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Attorney for Defendant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF KOOTENAI  
\*\*\*MAGISTRATE DIVISION\*\*\*

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|----------------------|---|---------------------------------|
| STATE OF IDAHO,      | ) | Case No. CR28-20-5861           |
|                      | ) |                                 |
| Plaintiff,           | ) |                                 |
|                      | ) |                                 |
| vs.                  | ) | <b>REPLY BRIEF TO STATE’S</b>   |
|                      | ) | <b>MEMORANDUM OF POINTS AND</b> |
|                      | ) | <b>AUTHORITIES</b>              |
| CHRISTA M. THOMPSON, | ) |                                 |
|                      | ) |                                 |
| Defendant.           | ) |                                 |

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COMES NOW the Defendant, Christa M. Thompson, by and through her attorney of record, Edward W. Dindinger of Dindinger & Kohler, PLLC, and submits her Reply Brief to the State’s Memorandum of Points and Authorities as follows.

**I. Background**

On August 4, 2020, Defendant Christa M. Thompson submitted her Motion to Dismiss along with her Memorandum in Support of Motion to Dismiss. At the hearing held on September 16, 2020, the Court expressed its intent to allow the state to file a responsive pleading, and decide the issue based on the filings submitted. At the Pretrial Conference on September 18, 2020, undersigned counsel, noting the State had had the Motion and Memorandum for over a month-and-a-half, without bothering to respond, requested the

opportunity to reply to whatever the State submitted. On September 18, 2020, the State filed a Memorandum of Points and Authorities, purportedly responsive to the Motion to Dismiss and its supporting Memorandum. Defendant Christa Thompson now submits her reply.

## **II. Legal Argument**

It must be stated with candor at the outset that it is rather difficult to reply to the State's Memorandum, as it does not appear to be in any way responsive to the Defendant's pleadings. Rather, it seems to be almost wholly a copy/paste job, lifted from various public information documents released by the Governor's office and the Attorney General. It is not even evident the State bothered to read the Defendant's Memorandum. Without question, this is the worst example of "legal writing" which has crossed undersigned counsel's desk. Nonetheless, an attempt will be made to respond to the State's "points" in turn:

### **A. The Defendant never argued the Governor lacked authority to issue a "Stay at Home order."**

The State asks, "Does the Governor have the authority to issue a Stay at Home order," and answers its own, apparently rhetorical, question in its first "point." It should be noted that the actual title of the Order in question is "Order to Self-Isolate for the State of Idaho," and it was issued by Dave Jeppesen, Director of the Idaho Department of Health and Welfare, not Governor Brad Little. In reality, the question and the first line of the answer appear to be simply plagiarized from the "Stay at Home Order Frequently Asked Questions" put out by the Attorney General's Office, and available at [https://www.ag.idaho.gov/content/uploads/2020/03/FAQs-Idahos-Stay-at-Home-Order.pdf?fbclid=IwAR2ifzpu7AzLB9yp-MvR1VOMNAF5DJ1dUL4IdfldTR5BBP\\_p4glVDWVHIhg#:~:text=Does%20the%20Governor%20have%20the%20authority%20to%20issue,Constitution.%20This%20authority%20is%20cod](https://www.ag.idaho.gov/content/uploads/2020/03/FAQs-Idahos-Stay-at-Home-Order.pdf?fbclid=IwAR2ifzpu7AzLB9yp-MvR1VOMNAF5DJ1dUL4IdfldTR5BBP_p4glVDWVHIhg#:~:text=Does%20the%20Governor%20have%20the%20authority%20to%20issue,Constitution.%20This%20authority%20is%20cod)

ified%20throughout%20Idaho%20Law. The State goes on to copy/paste two constitutional provisions and a statute, but provides no actual legal argument.

The obvious problem for the State is that it is simply tilting at a windmill; the Defendant never argued that the executive branch of the government of the State of Idaho (charitably reading the State's position broadly) lacked the "authority" to issue the Order. Rather, the Defendant's argument is premised upon that the charged conduct, as a logical and legal matter, simply could not have violated the Order, and empowering statutes, as they are written. Alternatively, Defendant argues the Order is unconstitutionally vague. Again, undersigned counsel is not at all certain the State bothered to read the Defendant's Memorandum.

**B. The State's second "point" consists merely of a recitation of history, and is not legally relevant.**

In its second "point," the State simply declares "Pursuant to I.C. 46-1008 the Governor declared a state of emergency and issued an executive order dated March 13, 2020 and was followed by an order of extreme emergency dated March 20, 2020." This is simply a statement of historical fact, and undersigned counsel finds its inclusion here bizarre. The State follows this by quoting (without attribution) from the Governor's Proclamation of a State of Emergency from March 25, 2020 (not March 20, as the State incorrectly avers) which, again, has no bearing on the arguments and issues Defendant has raised.

**C. The State's third "point" merely recites text from the Order in question, without addressing its applicability to the Defendant or to her alleged conduct.**

Here, the State copy/pasted boilerplate from the Order, without addressing any of the statutory or exemption-based arguments raised by the Defendant.

**D. The State’s fourth “point” simply recites the public justification for the issuance of the Order, which the Defendant has not challenged.**

Here, the State simply makes the assertion that, “limiting personal contact was within the purview of the Governor’s executive powers as delegated to the Idaho Department of Health and Welfare.” This is an incorrect statement of law, as the authority to issue “orders of isolation and quarantine” is provided to the Director of the Department of Health and Welfare by Idaho Code 56-1003, and is not the result of any “delegation” by the Governor. That notwithstanding, when read charitably, broadly, and generally, the Defendant never argued this point.

The State goes on to quote again from the Attorney General’s FAQ. While the Defendant appreciates, at least, that the State gave attribution in this instance, it is unclear to what the State believed it was responding. It certainly could not have been any of the arguments or issues raised by the Defendant in her Motion or its supporting Memorandum.

**III. Conclusion**

Again, the State’s “Memorandum of Points and Authorities” contains no points or authorities, much less legal arguments, which address the issues raised in this case. For the most part, it contains plagiarized assertions and general statements. It is clear the State does not take this case seriously which, combined with the State’s stated intention to call “8 to 10” witnesses at the trial of this action, represents a grossly irresponsible abuse of judicial resources which are still strained by limited operations due to COVID-19. As the Court correctly surmised and stated at the Pretrial Conference of this matter, this prosecution is nothing more than a “dog-and-pony-show” being carried on for reasons which can be known only to the State, but clearly for reasons other than the administration of justice. That alone justifies immediate dismissal in the interests of justice under Idaho Criminal Rule 48.

Because the State has utterly failed to respond to the Defendant's Motion to Dismiss and its supporting Memorandum, and for the reasons listed above, this action should be dismissed with prejudice forthwith.

DATED this 2<sup>nd</sup> day of October, 2020.

DINDINGER & KOHLER, PLLC

/s/ Edward W. Dindinger  
Edward William Dindinger, Esq.  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of October, 2020, a true and correct copy of the foregoing Reply Brief to State's Memorandum of Points and Authorities was served upon:

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