Legislators have an obligation to take positions on controversial political questions so that their constituents can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them.” *Id.* at 136-137.
 4. “In *New York Times Co. v. Sullivan*, 376 U. S. 254, we held that the Constitution limits state power, in a civil action brought by a public official for criticism of his official conduct, to an award of damages for a false statement “made with ‘actual malice’ -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not.” 376 U.S. at 279-280. At the outset, we must decide whether, in view of the differing history and purposes of criminal libel, the New York Times rule also limits state power to impose criminal sanctions for criticism of the official conduct of public officials. We hold that it does.” *Garrison v. Louisiana*, 379 U.S. 64, 67 (1964).
- B. Thus, for certain legislators of Idaho to say that I may not express my own political views, is to directly contradict U.S. Supreme Court law. Certainly, to chill free speech is conduct unbecoming of a Representative, right?
 - C. The “identity and photo” of the Statehouse volunteer were in the public knowledge and record by nature of an online newspaper article that as already in circulation. In fact: the article itself says, “I have shared the young woman’s name, as it is public knowledge and this is not a criminal case.” Sharing the link to a published article is protected speech.
 - D. The “identity” of the Statehouse intern was likely made public when this very Committee made its proceedings, and the underlying documents referenced

in the article, public. In any event, it is not I who made her identity public; her identity already was public.

- E. The contents of the Redoubt News article are not “defamatory.” They are opinions protected under the Idaho Constitution and the U.S. Constitution. Moreover, the people named in the article are public figures, thus raising the legal standard for defamation above that applicable to private persons.
- F. Indeed, the facts asserted in the article come “mostly from the response filed from the attorney for Rep. von Ehlinger,” according to the article. Again: public record. Again: sharing a link to an article containing matters of public record is protected speech.
- G. The accusation that I “appear[] to have made defamatory statements” violates my Due Process. What does “appear to” mean? What is the citation for the tort of defamation recognized in the State of Idaho, that includes the element of “appears to ____”? Am I being accused of defamation or not?
- H. Are my accusers actually asserting that in Idaho it is a tort, or maybe a crime, to merely “appear to” do something?
- I. As documented above, the accusation of perjury is patently false and betrays a gross lack of understanding of how computers generally, and the internet more specifically, and social media in particular, work. My testimony was accurate and truthful and was not made with any intent to mislead the Committee.
- J. Also as documented above, I am squarely within the law as set forth by the U.S. Supreme Court, and my accusers are unquestionably violating the same law.

VI. DUE PROCESS VIOLATIONS

- A. Confidentiality of ethics complaints.
 - 1. House Rule 45(3)(e) requires that, “Written complaints shall remain confidential until such time as the Ethics and House Policy Committee finds probable cause that such member has committed misconduct as provided in this rule.”

2. Contrary to this Rule, and despite the fact that the complaint says under the date, "HAND DELIVERED," I found the complaint on my House floor desk before the session began on May 12.
3. Thus: neither complaint was "hand delivered" to me in person and was left in public, where anyone could see it.
4. In fact, long before I ever found the complaint, I heard several remarks from various legislators about there being multiple ethics complaints against me.
5. Thus, clearly the Ethics Committee violated its own privacy rule.

B. Notice and specificity.

1. House Rule 45(2)(c) requires that each "complaint shall be specific."
2. As outlined above, the complaint lodges unspecific, vague allegations such as "she appears to have made defamatory statements" and "[t]he intimidating and bullying of the teenage witness by others could have..." and "Rep. Giddings appeared to misrepresent...."
3. What, exactly, are the accusations here?
4. If I do not know what I am accused of, how can I defend myself?
5. This violates not only Rule 45(2)(c) but also Due Process guaranteed to me under the Idaho Constitution and the Fifth Amendment to the United States Constitution.
6. Surely it is unbecoming of a Representative to be incapable of following the Due Process mandate of both the state and U.S. constitutions.

VII. CONCLUSION

- A. For the reasons expressed above, the complaint is unfounded and is a naked attempt to deprive a citizen of Idaho of her Constitutional rights of speech and press.

- B. To assert that it is unbecoming of a Representative to share published news stories, based upon public record documents, with her constituents, is itself a disgusting betrayal of our republican form of government. Indeed:

“One of the prerogatives of American citizenship is the right to criticize public men and measures -- and that means not only informed and responsible criticism, but the freedom to speak foolishly and without moderation. Our trust in the good sense of the people on deliberate reflection goes deep. For such is the contradictoriness of the human mind that the expression of views which may collide with cherished American ideals does not necessarily prove want of devotion to the Nation. It would be foolish to deny that even blatant intolerance toward some of the presuppositions of the democratic faith may not imply rooted disbelief in our system of government.”

Baumgartner v. United States, 322 U.S. 665, 673-674 (1944)

- C. “In those wretched countries where a man cannot call his tongue his own, he can scarce call anything his own. Whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech; a thing terrible to public traitors.” (Benjamin Franklin, Dogwood Papers, 1722.)

- D. Therefore, “Let us dare to read, think, speak and write.” (John Adams)

With highest regards,



Priscilla Giddings
Representative, District 7

Encl.: Recent (5/18/2021) printout of
<https://redoubtnews.com/2021/04/idaho-swamp-trying-to-unseat-another-conservative/>

Idaho Swamp Trying To Unseat Another Conservative

In the age of the “Me Too” movement, what happens when men are falsely accused?

