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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

State Representative SHIRLEY RINGO,

Plaintiff,

v.

The IDAHO STATE TAX COMMISSION;
and ROYCE CHIGBROW, TOM C.
KATSILOMETES, SAM HAWS, and
DAVID LANGHORST, Commissioners of
the Idaho State Tax Commission, in their
official capacities and on behalf of the Idaho
State Tax Commission,

Defendants.

Case No. CV OC 1011269

**Brief by Plaintiff Shirley Ringo in
Response to:**

- 1. Defendants' Motion to Dismiss
Plaintiff for Lack of Standing;
and**
- 2. Defendants' Brief in
Opposition to Plaintiff's
Motion to Amend Complaint
by (a) Adding Additional
Party Plaintiffs, and (b)
Adding a Third Cause of
Action**

This brief is in response to the State's briefing on the matters pending before the Court to be heard on November 18, 2010:

1. State's Motion to Dismiss Plaintiff for Alleged Lack of Standing; and
2. State's Opposition to Plaintiff's Motion to File an Amended Complaint which

Plaintiff Representative Ringo's Response Brief to State Motion to Dismiss and Opposition to Motion to Amend - 1

provides for: (1) addition of Idaho Federation of Teachers and the American Federation of Teachers Local 3215, University of Idaho, Moscow, Idaho, as parties Plaintiff; and (2) add Third Cause of Action for Unconstitutional Appropriation of Public Funds.

We address each in the order listed above.

Part 1: State Representative Shirley Ringo Does Have Standing to Bring this Action

Plaintiff respectfully suggests to the Court that there are several considerations which should be considered in determining the standing issue:

1. The presence or absence of “standing” is **not** derived from either the Constitution or statutes – it is solely and exclusively “**judge-made law.**”
2. The judiciary’s foundational concerns as articulated in the cases, are primarily three:
 - (a) Congestion of court dockets;
 - (b) Plaintiff’s ability to properly present the case; and
 - (c) Deference to the legislative process, that is, that the courts not take on issues which can be and should be exclusively the province of the legislature.

Standing as a Legislator

3. The Idaho Supreme Court has not ruled on the scope of standing of a legislator in cases of this nature. There are cases from other jurisdictions which hold that a legislator’s concerns and interest are limited to matters concerning his or her election and the counting of his or her vote on legislation. None of those cases are binding on this Court and this Court has the discretion as to whether to narrow the standing of a legislator to that extent.

4. A legislator is a constitutional officer who takes an oath to “support and defend the Constitution and the laws pursuant thereto.” Thus, a legislator has a duty imposed upon him or her upon assuming office.

5. The Idaho Supreme Court in the Public Schools Litigation had the same arguments now presented by the State before it relative to the standing of the ten school superintendents who formed a group known as *Idaho Schools for Equal Educational Opportunity* (“ISEEO”) which was not even formally incorporated or the subject of any formal articles of association of any kind whatsoever. The Supreme Court ruled that those superintendents, **because of their responsibility toward their students and school patrons**, had standing to maintain the action even though education is of interest to every person and corporate or other entity in Idaho. The Court ruled in *Idaho Schools For Equal Educ. V. Evans*, 123 Idaho 573 at 585 (1993) (ISEEO 1) as follows:

Next the State argues that the districts do not have standing because they did not represent the rights of the students. Whether or not that is true is beside the point because the districts have the required “personal stake” in the outcome of the litigation. School districts have an interest in receiving enough money to provide a thorough education for their pupils. Taking the school districts’ allegations in the light most favorable to them, as we must, they are not currently receiving that money. Thus the school districts meet the *Miles* test in that they allege a distinct palpable injury (lack of adequate funds) that has a fairly traceable causal connection to the actions of the State (the amount of money allocated by the Legislature to education).

Finally, the State argues that the superintendents/members of ISEEO lack standing because they have not suffered a distinct palpable injury. We disagree. Like the school districts, the superintendents have alleged they cannot provide a thorough education to their charges due to lack of state funding. Thus they have individual standing under *Miles*. ISEEO, the association of superintendents, has standing because “an organization whose members are injured may represent those members in a proceeding for judicial review.” *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972); *See Glengary-Gamlin Protective Ass’n v. Bird*, 106 Idaho 84, 87, 675 P.2d

Just as the superintendents in ISEEO, **because of their responsibility toward their students and school patrons**, had standing to sue, so also does a State Legislator have a responsibility directly imposed by the Idaho Constitution with respect to both (1) either directly appropriating monies; or (2) properly defining the parameters of the authority of an agency exercising the taxing power; and (3) carrying out the constitutional mandate in Article IX, Section 1 to properly fund education.

With respect to items (1) and (2) directly above, the focus of the Complaint in this case is to procure a declaratory judgment that the Tax Commission lacks the authority and guidelines required by the Constitution to assume the power of taxation which the Constitution directly delegates to the Legislators.

With respect to item (3), Article IX, Section 1 of the Constitution reads:

§ 1. Legislature to establish system of free schools

The stability of a republican form of government depending mainly upon the intelligence of the people, **it shall be the duty** of the legislature of Idaho, to establish and maintain a general, uniform, and thorough system of public, free common schools.

Curiously, the Tax Commission seeks a ruling from this Court that a legislator has no standing for access to the courts to receive judicial assistance in the performance of his or her constitutional duties when those in control are openly violating the Constitution. That would be carrying **judge-made law** (and judicial activism)¹ to a ridiculous extreme and require that this

¹ The word "activism" is used advisedly and with deference. Courts are inappropriately accused of being "activist" if one disagrees with a decision, but are strict constructionists if one agrees. That applies usually to constitutional interpretations, but it is the business of courts to rule and usually the decisions favor one side or the other. In this case we seek the Court's forum as the **Plaintiff Representative Ringo's Response Brief to State Motion to Dismiss and Opposition to Motion to Amend - 4**

Court be blind as to the provisions of the Idaho Constitution.

Before the Court are nine (9) affidavits from eight past or current Auditors which clearly demonstrate that management is in violation of the Constitution at a cost to the State of Idaho of an average of \$40 Million per year with approximately \$75 Million being at risk based on pending requests for reduction in tax liability – this at a time when the public schools have had their appropriations reduced by \$128 Million for the current year and are anticipated to suffer further devastating cuts in FY 2011 (see Affidavit of Plaintiff Shirley Ringo filed herewith as Appendix 1², she being a member of the Joint Finance Appropriations Committee (JFAC)).

Representative Ringo's affidavit advises that the schools have a special interest in the collection of monies which will result from the elimination of the favoritism afforded to certain taxpayers in that as she states in her affidavit, the restoration of funding to Education and the prevention of further erosion of Education funding in the next session of the legislature mean that educational funding will be one of the top recipients (as distinguished from all other revenue recipients) of any enhanced collection of taxes.

Plaintiff Ringo does NOT, as Defendants allege, contend that the Private Attorney General Doctrine in and of itself confers standing to sue. Her position is simply that bringing this action is a public service which qualifies for payment of her attorney fees under the Idaho Supreme Court decisions relative to the Private Attorney General Doctrine. That entitlement is especially appropriate in a case such as this one where the Idaho Attorney General has been put

sole remaining buffer against a "cover-up" – that is, we seek only an opportunity to present the facts before an unbiased tribunal.

² We recognize that if the Court is to consider this affidavit, the Defendants are entitled to require that the Motion to Dismiss be converted to a Motion for Summary Judgment and the procedures provided by Rule 56. Plaintiff has no objection to such conversion, or alternatively,

on notice of the wrong-doings of the Tax Commission since the Spring of 2008, more than two years ago and the Attorney General has taken no effective action despite the fact that the affidavits in this record establish that Idaho's Treasury is losing \$40 to \$50 Million per year and that currently there is pending before the Tax Commission the potential for compromises costing the State as much as \$75 Million.

Representative Ringo's Standing as a Taxpayer and Citizen

Plaintiff agrees with the *general proposition* that there are severe limitations upon the standing of a taxpayer to sue relative to tax burdens or expenditures in general. However, the State cites at both pages 5 and 6 of its brief *Koch v. Canyon County*, 145 Idaho 58, (2008) in support of that "general proposition" when in fact a close reading of the case indicates Representative Ringo even has standing to sue as a taxpayer under an exception articulated by the Idaho Supreme Court in *Koch*.

Koch, supra, reads in part as follows:

At page 3: "As a general rule, a citizen or taxpayer, by reason of that status alone, does not have standing to challenge governmental action The general rule holds even if the citizen or taxpayer alleges some indirect harm from the governmental action."

