

# Is Butch Otter a fair-weather constitutionalist?

**Marty Trillhaase/Lewiston Tribune**

Idaho Gov. C.L. (Butch) Otter has defended arming college students with concealed weapons in the name of the Constitution.

"As elected officials, we have a sworn responsibility to protect and defend the Constitution of the United States, not only when doing so is easy, convenient or without cost, but especially when it is not," Otter said.

Fair enough. As governor, Otter is bound to "see that the laws are faithfully executed.

But doesn't that go for Idaho's constitution as well?

In the last week or so, he's managed to trip over that document at least twice.

Take, for instance, the governor's plan to redouble wolf eradication efforts. In his State of the State address, Otter called for creation of a wolf control board, launched with the infusion of \$2 million.

It flew past the House on a 49-16 vote a month ago. And then in the corridors of the Statehouse, lawmakers privately asked Attorney General Lawrence Wasden this question: Back in the 1970s, Idahoans amended their constitution to cap state government at 20 departments.

Doesn't this create a 21st?

It sure does, Wasden's office told the lawmakers.

So back to the drawing board they went. By Tuesday, Otter's wolf bill acquired an amendment, transferring the wolf board to the governor's office and maintaining the constitutional limit on government agencies.

Just then, Otter's Commerce Chief Jeff Sayer's bill to dole out income, sales and payroll tax breaks up to 30 percent for any company creating 20 average-paying jobs in rural areas and 50 average-paying jobs in urban centers was on a roll.

It cleared the House 63-5 and then passed Senate by 29-6 when Sen. Steve Vick, R-Dalton Gardens, asked Wasden about its constitutionality.

Said Wasden's office: The bill has problems.

It gives Sayer and a seven-member Economic Advisory Council too much authority to decide what companies would get the break - and which would not.

"Within this broad grant of discretion, it is foreseeable that two identical applicants would receive different rates depending on each applicant's ability to negotiate with the director and secure subsequent council approval," wrote Deputy Attorney General Chelsea E. Kidney.

Likewise, making the council's decision final - and beyond the reach of any appeal - "creates constitutional vulnerability because it denies unsuccessful applicants any judicial review of the agency's determination."

Tuesday, state senators pulled the bill back, performed surgery on the floor and inserted enough new working parts to satisfy those concerns.

Old hands at this game say that's a lot of flubs from a governor's staff that had all the time in the world to prepare these bills and check for constitutional defects.

So is Otter's shop sloppy?

Or merely selective in its fealty to constitutional principles?

Two years ago, Otter's former chief economist, Mike Ferguson, grilled the governor about this constitutional provision: "... 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."

After more than a decade of tax cuts - many of them on Otter's watch - and a 25 percent decline in the share of Idaho's personal income devoted to school support, Ferguson wanted to know if Otter believed Idaho was following its constitution.

"I would say that we're probably not (meeting the constitutional obligation) but we're doing the best job we can and we're going to continue to do the best job we can," Otter said.

Then the governor went back to slashing taxes, socking money away in the banks and doing as little for the schools as he could manage.

Five years ago, he allowed a bill to become law - without his signature - that began the process of draining state lottery funds away from school and state construction projects to help finance school building bonds.

Even as he did so, Otter conceded the bill violated the spirit of Idaho's 1988 constitutional amendment establishing the lottery. "I wonder if the division proposed in this legislation would have been acceptable to the people of Idaho when they created the lottery," he wrote.

To recap: When he agrees with the Constitution, Otter's all for it.

When it gets in his way?

Not so much.