April 16, 2021 Idaho 0



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Idaho Swamp Trying To Unseat Another Conservative

by [Shari Dovale](#)

The Saga of the Idaho Legislative Swamp continues with accusations being made against Rep. Aaron von Ehlinger by Ms. [Jane Doe], a former page for the Idaho House.

Let's start with the background info for the current allegations:



Rep. Aaron von Ehlinger

Rep. von Ehlinger is serving the people of Nez Perce and Lewis Counties. He is unmarried. A young single adult woman, 19 year old [Jane Doe], initiated a dinner date with Rep. von Ehlinger. The date took place on March 9, 2021.

During this date, [Jane Doe] relayed stories about Rep. Jason Monks, assistant majority leader, which included Monks giving [Jane Doe] money, buying her lunch, occasionally filling her car up with gas, and more.

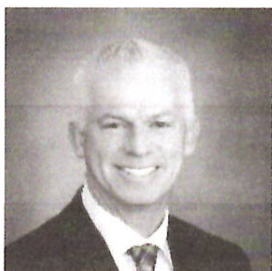
After dinner, they went to his apartment, got a little cozy but did not have intercourse. They did, however, get up close and personal, as it were. It was all consensual. She made comments afterwards that she was very heavily into smoking weed (marijuana). She also said, "I could make your life a living hell if I wanted to, but I won't."

I give this narrative mostly from the response filed from the attorney for Rep. von Ehlinger, as it is more complete and makes more sense to me.

[Jane Doe] is an 19 year old, single woman with a 3 year old son. She has claimed that something took place that is a crime of rape, yet the Boise police department have dropped this investigation and will not be pursuing it.

Her narrative begins on a false note, as she reported the crime took place on March 10th. Reading from the statement of Kim Blackburn, she is clear that it was the 11th when [Jane Doe] approached her and stated clearly that it was "last night" meaning March 10th. However, Rep. von Ehlinger has receipts that show the dinner took place two nights prior, on March 9th. How did this woman lose an entire day of her life?

That is a **HUGE red flag** to me!



Rep. Jason Monks

There are many other red flags as well. With her statements to von Ehlinger about how Rep. Jason Monks had given her money, and more, then having these exact same statements included in the official complaint is another Red Flag.

Additionally, Speaker Bedke has apparently warned legislators to "Watch out" or "Steer clear" of [Jane Doe] because she is "Trouble".

Let's not forget that von Ehlinger voluntarily took a polygraph test, which he passed easily. Has she done the same? And for those that may not know, it is standard procedure in many jurisdictions to have the accuser take a polygraph test.

While we are on the subject, since she has repeatedly brought up Rep. Monks, maybe we should ask him to clarify his relationship with this young woman through a polygraph, as well? Oh wait... he is one of the folks that signed the complaint against Rep. von Ehlinger. Could that be considered a conflict of interest?



Rep. Mike Moyle, Majority Leader

Who else signed the complaint? Rep. Mike Moyle, Majority Leader, who has had his own run-ins with Ethics:

[Idaho Majority Leader Mike Moyle Violates Ethics Rules](#)
[More of Mike Moyle's Oozy Boise Swampy Stuff](#)



House Speaker Scott
Bedke

Then, of course, we cannot leave out the Speaker of the House, Scott Bedke. Allegations of his shenanigans with a young attache for the House State Affairs committee who clearly rebuked his behavior, can be read here:

[The Truth About Our Morally Bankrupt Legislative Leadership](#)

To our knowledge, these previous alleged ethics violations have never been fully pursued by the Ethics committee. Is it a case of picking winners and losers? It could just be a case of not approving of Liberty Legislators who vote to the right and get in the way of leadership's agenda. If that is true, how many more legislators will they try to oust from Boise unjustifiably?

Another case that got big headlines but was buried by the leadership connections is the saga of Christy Perry and Jim Guthrie.



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Guthrie and Perry: Scandal In the Idaho Statehouse
Purple Ribbons for Senator Guthrie and Representative Perry.

Barbara Guthrie, wife of Idaho Senator Jim Guthrie, disclosed that her husband had a long term affair with Rep. Christy Perry. Mrs. Guthrie shared documents, phone records and more, included a disgusting “Selfie” that the Senator sent to Mrs. Perry.



Rep. Christy Perry and Sen. Jim Guthrie

This long-term affair was never condemned by the Ethics Committee. However, they now want to challenge a young unmarried man having a dinner date with an unmarried woman, just because the woman made accusations she cannot verify?

In the age of the "Me Too" movement, what happens when men are falsely accused? Anyone can throw accusations around and they are expected to be believed, regardless of proof. Destroying a person's reputation, credibility and livelihood are acceptable losses for someone with an agenda. Remember Brett Kavanaugh. These kinds of attacks are shameful and must be stopped.

The Chairman of the Idaho House Ethics Committee is Rep. Sage Dixon. Did he look at ALL the facts before authorizing this witch hunt? Dixon has authorized an internal, yet very public, hearing to deal with these allegations.

The House Leadership has hired an outside attorney, all to be charged to the taxpayers! Yet, the accused must hire representation and pay for this from his own pocket. When the persecution of a good man is paid for by the taxpayers, it is virtually a limitless fund. Not so for the accused. How is this fair to him?

It will be interesting to see how this plays out.

****UPDATE*** In the ethics hearing held on April 28, 2021, in Boise, Idaho, it was requested that all press refrain from posting the complaining witness name or photograph. We are complying with that request.*

Complaint

Response von Ehlinger Letter

Press Statement

Kangaroo Court, Part 2: Idaho Swamp Violates Constitutional Rights