



## House of Representatives State of Idaho

May 18, 2021

Rep. Sage G. Dixon  
House Ethics Committee

Re: Timely Response to Ethics Complaint of May 4, 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.
- 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 one underlying act: posting, on my public interest Facebook page, a link (a URL) to an online newspaper article. Query: are Idaho State Representatives actually prohibited from posting, on non-official webpages, links or hyperlinks to published newspaper articles? The assertion that Representatives are so prohibited, is the underpinning of this accusation, 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 one instance of a violation of "Conduct unbecoming a Representative which is detrimental to the integrity of the House as a legislative body."
- B. The factual basis of the allegation is that I "Posted or caused or allowed to be posed an article disparaging Rep. Von Ehlinger's accuser, House leadership, and misstating the process by which a public hearing could be authorized under House Rules." (Also my Facebook "commentary" of "Follow the Money!")
- C. I deny all of the assertions of wrongdoing.

## III. FACTS

- A. The underlying conduct constituting the subject of the complaints is the post on my Facebook page 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 against me contains the same attachment (“Exhibit A” to the complaint), 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.
  2. I did not edit the content or have any control over the content.
  3. In effect, I performed the modern version of the old practice of handing someone a page of the newspaper from the newsstand.
  4. I shared the news with my constituents.
  5. I suggested to my constituents that they, “follow the money” – that they investigate for themselves, by means of publicly available information (such as the linked article and the original source documents cited therein), what their government is doing, how their government is using their (taxpayers’) money – and I am a member of the Joint Finance and Appropriations Committee.
  6. Considering that the People of the State of Idaho are guaranteed, under Art. IV, Sec. 4, U.S. Constitution, to have in the State of Idaho “a Republican Form of Government,” referred to by President Abraham Lincoln in his Gettysburg Address as a “government of the people, by the people, for the people,” should not their elected Representative, a

member of the Joint Finance and Appropriations Committee, encourage among her constituents such participation in their government?

7. Is not transparency a bedrock of a Republican Form of Government?
- C. I did not post the attachment (“Exhibit A”) on my Facebook page. Rather, I posted a link to the article (specifically, the URL “<https://redoubtnews.com/2021/04/idaho-swamp-trying-to-unseat-another-conservative/>”).
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. In addition to posting the link (URL) on Facebook, I typed the words, “Follow the Money! Idaho’s very own Kavanaugh.”
- 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.

#### 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 accuser is 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. My Facebook post contained two items:
  - a) My personal statements; and
  - b) A link to a news article published by the press.
2. Clearly, my personal statement to “Follow the Money! Idaho’s very own Kavanaugh.” falls under the protections afforded by the aforementioned state and federal guarantees of free speech.

3. The contents of the news article published by the press are likewise 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.”
4. 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. Both 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.

5. 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).
6. As noted above, Redoubt News is available online and has a material website ranking (akin to “circulation” of a printed newspaper).
7. The material contained in the article linked in my Facebook post is, both by definition and as a matter of fact, already public, because it was, obviously, already published before I posted its link.
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.
9. 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, and the statement, “Follow the Money! Idaho’s very own Kavanaugh.” are protected political speech. The

U.S. Supreme Court has held that state representatives have the constitutionally protected right to post links to newspaper articles and to comment on them:

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 an Idaho legislator 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. My posting of a link (URL) to an article does not constitute me “adopt[ing] the contents thereof as” my own. Said assertion is ludicrous.

1. The four additional points in the May 4 complaint hinge on the false assertion of “adopting the contents thereof as” my own.
2. Sharing a link to a news article already in circulation does not now, and never has, amounted to the one sharing the link making accusations of the misdemeanors, etc., that are reported in the article.
3. In fact, what my accuser in his complaint accuses me of, he himself is doing, in two ways: he recirculated the same news article and he accused me of committing various crimes.
4. But he is actually doing it directly, in a writing in his own words, containing his signature. Clearly, then, if by virtue of a URL link in a Facebook post I “adopted the contents thereof as my own,” then by printing a hardcopy of the same article and distributing that hardcopy to people with his signature, my accuser also adopted the contents thereof as his own.

D. Indeed, the facts asserted in the article come “mostly from the response filed from the attorney for Rep. von Ehlinger,” according to the article. Thus, the contents of the article are already public record. Sharing a link to an article containing matters of public record is protected speech.

E. As documented above, I am squarely within the law as set forth by the U.S. Supreme Court, and my accuser is 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 4.



3. Thus: the complaint was not actually “hand delivered” to me in person and the complaint 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. The 5/4/21 complaint lodges the unspecific, vague allegation that my “conduct may be sufficiently directed toward making the attaché hesitant....”
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.

## 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