

Senate State Affairs Committee
Friday, February 23, 2024 - 8:00 A.M.
TESTIMONY ON: All Subjects

Written Testimony

Name (First & Last)	Subject	Manner Testifying	Representing Company/Organization	City	For / Against	Wish to Testify	District #
Blake Youde	H 496	IP	Shoshone-Bannock Tribes	Boise	For	Y	19

The Shoshone-Bannock Tribes support H496.

Amy Dundon	H 390	W	American Civil Liberties Union of Idaho	Nampa	Against	N	13
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Written testimony in opposition to House Bill 390
Submitted to the Idaho Senate State Affairs Committee on February 23, 2024
on behalf of the American Civil Liberties Union of Idaho

Mr. Chair and Members of the Committee,

The ACLU and ACLU of Idaho oppose HB 390. The bill, if passed, would extend the state's Attorney General's existing authority to include city officials. We oppose the bill because it could enable politically motivated investigations, prosecution, and retaliation for local elected officials whose views – and policies – are unfavorable to Idaho's Attorney General.

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HB 390 threatens political neutrality between state and local governments

Today, Idaho’s Attorney General (AG) is tasked with performing “legal services for the state and to represent all departments, agencies, offices, boards [...] and other state entities in all courts...”¹ Put simply, the AG is responsible for upholding Idaho state law. The office is tasked with representing the public interest of Idahoans, offering counsel to state government agencies, and to the state legislature. Indeed, the Idaho Office of Attorney General states, on its website, it is responsible for “defending Idaho’s sovereignty [...] push[ing] back against the federal government’s unconstitutional overreach” and with protecting Idahoan values.²

Most of us would agree “core Idahoan values” include local autonomy and control, minimal government interference in local matters, and limited government overreach. These values clearly undergird the official responsibilities of the Idaho Office of Attorney General – which, again, are limited to protecting and defending the interest of the state. The state Attorney General’s somewhat narrow duties ensure political oversight, transparency, and prosecutorial neutrality between the interests of the state and those of local (city and county) agencies and officials.

The bill before you, HB 390, would augment the AG’s concurrent jurisdiction over local matters, a provision already available by express permission of local authorities, or through statute granting such authority.³ What’s more, Idaho Code grants the Idaho Office of Attorney General certain investigative and prosecutorial authority, specifically when local (county) officials are alleged to have violated state criminal law. By granting Idaho’s Attorney General authority to investigate violations of state law by county officials, Idaho Code ensures a “check” on county officials – designed to aid in preventing or curbing county-level corruption. Most importantly, that the Attorney General is tasked with upholding state laws, the Attorney General’s official duties help maintain healthy separation between scales of government.

This healthy separation of powers is apparent throughout Idaho Code § 31-2002, which enumerates the Office’s relatively narrow jurisdiction. The Idaho Attorney General does not have authority to investigate all county officials; the Office may not investigate deputies, nor state or municipal employees. In fact, § 31-2002 states that the Attorney General may not investigate county employees other than select officers (to wit: County Commissioners, Prosecutors, Sheriffs, Clerks, Assessors, Treasurers, or Coroners).⁴ Further still, the Idaho Attorney General may only investigate elected county officials when three strict criteria are met.⁵

The duties of the state Attorney General are enumerated in Idaho Code. And, the limited power of the Attorney General were crafted by design. As a component of Idaho’s state executive branch, the Attorney General’s powers ought to be limited. Such “checks” on executive power are tantamount to a fair and just Idaho; they ensure our state maintains a healthy balance – and separation – between

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state, county, and municipal government.

HB 390 Supplements the Authority of the Idaho Attorney General in Ways Ripe for Abuse

Should HB 390 pass, it would enhance the powers of the Attorney General. If passed the bill would allow the AG to investigate municipal officials – and with a wide breadth of opportunity to do so. That is, HB 390 states that local (city) officials may be investigated for violations of state law when 1) they are at work, performing regular (paid) duties of their position; 2) they are at work without being officially “on duty” or performing paid work; and 3) they are on public property.

