MEMORANDUM

June 8, 2020

TO: Speaker Scott Bedke and Pro Tem Brent Hill

FROM: Bill Myers

RE: Illegitimacy of a June 23 Special Session of the Legislature

I. Introduction

The Freedom Man Political Action Committee1 (“PAC”) is calling on citizens to petition their state senators and representatives to convene a special session of the Idaho Legislature on June 23, 2020 to address issues related to the COVID-19 pandemic. The PAC’s three-part agenda for the session will be the Governor’s stay-home orders, his suspension of regulations dealing with foster children, and disbursement of federal funds.2

This call for a special session is not supported by facts or law and, if it proceeds, could inject confusion among the citizenry at best and promote anarchy at worst in the midst of the COVID-19 pandemic.

II. Governor Little’s Proclamations and Orders

The Governor’s pandemic proclamations and orders relevant to the call for a special session3 consist of:

1. March 13 proclamation of a state of disaster emergency pursuant to I.C. § 46-1008(2) for 30 days unless extended for 30-day increments.

1 www.freedomman.org

2 The PAC’s materials supporting a special session do not address federal funding issues. Consequently, they are not addressed in this memo.

3 Other proclamations and Executive Orders dealing with open meetings (3/18/20), state income tax filing deadlines (3/23/20), unemployment insurance (3/27/20), primary elections (4/1/20), etc., are not recounted as unnecessary to fully explore the issues.
2. March 23 proclamation suspending certain regulations pursuant to I.C. § 46-1008(5)(a) for the duration of the declared state of emergency.


4. April 22 proclamation extending the March 13 proclamation that was extended on March 25, for another 30 days pursuant to I.C. §§ 46-1008 and 46-601.

5. May 12 proclamation of a state of public health emergency pursuant to I.C. § 46-1008, for 30 days unless extended for 30-day increments.

6. May 30 Stay Healthy Order (Stage 3) issued jointly with Idaho Department of Health and Welfare pursuant to Idaho Const. Art. IV, § 5, and Idaho Code §§ 46-1008, 46-601, and 56-1003(7) effective until extended, rescinded, superseded, or amended. Under this Order:
   a. Businesses may resume operations at physical locations except nightclubs and large venues.
   b. Businesses must adhere to social distancing and sanitation.
   c. Certain persons entering Idaho are encouraged to self-quarantine.
   d. Vulnerable residents should take precautions.
   e. Gatherings of more than 50 people should be avoided.
   f. Non-essential travel can resume.

As of June 5th, Idaho had over 3100 COVID-19 cases resulting in 83 deaths.⁴

III. Questions and short answers raised by the PAC’s petition for a special session


B. Do Governor Little’s “stay home” orders violate the United States Constitution? No.

C. Has Governor Little suspended laws protecting foster children? No.

Consequently, any effort to convene a legislative session on June 23rd would be illegal. These issues will be addressed separately below.

⁴ According to https://coronavirus.idaho.gov/

A. The law authorizing the Governor to declare an “extreme emergency” does not authorize the Legislature to call a special session on June 23, 2020.

As its factual premise for a June 23 special session, the PAC claims that Governor Little’s March 25 proclamation of an extreme emergency is based on I.C. § 46-601(1)(a) due to China’s use of the coronavirus to attack Idaho.

The March 25 proclamation is, by its language and nature, not based on an enemy attack. Instead, it is in response to a pandemic which is analogous to an epidemic which is one of the examples in 46-601(1), subsection (b)—not subsection (a) cited by the PAC—as a basis for a proclamation of an extreme emergency. The Governor could have based his proclamation on an enemy attack or on a pandemic and he clearly chose the pandemic as his basis. The March 25 proclamation clearly references the pandemic declared by the World Health Organization and nowhere even hints that it is based on an enemy attack.

The PAC claims that Idaho was “attacked” as defined by I.C. § 67-415(a) as actions by an enemy of the U.S. resulting in substantial damage or injury to Idahoans or their property through means such as bacteriological or biological agents. The PAC cleverly uses the definition of an enemy “attack” from one law to define that phrase in a completely different law in a completely different section of the Idaho Code. The PAC takes the definition of an attack from a statute addressing the continuation of government operations following an attack that may kill or disable a “large proportion” of the Legislature and applies to the laws dealing with extreme emergencies from a pandemic.

