

11-4-2013

State v. L'Abbe Respondent's Brief 1 Dckt. 41212

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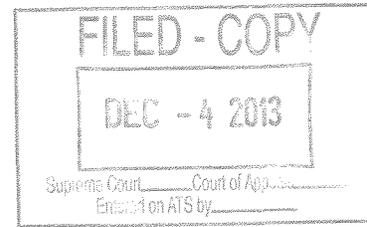
Stephen D. L'Abbe,' *sui juris* (Independent)

% 1614 Manitou Avenue

Boise, Idaho 83706

Special Appearance with assistance

Under Protest and Objection



In the Supreme Court of the State of Idaho

STATE OF IDAHO)	Citation No: 157114
Plaintiff / Respondent,)	Vio. -Speeding Code Section 49-654(2)
)	Supreme Court Docket No. 41212-2013
vs.)	“Case No.” CR-IN-2012-0021020
)	MANDATORY JUDICIAL NOTICE
Stephen D. L'Abbe)	REPLY BRIEF
so called defendant, Appellant)	OBJECTION TO UNCONSTITUTIONAL
)	DECISION AND ORDER

To the Supreme Court of the State of Idaho

cc: ATTORNEY GENERAL, Lawrence Wasden
cc: OFFICE OF THE COURT of the 4th District, Ada County
cc: PROSECUTING ATTORNEY'S OFFICE, City of Boise

I, Stephen D. L'Abbe, hereby attest and affirm that, to the best of my knowledge and belief, the following is true and correct this date: December 4, 2013.

Opening Statement

There is no possibility of determining the nature of a case that does not exist. If there is no remedy, there is no law. L'Abbe's "appeal" had absolutely no chance at touching the hands of justice as the district tribunal's "intermediate appellate decision that affirmed the magistrate's judgment finding L'Abbe' guilty," clearly reveals.

**REQUIRED MANDATORY JUDICIAL NOTICE OF JUDICATIVE
COGNIZANCE PURSUANT TO FEDERAL RULES OF EVIDENCE**

ARTICLE II. JUDICIAL NOTICE, [RULE 201] OF ADJUDICATIVE FACTS

(a) **Scope.** This rule governs judicial notice of an adjudicative fact only, Not a legislative fact.

(b) **Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from resort to sources whose accuracy cannot reasonably be questioned.

(c) **Taking Notice.** The court: (1) may take judicial notice on its own; or (2) **must take judicial notice if a party requests** it and the court is supplied with necessary information.

(d) **Timing.** The court may take judicial notice at any stage of the proceeding.

(e) **Opportunity to be heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the facts to be noticed. If the court takes judicial notice before notifying a party, on request, is still entitled to be heard.

(f) **Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

[Adopted effective Dec. 1, 2011]

[Dec. 4, 2013, SC Docket # 41212--2013 Reply Brief -[speeding] - Page 2 of 6]

A. L'Abbe has repeatedly voiced his objection to the pro se characterization / corporate reference obviously attributed to those who subject themselves to tribunal jurisdiction. Hence L'Abbe defended himself from this unconstitutional action at the commencement. As a proper person by special appearance "Sui Juris" litigant, L'Abbe' has questioned this tribunal's authority to preside over matters of Constitutional Protections. Motions aimed at protecting defendant's individual liberty and freedom as guaranteed in our Organic Constitution, have been systematically "denied" by Judges and Magistrates acting outside of their Rigid Constitutional Authority.

B. No claim of authority pursuant to our Organic Constitution has ever been presented by Corporate State of Idaho Tribunal's at any level, because it does not exist. It cannot exist in a Corporate Administrative Tribunal attempting to preside over Jurisdictional Questions and matters of We the People's Constitutional Protections. Only a 7th Amendment Court rooted in fully informed Jury Decision is by design----the remedy. The Respondent's Brief reveals exactly why a fully informed Jury placing Revised Statute Code 49-654(2) on trial as well as the defendant---is an absolute necessity.

C. We the People's Constitutionally secured unalienable rights cannot remain secure in the hands of government employees. These corrupt tribunals systematically engage as terrorists against the people and our Constitution. Our jails have been stolen and our "Peace Officers" have been indoctrinated to act as mercenaries against us -- a total reversal of truth and our Founding Fathers vision.

D. The Corporate State of Idaho comprised of its corporate individuals therein, (See Title 42 § 1983) have absolutely no authority to "consider" or "hold" anything that abrogates We the People's Constitutionally Secured Unalienable Rights.