At page 4:

"In appropriate circumstances, however, taxpayers do have standing to challenge governmental action. In *Brewster v. City of Pocatello*, 115 Idaho 502 (1988), the city enacted a tax to pay for street maintenance upon all owners and occupants of real property in the city. The tax owing by each owner or occupant was based on the traffic generated by that owner's or occupant's property. Even though the city had not sought to enforce the tax against any of the plaintiffs, we held that they had standing to challenge it. A party can also have standing even when the injury is

the granting of leave to amend the Complaint to provide the allegations contained in the affidavit.

Plaintiff Representative Ringo's Response Brief to State Motion to Dismiss and Opposition to Motion to Amend - 6

indirect and is shared by a large group. *Citing Mills v. Idaho Power Company*, 116 Idaho 635 (1989)..."

At pages 4 and 5: The *Koch* court next discussed U.S. Supreme Court cases on the standing issue about the general rule and then at page 5 stated:

"However, in *Flast v. Cohen*, 392 U.S. 83 (1968), the Supreme Court carved out a narrow exception against the general prohibition of taxpayer standing [*citing Hien*, 127 S. Ct. at 2564]. In *Flast*, the court held that a taxpayer did have standing to challenge a congressional appropriation that violated a specific constitutional limitation upon the congressional taxing and spending power. This court has also recognized such a rule in *Greer v. Lewiston Golf and Country Club, Inc.*, 81 Idaho 393 (1959) when we stated: 'Taxpayers have been held qualified to maintain an action to test the validity of a statute or ordinance which increases the tax burden. **Generally cases so holding involve an illegal expenditure of public money.**'" (Emphasis supplied.)

In the instant case, Representative Ringo alleges in her Second Amended Complaint not one, but two illegalities:

- (1) Unconstitutional delegation by the legislature of its taxing power to an agency without proper guidelines and restraints (Constitution Article VII, Section 5, and cases requiring specific limitations and guidelines upon delegation of taxing power to an outside agency); and
- (2) Unconstitutional "appropriation" of State monies by the Defendant Tax Commissioners in its dispensing of tax assessment reductions to favored corporations or individuals (Constitution Article VII, Section 13 re appropriation of funds).

After discussing further on page 5 the history of "over one hundred years" of the Court entertaining taxpayer or citizen challenges to lease agreements which violate Article VIII, Section 3 of the Idaho Constitution, the *Koch* Court noted: "Even though standing is jurisdictional and may be raised at any time, including on appeal (citation omitted), this Court has never questioned the standing of a taxpayer to challenge expenditures that allegedly violate Plaintiff Representative Ringo's Response Brief to State Motion to Dismiss and Opposition to Motion to Amend - 7

Article VIII, Section 3.” The Court then stated:

“If this Court were to hold that taxpayers do not have standing to challenge the incurring of indebtedness or liability in violation of that specific constitutional provision, we would, in essence, be **deleting that provision from the Constitution.**” (Emphasis supplied.)

The Defendants herein seek to invite this Court to set up a situation where no one has standing to challenge the unconstitutional and thereby illegal practices of the Legislature and the Tax Commissioners in the imposition of taxes and unequal application of assessments.

The *Koch* court concluded its holding relative to standing at page 6 of the Slip Opinion by stating:

The United States Supreme Court has held that a taxpayer has standing to challenge a congressional appropriation that violated a specific constitutional limitation upon the congressional taxing and spending power. There is no logical difference between making an appropriation that is specifically prohibited by the Constitution and incurring an indebtedness or liability that is specifically prohibited by the Constitution. We therefore hold that the plaintiffs, who are electors and taxpayers of the county, have standing to challenge whether the lease agreement violated Article VIII, Section 3.

The instant case comes within the rulings and teachings of *Koch v. Canyon County* and the cases cited therein.

At page 4 of the State’s Memorandum in Support of Motion to Dismiss filed June 25, 2010, the State inappropriately relies on *Selkirk Priest Basin Ass’n. Inc. v. State Ex Rel. Batt*, 128 Idaho 831 (1996) and *Young v. City of Ketchum*, 137 Idaho 102 (2002).

In *Selkirk, supra*, the issue was whether an association of environmentalists suffered a “distinct and palpable injury not suffered alike by all citizens in the jurisdiction,” and the court ruled that all people in the area were affected by a Land Board decision regarding impact on lands used for recreational and aesthetic enjoyment. There the court rejected the standing of the

citizens in general but held that a commercial guide had a special interest because of the effect on his amount of open space used for his guided tours. In the instant case, not all citizens or taxpayers of Idaho are equally affected by a lack of adequate funding for either the students in K-12 or in the University system. Further, the issues in this case relative to revenue sources implicate the tax liability of multistate corporations and their stockholders, which incidence is not shared by any others. Additionally, those citizens of Idaho who have no children or students in the educational system are not equally affected.

Young v. City of Ketchum, supra, does not support the State's position. That case involved a citizen's pro se complaint, and a second case by several property owners, which two cases were consolidated, against the City under the allegation that the payment of proceeds from a local option tax by the City to the Chamber of Commerce violated various provisions of the Idaho Constitution. The Supreme Court noted at 137 Idaho 104:

The doctrine of standing is a subcategory of justiciability (citation omitted). As this court has previously noted, the doctrine is imprecise and difficult to apply. (citation omitted). Standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated (citations omitted). To satisfy the case or controversy requirement of standing, a litigant must "allege or demonstrate an injury in fact and a substantial likelihood the relief requested will prevent or redress the claimed injury." This requires a showing of a "distinct palpable injury" and "fairly traceable causal connection between the claimed injury and the challenged conduct." *Miles* at 639, 778 P.2d at 761.

* * *

[A] citizen and taxpayer may not challenge a governmental enactment where the injury is one suffered by all citizens and taxpayers alike (citations omitted).

In the instant case, Representative Ringo has a distinct standing from all of the citizens of Idaho in general, in that she has a duty mandated by the Constitution and her

oath of office to ensure that the constitutional provisions be honored and carried out which require that (1) taxes be uniform; (2) that when the Legislature delegates its taxing power to an agency, that it provide appropriate guidelines and limitations, and (3) that appropriations of public monies be made only by the Legislature.

The Motion to Dismiss Representative Shirley Ringo as a party Plaintiff should be denied. In the event the motion is granted, we present the Court with an alternative.

Alternative: We are filing simultaneously herewith an Application for Leave to Intervene as Party Plaintiffs on behalf of the IEA, IFT and AFT under Rule 24(a) or Rule 24(b) with proper service upon the other parties. With that petition before this Court the case can go forward with the parties other than Representative Ringo as the Plaintiff. This will conserve judicial time and effort and expedite the processing of the action rather than that which would be required if the parties must start over and proceed in the separate action referred to in footnote 1 hereinabove.

Part 2: Addition of Idaho Federation of Teachers and American Federation of Teachers Local 3215, University of Idaho, Moscow, Idaho as Parties Plaintiff³

Plaintiff has moved for leave to file a Second Amended Complaint which includes both a Third Cause of Action and adds the Idaho Federation of Teachers and American Federation of Teachers as parties' plaintiff. Defendants have objected to the additional plaintiffs under an

³ The Defendants assert that this Court cannot rule simultaneously on the standing of Representative Ringo and the Motion to Add Parties Plaintiff, positing that once their motion to dismiss has been filed Ringo has no standing to move to amend the complaint until the standing issue is determined. Plaintiff disagrees, but to cover the event of the Court accepting Defendants' position, the Idaho Federation of Teachers (IFT), the American Federation of Teachers, University of Idaho, Moscow, Idaho Local 3215 (AFT), and the Idaho Education Association (IEA) are filing a separate action which potentially can be consolidated herewith for trial. Additionally, the IEA, IFT and AFT Local 3215 have filed an Application for Intervention herein which is noticed for hearing on November 18th.

argument which asserts that Representative Ringo's asserted lack of standing deprives her of the ability to move for amendment of the Complaint by the addition of the new parties. Defendants assert further that the addition of new parties cannot "cure" any lack of standing Representative Ringo has.

The Defendant's motion is under Rule 15(a) and its constrictions or limitations. The Defendants' briefing did not discuss nor consider the existence of Rule 24(a) and (b) which permits an interested party to intervene.

Plaintiff responds by suggesting two alternatives:

1. We know of no authority which would prevent the Court from ruling that Representative Ringo **does** have standing to sue and then immediately thereafter, based upon the present pleadings, grant the intervention by the IFT and AFT.

2. The second alternative is that the IFT, AFT and Idaho Education Association (IEA) are filing simultaneously herewith a Motion to Intervene under Rule 24(a) or Rule 24(b).

Rule 24(a) provides that anyone may intervene as a **matter of right** ". . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that a disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest . . ."