First, the argument that we have been attacked by China avoids the reality that the Governor did not base his exercise of his powers on the belief that we were attacked by a foreign enemy. The PAC tries to avoid this reality by quoting President Trump’s statements that China attacked us with COVID-19. Despite the President’s rhetoric, there has been no Presidential or Congressional declaration of war with China. If we had been attacked to the degree

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5 I.C. § 67-414.
contemplated by I.C. § 67-414, causing “unprecedented destructiveness,” one might assume that a formal declaration of war would have followed. The lack of a war with China might, therefore, be explained by the fact that the COVID pandemic is not unprecedented. Witness six pandemics that have occurred in just the last century (Sixth cholera pandemic, Spanish flu, Asian flu, Hong Kong flu, Swine flu, and COVID-19).

Second, the PAC provides no evidence that the pandemic, assuming it was a biological attack by China on the United States, has rendered a large proportion of the Idaho Legislature unable to fulfill their oaths of office. The PAC has not provided a single example of a member of the 2020 Legislature who has succumbed to the virus.

Third, this effort to use the definition of “attack” from one statute to define the word in another statute is improper. A definition found in a title of the Idaho Code applies to words in that title. A statutory definition provided in one act does not apply for all purposes and in all contexts but generally only establishes what it means where it appears in the same act. The definition of “attack” borrowed by the PAC from a different title of the Idaho Code states that it for use “in this (continuity of government) act.” The definition cannot be lifted from Title 67 and dropped into Title 46 as the PAC attempts to do.

B. Governor Little did not impose martial law justifying a special session.

The PAC also claims that Governor Little has imposed martial law on Idaho due to the attack and must convene the Legislature pursuant to I.C. § 67-422 on or before June 23 -- 90 days following the “inception of the attack.” The PAC pegs the date to the Governor’s March 25 proclamation. The PAC then concludes that the Governor will not convene the Legislature so the Legislature must automatically convene on the 90th day pursuant to the cited statute.

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6 I.C. Sec. 67-414.
9 I.C. § 67-415(a).
10 Id.
Governor Little did not impose martial law and his proclamations were not due to an attack, as explained above. I.C. § 46-601(1) authorizes the Governor to order the national guard or organized militias into the active service of the state. This would be martial law.\textsuperscript{11} Because Idaho is not under martial law, this statute cannot be the basis for a June 23 legislative session.

And again, the PAC is mixing I.C. § 46-601(2) dealing with extreme emergencies resulting from a pandemic and I.C. § 67-422 dealing with continuity of government following an enemy attack that may incapacitate the Legislature as a body. Indeed, I.C. § 67-422 is part of the Emergency Interim Legislative Succession Act.\textsuperscript{12} Relying on I.C. § 67-422 only, the PAC states that because Gov. Little has not convened the Legislature following an attack (that he has not recognized), the Legislature, or what’s left of it following the attack, must convene 90 days after the Governor’s March 25 proclamation (which nowhere references an enemy attack). The PAC believes Idaho has been attacked by the Chinese based on statements President Trump made on May 6, 2020. If that was a proclamation of an enemy attack, then the PAC must wait 90 days from the President’s declaration – August 4th – before it could convene itself.

C. The law authorizing the Governor to declare a “disaster emergency” does not authorize the Legislature to call a special session on June 23.

The PAC claims that Idaho Code § 46-1008(2) authorizes the Legislature to adopt a concurrent resolution terminating Governor Little’s state of emergency “at any time,” which the PAC interprets as authorizing the Legislature to convene a special session at any time to consider such resolution.

The PAC misconstrues the phrase “at any time” as it fits in the statute. The sentence prior to the sentence containing “at any time” states that a declared state of emergency can last no longer than 30 days, subject to an extension of up to 30 days. This is followed by the sentence cited by the PAC: “The legislature by concurrent resolution may terminate a state of disaster emergency at any time.”

\textsuperscript{11} See, e.g., McConnel v. Gallet, 51 Idaho 386 (1931).
\textsuperscript{12} I.C. § 67-413 et seq.
The PAC misconstrues the phrase “at any time” to mean that the Legislature may call itself into special session “at any time” to terminate a state of emergency. This is one, but not the best, interpretation of the sentence. It could also mean that the Legislature can adopt a concurrent resolution that terminates a state of emergency “at any time” during the 60 days that a proclamation may last. In other words, the Legislature does not have to wait for the expiration of the state of emergency to terminate it; the Legislature can terminate it at any time while it is effective.

