

MINUTES  
**HOUSE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, February 21, 2020

**TIME:** 8:00 A.M.

**PLACE:** Room EW42

**MEMBERS:** Chairman Harris, Vice Chairman Armstrong, Representatives Crane, Palmer, Barbieri, Holtzclaw, Monks, Zito, Scott, Andrus, Hartgen, Young, Smith, Gannon, Green

**ABSENT/  
EXCUSED:** None

**GUESTS:** The sign-in sheet will be retained with the minutes in the committee secretary's office until the end of the session. Following the end of the session, the sign-in sheet will be filed with the minutes in the Legislative Services Library.

**Chairman Harris** called the meeting to order at 8:00 AM.

**H 414:** **Chairman Harris** said the committee would continue discussion on **H 414**.

**MOTION:** **Rep. Scott** made a motion to **HOLD H 414** in committee for time certain until Friday, February 28, 2020.

In response to questions from committee members about the motion, **Rep. Barbieri** said there were a few issues to fix and voiced his support for the motion as the sponsor.

**VOTE ON  
MOTION:** **Motion carried by voice vote.**

**MOTION:** **Rep. Gannon** made a motion to approve the minutes from the February 10, 2020 meeting. **Motion carried by voice vote.**

**MOTION:** **Rep. Gannon** made a motion to approve the minutes from the February 6, 2020 meeting. **Motion carried by voice vote.**

**H 509:** **Rep. Young** said **H 509**, the Idaho Vital Statistics Act, would prohibit the change or amendment of facts such as time of birth, date of birth, biological sex, birth weight, birth length, and place of birth on birth certificates. She highlighted the importance of accurate government records. Rep. Young emphasized the science of biological sex and said definitions matter. Rep. Young referred to *F. V. vs. Barron* to support the constitutionality of **H 509**.

In response to committee questions, **Rep. Young** said the court decision indicates it took into account the inaction of the legislature on this issue. She said she is not a lawyer so she cannot challenge the decision in court but she is a legislator so she has chosen this avenue. Rep. Young said there is always potential for laws to be litigated in court but the costs and balances must be weighed in the balance. Rep. Young said the court decision said the state must establish a process to review applications and the state cannot categorically deny applications but the court would not step on the state's ability to implement an application review process.

**Mistie Tolman**, Planned Parenthood, and **Lori Burelle**, Southwest Idaho National Organization for Women, testified **in opposition to H 509**. They said people need documents that match how they live in the world. Many LGBT people face obstacles to physical and medical care and the state should identify solutions that help, not provide more obstacles. They said **H 509** is cruel and violates court rulings.

**Kacie Hoch** testified in opposition to **H 509**. She said **H 509** puts transgender people at risk, invades privacy and increases discrimination.

**Lindsay Zea** testified in support of **H 509**. She said **H 509** protects a weak and vulnerable population, citing the potential for predators to misuse the current system.

**Monica Cockerille**, Lambda Legal, testified she was an attorney on counsel for F.V. vs. Barron. She said the state conceded there was no rational basis to deny people the opportunity to change their birth certificate. She said the arguments provided by the sponsor had been considered, but the court said transgender people needed the opportunity to change their birth certificates. She said the court issued a permanent injunction that currently applies to state officials and **H 509** enacts an old policy in which transgender people are categorically denied. State employees will be put in a place where they must decide whether to defy the court and be held in contempt or defy state law. She said there will be significant consequences for willfully violating the court decision. Currently transgender people face a lower rate of discrimination and violence because they have accurate legal documents.

In response to committee questions, **Ms. Cockerille** said to get a passport people need a birth certificate and driver's license so it is important they match. She said the legislative body can craft a rule within the confines of the court decision, but it is under heightened scrutiny.

**Kathy Griesmyer**, ACLU, testified in opposition to **H 509**. She said it is a direct violation of court rule, an attempt to circumvent the court order, and it blatantly ignores established case law. Ms. Griesmyer said there are no known complications with the current policy which is widely practiced across the country.

In response to legal questions from the committee, **Ms. Griesmyer** deferred to the ACLU legal director, **Richard Eppink**.

In response to committee questions, **Mr. Eppink** said the one-year restriction on changing gender in **H 509** would directly violate the court order and could be held in contempt of court. Mr. Eppink said the legislature can enact many unconstitutional policies but the state cannot enforce them. Citing the supremacy clause in the United States Constitution, Mr. Eppink said **H 509** would in effect automatically reject applications to change birth certificates.

**Blaine Konzatti**, Family Policy Alliance of Idaho, testified in support of **H 509**. He said **H 509** requires birth certificates to reflect objective facts as they existed at the time of birth and is within the government's interest. He said biological males could use the female marker to enter locker rooms, shelters or prisons, which makes women and children less safe.

**Janelle Wintersteen**, volunteer with Southwest Idaho NOW, testified in opposition to **H 509**. She said **H 509** did not match the Idaho values she has seen and experienced.

**Emilie Jackson-Edney** and **Oliver Cowen** testified in opposition to **H 509**. They emphasized the importance of having identification documents that match their identities. They highlighted the everyday consequences **H 509** would have on transgender people.

**Jennifer Martinez**, Idaho Coalition Against Sexual and Domestic Violence, testified in opposition to **H 509**. She emphasized the importance of documents like birth certificates in daily life and said **H 509** unnecessarily reveals trans people's identity, is more restrictive than federal requirements, and creates barriers to transgender people.

In closing, **Rep. Young** said **H 509** does not automatically deny applications, but provides a process to change their sex marker that requires a court order. She said she agrees wholeheartedly that individuals have full ability to define themselves as they want, but as government documents, birth certificates should reflect material fact. Rep. Young said the legislature has a constitutional right to choose the legal definitions that undergird state policy.

**MOTION:** **Rep. Andrus** made a motion to send **H 509** to the floor with a **DO PASS** recommendation.

**SUBSTITUTE MOTION:** **Rep. Gannon** made a substitute motion to **HOLD H 509** in committee.

During discussion of the motion, **Rep. Smith** spoke **in support** of the substitute motion because **H 509** violates an existing court ruling. **Rep. Gannon** said **H 509** is a legal disaster and there is a process in place already that is working. **Rep. Green** said **H 509** deliberately flies in the face of the court and will place an undue burden on taxpayers.

**Rep. Gannon** requested the court opinion of *F.V. vs. Barron* be included with the official record.

**MOTION:** **Rep. Green** made a motion for a roll call vote on the substitute motion.

**MOTION:** **Rep. Green** made a motion for a roll call vote on the original motion.

During discussion on the motion, some representatives said they would support the bill in committee but would reserve their right to change their vote on the floor.

**ROLL CALL VOTE ON SUBSTITUTE MOTION:** **Rep. Green** requested a roll call vote on the substitute motion. **Motion failed by a vote of 3 AYE and 12 NAY. Voting in favor** of the motion: **Reps. Smith, Gannon, Green. Voting in opposition** to the motion: **Reps. Harris, Armstrong, Crane, Palmer, Barbieri, Holtzclaw, Monks, Zito, Scott, Andrus, Hartgen, Young.**

**ROLL CALL VOTE ON ORIGINAL MOTION:** **Rep. Green** requested a roll call vote on the original motion. **Motion carried by a vote of 12 AYE and 3 NAY. Voting in favor** of the motion: **Reps. Harris, Armstrong, Crane, Palmer, Barbieri, Holtzclaw, Monks, Zito, Scott, Andrus, Hartgen, Young. Voting in opposition** to the motion: **Reps. Smith, Gannon, Green. Rep. Young** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 10:03 AM.

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Representative Harris  
Chair

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Devon Powers  
Secretary