Rule 24(b) provides for **Permissive Intervention** ". . . when an applicant's claim or defense and the main action have a question of law or fact in common." The rule further provides "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

The IFT, AFT and IEA qualify under either Rule 24(a) or Rule 24(b). The proposed Superseding Second Amended Complaint provides as follows relative to the first two listed Plaintiff Representative Ringo's Response Brief to State Motion to Dismiss and Opposition to Motion to Amend - 11

organizations (the Petition contains information relative to the IEA):

(B) The Constitution of the Plaintiff, Idaho Federation of Teachers (“IFT”), reads in part as follows:

Section 1. To encourage and protect democratic educative practices so that students can realize their fullest potential physically, mentally, socially, and spiritually.

Section 2. To serve as a clearing house for innovation concerning student and teacher welfare.

Section 3. To bring locals of the American Federation of Teachers in Idaho into relationships of mutual assistance and cooperation with each other, and with organized labor, for the purpose of advancing democratic concepts and practices throughout society.

Section 4. To assist in organizing new locals and provide continuous service and assistance to all locals in improving their organization.

Section 5. To raise the standards of the teaching profession and improve instructional opportunities by securing the conditions essential to the best professional service.

Section 6. To obtain for both students and teachers all the rights to which they are entitled, and eliminate all forms of discrimination in education on the basis of race, creed, age, sex or social and political status.

Section 7. To protect the establishment and maintenance of free public education at all levels, including the university level.

Section 8. To further the aims of the American Federation of Teachers.

As such, the Plaintiff, IFT, on behalf of its members and the students and teachers of Idaho, has a direct interest in the issues presented in this case.

(C) The Plaintiff, American Federation of Teachers, [University of Idaho] Moscow, Idaho Local 3215, (“AFT Local 3215”) is composed of faculty and staff of the University of Idaho. For years we have experienced relatively low salaries and benefits and other disadvantages due to low state funding.

Faculty salaries at the University of Idaho are among the lowest in the nation for our class of institution, with salaries ranging from about 21% below average for Professor ranks to 15% for Assistant Professors. Faculty raises have been infrequent and modest. In the past 2 years the state fiscal crisis has resulted in fewer hires, mandatory work furloughs, and elimination of faculty and staff jobs. Reduced department budgets have

affected our ability to deliver the best possible education to our constituency-- our students.

Idaho governmental leaders tell us that much of the recent funding holdbacks to education are due to reduced tax revenue, yet the Idaho State Tax Commission ("ITC") fails to raise revenue according to state laws and policies. The education professionals we represent and the students in our institution are directly or indirectly negatively impacted by the current ITC practices of unfair and unequal taxation, resulting in less than full collection of revenues due to the State of Idaho needed for proper funding of public (K-12) and higher education.

The purposes and functions of the IEA were not included or discussed in the motion for leave to file the Second Amended Complaint because the IEA had not yet determined its intent to join the litigation. We will not lengthen this brief by detailing the IEA Bylaws other than to state that the purposes of the IEA are undoubtedly well known to this Court. It differs from the IFT and the AFT in that it has little focus, if any, on higher education as distinguished from K-12.

The three organizations clearly come within the ambit of the ruling of the Idaho Supreme Court in *ISEEO I* quoted in Part 1 of this brief relative to the standing of Representative Ringo. Again, we reference the Affidavit of Representative Ringo filed herewith as Appendix A which establishes that education funding stands somewhat separately and above most other State agencies which will be the recipient of enhanced tax revenues.

The Defendants will likely argue that the school organizations and Representative Ringo's interests are no different than those of the entire public of the State of Idaho, in that one cannot be 100 percent certain that any enhanced revenue will go to the schools or that alternatively, that if revenue from this source goes to the schools, one cannot be 100 percent certain that the Legislature will offset the enhanced revenue available to schools by reduced revenue from other sources.

That argument was raised by the Defendants in *Branson School District RE-82 v. Romer*, 958 F.Supp. 1501 (D.C. Colo. 1997) which was followed by a lengthy opinion on appeal to the Tenth Circuit in *Branson* at 161 F.3d 619 (10th Cir. 1998). There the plaintiff school representatives were seeking to overturn an Amendment 16 to the Colorado State Constitution which allegedly conflicted with the Colorado Statehood Enabling Act, thereby violating the Supremacy Clause of the United States Constitution.

A forceful argument was made by the Defendants that the Plaintiffs lacked standing to sue, which was discussed at length by both the trial and appellate courts. The Plaintiffs won on the standing issue in both courts, but did not prevail for other reasons.

At 958 F.Supp 1509, the trial court stated:

The parties agree that only a small percentage of each school district plaintiff's budget comes from the sale and management of school lands [school and revenue being the issue in the case]. The rest is allocated on a yearly basis by the Colorado General Assembly. The defendants argue (1) there is no evidence that the implementation of Amendment 16 will result in less revenue for schools from school lands, and (2) even if it does, there is no evidence that any shortfall would not be made up by the General Assembly. **I am not persuaded.** (Emphasis supplied.)

The trial court then embarked upon a three page analysis of several Supreme Court decisions, one of which was *ASARCO, Inc. v. Kadish*, 490 U.S. 605 (1969) which had a split plurality on the standing issue based upon the foregoing considerations, then discussed *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) and then went on to rule as follows at page 1510:

ASARCO is a plurality opinion in which the Court was evenly divided over whether the plaintiffs had standing, and it is therefore not controlling. As for *Lujan*, it does not adopt *ASARCO* fully, but only the rationale that if intervening parties have unfettered discretion to obviate whatever relief is fashioned by the Court, there is no standing. That is not the case here. Rather, if plaintiffs prevail and show that the school fund will generate less money, they get less money from that fund. Additional funding by the Colorado General Assembly is a distinct issue, and the state cannot

circumvent the United States Constitution by simply lumping its support from general funds in with the money specifically earmarked, segregated in trust, and directed by Congress to go to the support of the common schools. Enabling Act Section 14.

The 10th Circuit did not reverse the trial court in the above analysis, but simply stated at 161 F.3d 630 and 631:

In this case, we need not wade through the complex question of whether the potential loss of income from the state land trust as a result of Amendment 16 is a sufficiently concrete and imminent injury under Article III. (Citation omitted) Instead, we conclude that all of the plaintiffs have suffered another injury that is equally sufficient, if not more so, to meet the constitutional requirements of Article III.

In the instant case we are not dealing with a specifically earmarked fund, but we are dealing with the fact, as established by Representative Ringo, that Education will be a high priority in the allocation of enhanced revenues. As the Affidavit of Representative Ringo points out, the issue of the \$128 Million decrease in Education funding by the last session of the Legislature was one of the major issues in the current gubernatorial campaign and nearly every candidate for state office has come out in support of restoration of that funding and against further decreases.

Accordingly, the Petition of the Education Associations to Intervene as Party Plaintiffs should be granted.

Part 3: Amendment to Assert Third Cause of Action for Misappropriation of Public Funds in Violation of Article VII, Section 13 of the Constitution of the State of Idaho

Defendants incorrectly assert that the foundation of the Third Cause of Action lies in the Idaho Code rather than the Idaho Constitution. Paragraph 27 of the Second Amended Complaint reads as follows:

27. Article VII, Section 13 of the Constitution of the State of Idaho provides:

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“§ 13. Money—How drawn from treasury.

No money shall be drawn from the treasury, but in pursuance of appropriations made by law.”

Plaintiff does reference Title 18, Chapter 7 of the Idaho Code in paragraph 30. The main purpose of that reference is to establish that the misappropriation of public funds is indeed a wrongful activity in violation of public policy as recognized by the Legislature. Plaintiff agrees that the criminal code does not in most instances automatically give rise to a civil cause of action. The argument can be made that such a cause of action rises in the special circumstances of this case, but that position and such a ruling by this Court is not necessary as the only foundation of the Third Cause of Action. Article VII, Section 13 of the Constitution provides a proper basis for the Third Cause of Action, with or without the criminal code.

Simply stated, for purposes of a motion to dismiss, this Court must consider the allegations (which are supported by the affidavits) that the Tax Commission practices are beyond its authority in violation of the Constitution, as alleged in the Complaint, as being true.

Paragraphs 28, 29 and 30 of the Third Cause of Action read as follows:

28. Once the Auditors of the Idaho State Tax Commission promulgate an assessment to a taxpayer, the monies owed under the assessment by the taxpayer are **constructively** monies due to the Treasury of the State of Idaho, and remain such until and unless a taxpayer files a protest and the protest is **lawfully** determined to be appropriately granted in whole or in part.

29. No member of the Idaho State Tax Commission or the employees thereof have the authority to dispense with the payment of those assessments except by lawful and proper reduction of an assessment pursuant to constitutional requirements and in compliance with constitutional statutes and rules relative to such forgiveness or reduction of tax liability.