E. Truth is self-evident and is in no way, shape or form----argumentative (an issue).

F. The Corporate State of Idaho has no authority to grant magistrate's authority not provided to it pursuant to the Organic Constitution. Any jurisdiction the State of Idaho thinks it has to hear, process and determine any so called "citable offense" is null and void. – TREASON. In our Constitutional Republic exists Fully informed Jury Decision!

G. The State of Idaho's Corporate Tribunal has the audacity to claim "The court is not required to consider arguments that are not properly supported by authority."

- 1) The State of Idaho uses State Court cites as "Unpublished Judicial Opinion" not considered authority----as authority.**
- 2) Defendant cites numerous Supreme Court and Federal Court cases pursuant to and including the Organic Constitution, as authority.**
- 3) Defendant's offering of proof is by no means argumentative. (No issue)**
- 4) Defendant's offering of Proof has been blockaded at every turn.**

The Corporate State of Idaho's cites are not authority, as the "Table of Authorities" imply they are. The State has previously revealed their "cites" and subsequently their "so called" authority to implement lawless "enforcement procedures" are rooted in Judicial Opinion, (not pursuant to Rigid Constitutional authority). This is a land of Rigid Constitutional law with no reliance on the opinions of men. (Domestic enemies) See 2012 and 2013 Unpublished Judicial Opinions #620 and #762 in State of Idaho's unconstitutional action against L'Abbe' (Open Container and seatbelt respectively). The corporate State attempts to use these cites as authority to convict and impose a liability without an affidavit of a verified claim or damaged party. However, these identical cites are not considered authority

by their own decree. SEE AGAIN 2013 UNPUBLISHED OPINION AND SHALL NOT BE CITED AS AUTHORITY. Melanson's second paragraph reads as follows – "L'Abbe' was cited for failing to use a safety restraint . . . Following a bench trial, L'Abbe' was found guilty and ordered to pay a \$10.00 fine." A liability defendant L'Abbe' was forced to pay by threat duress, and coercion, in addition to an \$85.00 liability "forced upon" him because he chose to defend his Rigid Constitutional Rights. From the perspective of the indoctrinated mind – it's called "failure to comply." (See Offer of Poof) That is Fraud, so the attempt to impose a liability and convict defendant L'Abbe' without a lawful claim – is Treason.

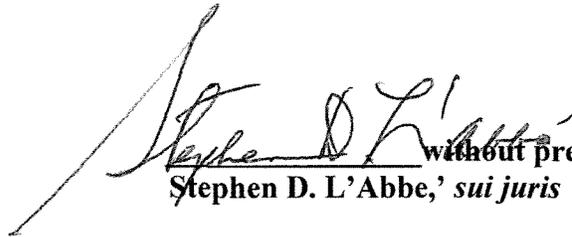
H. In the best interest of justice, dismiss this unconstitutional action on its merits with prejudice, or defendant L'Abbe' must demand his 1st Amendment Right of Redress of Grievances at the federal level - - - in a 7th Amendment Court, with a fully informed jury. Dismissal naturally short circuits the systematic tyranny occurring today. A whole lot of money / power evaporates when Rigid Constitutional principles are appropriately in force.

I. Defendant L'Abbe' fully understands the intention of the assertion that ". . . this case only involves a state traffic infraction, not a federal offense, so no Article III court or judge is required." – an indoctrinated mind. It's a blatant attempt to blockade We the people's responsibility – addressing questions regarding jurisdiction and Rigid Constitutional Protections. Our 1st Amendment right of redress recognizes the divine necessity of vigilance. The 6th and 7th Amendments reinforce that divine necessity. In our Republic, anytime a Sovereign individual recognizes the necessity to defend himself, a 7th Amendment Court is naturally always required. (Education sheds considerable light on the shadows of indoctrination.) See Appellants Brief – Supreme Court Justice John Marshall. In light of actions of this nature, We the People have no choice but to return to the attitudes prevailing at the writing of our rigid Constitution.

DATED THIS 4th Day of December, 2013.

Stephen L'Abbe being sworn, deposes and says:

- (1) That the party is the appellant in the above-entitled reply brief on appeal and that all statements in this notice of appeal are true and correct to the best of his knowledge and belief.
- (2) All issues and statements within this reply brief are under L'Abbe's rigid Constitutionally secured unalienable rights with "form" 9th Amendment, "force" 10th Amendment and "authority" 7th Amendment.



without prejudice UCC 1-308
Stephen D. L'Abbe, *sui juris*

OFFER of PROOF: (Attachments)

1. Payment of (Seatbelt) Fines and Fees for Justice under TDC – 2 Pages
2. Definition of [Cite] –Black Law 6th Edition page 244
3. Definition of [Authority] - Black Law 6th Edition page 133

ACKNOWLEDGMENT: SUBSCRIBED AND SWORN to before me a Notary Public of the State of Idaho, County of Ada on this, the 4th day of December, 2013.