Judges are often asked to interpret the correct meaning of a statute that is subject to multiple meanings. Judges apply a commonly used rule that the statute should be interpreted in a manner that does not cause it to conflict with the Constitution.\(^\text{13}\) The PAC’s interpretation conflicts with the Idaho Constitution when it concludes that the Legislature may call itself into special session at any time.

The starting point for the analysis is the Idaho Constitution, Art. IV, § 9:

> EXTRA SESSIONS OF LEGISLATURE. The governor may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it; but when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation. . . .

From this section of the Constitution, we know that the Governor can call a special, or “extraordinary,” session, but it is silent on whether the Legislature could do so on its own initiative, how that would be done, and whether its power to legislate would be restricted to any subjects. This constitutional provision is compatible with Art. III, § 8 that authorizes the Legislature to meet annually beginning on the second Monday in January of each year, unless a different day is set by law,\(^\text{14}\) “and at other times when convened by the governor.”

\(^{13}\) *State v. Groseclose*, 67 Idaho 71, 75, 171 P.2d 863, 865 (1946) (“If the terms of a statute are by fair and reasonable interpretation capable of a meaning consistent with the requirements of the Constitution, the statute will be given that meaning, rather than another in conflict with the Constitution.”).

\(^{14}\) I.C. § 67-404 sets the Monday on or nearest January 9th as the starting date.
In the absence of a constitutional provision explicitly authorizing the Legislature to call itself into special session, can that authority be inferred from other sections of the Constitution or, perhaps, from inherent powers of the Legislature?

This question is answered in the first instance by Art. II, § 1, of the Constitution:

DEPARTMENTS OF GOVERNMENT. The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

(Emphasis added). To paraphrase the emphasized text in the current context, the legislative department shall not exercise the executive department’s power to call a special session unless the Constitution expressly allows it to do so. Consequently, in the absence of an express authorization, such power in the legislative department cannot be inferred from other provisions in the Constitution.

Several judicial decisions arising out of Idaho have addressed a governor’s power under Art. IV, § 9. In deciding this question, the courts held that the governor alone may exercise the Constitution’s authority to call a special session.

In *Diefendorf v. Gallet*, the Idaho Supreme Court began its analysis by citing Art. II, § 1’s declaration that the three branches of government may not interfere with each other’s duties. The Court made this point in refusing to substitute its judgment for that of the governor when deciding whether an extraordinary occasion merits a special session. When turning to Art. IV,

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15 Art. III, § 27 requires the Legislature to continue state and local governmental operations following an enemy attack. The inapplicability of this constitutional provision to the COVID-19 pandemic was discussed above.

16 10 P.2d 307, 315 (1932), partially superseded by statute, 319 P.2d 195 (Idaho 1957),

17 *Id.* at 314.
§ 9, the Court held that “[t]he responsibility and the discretion are [the governor’s], not to be interfered with by any other co-ordinate branch of government.”  

The Supreme Court cited a federal district court decision that also analyzed Art. IV, § 9 vis-à-vis a governor’s determination of extraordinary circumstances meriting a special session. After quoting the constitutional provision, the Court stated, “It vests in the Governor power and discretion to convene the Legislature on extraordinary occasions in session which the framers of the Constitution have intrusted [sic] to the chief executive officer of the state alone.”

This issue of a legislature calling itself into session has been addressed by other courts as well. In an Oklahoma case, a majority of the House of Representatives signed a petition alleging their inherent power to call the Legislature into special session. A taxpayer successfully sued to prevent the use of state funds to pay for the session. Interpreting Oklahoma’s version of Idaho’s special session constitutional provision, the court emphasized the sentence preventing the legislature from acting on any subject other than as provided by the governor and ruled that it “expressly prohibits the legislative branch, or any part thereof, from exercising this power.”

The court held that if the member of the House came to the Capitol for a purported special session, they would come as individuals with no ability to incur state expenses and no ability to perform official functions.