30. To the extent that the Defendants have forgiven or reduced legally imposed tax liability without compliance with either the Constitution, or

constitutional statutes of Idaho, or constitutional Rules of the Idaho State Tax Commission, such forgivenesses or reductions are in violation of both the Idaho Constitution and Title 18, Chapter 7 of the Idaho Code.

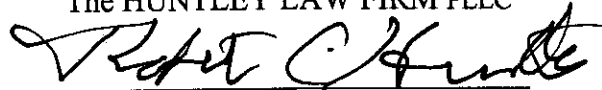
The highlighted words at the end of paragraph 30 are unnecessary to the statement of a cause of action and are there simply to illustrate the impropriety of the conduct of the Tax Commissioners in secretly and unilaterally giving away or reducing tax assessments which should be paid equally by all taxpayers similarly situated.

CONCLUSION

On the basis of the foregoing, Plaintiff requests that the Motion to Dismiss be denied and that the application for intervention of additional plaintiffs be granted.

Respectfully submitted this 4th day of November, 2010.

The HUNTLEY LAW FIRM PLLC



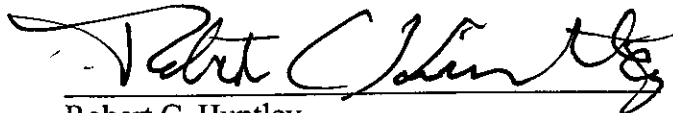
Robert C. Huntley

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2010, I caused to be served a true and correct copy of the foregoing VIA EMAIL addressed to the following:

Hon. Lawrence Wasden, Attorney General
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State Representative SHIRLEY RINGO,

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Defendants.

Case No. CV.OC 1011269

Affidavit of Representative Shirley
Ringo

STATE OF IDAHO)
 ss.
County of Latah)

REPRESENTATIVE SHIRLEY RINGO, being first duly sworn, deposes and says:

1. I am the Plaintiff in this action and provide the following supplemental information.

AFFIDAVIT OF REPRESENTATIVE SHIRLEY RINGO - 1

APPENDIX 1

2. I have been a member of the Joint Finance and Appropriations Committee in the Idaho Legislature for the past six years. In that capacity, as well as my general duties as a Legislator, I am well informed as to the status of State appropriations from year to year for the funding of Education.

3. I was a teacher in the Idaho public schools from 1976 to 2000, with my primary field being Mathematics at the high school level in various courses, including Calculus, trigonometry, and Geometry.

4. During the 2010 Legislative Session, the funding of Public Education (K-12) by the State was decreased by \$128 Million. This reduction of income to the Schools has had a severe detrimental effect upon the ability of the school system to provide the constitutionally required "thorough education."

5. Prior to the 2006 special legislative session, a portion of public school funding was provided by a .3% (.003) tax on assessed property value. In the 2006 special session, to give property tax relief, legislators voted to completely eliminate this tax. The lost funding was partially replaced with a 1% increase in the sales tax. The promise was made that schools would thereby be protected. In the 2010 legislative session, due to greatly decreased revenue from the sales tax, legislators reduced public school funding by \$128,000,000. As a result, patrons in five out of the six school districts I represent were required to raise their property tax to partially mitigate the loss of state support.

6. Inadequate financial support from the State level has resulted in many schools shifting to four-day weeks, and many other reductions in quality of Education such as an inadequate number of textbooks; outdated textbooks; and reduction in programs in the arts and in sports. Vital programs and course offerings at the University level are being severely curtailed.

Class sizes at both the Public Schools and University level are exceeding appropriate standards and students at the University level are unable to timely matriculate in required course work.

7. Budget projections for the next fiscal year indicate that without enhancements in revenues to the State General Fund greater than any prediction to date, there will be heavy pressures to further reduce support to Education, both at the K-12 level and at the University level.

8. As the affidavits of the eight Auditors or former Auditors provided in this case detail, the relief sought in this case could result in an enhancement of revenues to the State of Idaho of somewhere between \$40 Million and \$70 Million. It is my observation through my work on the Appropriations Committee and through my awareness of the pronouncements made by both candidates for Governor and nearly all Legislators, that a high percentage of any enhanced revenue will go directly into Education funding, that is, the enhanced funding of Education will be one of the top two or three priorities as revenue becomes available.

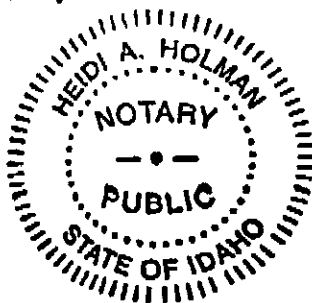
Further sayeth Affiant naught.

DATED this 4th day of November, 2010.

Shirley Ringo
Representative Shirley Ringo

On this 4th day of November, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Representative **Shirley Ringo**, known or identified to me to be ~~the person~~ whose name is subscribed to the within instrument, and acknowledged to me that ~~she~~ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Heidi A. Holman
NOTARY PUBLIC for the State of Idaho
Residing at: ~~Moosew~~, Idaho *Pullman, WA*
My commission expires: *4/9/2011*

Robert C. Huntley ISB#894
The HUNTLEY LAW FIRM PLLC
815 W. Washington Street
P.O. Box 2188
Boise, Idaho 83701
Telephone: 208-388-1230
Facsimile: 208-388-0234
rhuntley@huntleylaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

State Representative SHIRLEY RINGO,

Plaintiff,

v.

The IDAHO STATE TAX COMMISSION;
and ROYCE CHIGBROW, TOM C.
KATSILOMETES, SAM HAWS, and
DAVID LANGHORST, Commissioners of
the Idaho State Tax Commission, in their
official capacities and on behalf of the Idaho
State Tax Commission,

Defendants.

Case No. CV OC 1011269

**Application for Intervention as
Parties Plaintiff Under Rule 24(a) or
(b) by The IDAHO EDUCATION
ASSOCIATION; The IDAHO
FEDERATION OF TEACHERS, an
unincorporated association; and The
AMERICAN FEDERATION OF
TEACHERS LOCAL 3215, University
of Idaho, Moscow, Idaho**

COME NOW the IDAHO EDUCATION ASSOCIATION; The IDAHO FEDERATION OF TEACHERS, an unincorporated association; and The AMERICAN FEDERATION OF TEACHERS LOCAL 3215, University of Idaho, Moscow, Idaho, and apply to the Court for leave to intervene and participate as Parties Plaintiff in the above-captioned action. These parties are filing a separate action in Ada County District Court for proceeding with their claims in the

event this application is denied, but will move to dismiss that action if this application is granted.

These parties represent to the Court that they have standing to sue on the basis of the ruling of the Idaho Supreme Court in *Idaho Schools For Equal Educ. V. Evans*, 123 Idaho 573 at 585 (1993) (ISEEO 1), which decision reads in part as follows:

Next the State argues that the districts do not have standing because they did not represent the rights of the students. Whether or not that is true is beside the point because the districts have the required "personal stake" in the outcome of the litigation. School districts have an interest in receiving enough money to provide a thorough education for their pupils. Taking the school districts' allegations in the light most favorable to them, as we must, they are not currently receiving that money. Thus the school districts meet the *Miles* test in that they allege a distinct palpable injury (lack of adequate funds) that has a fairly traceable causal connection to the actions of the State (the amount of money allocated by the Legislature to education).

Finally, the State argues that the superintendents/members of ISEEO lack standing because they have not suffered a distinct palpable injury. We disagree. Like the school districts, the superintendents have alleged they cannot provide a thorough education to their charges due to lack of state funding. Thus they have individual standing under *Miles*. ISEEO, the association of superintendents, has standing because "an organization whose members are injured may represent those members in a proceeding for judicial review." *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972); *See Glengary-Gamlin Protective Ass'n v. Bird*, 106 Idaho 84, 87, 675 P.2d 344, 347 (Ct. App. 1983).

The charters and goals of these three applicants include the following:

- (A) **The Idaho Education Association**, whose membership includes approximately 13,000 public school teachers, has the following goals and mission:

Mission Statement

"The Idaho Education Association advocates the professional and personal well-being of its members and the vision of excellence in public education, the foundation of the future."

IEA Focus Statement

“The focus of the IEA is to help local associations build capacity to achieve excellence in public education.”

