

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Friday, March 29, 2024

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Guthrie, Vice Chairman Bernt, Senators Winder, Anthon, Harris, Lee, Toews, Wintrow, and Shea (Ruchti)

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Guthrie** called the meeting of the Senate State Affairs Committee (Committee) to order at 8:00 a.m.

WELCOME: **Chairman Guthrie** welcomed all to the Committee meeting.

H 421 **INDIVIDUAL'S SEX - Amends existing law to define terms and to revise definitions regarding "sex" and "gender".** **Senator Adams** stated that **H 421** amended Idaho Code § 73-114 to add definitions of boy, father, female, gender, girl, male, and mother. **H 421** also amended three sections of Idaho Code to account for the definitions listed above. These sections included the Vulnerable Child Protection Act, the definitions of changing facilities in public schools, and material facts included on certificates of birth. He stated that **H 421** provided clear and uniform definitions throughout Idaho Code, and was based on objectivity, not subjectivity.

DISCUSSION: **Senator Wintrow** asked why the terms man and woman were not included in the definitions. **Senator Adams** responded those terms were not part of the legislation. **Senator Wintrow** asked why the sponsors chose to place subjective definitions into Idaho Code. **Senator Adams** replied that words mattered, and the definitions were objective. **Senator Wintrow** commented that she taught women's studies and gender studies at the university level, and the definitions were not scientific. She inquired how Senator Adams came up with the definitions. **Senator Adams** replied the definitions were backed by the studies of biology and language. He remarked that the key root of the word "gender" was "genes", and these words related to the reproductive process.

TESTIMONY: **Mistie DelliCarpini-Tolman**, State Director, Idaho Planned Parenthood Alliance Associates; **Nikson Mathews**; **Eric Gironda**; **Julianne Donnelly Tzul**, Advocacy Director, American Civil Liberties Union of Idaho; **Nissa Nagel**; **Mary Ruckh**; **Karen Hansen**; **Joanna Schaffer**; **Jessica Rolyynn**; **Jenna Damron**; and **Dylan Goldade** testified in opposition to **H 421**. The common themes were **H 421** denied the existence of trans, non-binary, and intersexual people. People were forced to conform to rigid gender norms. It complicated and harmed lives and had a high human cost. It harmed everyone, not just the trans community. Legislation leading up to World War II in Europe often started small then grew. **H 421** was discrimination based on sex. The medical community should have been consulted as the definitions were formed. Sex and gender were distinct from each other. This was an example of government overreach. Subjectivity was a human experience. The medical community identified many examples that demonstrated sex was not binary. **H 421** led to costly litigation and eroded individual rights.

Grace Howat, Policy Advocate, Idaho Family Policy Center, testified in support of **H**

421. She remarked that progressives in society deconstructed distinctions between males and females, and without clear definitions of male and female, women-only sports and domestic violence shelters became meaningless. She stated that **H 421** created policy-neutral, solid, statutory definitions for sex-based terms.

Written Testimony in support and opposition of **H 421**, **H 538**, and **H 599** appears in Attachment 1.

A letter in opposition to **H 421** from the American Civil Liberties Union of Idaho appears in Attachment 2.

DISCUSSION: **Senator Wintrow** asked Jessica Rolynn to medically define the terms sex, gender, gender identity, and gender expression. **Jessica Rolynn** responded with the medical definitions of sex and gender. She remarked that sex was assigned at birth based on external and internal anatomy. Gender was related to constructed roles and identities. **Senator Wintrow** asked at what age was inter-sex identified. **Jessica Rolynn** replied that it was determined at any time throughout an individual's life.

Senator Adams closed by referencing the language of **H 421** and clarified the terms. He stated that only .018 percent of people nationally were intersexual. **H 421** did not claim that all uses of the terms sex and gender were synonymous; rather, it clarified the cases in Idaho Code where gender was used to refer to the natural differences between males and females. Federal law interchanged the definitions of sex and gender. Idaho Code did not. There were inherent differences between men and women. He stated that in **H 421**, gender identity was not touched. The law was objective to biology and not to identity. He remarked that **H 421** was a clean-up bill to clarify definitions.

Senator Bernt inquired if **H 421** would be legally defensible, and if the Attorney General's office was consulted. **Senator Adams** responded that the Attorney General's office did not provide an opinion, but **H 421** clarified definitions.

