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Petitioner representing himself

BEFORE THE SUPREME COURT OF IDAHO

In Re: Petition for Writ of Prohibition.

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RECLAIM IDAHO, and the COMMITTEE TO  
PROTECT AND PRESERVE THE IDAHO  
CONSTITUTION, INC.,

Petitioners,

v.

LAWRENCE DENNEY, Idaho Secretary of State, in  
his official capacity,

Respondent,

and

SCOTT BEDKE, in his official capacity as Speaker of  
the House of Representatives of the State of Idaho;  
CHUCK WINDER, in his official capacity as Presi-  
dent Pro Tempore of the Idaho State Senate; and the  
SIXTY-SIXTH IDAHO LEGISLATURE,

Intervenor-Respondents.

Docket No. 48784-2021

Docket No. 48760-2021

**REPLY IN SUPPORT OF  
PETITIONER GILMORE'S  
MOTION TO REVISE PART OF  
OPINION FILED AUGUST 23, 2021  
(As corrected on August 25, 2021)**

In Re: Petition for a Writ of Mandamus.

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MICHAEL STEPHEN GILMORE, a Qualified  
Elector of Ada County,

Petitioner,

v.

LAWRENCE DENNEY, Idaho Secretary of State, in  
his official capacity,

Respondent,

and

SCOTT BEDKE, in his official capacity as Speaker of  
the House of Representatives of the State of Idaho;  
CHUCK WINDER, in his official capacity as Presi-

dent Pro Tempore of the Idaho State Senate; and the  
SIXTY-SIXTH IDAHO LEGISLATURE,  
Intervenor-Respondents.

I moved this Court to correct what I identified as an inconsistency in the Court’s Opinion in this Case — the Opinion’s requirement that I show a “unique” injury to establish standing (an injury “that is different than that suffered by *any other* member of the public”), Opinion p. 15 (emphasis mine), as opposed by a distinct injury (“an injury not suffered by all citizens and taxpayers alike”), Opinion, p. 16. As I explained in my Motion, I have nothing to gain from the Court correcting this inconsistency; my Petition will still be dismissed regardless of how the Court rules on my Motion.

The Respondent’s seemingly perfunctory Opposition to my Motion can be summarized as follows: First, the Opposition says at pp. 2–5 that the alleged tension between unique-injury based standing and distinct-injury based standing does not exist because *Selkirk-Priest Basin Ass’n v. State*, 128 Idaho 831, 834, 919 P.2d 1032, 1035 (1996), which the Opinion cited on p. 15, did not require a unique injury. I agree that *Selkirk-Priest Basin Ass’n* did not require unique injury, but the Opinion cites it as though it did. That is the problem.

Second, the Opposition says at pp. 5–7 that the Motion is procedurally deficient because it is not explicitly based upon any Idaho Appellate Rule. Rule 32 generally authorizes any Motion allowed by the Rules. Perhaps my Motion is allowed by the Rules; perhaps it is not. But, Courts may revise their Opinions *sua sponte* to correct them. My Motion is not seeking anything for my own benefit; it is attempting to correct what I have identified as an inconsistency in the Opinion. The Court may revise its Opinion with or without my Motion.

Third, the Opposition says at pp. 7–9 that I am seeking an advisory opinion. This is of a common theme with the second point, and my response is the same.

What the Opposition lacks entirely is any discussion of whether the Opinion will be improved by tackling the issues addressed in my Motion. I think that it would give better guidance to the District Courts if it were. For example, this Court has reversed a District Court that dismissed a case for lacking of standing on the mistaken belief that a Plaintiff must show a unique injury to establish standing.<sup>1</sup> In *Butters v. Hauser*, 131 Idaho 498, 960 P.2d 181 (1998), a property owner sued Latah County after it granted a conditional use permit to build a radio transmission tower near her property; the tower interfered with the property owner’s telephone system, and she had to spend \$1,500 for a new telephone system that eliminated the tower’s interference. The District Court dismissed the property owner’s count for declaratory judgment for lack of standing because her injuries “while arguably palpable, are not unique to her.” *Id.* at 500, 960 P.2d at 183. This Court reversed dismissal of the declaratory judgment count because the property owner suffered peculiarized harm (*i.e.*, distinct harm not shared alike by the general public), even if it was not unique harm. *Id.* at 501, 960 P.2d at 184.

The Court’s Opinion in this case stated at p. 18 that “Gilmore fails to meet the test set forth by this Court in *Phillip Morris* by pointing to a ‘distinct and palpable injury’ that he has suffered and is *unique* to him.” This reference to “uniqueness” and other references that I referred to in my Motion have the potential to confuse District Courts into the same mistake made in *Butters*. That is reason enough to remove them.

More importantly, the Court’s landmark Opinion in this case will be cited by courts in Idaho and throughout the Nation. It will be cited in law reviews, treatises, and textbooks. It will be read and studied by generations of Idaho law students. If the Opinion muddies the waters of

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<sup>1</sup> Although a unique injury is not necessary to establish standing, it would always be sufficient to establish standing because a unique injury will always be a distinct injury. *E.g.*, *Bedke v. Ellsworth*, 168 Idaho 83, 480 P.3d 121 (2021) (Speaker of the House’s unique injury vis-à-vis the State Treasurer in their dispute over office space in the Capitol gave him standing).

standing law by suggesting that standing requires *unique* injuries *not suffered by any other member of the public*— which it does as currently written — that confusion will take time to clear up.

For all these reasons, as more fully explained in my Motion, I urge the Court to revise its discussion of standing to remove references to standing requiring a unique injury not suffered by any other member of the public.

DATED THIS 16th day of September, 2021.

/s/ Michael Stephen Gilmore  
Petitioner

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2021, I e-mailed this Reply in Support of Motion to Revise Part of Opinion to the following attorneys at the following e-mail addresses:

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DATED THIS 16th day of September, 2021.

/s/ Michael Stephen Gilmore  
Petitioner