IEA Core Values

- **Public Education:** Preserving the foundation of democracy
- **Justice:** Upholding fair and equitable treatment for all
- **Unity:** Standing together for our common cause
- **Integrity:** Stating what we believe and living up to it

The IEA policies for which it recommends actions to implement by the organization and its members include:

C-1.2 State Funding. The Idaho Education Association believes that to achieve its commitment to equal educational opportunity for all and to ensure fair tax practices for all citizens, public education must be supported from public tax sources. The Association and its affiliates oppose the use of public revenues for nonpublic pre-K through 12 schools. Therefore, it seeks support in accordance with the following principles:

- a. An increasing portion of public funds should be for direct instruction of the student.
- b. The amount of aid must be generally predictable for long-range planning and specifically predictable for year-to-year planning.
- c. Tax revision favorable to public education should be encouraged and continually reviewed at every governmental level.

* * *

- f. The state of Idaho should aggressively collect delinquent unreported and overdue taxes.

C-1.3 Tax Reform. The Idaho Education Association supports tax reform and believes that tax reform should:

- a. Increase tax fairness and raise revenue necessary to finance quality public education and other public services.
- b. Eliminate regulations that shift the tax burden to the less affluent.

* * *

- f. Assure that statewide uniformity in property tax effort be required.
- g. Provide for increased local and state funding of public education.
- h. Provide funding for public education that ensures adequacy and equity of resources.

* * *

j. Eliminate tax laws and rulings that are harmful to education employees and educational needs.

k. Review tax exemptions so the increase in revenues can be used to fund public schools.

(B) The Constitution of the Plaintiff, **Idaho Federation of Teachers (“IFT”)**, reads in part as follows:

Section 1. To encourage and protect democratic educative practices so that students can realize their fullest potential physically, mentally, socially, and spiritually.

Section 2. To serve as a clearing house for innovation concerning student and teacher welfare.

Section 3. To bring locals of the American Federation of Teachers in Idaho into relationships of mutual assistance and cooperation with each other, and with organized labor, for the purpose of advancing democratic concepts and practices throughout society.

Section 4. To assist in organizing new locals and provide continuous service and assistance to all locals in improving their organization.

Section 5. To raise the standards of the teaching profession and improve instructional opportunities by securing the conditions essential to the best professional service.

Section 6. To obtain for both students and teachers all the rights to which they are entitled, and eliminate all forms of discrimination in education on the basis of race, creed, age,

sex or social and political status.

Section 7. To protect the establishment and maintenance of free public education at all levels, including the university level.

Section 8. To further the aims of the American Federation of Teachers.

As such, the Plaintiff, IFT, on behalf of its members and the students and teachers of Idaho, has a direct interest in the issues presented in this case.

(C) The Plaintiff, **American Federation of Teachers, Moscow, Idaho Local 3215**, (“**AFT Local 3215**”) is composed of faculty and staff of the University of Idaho. For years we have experienced relatively low salaries and benefits and other disadvantages due to low state funding.

Faculty salaries at the University of Idaho are among the lowest in the nation for our class of institution, with salaries ranging from about 21% below average for Professor ranks to 15% for Assistant Professors. Faculty raises have been infrequent and modest. In the past 2 years the state fiscal crisis has resulted in fewer hires, mandatory work furloughs, and elimination of faculty and staff jobs. Reduced department budgets have affected our ability to deliver the best possible education to our constituency-- our students.

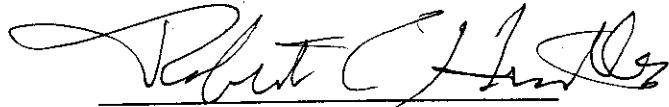
Idaho governmental leaders tell the public that much of the recent funding holdbacks to education are due to reduced tax revenue, yet the Idaho State Tax Commission (“ITC”) fails to raise revenue according to state laws and policies. The education professionals we represent and the students in our institution are directly or indirectly negatively impacted by the current ITC practices of unfair and unequal taxation, resulting in less than full collection of revenues due to the State of Idaho needed for proper funding of public (K-12) and higher education.

These Applicants will join as Parties Plaintiff in the Second Amended Complaint in the form finally approved by this Court.

This Application is supported by the brief filed herewith.

DATED this 4th day of November, 2010.

The HUNTLEY LAW FIRM PLLC



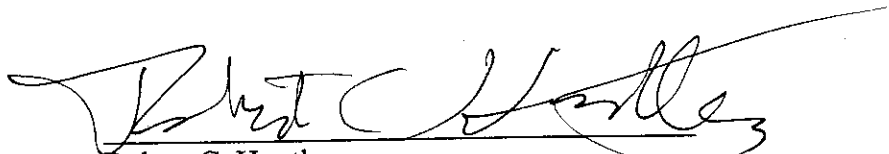
Robert C. Huntley

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2010, I caused to be served a true and correct copy of the foregoing **VIA EMAIL AND HAND DELIVERY** addressed to the following:

Hon. Lawrence Wasden, Attorney General
Steven L. Olsen, Deputy Attorney General
Clay Smith, Deputy Attorney General
Statehouse
P.O. Box 83720
Boise, ID 83720-0010
Clay.smith@ag.idaho.gov
steve.olsen@ag.idaho.gov

Attorneys for the Defendants



Robert C. Huntley

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rhuntley@huntleylaw.com

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

State Representative SHIRLEY RINGO,
Plaintiff,

v.

The IDAHO STATE TAX COMMISSION;
and ROYCE CHIGBROW, TOM
KATSILOMETES, SAM HAWS, and
DAVID LANGHORST, Commissioners of
the Idaho State Tax Commission, in their
official capacities and on behalf of the Idaho
State Tax Commission,

Defendants.

Case No. CV OC 1011269

**Motion for Leave to File
SUPERSEDING (Amended
November 4th in paragraph 16)
Second Amended Complaint for
Declaratory Judgment and Injunctive
Relief**

COMES NOW the Plaintiff and moves the Court for leave to file the SUPERSEDING (Amended November 4th in paragraph 16) Second Amended Complaint attached hereto as Appendix A. Plaintiff earlier filed a Motion to File a Second Amended Complaint which added a Third Cause of Action, and which motion is scheduled for hearing on November 18, 2010.

This "Superseding" Second Amended Complaint (Amended November 4th in

**MOTION FOR LEAVE TO FILE SUPERSEDING (Amended November 4th in paragraph 16)
SECOND AMENDED COMPLAINT - 1**

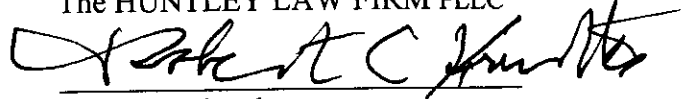
paragraph 16) is presented in lieu of Superseding Second Amended Complaint which added two new Parties Plaintiff, namely the Idaho Federation of Teachers and the American Federation of Teachers, Local 3215, University of Idaho, Moscow, Idaho, and added a Second Affidavit of former Auditor Stan Howland to Appendix B.

This case is in the early stages, no Answer has been filed and new information has come to light by virtue of the nine affidavits previous filed herein of current and former Auditors and made a part hereof as though fully set forth herein.

A supporting brief in support of the Superseding Second Amended Complaint has earlier been filed herein.

Respectfully submitted this 4th day of November, 2010.

The HUNTLEY LAW FIRM PLLC



Robert C. Huntley

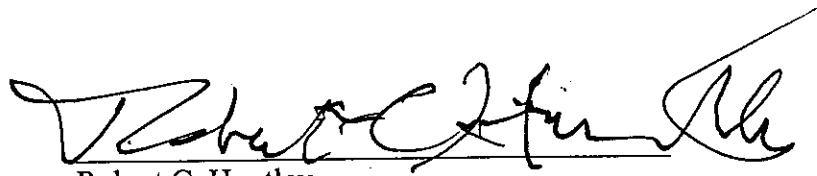
CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Hon. Lawrence Wasden, Attorney General
Steven L. Olsen, Deputy Attorney General
Melissa Moody, Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

HAND DELIVER
 U.S. MAIL
 OVERNIGHT MAIL
 TELECOPY (FAX)
 EMAIL

Attorneys for the Defendants



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APPENDIX A

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

State Representative SHIRLEY RINGO; and
the IDAHO FEDERATION OF TEACHERS,
an unincorporated association; and
AMERICAN FEDERATION OF
TEACHERS LOCAL 3215, University of
Idaho, Moscow, Idaho,

Plaintiffs,

v.

The IDAHO STATE TAX COMMISSION;
and ROYCE CHIGBROW, TOM C.
KATSILOMETES, SAM HAWS, and
DAVID LANGHORST, Commissioners of
the Idaho State Tax Commission, in their
official capacities and on behalf of the Idaho
State Tax Commission,

Defendants.

