

IN THE SUPREME COURT OF THE STATE OF IDAHO

IDAHOANS FOR OPEN PRIMARIES
and RECLAIM IDAHO,

Petitioners,

vs.

RAÚL R. LABRADOR, in his official ca-
pacity as the Idaho Attorney General, and
PHIL MCGRANE, in his official capacity
as the Idaho Secretary of State,

Respondents.

Docket No. 50940-2023

VERIFIED RESPONSE TO PETITION

RAÚL R. LABRADOR
ATTORNEY GENERAL

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Attorneys for Respondents

Respondents Raúl R. Labrador, in his official capacity as Attorney General for the State of Idaho, and Phil McGrane, in his official capacity as the Secretary of State for the State of Idaho, hereby respond to the petition, and assert affirmative defenses in this matter as follows:

RESPONSE

Respondents deny every allegation contained in the Petition unless expressly admitted herein.

RESPONSE TO “INTRODUCTION”

1. To the extent paragraph 1 states the relief that Petitioners seek, no response is required. To the extent paragraph 1 states otherwise, Respondents deny the allegations of paragraph 1.

2. To the extent paragraph 2 states the relief that Petitioners seek, no response is required. To the extent paragraph 2 states otherwise, Respondents deny the allegations in paragraph 2.

3. Respondents deny the allegations of paragraph 3.

RESPONSE TO “JURISDICTION”

4. Respondents admit the allegations in paragraph 4.

5. Respondents deny the allegations of paragraph 5, except that the cited statutes speak for themselves.

6. Respondents deny the allegations of paragraph 6, except that the cited statute speaks for itself.

7. Respondents deny the allegations of paragraph 7, except that the cited statutes speak for themselves.

8. Respondents deny the allegations of paragraph 8, except the Idaho Constitution speaks for itself.

9. Respondents deny the allegations of paragraph 9, except that the cited Idaho statutes speak for themselves.

10. Respondents deny the allegations of paragraph 10, except Idaho Code § 34-1809(3)(a) the cited statute speaks for itself.

RESPONSE TO “PARTIES”

11. Respondents are without knowledge or information sufficient to form a belief as to the truth of the first two sentences of paragraph 11 and therefore deny same. Respondents deny the remaining allegations of paragraph 11.

12. Respondents are without knowledge or information sufficient to form a belief as to the truth of the first three sentences of paragraph 12 and therefore deny same. Respondents deny the remaining allegations of paragraph 12.

13. Respondents deny the allegations of paragraph 13, except that they admit that Raúl Labrador is named in his official capacity as the Attorney General of Idaho and that the cited statutes speak for themselves.

14. Respondents deny the allegations of paragraph 14, except that they admit that Phil McGrane is named in his official capacity as the Secretary of State for the State of Idaho and that the cited statutes speak for themselves.

RESPONSE TO “STATUTORY FRAMEWORK”

15. Respondents deny the allegations of paragraph 15, except that the cited portion of the Idaho Constitution speaks for itself.

16. Respondents deny the allegations of paragraph 16, except that the cited portion of the Idaho Constitution speaks for itself.

17. Respondents deny the allegations of paragraph 17, except that the cited statute speaks for itself.

18. Respondents admit the allegations of paragraph 18.

19. Respondents admit the allegations of paragraph 19.

20. Respondents deny the allegations of paragraph 20, except that the cited statute speaks for itself.

21. Respondents deny the allegations of paragraph 21, except that the cited statute speaks for itself.

22. Respondents deny the allegations of paragraph 22, except that the cited statute speaks for itself.

23. Respondents admit the allegations of paragraph 23, except that the cited statute speaks for itself.

24. Respondents deny the allegations of paragraph 24, except that the cited statute speaks for itself.

25. Respondents deny the allegations contained in paragraph 25, except that the cited statute speaks for itself.

26. Respondents deny the allegations of paragraphs 26, except that the cited statute speaks for itself.

27. Respondents deny the allegations of paragraphs 27, except that the cited statute speaks for itself.

28. Respondents deny the allegations of paragraph 28, except that the cited statute speaks for itself.

RESPONSE TO “FACTS COMMON TO THE CLAIMS”

29. Respondents deny that Petitioners provided a copy of the initiative to the Secretary of State and admit the remaining allegations of paragraph 29.

30. Respondents deny the allegations of paragraph 30, except that the cited tweet speaks for itself.

31. Respondents deny the allegations of paragraph 31, except that the cited tweet speaks for itself.

32. Respondents deny the allegations of paragraph 32, except they admit that the Attorney General issued the certificate of review on May 31, 2023, and the certificate of review and cited statute speak for themselves.

33. Respondents deny the allegations of paragraph 33, except that they admit the proponent of the initiative did revise the initiative and submitted a different initiative for assignment of ballot titles.

