

Proclamation of the 65th Legislature Sitting in Extraordinary Session

WHEREAS, Idaho citizens are crying out for a voice in the present, and (threatened) future, enforcement of personal restrictions on their livelihood, travel, and association; and

WHEREAS, Article II, Section 1 Idaho Constitution states: “The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.” [Emphasis Added]; and

WHEREAS, the Idaho Legislature must immediately convene to address the June 11, 2020 Proclamation and concomitant actions by the Idaho Governor’s Office clearly violating the Separation of Powers provision of the Idaho State Constitution; and

WHEREAS, the 65th Idaho Legislature, having sworn to uphold the Idaho Constitution, would be failing said oath, as well as failing its responsibilities to the citizens of Idaho, and disregarding Constitutional responsibilities, if it did not immediately reconvene at an Extraordinary Session to address the state of Idaho’s current Constitutional crisis including violations of Idaho’s Separation of Powers provision; and

WHEREAS, 46-1008(2) Idaho Code states in part: “The legislature by concurrent resolution may terminate a state of disaster emergency at any time.”; and

IN INSTANCE ONE:

WHEREAS, the Governor’s Office has, after numerous Declarations of Emergency, issued an Emergency Proclamation dated June 11, 2020 suspending 24 Idaho statutes as well as various regulations; and

WHEREAS, 46-1008(5) Idaho Code, upon which the Governor’s Office rests its authority to suspend statutory law, specifically states that the governor may: “Suspend the provisions of any regulations prescribing the procedures for conduct of public business . . .”; [Emphasis Added]; and

WHEREAS, such power over regulations is not disputed, but nowhere in the Idaho State Constitution or Idaho Statute is the Governor’s Office authorized to suspend or alter any Idaho Statute; and

WHEREAS, as one example, the Governor’s Office has changed Election Law, specifically the May 2020 Primary dates, altering a statutory requirement for holding elections and having unilaterally changed the method of voting, causing great confusion resulting in disenfranchising many Idaho voters; and

WHEREAS, as another egregious example, the Governor’s Office has suspended Idaho Code 74-203, thereby purporting to preclude the legislature from formally convening and therefore is an attempt to silence, undermine, and marginalize the legislature; and

WHEREAS, the Governor’s Office has exceeded its authority and violated the Constitution’s Separation of Powers provision by so suspending these, and other, Idaho laws; and

IN INSTANCE TWO:

WHEREAS, Article III, Section 8, Idaho Constitution states: “The sessions of the legislature shall be held annually at the capital of the state, commencing on the second Monday of January of each year, unless a different day shall have been appointed by law, and at other times when convened by the governor.” [Emphasis Added]; and

WHEREAS, it is the determination of the 65th Legislature that Article III, Section 8 Idaho Constitution does not work to restrict the legislature from convening under its own authority, is not a proscription for the legislature from calling itself to convene, but *requires* convening in those specified instances set out therein: and

WHEREAS, the Governor’s Office has exceeded its authority and violated the Constitution’s Separation of Powers provision, exercising powers properly belonging to the legislature, deliberately preventing and avoiding legislative participation as required by law; and

IN INSTANCE THREE:

WHEREAS, the Governor’s Office has received on behalf of the state a \$1.25 billion grant from the Federal government to spend for COVID-19 related costs; and

WHEREAS, the legislature has not authorized appropriation of any of these funds received from the grant; and

WHEREAS, the Governor’s Office is relying on Idaho Code 67-3516, (pursuant to the June 11, 2020 Proclamation) defining ‘not cognizable’ the grant funds received, erroneously attempting to avoid legislative authorization of appropriations therefrom; and

WHEREAS, 67-3516 Idaho Code, the statute upon which the Governor’s Office relies for authority in appropriating said funds without legislative oversight, *specifically reserves spending authority* to the legislature solely by passing “appropriation acts”; and

WHEREAS, 67-3516 Idaho Code, in addressing “not cognizable” funds, contemplates spending authority already appropriated by the Legislature but not cognizable at that time; and

WHEREAS, 67-3516(1) Idaho Code, specifically states regarding budgets: “. . . whether the appropriation is fixed or continuing, are fixed budgets beyond which state officers, departments, bureaus and institutions may not expend.” [Emphasis Added]; and

WHEREAS, categorizing this grant as ‘non-cognizable’ under Idaho Code 67-3516 does not preclude such amounts from being included in the department’s, bureau’s, or institution’s, respective budget; and

WHEREAS, this grant is so large that it is almost certain that funds appropriated from this grant will result in surpassing each affected agency’s respective “spending authority” [67-3516(1)] and therefore is unlawful without further appropriation authorization by the legislature; and

WHEREAS, the Governor’s Office has exceeded its authority and violated the Constitution’s Separation of Powers provision by appropriating funds which, cumulatively, will likely exceed the spending authority of the legislature; and

IN INSTANCE FOUR:

WHEREAS, according to the Idaho Department of Health and Welfare*, 81.3% of all COVID-related deaths were of people aged over 70 and 54.7% of COVID-19 related deaths were people over 80 with no one under the age of 50 years old having died; and

WHEREAS, again, according to the IDHW statistics*, a large portion of Idaho COVID-19 related deaths occurred in Long Term Care facilities; and

WHEREAS, with a death rate so isolated, and limited to a population already subject to other morbidities, the overwhelming nature of the emergency as described in the June 11 Proclamation is, if it ever was, no longer in existence; and

WHEREAS, the Governor's Office is now spending funds for putting into place a contact-tracing mechanism not appropriated by the legislature, and most importantly, will severely impact essential liberties of Idaho citizens. Further, given these statistics, is an unnecessary expenditure; and

WHEREAS, the Governor's Office is now spending funds for COVID testing of Idaho citizens, and given these statistics, is an unnecessary expenditure.

WHEREAS, the Legislature has a Constitutional obligation, and affirmative duty, to convene, and therefore must be active in effectuating emergency policy, and must revisit the affected budgets of the departments, bureaus and institutions, appropriation of which cannot wait until January 2021.

NOW, THEREFORE,

BE IT RESOLVED that the 65th Idaho Legislature must immediately reconvene at an Extraordinary Session to address an emergency occasioned by the actions by the Governor's Office to violate Idaho's Separation of Powers provision; and

BE IT FURTHER RESOLVED that the facts above referenced constitute a constitutional emergency for which the 65th Idaho Legislature must immediately reconvene, at an Extraordinary Session, to address:

- The purported suspension by the Governor's Office of Idaho Statutory Law; and
- The emergency occasioned by the Governor's Office currently expanding the budgets of the variously affected state departments, bureaus and institutions; and
- An emergency created by the immediate availability of the federal grant funds and the particulars regarding Idaho's receipt and expenditure thereof; and

BE IT FURTHER RESOLVED that the 65th Idaho Legislature, having sworn to uphold the Idaho Constitution, must not fail said oath, nor fail its responsibilities to the citizens of Idaho, and therefore would be derelict in its duties if it did not immediately reconvene at an Extraordinary Session to address the state of Idaho's current emergency circumstances.

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*Independent News Source