Case No. CV OC 1011269

**SUPERSEDING (Amended
November 4th in paragraph 16)
Second Amended Complaint for
Declaratory Judgment and Injunctive
Relief**

Plaintiffs as their claim allege:

PARTIES

1. **The Plaintiffs:**

(A) At all times relevant hereto, the **Plaintiff, Shirley Ringo**, was and is a resident of the State of Idaho and a member of the Idaho House of Representatives. As such Representative Ringo possesses standing and an interest, both as a Legislator and a citizen and taxpayer of the state of Idaho, to bring this action to require the agencies of government to comply with the duties imposed by the Constitution of the State of Idaho in implementing and executing the imposition and collection of taxes in a uniform manner, and in this instance, including, but not limited to, income taxes imposed upon multi-state corporations doing business in the State of Idaho. As a State Representative, Plaintiff is a Constitutional Officer with a sworn duty and responsibility to support and uphold the Constitution of the State of Idaho. The Constitution imposes the power to tax on the Legislators and it also imposes the obligation of appropriating funds upon the Legislators, and thus Representative Shirley Ringo has standing to receive court assistance to enable her to perform her duties in a constitutional manner.

(B) The Constitution of the **Plaintiff, Idaho Federation of Teachers (“IFT”)**, reads in part as follows:

Section 1. To encourage and protect democratic educative practices so that students can realize their fullest potential physically, mentally, socially, and spiritually.

Section 2. To serve as a clearing house for innovation concerning student and teacher welfare.

Section 3. To bring locals of the American Federation of Teachers in Idaho into relationships of mutual assistance and cooperation with each other, and with organized labor, for the purpose of advancing democratic concepts and practices throughout society.

Section 4. To assist in organizing new locals and provide continuous service and assistance to all locals in improving their organization.

Section 5. To raise the standards of the teaching profession and improve instructional opportunities by securing the conditions essential to the best professional service.

Section 6. To obtain for both students and teachers all the rights to which they are entitled, and eliminate all forms of discrimination in education on the basis of race, creed, age, sex or social and political status.

Section 7. To protect the establishment and maintenance of free public education at all levels, including the university level.

Section 8. To further the aims of the American Federation of Teachers.

As such, the Plaintiff, IFT, on behalf of its members and the students and teachers of Idaho, has a direct interest in the issues presented in this case.

(C) The Plaintiff, American Federation of Teachers, Moscow, Idaho Local 3215, (“AFT Local 3215”) is composed of faculty and staff of the University of Idaho. For years we have experienced relatively low salaries and benefits and other disadvantages due to low state funding.

Faculty salaries at the University of Idaho are among the lowest in the nation for our class of institution, with salaries ranging from about 21% below average for Professor ranks to 15% for Assistant Professors. Faculty raises have been infrequent and modest. In the past 2 years the state fiscal crisis has resulted in fewer hires, mandatory work furloughs, and elimination of faculty and staff jobs. Reduced department budgets have affected our ability to deliver the best possible education to our constituency-- our students.

Idaho governmental leaders tell us that much of the recent funding holdbacks to education are due to reduced tax revenue, yet the Idaho State Tax Commission (“ITC”) fails to raise revenue according to state laws and policies. The education professionals we represent and the students in our institution are directly or indirectly negatively impacted by the current ITC practices of unfair and unequal taxation, resulting in less than full collection of revenues due to the State of Idaho needed for proper funding of public (K-12) and higher education.

2. The **Defendants, the Idaho State Tax Commission** (and the Commissioners thereof) are charged under the Constitution of the State of Idaho, Article VII, Section 5 to levy and collect taxes in a “uniform manner,” that provision of the Constitution reading in part as follows:

§ 5. Taxes to be uniform – Exemptions

All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxing of all property, real and personal. .
.”

Defendants are also sworn to uphold the Constitution of the State of Idaho.

STATEMENT OF THE FACTS

3. The power to tax, or exempt from taxation remains with the Legislature under the Idaho Constitution and the Legislature possesses plenary power in all matters of taxation except as prohibited or limited under the Idaho Constitution.

4. The Idaho Supreme Court has on several occasions ruled that the Idaho Legislature may not delegate its power to tax to an outside agency, such as the Defendant Idaho State Tax Commission, without “meaningful standards.” For example, in *Sun Valley Company v. The City of Sun Valley*, 109 Idaho 424 at 427 (1985) the Court stated:

SUPERSEDING (Amended November 4th in paragraph 16) Second Amended Complaint - 4

The non-delegation doctrine, as it is called, traditionally required that laws delegating legislative authority to either the executive branch or the judiciary [provide] meaningful “standards.” These standards which insure that decision makers in the other branches, who are not publicly accountable through the election process, would not act arbitrarily, capriciously, or discriminatory.

5. Broad delegation of legislative authority without designation of detailed standards is only proper when the agency’s internal guidelines provide meaningful standards against arbitrary decision making.

6. Plaintiffs have been informed by recently retired Level IV Auditor Stan Howland, who has served as an auditor for the Idaho State Tax Commission, of the facts alleged in this Complaint and, therefore, on information and belief, allege them in support of this Complaint. The Affidavit of former Level IV Auditor Stan Howland is attached to this Complaint as Appendix A and made a part hereof as though fully set forth herein.

7. Under the current Idaho scheme, there are no appropriate standards and guidelines in either the statutes or the agency rules, regulations and practices, with the result that the Commission can, and does frequently, secretly and improperly forgive, compromise, or relieve corporations and other taxpayers, of all or a portion of their tax liability, in violation of the constitutional mandate.

8. The device utilized by the Tax Commission currently and in recent years is called a “Compromise and Closing Agreement” (“CSA” and sometimes referred to as “C&Cs”) under Commission Rule 500. The current Rule 500 is totally devoid of any protection from secret deals with favored taxpayers which results in taxes not being uniform upon the same class of subjects, all in violation of the Idaho Constitution.

9. The C&Cs result in a loss of revenue to the State of Idaho in a magnitude of

millions of dollars each year, unfairly favoring those taxpayers in the subject classes who happen to know how to “game the system,” with a resultant shifting of the tax burden to other taxpayers.

10. The State of Idaho Legislative Services Office issued an original “Legislative Audit Report” in 1996 which reported serious deficiencies in the system resulting in violations of the constitutional mandate. During that process a number of instances of unjustified compromises with large multi-state corporations were documented.

11. In the years following 1996, the improper C&Cs have been and are increasingly utilized by the Commission to grant illegal reductions in tax payments to taxpayers (including multi-state corporations as well as individuals) who protested their assessments.

12. The procedures utilized by the Tax Commission provide absolutely no meaningful transparency whereby the public, the legislature or the press can receive any information or oversight into the proper use of the C&Cs. The procedure is as follows:

- The audit staff performs its function and makes a report as to the resulting tax, penalty, and interest deficiency.
- Frequently the audit staff makes a request of the taxpayer for documentation necessary to making a proper determination of the taxpayer’s full liability. Frequently the taxpayers are refusing to provide the properly requested and necessary documentation and the Commissioners refuse to enforce their subpoena power in a very *ad hoc* and infrequent manner, thus favoring some taxpayers over others.
- If a taxpayer objects to the assessment recommended by the auditor, the case next goes to the desk of a single Commissioner (in the case of multi-state corporations, to the desk of Commission Chairman Royce Chigbrow) and then the

Commissioner in secret negotiates with the taxpayer and works out a compromise.

- The Commissioner who is considering the protest (who does not necessarily or usually have special expertise in the multi-state audit arena) does not consult with the auditor.
- The C&Cs are signed and filed in the confidential files of the Commission. The agreements are not available for any third party to examine and make a determination as to whether the agreements are founded upon a lawful premise. The current statutory framework does require that the Commission make a report to the Legislature in March of each year. However, the report by the Commission to the Legislature does not contain any detail by which a C.P.A., a lawyer, or any other expert can determine the basis or legal correctness of the final tax assessment.
- There ostensibly is a procedure where the single Commissioner involved is expected to consult with a second Commissioner in the completion of a C&C over a certain dollar amount. However, each of the four Commissioners preside over different types of taxes, i.e., income, sales, property, etc., with multi-state taxation being one of the more complex fields. Not only is the lead Commissioner lacking in expertise in the field, but no other Commissioner has developed the required expertise to execute a meaningful sign-off.

13. In the last five to ten years favoritism to certain taxpayers has occurred which are provided herewith as examples which are not totally inclusive:

- (a) A wealthy Idaho resident, through the C&C procedure, was provided a \$1.6 Million tax break **before** the audit report was issued and the audit in that case was removed from SUPERSEDING (Amended November 4th in paragraph 16) Second Amended Complaint - 7

the professional auditors. In this case the taxpayer claimed that the State had no jurisdiction to levy a tax because of no business presence in the state of Idaho, when in fact that investigating auditor did identify that the taxpayer has substantial business operations in the state. The auditor had determined that the position the taxpayer was taking before the State of Idaho was fraudulent.

(b) A non-cooperative taxpayer was given a special discount on the years under audit and the audit staff was banned from auditing that taxpayer during the following two years.