In a Nebraska case, the President of the Senate assumed acting Governor status and called a special session. When the Secretary of State returned to Nebraska, he resumed his role as acting Governor and dissolved the special session but the legislators met anyway. In reviewing these facts, the court admonished: “In fact, I choose to avoid any further publication of the disgraceful transactions that have attended the administration of our state government—

18 Id. at 315.
19 Utah Power & Light Co. v. Pfost, 52 F.2d 226 (D. Idaho 1931)
20 Id. at 231. (emphasis added).
21 Simpson v. Hill, 263 P. 635 (Okla. 1927)
22 Id. at 639.
23 Id. at 641.
transactions which have made the character of the state the subject of jeer abroad, and occasioned every good citizen to blush to acknowledge that he is a member of it.”

24 People v. Parker, 3 Neb. 409, 418 (1873).


26 Const. Art. III, § 27.

27 I.C. § 67-422.
allowed to happen, all of Idaho government could literally rest in the hands of a few legislators – virtually unfettered even by the Idaho Constitution.

V. **Governor Little’s “stay home” orders do not violate the United States Constitution.**
   
   A. The right to assemble can be temporarily curtailed during emergencies.

   The PAC claims that the Governor’s order banning all in-person gatherings of any number of individuals outside the household violates the First Amendment of the U.S. Constitution and its protection against laws that abridge the right of the people to peaceably assemble.

   This order was part of the March 25, 2020 Department of Health and Welfare (IDHW) order that is no longer in effect. It was rescinded by the May 1, 2020 Stay Healthy Order. The current May 30 Stay Healthy Order states that gatherings of more than 50 people “should be avoided.” Gatherings of 50 or fewer people are not restricted. Consequently, this claim challenges an order that no longer exists.

   Even if the Governor’s original stay home order was still in effect, it did not violate the constitutional right of citizens to assemble peaceably because the order was supported by a compelling state interest that cannot be achieved through less restrictive means.

   The First Amendment to the U.S. Constitution states:

   > Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

   Temporary curtailment of the right to peaceably assemble is consistent with courts’ longstanding interpretation of the Constitution. The Tenth Amendment to the U.S. Constitution reserves to the States all powers not delegated to the federal government or prohibited to the States. This includes police powers, and has been recognized since the earliest days of our Nation to include health laws and quarantine laws.\(^2^8\) As a general principle, “[t]he Government's

\(^{28}\) *Gibbons v. Ogden*, 22 U.S. 1, 78 (1824).
regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest.”

Consistent with that principle, courts have repeatedly upheld a state’s police power to respond to emergency situations with, for example, temporary curfews that might curtail the movement of persons who otherwise would enjoy freedom from restriction. In such circumstances, “governing authorities must be granted the proper deference and wide latitude necessary for dealing with the emergency.” Relatedly, and as a general rule, a public forum for speech created by the government can be closed for expression so long the action does not result from a desire to censor particular speech or speakers. The government can regulate expressive activity using valid “time, place, and manner” regulations if the regulations meet certain requirements, including that they serve a sufficiently important purpose.

B. The Governor has not unconstitutionally restricted religious freedom.

The PAC claims that the Order bans all on in-person religious services and thus impinges upon the First Amendment’s protection of the free exercise of religion.

This order was also part of the March 25, 2020 IDHW order that has been rescinded. Again, the May 30 Stay Healthy Order states that gatherings of more than 50 people “should be avoided.” Gatherings of 50 or fewer people are unrestricted.

The Governor’s Stay Healthy Order does not violate the First Amendment’s protection of the free exercise of religion because the order is generally applicable to everyone and advances a compelling governmental interest. While the First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” the U.S. Supreme Court has consistently held that lawsuits raising “free exercise” claims will fail in the face of a “valid and neutral law of general applicability.” This concept was most recently


31 Smith v. Avino, 91 F.3d at 109.

affirmed in the Court’s May 29, 2020 denial of injunctive relief in *South Bay United Pentecostal Church v Newsom.* In that case, the South Bay United Pentecostal Church brought an action in federal court to stop enforcement of a California order that placed numerical and other restrictions on public gatherings, including religious services. In denying the Church’s request, Chief Justice Roberts wrote:

> Although California's guidelines place restrictions on places of worship, those restrictions appear consistent with the Free Exercise Clause of the First Amendment. Similar or more severe restrictions apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time.

In support of this point, Chief Justice Roberts wrote that “[o]ur Constitution principally entrusts ‘the safety and the health of the people’ to the politically accountable officials of the States ‘to guard and protect.’”