Senator Wintrow asked how to know with certainty whether someone was a man or a woman. **Senator Adams** replied that it was clear to the average Idahoan.

MOTION: **Senator Toews** moved to send **H 421** to the floor with a **do pass** recommendation. **Senator Harris** seconded the motion.

DISCUSSION: **Senator Toews** stated that **H 421** was a clarification of existing, objective definitions.

Acting Senator Shea practiced civil rights litigation and her advice had been heeded when something was not Constitutional. Idaho was currently embroiled in litigation concerning gender affirming care and youth sports. Idaho had lost in litigation concerning gender identification on birth certificates. She was concerned with what **H 421** meant for Idaho taxpayers and did not believe that it merely addressed semantics. She remarked that she did not support **H 421**.

Senator Lee agreed that **H 421** was not just a clean-up bill. Men and women should not be treated differently under the law. The Constitution protected the minority, and the individuals that were harmed by **H 421** were already vulnerable and marginalized.

Senator Wintrow appreciated the testimony and remarked that definitions were socially constructed. People had a personal right to privacy, and to be treated with dignity and respect. She remarked that separation created violence, and **H 421** institutionalized a majority viewpoint that suppressed a minority, and it was not

based in fact.

Senator Toews read the definitions in the bill, and remarked that the definitions of sex and chromosomes were already referenced in Idaho Code.

**ROLL CALL
VOTE:**

Chairman Guthrie requested a roll call vote on the motion to send **H 421** to the floor with a **do pass** recommendation. **Chairman Guthrie** and **Senators Winder, Anthon, Harris, and Toews** voted aye. **Vice Chairman Bernt** and **Senators Lee, Wintrow, and Shea** voted nay. The motion carried.

H 538

CIVIL RIGHTS - Adds to existing law to prohibit governmental entities in the State of Idaho from compelling employees and students to use certain titles and pronouns. **Senator Trakel** stated **H 538** addressed a freedom of speech issue. He remarked that government entities would not compel employees to use pronouns they may or may not agree with. Employees were not compelled to communicate preferred personal titles or pronouns that did not correspond with the biological sex of the individual seeking to be referred to by the title or pronoun. Idaho school districts had policies that fired or disciplined teachers who did not use the pronouns the school forced them to use. Employees had freedom of speech protections regarding the use of compelled pronouns.

DISCUSSION:

Senator Wintrow asked if she addressed Senator Trakel with an inappropriate title in the military, would that be acceptable? **Senator Trakel** responded there was no freedom of speech in the military. **Senator Wintrow** asked that if she called Senator Trakel, Mrs. Trakel, was there no punishment for her. **Senator Trakel** responded that it was disrespectful, but it was her right. If it rose to the level of harassment, there were laws to address that.

TESTIMONY:

Mistie DelliCarpini-Tolman, State Director, Idaho Planned Parenthood Alliance Associates; **Nikson Mathews**; **Nissa Nagel**; **Mary Ruckh**; **Amy Dundon**, American Civil Liberties Union of Idaho; **Dylan Goldade**; and **Jenna Damron**, American Civil Liberties Union, testified in opposition to **H 538**. The common themes were **H 538** created a hostile and unwelcome work environment. Using preferred pronouns was about respect. Using unwanted pronouns impacted mental health and constituted bullying. **H 538** prioritized the comfort of adults over the safety of children. The employer should define appropriate language. **H 538** violated parental rights and pitted privacy against free speech.

Katherine Hartley, Attorney, Pacific Justice Institute; **Grace Howat**, Policy Advocate, Idaho Family Policy Center; and **Stephen Bender**, testified in support of **H 538**. The common themes were compelled speech was not acceptable. Religious beliefs should be protected without fear of termination or discipline. Six states already had legislation that protected teachers. The right to speak freely was protected by the first amendment. Sixty-two percent of likely Idaho voters believed that State law should protect people from discipline when incorrect pronouns were used.

A letter from the American Civil Liberties Union of Idaho in opposition to **H 538** appears in Attachment 3.

A handout from the Idaho Family Policy Center in support of **H 538** appears in Attachment 4.