(c) One Commissioner reversed an audit adjustment on a friend and individual who is prominent in Idaho politics.

(d) On one occasion, a tax manager for a large Idaho company told a Commissioner in a protest hearing that his opinion was asked by the Governor on all reappointments. This event occurred several months before the Commissioner was up for reappointment and the taxpayer received a \$100,000 discount.

(e) Conservatively, seventy-five (75%) percent of all large corporate taxpayers refuse to provide documentation to the auditors on tax deductions or other issues. The Commission never requires the taxpayer to provide the information at the protest level.

(f) A taxpayer was permitted to file on an incorrect method which created large losses understating tax liability which was then carried forward to future years.

(g) Many of the C&C compromises are made in violation of the rules established by publicized formal opinions of the Commission, which published opinions remain on file as guidance to other taxpayers who have no knowledge of the secret deviation from the precedence established by the publicized opinion. Many C&Cs are issued which are in direct conflict with previous written decisions.

(h) In the three years last past approximately seventy-five (75%) percent of the protests by taxpayers have been settled through the use of C&Cs rather than written decisions. Written decisions are available to the public and C&Cs are not.

(i) In one case of which Auditor Stan Howland has knowledge, a taxpayer had been audited seven times over the past twenty years utilizing a tax filing method not authorized by Idaho law. In all but one instance the taxpayer was granted a compromise and one such compromise was the settlement of a \$220,000 tax liability for \$80,000.

(j) In another case reported by Auditor Stan Howland, the Commission upheld the negligence penalty assessed against a taxpayer who had filed illegal tax returns for fifteen years. After publicly upholding the penalty, the Commission secretly dismissed the penalty with a C&C after a phone call from the taxpayer.

14. The information provided by Auditor Stan Howland includes the illustrative fact that there is currently pending, in the case of two taxpayers, possible and likely compromise of tax liability of approximately \$50 Million, which will typically result in a compromise that based on the Commission's action over the past several years, will result in a loss to the State tax base of between \$15 Million and \$40 Million.

15. Since the filing of the First Amended Complaint various personnel attached to the Tax Commission have advised that there are certain other devices being utilized or contemplated, which result in a lack of equal treatment of taxpayers, both corporate, partnership and individual who are in the same class of taxpayers, or a gross violation of established policies and procedures, all of which will result in extreme financial loss of income to the State of Idaho and the unequal taxation of both individuals and business entities within the same classes of taxpayers, or will improperly deflect the burden of taxation upon other classes of taxpayers. The SUPERSEDING (Amended November 4th in paragraph 16) Second Amended Complaint - 9

Commission personnel are fearful for the impact their testimony might have on their job status, but are willing to testify if provided proper protection by this Court through *in camera* or other appropriate device. Nine (9) Affidavits in addition to the Affidavit set forth in the original Complaint as Appendix A are being filed simultaneously herewith, as Appendix B to the Motion, in support of Plaintiffs' allegations herein and in support of Plaintiffs' claims for relief.

16. Based upon the above and foregoing facts, the State of Idaho to the detriment of the vast majority of its institutions and citizens, will suffer severe, permanent, irreparable damages unless the Court prohibits the further use of Compromise and Closing Agreements (C&Cs) until such time as the Defendants provide a constitutionally appropriate system for delegation of legislative authority to the Idaho State Tax Commission, with appropriate standards and safeguards to the public interest being contained at either or both levels. The following listed facts in support of both the seriousness of the issues and the standing of the Parties Plaintiff are taken from the Affidavit of Plaintiff Shirley Ringo as Appendix 1 hereto:

(4) During the 2010 Legislative Session, the funding of Public Education (K-12) by the State was decreased by \$128 Million. This reduction of income to the Schools has had a severe detrimental effect upon the ability of the school system to provide the constitutionally required "thorough education."

(5) Prior to the 2006 special legislative session, a portion of public school funding was provided by a .3% (.003) tax on assessed property value. In the 2006 special session, to give property tax relief, legislators voted to completely eliminate this tax. The lost funding was partially replaced with a 1% increase in the sales tax. The promise was made that schools would thereby be protected. In the 2010 legislative session, due to greatly decreased revenue from the sales tax, legislators reduced public school funding by \$128,000,000. As a result, patrons in five out of the six school districts I represent were required to raise their property tax to partially mitigate the loss of state support.

(6) Inadequate financial support from the State level has resulted in many schools shifting to four-day weeks, and many other reductions in quality of Education such as an inadequate number of textbooks; outdated textbooks; and reduction in programs in the arts and in sports. Vital programs and course offerings at the University level are being severely curtailed. Class sizes at both the Public Schools and University

level are exceeding appropriate standards and students at the University level are unable to timely matriculate in required course work.

(7) Budget projections for the next fiscal year indicate that without enhancements in revenues to the State General Fund greater than any prediction to date, there will be heavy pressures to further reduce support to Education, both at the K-12 level and at the University level.

(8) As the affidavits of the eight Auditors or former Auditors provided in this case detail, the relief sought in this case could result in an enhancement of revenues to the State of Idaho of somewhere between \$40 Million and \$70 Million. It is my observation through my work on the Appropriations Committee and through my awareness of the pronouncements made by both candidates for Governor and nearly all Legislators, that a high percentage of any enhanced revenue will go directly into Education funding, that is, the enhanced funding of Education will be one of the top two or three priorities as revenue becomes available.

17. Plaintiffs are entitled to bring this action as "Private Attorneys General" for at least three reasons, among others: (1) the incumbent Attorney General was previously a Deputy Attorney General when certain of the unconstitutional actions alleged herein were being undertaken; (2) currently, Deputy Attorney Generals assigned to the Tax Commission are involved in either agreeing with or failing to object to the unconstitutional procedures which are being implemented; and (3) prior to the initiation of this lawsuit, a request was made upon the Attorney General's office to conduct a thorough and proper investigation of the circumstances and he failed, and continues to fail to do so.

FIRST CAUSE OF ACTION

(Cause of Action Under Idaho Constitution Article VII, Section 5)

18. Plaintiffs re-plead paragraphs 1 through 17 as though fully set forth herein.

19. Plaintiffs, by virtue of their standing as stated in paragraph 1 herein above, and as "Private Attorneys General" seek judgment and order under Article VII, Section 5 of the Constitution of the State of Idaho requiring the Defendants to cease their violations of the

Constitution in the administration of Idaho tax assessment and collection and further seek an order declaring the present system of assessment and collection of taxes unconstitutional until and unless the Legislature and the Tax Commission adopt statutes, rules and regulations in compliance with the requirements of the Idaho Constitution.

20. Pending final resolution of this case, Plaintiffs seek leave to conduct discovery and to move this Court for a hearing requiring the Defendants to show cause, if any they have, why a Preliminary Injunction should not be granted enjoining the Defendants from engaging in the unconstitutional activities herein above alleged.

21. Plaintiffs have been required to retain the services of counsel to bring this action and are entitled to recover their reasonable costs and attorney fees as a Private Attorneys General, and/or pursuant to sections 12-120 and 12-121, Idaho Code.

SECOND CAUSE OF ACTION

(Equal Protection of the Laws Under the Idaho Constitution Article I, Section 13 and the Fifth and Fourteen Amendments to the Constitution of the United States of America)

22. Plaintiffs re-plead paragraphs 1 through 21 as though fully set forth herein.

23. Plaintiffs, by virtue of their standing as stated in paragraph 1 herein above, and as “Private Attorneys General,” seek judgment and order under Equal Protection Clauses of Idaho Constitution Article I, Section 13 and the Fifth and Fourteen Amendments to the Constitution of the United States of America requiring the Defendants to cease their violations of the Constitutions in the administration of Idaho tax assessment and collection and further seek an order declaring the present system of assessment and collection of taxes unconstitutional until and unless the Legislature and the Tax Commission adopt statutes, rules and regulations in compliance with the requirements of the Idaho and United States Constitutions.

24. Pending final resolution of this case, Plaintiffs seek leave to conduct discovery and to move this Court for a hearing requiring the Defendants to show cause, if any they have, why a Preliminary Injunction should not be granted enjoining the Defendants from engaging in the unconstitutional activities herein above alleged.

25. Plaintiffs have been required to retain the services of counsel to bring this action and are entitled to recover her reasonable costs and attorney fees as a Private Attorney General, pursuant to Sections 12-120 and 12-121, Idaho Code as well as under 29 U.S.C. § 1983 et seq.

THIRD CAUSE OF ACTION

(Misappropriation of Public Funds Under Article VII, Section 13 of the Constitution of the State of Idaho and under Section 18, Chapter 57 of the Idaho Code)

26. Plaintiffs re-plead paragraphs 1 through 25 as though fully set forth herein.

27. Article VII, Section 13 of the Constitution of the State of Idaho provides:

“§ 13. Money—How drawn from treasury.