34. Respondents admit the allegations of paragraph 34.

35. Respondents admit the allegations of paragraph 35.

36. Respondents admit the allegations of paragraph 36.

37. Respondents deny the allegations of paragraph 37, except that the letter from the Attorney General speaks for itself.

38. Respondents deny the allegations of paragraph 38.

RESPONSE TO FIRST CLAIM FOR RELIEF

39. Responding to paragraph 39, Respondents incorporate their responses to the preceding paragraphs.

40. Respondents deny the allegations of paragraph 40, except that the cited statutes speak for themselves.

41. Respondents deny the allegations of paragraph 41.

42. Respondents deny the allegations of paragraph 42, except that they admit the short ballot does not contain the words “open primary.”

43. Respondents deny the allegations of paragraph 43.

44. Respondents deny the allegations of paragraph 44.

45. Respondents deny the allegations of paragraph 45, except that the cited statute speaks for itself.

46. Respondents deny the allegations of paragraph 46.

47. Respondents deny the allegations of paragraph 47.

48. Respondents deny the allegations of paragraph 48.

49. Respondents deny the allegations of paragraph 49.

RESPONSE TO SECOND CLAIM FOR RELIEF

50. Responding to paragraph 50, Respondents incorporate their responses to the preceding paragraphs.

51. Respondents admit the allegations of paragraph 51, except that the cited statutes speak for themselves.

52. Respondents deny the allegations of paragraph 52.

53. Respondents deny the allegations of paragraph 53, except that the ballot title speaks for itself.

54. Respondents deny the allegations of paragraph 54, except that the ballot title speaks for itself.

55. Respondents deny the allegations of paragraph 55.

56. Respondents deny the allegations of paragraph 56.

57. Respondents deny the allegations of paragraph 57.

58. Respondents deny the allegations of paragraph 58, except that the ballot title speaks for itself.

59. Respondents deny the allegations of paragraph 59.

60. Respondents deny the allegations of paragraph 60.

61. Respondents deny the allegations of paragraph 61.

RESPONSE TO THIRD CLAIM FOR RELIEF

62. Responding to paragraph 62, Respondents incorporate their responses to the preceding paragraphs.

63. Respondents deny the allegations of paragraph 63, except that the cited code section speaks for itself.

64. Respondents deny the allegations of paragraph 64, except that they admit Petitioners seek the relief requested.

65. Respondents deny the allegations of paragraph 65, except that they admit Petitioners seek the relief requested.

AFFIRMATIVE AND OTHER DEFENSES

The following are defenses that Respondents assert based on the facts alleged in the action. In disclosing these defenses, Respondents do not assume any burden of proof not otherwise required by law. Moreover, Respondents undertake the burden of proof only as to those defenses deemed “affirmative” defenses by law, regardless of how such defenses are denominated herein.

FIRST AFFIRMATIVE DEFENSE

The Petition fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Petitioners lack standing to bring this action because they are prohibited from maintaining any action in the courts of the State of Idaho pursuant to Idaho Code § 30-21-810.

ATTORNEY FEES

Petitioners brought this action without a reasonable basis in fact or law. As a result, Respondents are entitled to an award of attorney fees for defending this action pursuant to Idaho Code §§ 12-117 and 12-121.

PRAYER FOR RELIEF

Respondents demand judgment and pray for relief as follows:

1. That Petitioners' petition be dismissed and that the Petitioners take nothing thereby;
2. Award attorney fees and costs of this action to the Respondents pursuant to Idaho Code §§ 12-117(1) and 12-121 as Petitioners have brought this action without reasonable basis in fact or law.
3. For any other relief that the Court deems just and equitable under the circumstances of this action.

Respectfully submitted.

DATED: July 25, 2023.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By: /s/ Joshua N. Turner
JOSHUA N. TURNER
Deputy Solicitor General

Attorneys for Respondents

VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

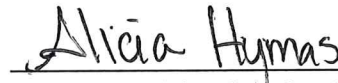
Raúl R. Labrador, Attorney General of the State of Idaho, being first duly sworn,
deposes and says:

I have read the foregoing Verified Response to Petition and know the contents
thereof, and the same are true to the best of my knowledge and belief.

DATED this 25th day of July, 2023.


RAÚL R. LABRADOR

SUBSCRIBED AND SWORN to before me this 25th day of July, 2023.


Notary Public for the State of Idaho
Residing at: Ada County
My Commission Expires: 4/19/29



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 25, 2023, I filed the foregoing electronically through the iCourt E-File system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notification of Service:

Deborah A. Ferguson
daf@fergusondurham.com

Craig H. Durham
chd@fergusondurham.com

/s/ Joshua N. Turner
JOSHUA N. TURNER
Deputy Solicitor General