DISCUSSION: **Senator Trakel** closed by highlighting that some of those whotestified wanted their rights protected at the cost of the rights of others. Freedom of speech was protected, but respect was not legislated; rather, it was earned. He stated the Supreme Court ruled that compelled speech offended the Constitution. The law was designed to protect speech a person disagreed with. He stated that freedom of speech had become political, and bullying existed on both sides. Schools in Idaho had made the issue of pronouns political and punishable, and public schools were government entities. **H 538** protected free speech, individual rights, and freedoms.

Senator Lee asked how Senator Trakel responded to the concern that even if parents agreed to the use of a different pronoun for their child, the teacher could refuse to use that pronoun. **Senator Trakel** responded it was disrespectful, but the parent had other options, such as changing the classroom or school.

MOTION: **Senator Toews** moved to send **H 538** to the floor with a **do pass** recommendation. **Senator Harris** seconded the motion.

DISCUSSION: **Senator Shea** remarked that schools were protected by Title 7 and Title 9 of the Civil Rights Code. The Supreme Court ruled that misgendering created a hostile work environment. She was concerned with litigation because **H 538** encouraged intentional misgendering, and she would be voting nay.

Senator Wintrow commented that **H 538** incentivized misgendering, and it should not be institutionalized in law. It was respectful to address someone as they wished to be addressed.

Senator Bernt stated he was concerned that if the student had parental permission for a different pronoun, then it was not difficult for the teacher to comply with that. It was about respect.

Senator Toews remarked that **H 538** presented a free speech issue, and Section 3 used the language "knowingly and intentionally", and parents could ask that their child be addressed by a different pronoun.

ROLL CALL VOTE: **Chairman Guthrie** asked for a roll call vote on the motion to send **H 538** to the floor with a **do pass** recommendation. **Chairman Guthrie** and **Senators Winder, Anthon, Harris, and Toews** voted aye. **Vice Chairman Bernt** and **Senators Lee, Wintrow, and Shea** voted nay. The motion carried.

H 599 **ELECTIONS - Adds to existing law to prohibit ballot harvesting, to provide certain exceptions, and to establish penalties for violations.** **Senator Bernt** yielded to Phil McGrane, Secretary of State, to present **H 599**. **Secretary McGrane** remarked that ballot harvesting was defined as collecting and depositing a large number of absentee ballots, and that ballot harvesting was not practiced on a large scale in Idaho, but it existed in other states. Idaho had no statutory guidance regarding the collection of absentee ballots. **H 599** prohibited the collection or conveyance of another person's ballot, with the following exceptions: the collector was an elections official, a postal worker, an employee or contractor of a common carrier, a paid collector, a relative, a household member, or a caregiver. He stated that violating the provisions of **H 599** was a misdemeanor unless the collector had ten or more ballots.

DISCUSSION: **Senator Wintrow** inquired how to know if someone was not volunteering for a campaign, and how a caregiver was defined. **Secretary McGrane** responded that the specific circumstances were addressed in criminal code.

TESTIMONY: **Olivia Luna** and **Bonnie Shuster** testified in opposition to **H 599**. The common themes were the State should not determine who voters trusted with their ballots. Home-bound citizens relied on neighbors and friends to collect their ballots. The postal service was not always trustworthy. Idahoans helped one another. **H 599** should be amended to include conveyance by a friend or neighbor.

Russ Hendricks testified in support of **H 599**. He remarked that voting was a right, but effort and planning were required. **H 599** had commonsense sideboards, and absentee ballots were susceptible to fraud.

DISCUSSION: **Senator Wintrow** asked Mr. Hendricks if he supported amending **H 599** to allow friends and neighbors to collect and convey ballots. **Mr. Hendricks** responded that he supported **H 599** as it was currently written.

Senator Wintrow asked Secretary McGrane if he supported amending **H 599** to allow friends and neighbors to collect and convey ballots. **Secretary McGrane** responded that absentee ballots traveled through the mail, and the exceptions were addressed in the language of **H 599**.

MOTION: **Senator Harris** moved to send **H 599** to the floor with a **do pass** recommendation. **Senator Toews** seconded the motion. The motion carried by **voice vote**. **Senators Wintrow** and **Shea** requested to be recorded as voting nay.

ADJOURNED: There being no further business at this time, **Chairman Guthrie** adjourned the meeting at 9:55 a.m.

Senator Guthrie
Chair

Peggy Caraway
Secretary