No money shall be drawn from the treasury, but in pursuance of appropriations made by law.”

28. Once the Auditors of the Idaho State Tax Commission promulgate an assessment to a taxpayer, the monies owed under the assessment by the taxpayer are **constructively** monies due to the Treasury of the State of Idaho, and remain such until and unless a taxpayer files a protest and the protest is **lawfully** determined to be appropriately granted in whole or in part.

29. No member of the Idaho State Tax Commission or the employees thereof have the authority to dispense with the payment of those assessments except by lawful and proper reduction of an assessment pursuant to constitutional requirements and in compliance with constitutional statutes and rules relative to such forgiveness or reduction of tax liability.

30. To the extent that the Defendants have forgiven or reduced legally imposed tax

SUPERSEDING (Amended November 4th in paragraph 16) Second Amended Complaint - 13

liability without compliance with either the Constitution, or constitutional statutes of Idaho, or constitutional Rules of the Idaho State Tax Commission, such forgivenesses or reductions are in violation of both the Idaho Constitution and Title 18, Chapter 7 of the Idaho Code.

31. Plaintiffs, by virtue of their standing as stated in paragraph 1 herein above, and as a “Private Attorneys General,” seek judgment and order under Article VII, Section 5 of the Constitution of the State of Idaho requiring the Defendants to cease their violations of the Constitution in the administration of Idaho tax assessment and collection and further seek an order declaring the present system of assessment and collection of taxes unconstitutional until and unless the Legislature and the Tax Commission adopt statutes, rules and regulations in compliance with the requirements of the Idaho Constitution.

32. Pending final resolution of this case, Plaintiffs seek leave to conduct discovery and to move this Court for a hearing requiring the Defendants to show cause, if any they have, why a Preliminary Injunction should not be granted enjoining the Defendants from engaging in the unconstitutional activities herein above alleged.

33. Plaintiffs have been required to retain the services of counsel to bring this action and are entitled to recover their reasonable costs and attorney fees as Private Attorneys General, and/or pursuant to Sections 12-120 and 12-121, Idaho Code.

WHEREFORE, Plaintiffs pray judgment as follows:

1. For Declaratory Judgment under the First and Third Causes of Action herein above, that the present statutes, rules, regulations and procedures provided by the Legislature and utilized by the Idaho State Tax Commission violate the mandates and strictures of the Constitution of the State of Idaho relative to delegation of legislative authority to the Tax Commission; and under the Second Cause of Action further violate “equal protection under the
SUPERSEDING (Amended November 4th in paragraph 16) Second Amended Complaint - 14

law” the mandates of both the Federal and State Constitutions.

2. The Court enjoin the Defendant Tax Commission and its Commissioners from entering into further Compromise and Settlement Agreements and other improper or illegal practices until such time as a constitutional system is established by the Legislature and the Defendants; Plaintiff has moved for entry of a Preliminary Injunction and will ultimately seek a Permanent Injunction;

3. For an award of attorney fees to Plaintiffs’ attorney under the Private Attorney General Doctrine and/or the Due Process and Equal Protection Clauses of the Federal and State Constitutions; and pursuant to 29 U.S.C. § 1983 et seq. and Idaho Code Sections 12-120 et seq.

4. For Plaintiffs’ costs and such other and further relief as may be meet and equitable in the premises.

DATED this 4th day of November, 2010.

The HUNTLEY LAW FIRM PLLC

A handwritten signature in black ink, appearing to read "Robert C. Huntley", written over a horizontal line.

Robert C. Huntley

2. I have been a member of the Joint Finance and Appropriations Committee in the Idaho Legislature for the past six years. In that capacity, as well as my general duties as a Legislator, I am well informed as to the status of State appropriations from year to year for the funding of Education.

3. I was a teacher in the Idaho public schools from 1976 to 2000, with my primary field being Mathematics at the high school level in various courses, including Calculus, trigonometry, and Geometry.

4. During the 2010 Legislative Session, the funding of Public Education (K-12) by the State was decreased by \$128 Million. This reduction of income to the Schools has had a severe detrimental effect upon the ability of the school system to provide the constitutionally required "thorough education."

5. Prior to the 2006 special legislative session, a portion of public school funding was provided by a .3% (.003) tax on assessed property value. In the 2006 special session, to give property tax relief, legislators voted to completely eliminate this tax. The lost funding was partially replaced with a 1% increase in the sales tax. The promise was made that schools would thereby be protected. In the 2010 legislative session, due to greatly decreased revenue from the sales tax, legislators reduced public school funding by \$128,000,000. As a result, patrons in five out of the six school districts I represent were required to raise their property tax to partially mitigate the loss of state support.

6. Inadequate financial support from the State level has resulted in many schools shifting to four-day weeks, and many other reductions in quality of Education such as an inadequate number of textbooks; outdated textbooks; and reduction in programs in the arts and in sports. Vital programs and course offerings at the University level are being severely curtailed.

Class sizes at both the Public Schools and University level are exceeding appropriate standards and students at the University level are unable to timely matriculate in required course work.

7. Budget projections for the next fiscal year indicate that without enhancements in revenues to the State General Fund greater than any prediction to date, there will be heavy pressures to further reduce support to Education, both at the K-12 level and at the University level.

8. As the affidavits of the eight Auditors or former Auditors provided in this case detail, the relief sought in this case could result in an enhancement of revenues to the State of Idaho of somewhere between \$40 Million and \$70 Million. It is my observation through my work on the Appropriations Committee and through my awareness of the pronouncements made by both candidates for Governor and nearly all Legislators, that a high percentage of any enhanced revenue will go directly into Education funding, that is, the enhanced funding of Education will be one of the top two or three priorities as revenue becomes available.

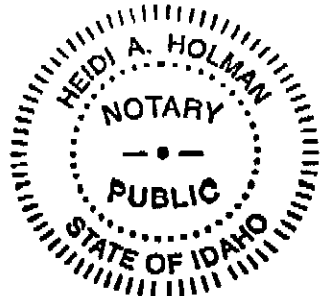
Further sayeth Affiant naught.

DATED this 4th day of November, 2010.

Shirley Ringo
Representative Shirley Ringo

On this 4th day of November, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared Representative **Shirley Ringo**, known or identified to me to be ~~the person~~ whose name is subscribed to the within instrument, and acknowledged to me that ~~she~~ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Heidi A. Holman
NOTARY PUBLIC for the State of Idaho
Residing at: ~~Moscow, Idaho~~ Pullman, WA
My commission expires: 4/9/2011

Robert C. Huntley ISB #894
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Boise, Idaho 83701
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Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

State Representative SHIRLEY RINGO,

Plaintiff,

v.

The IDAHO STATE TAX COMMISSION;
and ROYCE CHIGBROW, TOM
KATSILOMETES, SAM HAWS, and
DAVID LANGHORST, Commissioners of
the Idaho State Tax Commission, in their
official capacities and on behalf of the Idaho
State Tax Commission,

Defendants.

Case No. CV OC 1011269

NOTICE OF HEARING of:

**(1) Application for Intervention of
Party Plaintiffs**

AND

**(2) Motion to File SUPERSEDING
(Amended November 4th in
paragraph 16) Second Amended
Complaint**

PLEASE BE ADVISED that the **(1) Application for Intervention of Party Plaintiffs**, Idaho Education Association, Idaho Federation of Teachers and the American Federation of Teachers, University of Idaho, Moscow, Idaho Local 3215, and the **(2) Motion to File SUPERSEDING**

(Amended November 4th in paragraph 16) Second Amended Complaint will come on for hearing before the Court on the 18th day of November, 2010 at 3:30 p.m. or as soon thereafter as counsel may be heard.

DATED this 4th day of November, 2010.

The HUNTLEY LAW FIRM PLLC



Robert C. Huntley

CERTIFICATE OF SERVICE

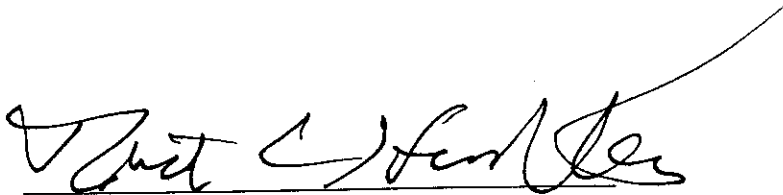
I hereby certify that on this 4th day of November, 2010, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

***VIA EMAIL**

And

- HAND DELIVER
- U.S. MAIL
- OVERNIGHT MAIL
- TELECOPY (FAX)

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Robert C. Huntley