KATHY M FONTAINE
Notary Public
State of Idaho

Kathy M. Fontaine

Title Residence exp 10/07/16

Notary

[Dec. 4, 2013, SC Docket # 41212--2013 Reply Brief -[speeding] - Page 6 of 6]

OFFER OF PROOF

From: **Stephen D. L'Abbe'**
1614 Manitou
Boise, Idaho 83706

26-Apr-13

CERTIFIED MAIL

7010 1670 0002 0286 2129

To: **District Court of Ada County**
200 W. Front Street
Boise, Idaho 83702

REF:

(Seatbelt)

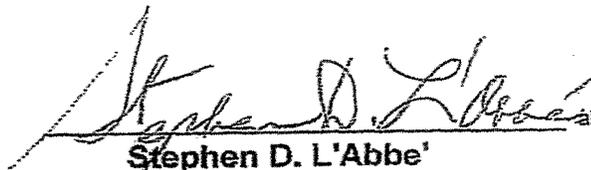
DU 228803 E
Traffic Citation # ISP0093460
(CR-IN-2012-6130)

Idaho State
Issue Date:[02/07/12]
Appeal

To whom it may concern,

Please Mail Receipt of payment to Stephen D. L'Abbe', 1614 Manitou Ave., Boise, Idaho 83706
in the enclosed self addressed stamped envelope.

ATTACHMENTS: * \$10.00 Money Order # R103497315449
* Self-address stamped envelope.



Stephen D. L'Abbe'

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OFFER OF PROOF

From: **Stephen D. L'Abbe'**
1614 Manitou
Boise, Idaho 83706

26-Apr-13

CERTIFIED MAIL

7012 2210 0001 9167 1747

To: **Transporation Department**
Driver Services, P.O. Box 34
3311 W. State Street
Boise, Idaho 83731

REF:

(Seatbelt)

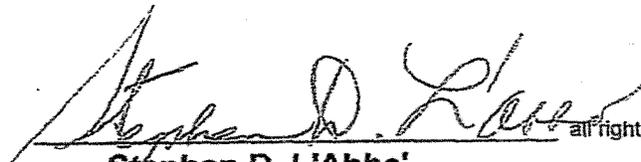
DU 228803 E
Traffic Citation # ISP0093460
(CR-IN-2012-6130)

Idaho State
Issue Date:[02/07/12]
Appeal

To whom it may concern,

Please Mail Receipt of payment to Stephen D. L'Abbe', 1614 Manitou Ave., Boise, Idaho 83706
in the enclosed self addressed stamped envelope.

ATTACHMENTS: * \$ 85.00 Money Order # R103497315450
* Self-address stamped envelope.



Stephen D. L'Abbe'

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Self authentication. Statutes frequently provide that certain classes of writings shall be received in evidence "without further proof." The following fall into this category: (1) deeds, conveyances or other instruments, which have been acknowledged by the signers before a notary public, (2) certified copies of public records, and (3) books of statutes which purport to be printed by public authority. See Fed.Evid.Rule 902.

Authenticum /oθéntakəm/. In the civil law, an original instrument or writing; the original of a will or other instrument, as distinguished from a copy.

Author. One who produces, by his own intellectual labor applied to the materials of his composition, an arrangement or compilation new in itself. A beginner or mover of anything; hence efficient cause of a thing; creator; originator; a composer, as distinguished from an editor, translator or compiler.

Authorities. Citations to constitutions, statutes, precedents, judicial decisions, rules, regulations, textbooks, articles, and the like made on the argument of questions of law (e.g., in briefs, motions, etc.) on the trial of causes before a court, in support of the legal positions contended for, or adduced to fortify the opinion of a court or of a text writer upon any question. Authorities may be either primary (e.g., statutes, court decisions, regulations), or secondary (e.g., Restatements, treatises).

Authority. Permission. Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge. Control over; jurisdiction. Often synonymous with power. The power delegated by a principal to his agent. The lawful delegation of power by one person to another. Power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to agent. See Restatement, Second, Agency § 7.

Refers to the precedential value to be accorded an opinion of a judicial or administrative body. A court's opinion is binding authority on other courts directly below it in the judicial hierarchy. Opinions of lower courts or of courts outside the hierarchy are governed by the degree to which it adheres to the doctrine of stare decisis. See Stare decisis.

Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties.

