

MINUTES  
**HOUSE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, January 27, 2014

**TIME:** 9:00 A.M.

**PLACE:** Room EW40

**MEMBERS:** Chairman Loertscher, Vice Chairman Batt, Representatives Anderson(1), Andrus, Luker, Crane, Palmer, Sims, Barbieri, Holtzclaw, McMillan, Monks, Packer, Smith, Gannon, Woodings

**ABSENT/  
EXCUSED:** None

**GUESTS:** Richard Eppink, ACLU; Dean Gunderson, self; Shavone Hasse, self; Monica Hopkins, ACLU; Julie Hart, Westerberg and Associates; Dennis Stevenson, Department of Administrative Rules; Roger Batt, Idaho Heartland Coalition; Cay Marquart, self; Ron Marquart, self; Eve Blackwell, self; Anne Hausrath, self.

**Chairman Loertscher** called the meeting to order at 9:01 a.m.

**Chairman Loertscher** turned the gavel over to **Vice Chairman Batt**.

**MOTION:** **Rep. Woodings** made a motion to approve the minutes of the January 21, 2014 and January 22, 2014, 2014 meetings. **Motion carried by voice vote.**

**DOCKET NOS.  
38-0406-1301  
38-0408-1301:** **Teresa Luna**, Director, Department of Administration, presented **Docket Nos. 38-0406-1301** and **38-0408-1301**. She requested that the Pending Rules be approved as written. She stated in the 2012 legislative session **H 693** was passed with an emergency clause directing the Department of Administration to promulgate three sets of Rules within thirty days, addressing the use of the Capitol exterior, interior of Capitol Mall buildings, and exterior of Capitol Mall property. The Rules were brought before the legislature in 2013. The Rules regarding the interior of the Capitol Mall building were approved at that time and have been in place for over a year now.

**Ms. Luna** stated the proposed Pending Rules dealing with the exterior of the Capitol building and the Capitol Mall properties were a result of changes the House and Senate State Affairs Committees requested last year. She stated the changes made are similar in nature between the two sections and contain specific definitions, uses, liability, and removal of some limitations. She stated some of the Rules adopted last year were challenged in federal court. The Court sided with the state on some issues and sided with the challengers on others. The state lost on the issues of a seven-day duration limit, the state event's exception, liability and indemnification, and Rules regarding fees and costs.

In response to committee questions, **Carl Withroe**, Deputy Attorney General, Department of Administration, explained the background of the legal case involving the current and Pending Administrative Rules. He stated the Court upheld many of the Pending Rules. He said the Rules implicate a vital role of the Department of Administration's ability and obligation to manage the properties for all Idahoans and to balance appropriate uses within the confines of many limitations, the First Amendment in particular.

**Mr. Withroe** stated the Department's Rules are entirely compatible to First Amendment rights. He stated Rules relating to Capitol Mall property do not need to yield to the unlimited exercise of all forms of expression, whenever and however one group of litigants wants. He reiterated that the Pending Rules were not crafted to limit speech, but to authorize the state's ability to manage its property as a land owner, which it does for all Idahoans. He stated that by approving the Rules as written, the Department's ability to appeal in the Ninth Circuit Court would be preserved.

**Mr. Withroe** also stated the prior Court decision validated the current Camping Rules. He said plaintiffs might try to appeal that issue and the state would then appeal the final decision. He said the state events Rule does not contemplate a situation where the Department will be in a position to favor or disfavor private speakers on the basis of content. The Rule speaks to state events that are initiated and controlled by a state agency or elected official and is therefore not discriminatory. He said the state events Rule is based on *Pleasant Valley City v. Summum*, which recognizes that when the government is the speaker, the First Amendment is not implicated and the government may choose what to say and how to say it.

**Mr. Withroe** stated the Rules regarding costs and fees are in no way based on limiting types of speech. He also said costs are limited to activities, which are quantifiable and may not exist in all circumstances. Any additional costs associated with events would be considered a pass-through so that taxpayers wouldn't be liable for those expenses. He stated the user is responsible for any damages to the property. He stated there are always competing uses for the Capitol Mall buildings and property and all uses must be balanced with scarce resources.

In closing, **Ms. Luna** stated the Department is enforcing the Rules in general but not those of which were found by the Court to be unconstitutional. She also stated the Rules the City of Boise imposes are much stricter than those of the Department.

**Dean Gunderson**, representing himself, stated he is opposed to the Pending Rules because they are unconstitutional and the Court has upheld that point. He stated there are many areas in the Rules that are too vague and need better definition.

**Shavonne Hasse**, representing herself, stated she is opposed to the Rules. She stated she will not obey the Rules or laws even if they are changed if they infringe on her First Amendment rights. She stated it was her moral obligation to disobey what she feels are unjust laws.

**Monica Hopkins**, Executive Director, ACLU, stated she is opposed to the Pending Rules that were deemed unconstitutional by the Court. She stated she does not agree that the state holds the position of a land owner/property management agency but is a representative of the State of Idaho who is to maintain the rights of the citizens of Idaho. She stated **Judge Winmill** gave suggestions in his Order on how the Rules may be changed. She stated she believes the Rules are onerous and an overreach of government power.

In response to committee questions, **Richard Eppink**, Legal Director, ACLU, stated the last day for plaintiffs to submit their partial summary judgment regarding the camping issue is February 14, 2014. He said that if the Rules were not approved and the state did file an appeal, the issue would be unclear and the issues would then be moot.

**Eve Blackwell**, representing herself, urged the committee to vote against the Pending Rules because they are unconstitutional.

**Cay Marquart**, representing herself, stated she was also representing her late father who was a Constitutional Judge and urged the committee to cease from pursuing any further action on the Rules that are unconstitutional.

**Ann Hausrath**, representing herself, requested the committee obtain accurate information regarding the current legal case and how much it has cost the state already. She also stated she believes the Pending Rules were crafted for one group of people but they will affect everyone in the state.

**Vice Chairman Batt** turned the gavel over to **Chairman Loertscher**.

In closing, **Ms. Luna** asked the committee to approve the Pending Rules as written to give the state the opportunity for an appeal.

**Chairman Loertscher**, with consent from the committee, asked for further information as discussed by committee members, prior to a vote on **Docket Nos. 38-0406-1301 and 38-0408-1301**.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 9:59 a.m.

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Representative Loertscher  
Chair

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Kasey Perkins  
Secretary