

Law Offices of Gene Schaerr
332 Constitution Avenue NE
Washington, DC 20002

October 13, 2014

Via ECF

Ms. Molly Dwyer, Clerk
United States Court of Appeals for the Ninth Circuit
The James R. Browning Courthouse
95 7th Street
San Francisco, CA 94103

Re: Nos. 14-35420 & 14-35421, *Susan Latta et al. v. Governor C.L. "Butch" Otter et al.*

Dear Ms. Dwyer:

The order issued by the Supreme Court on October 10, 2014 (attached) should not be interpreted as having denied the Governor's stay application on the merits. As the Governor made clear in his application to the Supreme Court, he still has pending before *this* Court a motion to stay the mandate that this Court recalled on October 8. The latter motion was filed on the morning of October 8, shortly before the filing of the application to the Supreme Court, and seeks the same relief sought there, i.e., a stay pending disposition of the forthcoming motion for rehearing and, if necessary, the disposition of a petition for certiorari to the Supreme Court.

This of course means that, when the Supreme Court denied the stay application, unexhausted remedies were still available—a classic basis for denying a stay. It is therefore reasonable to assume that that was the reason the Supreme Court denied the Governor's stay application.

Accordingly, to ensure that further stay proceedings proceed in an orderly fashion, Governor Otter respectfully requests that this Court quickly set a briefing schedule on the pending motion for stay that was filed in this Court on October 8. If this Court decides to deny that motion, and thus exhaust the remedies available from this Court, the Governor respectfully requests that the Court leave its present stay in place for a reasonable period so that he and the other appellants can seek an appropriate stay from the Supreme Court.

Sincerely,

/s/ Gene C. Schaerr
Gene C. Schaerr

cc: All counsel of record, via ECF

(ORDER LIST: 574 U.S.)

FRIDAY, OCTOBER 10, 2014

ORDER IN PENDING CASE

14A374 OTTER, GOV. OF ID, ET AL. V. LATTA, SUSAN, ET AL.

The application for stay presented to Justice Kennedy and by him referred to the Court is denied. The orders heretofore entered by Justice Kennedy are vacated.