See also Actual authority; Apparent authority; Binding authority; Commission; Competent authority; Constructive authority; Control; Credentials; Implied authority; Power; Precedent; Real authority; Scope of authority.

Actual express authority. Actual authority derived from written or spoken words of principal. See also Actual authority.

Actual implied authority. Actual authority inferred from words or conducted manifested to agent by principal. See also Implied authority.

Apparent authority. That which, though not actually granted, the principal knowingly permits the agent to exercise, or which he holds him out as possessing. The

power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons. Restatement, Second, Agency, § 8. See Authority by estoppel, below.

Authority by estoppel. Not actual, but apparent only, being imposed on the principal because his conduct has been such as to mislead, so that it would be unjust to let him deny it. See Apparent authority, above.

Authority coupled with an interest. Authority given to an agent for a valuable consideration, or which forms part of a security.

Express authority. That given explicitly, either in writing or orally. See Express authority.

General authority. That which authorizes the agent to do everything connected with a particular business. It empowers him to bind his principal by all acts within the scope of his employment; and it cannot be limited by any private direction not known to the party dealing with him.

Implied authority. Actual authority circumstantially proved. That which the principal intends his agent to possess, and which is implied from the principal's conduct. It includes only such acts as are incident and necessary to the exercise of the authority expressly granted.

Incidental authority. Such authority as is necessary to carry out authority which is actually or apparently given, e.g. authority to borrow money carries with it as an incidental authority the power to sign commercial paper to effectuate the borrowing.

Inferred authority. See Incidental authority, above.

Inherent authority. Such power as reposes in an agent by virtue of the agency itself.

Limited authority. Such authority as the agent has when he is bound by precise instructions.

Naked authority. That arising where the principal delegates the power to the agent wholly for the benefit of the former.

Ostensible authority. See Apparent authority, above.

Presumptive authority. See Implied authority, above.

Special authority. That which is confined to an individual transaction. Such an authority does not bind the principal, unless it is strictly pursued.

Unlimited authority. That possessed by an agent when he is left to pursue his own discretion.

Authorize. To empower; to give a right or authority to act. To endow with authority or effective legal power, warrant, or right. People v. Young, 100 Ill.App.2d 20, 241 N.E.2d 587, 589. To permit a thing to be done in the future. It has a mandatory effect or meaning, implying a direction to act.

"Authorized" is sometimes construed as equivalent to "permitted"; or "directed", or to similar mandatory language. Possessed of authority; that is, possessed of

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CITATIONS, LAW OF

BLACKS LAW 6th EDITION

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jurists, viz., Papinian, Paul, Gaius, Ulpian, and Modestinus, should be quoted as authorities. The majority was binding on the judge. If they were equally divided the opinion of Papinian was to prevail; and in such a case, if Papinian was silent upon the matter, then the judge was free to follow his own view of the matter.

Citators. A set of books which provide, through letter-form abbreviations or words, the subsequent judicial history and interpretation of reported decisions. The citators also denote the legislative and amendment history, and cases that have cited or construed, constitutions, statutes, rules, regulations, etc. The most widely used set of citators is *Shepard's Citations*.

Cite. L. Fr. City; a city. *Cite de Loundr'*, city of London.

Cite. To summon; to command the presence of a person; to notify a person of legal proceedings against him and require his appearance thereto. To read or refer to legal authorities, in an argument to a court or elsewhere, in support of propositions of law sought to be established. To name in citation. To mention in support, illustration, or proof of. See Citation; Citation of authorities.

Citizen. One who, under the Constitution and laws of the United States, or of a particular state, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. U.S.Const., 14th Amend. See Citizenship.

"Citizens" are members of a political community who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as collective rights. *Herriott v. City of Seattle*, 81 Wash.2d 48, 500 P.2d 101, 109.

The term may include or apply to children of alien parents born in United States, *Von Schwerdtner v. Piper*, D.C.Md., 23 F.2d 862, 863; *U. S. v. Minoru Yasui*, D.C.Or., 48 F.Supp. 40, 54; children of American citizens born outside United States, *Haaland v. Attorney General of United States*, D.C.Md., 42 F.Supp. 13, 22; Indians, *United States v. Hester*, C.C.A.Okla., 137 F.2d 145, 147; National Banks, *American Surety Co. v. Bank of California*, C.C.A.Or., 133 F.2d 160, 162; nonresident who has qualified as administratrix of estate of deceased resident, *Hunt v. Noll*, C.C.A.Tenn., 112 F.2d 288, 289. However, neither the United States nor a state is a citizen for purposes of diversity jurisdiction. *Jizemerjian v. Dept. of Air Force*, 457 F.Supp. 820. On the other hand, municipalities and other local governments are deemed to be citizens. *Rieser v. District of Columbia*, 563 F.2d 462. A corporation is not a citizen for purposes of privileges and immunities clause of the Fourteenth Amendment. *D. D. B. Realty Corp. v. Merrill*, 232 F.Supp. 629, 637.