The Governor’s Stay Healthy Order is generally applicable to all Idahoans, is temporary, and does not target the free exercise of religion. Religious gatherings are treated the same as any other type of gathering in the state, just like in the *South Bay United Pentecostal Church* case.

C. Non-essential travel is a non-issue.

The PAC claims that the original Stay Home Order prohibits non-essential travel and thus deprives persons of liberty without due process of law contrary to the U.S. Constitution’s Fifth Amendment.

Once again, this order was part of the March 25, 2020 IDHW order that has been rescinded. The May 30 Stay Healthy Order that is currently in place allows non-essential travel so this is a non-issue.

Even if the non-essential travel ban were to be reinstated, the Governor can temporarily restrict travel through the exercise of the State’s police power. Idaho courts have been clear on

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34 *Id.*
35 *Id.* (quoting *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905)).
this point: “Whether it is termed a right or a privilege, an individual's ability to travel on public highways is 'subject to reasonable regulation by the state in the exercise of its police power.'”

“A state law does not impermissibly infringe on this right unless impeding travel is the law's primary objective, the law actually deters such travel, or the law uses a classification that serves to penalize the exercise of the right.” The State’s police powers are used to curtail travel in everyday circumstances—like imposing speed limits and other safety measures—as well as in emergency situations such as requiring drivers to pull over for emergency vehicles and also during a public health emergency.

The Governor’s temporary limitation on travel had a primary objective of limiting the spread of COVID-19, a communicable disease with no vaccine and no natural human immunity. Therefore, the Governor’s exercise of the state’s police powers are reasonable under the circumstances. He derived those powers from the Idaho Code that vests all police powers of the state in the governor whenever he or she declares a state of extreme emergency.

The PAC would have a special session of the Legislature address this state law, presumably, but for reasons stated above, a special session on June 23rd would be illegal. The law, and any amendments may be addressed by the Legislature when it convenes its next regular session in 2021.

D. The Governor’s designation of non-essential businesses does not violate the Fourteenth Amendment.

The PAC claims that the original Stay Home Order’s designation of some Idaho businesses as essential and others as non-essential violates the Fourteenth Amendment requirement that the States extend to each of their citizens the equal protection of the laws.

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38 I.C. § 46-601(2).
This order was part of the rescinded March 25, 2020 order. The May 30 Stay Healthy Order requires nightclubs and large venues to remain closed except for some minimum basic operations.

The Governor’s Stay Healthy Order does not violate the Fourteenth Amendment’s equal protection clause. The Fourteenth Amendment states in part that “[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” That said, “[t]he Equal Protection Clause allows the States wide latitude with economic decisions, and presumes that even improvident decisions will eventually be rectified by the democratic processes.” Consequently, while the PAC clearly dislikes this order, it is not unconstitutional and that argument cannot be used to call a special session of the Legislature.

As a starting point, it is not clear how the Equal Protection Clause would even apply to the essential vs. non-essential worker dynamic. Assuming that the essential worker classification qualifies for equal protection consideration, there is no legitimate interpretation of that clause to show that any such violation has occurred here. “[A] classification neither involving fundamental rights nor proceeding along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose.” To the first point, the U.S. Supreme Court has previously declined to label the right to work as a fundamental right. And to the second, slowing the transmission of a communicable disease is a legitimate government purpose and the Governor’s actions are related to that purpose.

There is no equal protection violation even under the most demanding constitutional standard. Under that standard, the courts apply a “strict scrutiny” analysis that requires the government to show that its actions are “narrowly tailored” to achieving a “compelling” state

\[\text{39} \quad \text{Crawford v. Antonio B. Won Pat Int’l Airport Auth., 917 F.3d 1081, 1096 (9th Cir. 2019).} \]
\[\text{40} \quad \text{Id. at 1095.} \]
\[\text{41} \quad \text{See Massachusetts Bd. of Ret. v. Murgia, 427 U.S. 307, 312 (1976) (Applying only a rationality test, not strict scrutiny, to rights related to federal employment).} \]
interest. Idaho’s interest is well understood—slowing the transmission of disease to save lives and reduce illness. The PAC may disagree with that statement of the State’s interest and the PAC may argue that the Governor’s order in not narrow enough to achieve that interest. The PAC could raise those arguments before a court that would then decide if the PAC is right or wrong, but the Governor has the authority to make that decision under Idaho’s police power when he declared an extreme emergency. He has that authority because the Legislature gave it to him when it passed I.C. § 46-601(2). The PAC wants a special session of the Legislature to change that law, presumably, but for reasons stated above, the Legislature lacks the power to call itself into session as a result of a pandemic.