Under the diversity statute, which mirrors U.S. Const. Article III's diversity clause, a person is a "citizen of a state" if he or she is a citizen of the United States and a domiciliary of a state of the United States. *Gibbons v. Udaras na Gaeltachta*, D.C.N.Y., 549 F.Supp. 1094, 1116.

Citizen-informant. An eye witness who, with no motive but public service, and without expectation of payment, identifies himself or herself and volunteers information to the police. *People v. Press*, Colo.App., 633 P.2d 489, 492.

Citizen's arrest. A private citizen as contrasted with a police officer may, under certain circumstances, make an arrest, generally for a felony or misdemeanor amounting to a breach of the peace. A private person may arrest another: 1. For a public offense committed or attempted in his presence. 2. When the person arrested has committed a felony, although not in his presence. 3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it. Calif.Penal Code, § 837.

Citizenship. The status of being a citizen. There are four ways to acquire citizenship: by birth in the United States, by birth in U.S. territories, by birth outside the U.S. to U.S. parents, and by naturalization. See Corporate citizenship; Diversity of citizenship; Dual citizenship; Federal citizenship; Naturalization; Jus sanguinis; Jus soli.

City. A municipal corporation; in most states, of the largest and highest class. Also, the territory within the corporate limits. A political entity or subdivision for local governmental purposes; commonly headed by a mayor, and governed by a city council.

City council. The principal governmental body of a municipal corporation with power to pass ordinances, levy taxes, appropriate funds, and generally administer city government. The name of a group of municipal officers constituting primarily a legislative and administrative body, but which is often charged with judicial or quasi judicial functions, as when sitting on charges involving the removal of an officer for cause.

City courts. Court which tries persons accused of violating municipal ordinances and has jurisdiction over minor civil or criminal cases, or both.

City real estate. Property owned and used for municipal purposes. *McSweeney v. Bazinet*, 269 A.D. 213, 55 N.Y.S.2d 558, 561.

Civic. Pertaining to a city or citizen, or to citizenship.

Civic enterprise. A project or undertaking in which citizens of a city co-operate to promote the common good and general welfare of the people of the city.

Civil. Of or relating to the state or its citizenry. Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings

The word is derived from the Latin *civilis*, a citizen. Originally, pertaining or appropriate to a member of a *civitas* or free political community; natural or proper to a citizen. Also, relating to the community, or to the

AFFIDAVIT OF SERVICE LIST

For

APPELLANT'S REPLY BRIEF on APPEAL to the Supreme Court as follows on December 4, 2013 to: AFFIDAVIT by appellant/defendant, with due respect and with two witnesses of mailing this date (All Rights reserved).

HAND delivery to:

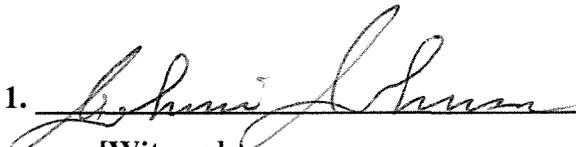
- 1. To the Supreme Court of Idaho: Stephen W. Kenyon, CLERK of the Courts, 451 West State Street, Boise, Idaho 83702**

- 2. Lawrence Wasden, ATTORNEY GENERAL, Capital Building, Room C210, 700 W. Jefferson Street, P. O. Box 83720, Boise Idaho 83720-0010**

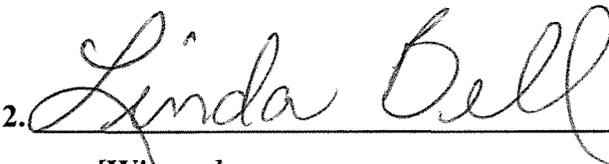
- 3. OFFICE OF THE COURT of the 4th Judicial District of Ada County, 200 W. Front Street, Boise, Idaho 83702.**

- 4. PROSECUTING ATTORNEY'S OFFICE of the City of Boise, 150 N. Capitol Blvd, Boise, Idaho 83702.**

**Of this Appellant's Brief hand delivery to this Service List above on
December 4, 2013**

1. 

[Witness]

2. 

[Witness]

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[Dec. 4, 2013, SC Docket # 41212--2013 Reply Brief -[speeding] - Page 1 of 1]