E. The Governor has not suspended the U.S. or Idaho Constitutions.

The PAC claims that Governor Little has illegally suspended the U.S. Constitution, citing a U.S. Supreme Court case from 1866.43

The Constitutions of the United States and the State of Idaho were not suspended, rather, emergency circumstances allowed Governor Little to curtail or limit certain rights to address that emergency. As the U.S. Supreme Court has held, “In an emergency situation, fundamental rights such as the right of travel and free speech may be temporarily limited or suspended.”44 As explained above, even during emergencies, governments must satisfy certain tests to ensure their actions pass constitutional muster and are balanced against the dangers posed by a given emergency. If the PAC thinks the Governor has not properly balanced his use of police powers, its remedy, if any, is in court and not in an illegal legislative session.

The powers exercised by the Governor are consistent with the case cited by the PAC, Ex parte Milligan. In that case, written shortly after the Civil War, the U.S. Supreme Court held that a military court may not try an ordinary citizen unconnected with the military or an area of the country directly involved in war.45 In essence, the Court held that while suspension of

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42 Hines v. Youseff, 914 F.3d 1218, 1234 (9th Cir. 2019).
43 Ex parte Milligan, 71 U.S. 2, 76 (1866).
44 See Smith v. Avino, 91 F.3d at 109 (citing Aptheker v. Secretary of State, 378 U.S. 500 (1964)).
45 Ex parte Milligan, 71 U.S. at 79-80.
VI. Governor Little has not suspended laws protecting foster children.

The PAC claims that Governor Little’s March 23 proclamation suspended Idaho laws that protect children in state custody and ensure that parental rights are maintained. Specifically, the PAC looks at four state regulations:

1. IDAPA 16.06.01.50.06, requiring parental visitation unless contrary to the child’s safety;
2. IDAPA 16.06.01.50.07, requiring notification to parents within 7 days of change of foster placement;
3. IDAPA 16.06.01.50.08, requiring notification to parents if there is a change in their visitation schedule with their child in foster care; and
4. IDAPA 16.06.01.50.09, requiring notification regarding right to appeal changes in visitation or placement of their foster child.

These regulations only apply in child protection proceedings, governed by Idaho statute, and concerning a child within the state who is neglected, abandoned, or abused by his or her parents. As the Idaho Supreme Court has ruled, “The [Child Protection Act] is designed to protect children from guardians or custodians who might pose a health or safety threat.” This is consistent with the U.S. Supreme Court’s decision that “[A] state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized.”

Governor Little’s order temporarily suspends limited agency regulations; it does not suspend any statutes concerning child protection proceedings. The statutory requirements regarding the grounds for a child’s removal, and the hearing and notice triggered by the removal, are not affected by the Governor’s order. For example, hearing and notice requirements

46 I.C. § 16-1603(1).
triggered by the removal of a child to prevent serious physical or mental injury to the child are not affected by the Governor’s order. Consequently, the suspension of these regulations only interrupts the ability of a parent to interact with his or her child where the child has already been removed from the physically and/or mentally abusive parent. The effect of the order is to further protect these mistreated children from COVID-19 – an effect the PAC wants to undo.

VII. Conclusion.

The PAC does not like the Governor’s exercise of the powers given to him by the United States and Idaho Constitutions and the Legislature over many decades. Its solution is to create an alternative legislature, consisting of a few legislators, that would have unfettered control of all branches of Idaho’s government because they could waive any portions of the Idaho Constitution that they deem “impracticable” or that slows them down.

It is hardly surprising that a political action committee would promote a political rally. Legislators who rally to the call for a June 23 “session,” however, will choose to do so knowing that the Chinese have not killed or disabled a large proportion of the existing Idaho Legislature. They will also need to turn a blind eye to the PAC’s highly selective reading of some Idaho laws and purposeful rejection of other Idaho laws. And they will need to ignore judicial decisions going back centuries from the United States Supreme Court on down.

49 I.C. §§ 16-1608(1)(a), 16-1609(c).