The supplemented authority, coupled with the criteria for investigation, could pose serious consequences for local control. Municipal agencies and officials, much like county agencies, deeply value political independence – as mentioned above, local control is a cherished and uniquely Idahoan value. Should the Attorney General be granted authority to investigate city officials, the expanded power could erode the political independence and autonomy of local government. It is easy to imagine instances where the current or a future Attorney General may hold political views that depart from those of local officials. Granting investigative authority over local officials to the state Attorney General could open opportunities for politically motivated allegations, investigations, and even prosecution.

We urge you to vote no on HB 390. Expanding the authority of the state Attorney General far exceeds any apparent need. Today, county prosecutors investigate municipal officials, as well as other county-level officials not enumerated in Idaho Code. As such, HB 390 is a solution without a problem. Further, expanding the authority of the state Attorney General is a move ripe for potential abuse.

Respectfully,

Amy Dundon, Legislative Strategist, ACLU of Idaho

Notes

1. Title 67, Chapter 14, Section 67-1401: Duties of the Attorney General (Idaho Statutes). Accessed online. [https://legislature.idaho.gov/statutesrules/idstat/title67/t67ch14/sect67-1401/#:~:text=\(1\)%20To%20perform%20all%20legal,or%20bodies%20of%20any%20nature.](https://legislature.idaho.gov/statutesrules/idstat/title67/t67ch14/sect67-1401/#:~:text=(1)%20To%20perform%20all%20legal,or%20bodies%20of%20any%20nature.)

2. Idaho Office of Attorney General. Accessed online. [https://www.ag.idaho.gov/#:~:text=As%20Idaho's%20Attorney%20General%](https://www.ag.idaho.gov/#:~:text=As%20Idaho's%20Attorney%20General%20)

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2C%20I,and%20keep%20our%20families%20safe.

3. Idaho Code Section 31-2002. Accessed online. https://www.ag.idaho.gov/content/uploads/2018/04/explanationOfDutiesAG_PublicCorruptionCases.pdf

4. Ibid.

5. Office of the Attorney General, State of Idaho. Public Corruption. Accessed online. <https://www.ag.idaho.gov/office-resources/public-corruption/>

Amy Dundon

H 498

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American Civil Liberties
Union of Idaho

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Against

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WRITTEN TESTIMONY IN OPPOSITION TO HOUSE BILL 498
SUBMITTED TO THE IDAHO SENATE STATE AFFAIRS COMMITTEE
FEBRUARY 22, 2024, ON BEHALF OF
THE AMERICAN CIVIL LIBERTIES UNION OF IDAHO

Chairman Guthrie and Members of the Committee,

I submit this testimony on behalf of the ACLU of Idaho and in strong opposition to House Bill 498 (HB 498). If passed, HB 498 would impermissibly burden access to protected speech by requiring users to verify their age before accessing legal adult content online. HB 498, if allowed to go into effect, would require internet users to provide personal information, such as government-issued identification, to companies or third parties that purport to be able to verify their ages. Such "filters" or "screens" may block some people, such as those without necessary identification or those whose identification is mis-identified by the technology, from accessing certain internet sites altogether.

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Courts have repeatedly found age verification requirements like those outlined in HB 498 unconstitutional. The landmark U.S. Supreme Court case, *Reno v. American Civil Liberties Union* held that the government can no more restrict a person’s access to materials on the internet than it can ban books based on content. Partly, the legal rationale of such court decisions is based on the recognition of privacy and anonymity.

Perhaps more fundamentally, the courts have also recognized, time and again, the ways such internet filters threaten protected speech rights, specifically where a less restrictive alternative exists. Indeed, in the case of HB 498, a less restrictive alternative does exist: users’ voluntary installation of filters on personal devices, for instance, would not limit protected speech, impose invasive age verification for adults, and would likely achieve the desired legislative intent outlined in the bill.

In September 2023, a judge blocked an Arkansas law that would have placed unconstitutional age-verification burdens on internet users.¹ Meanwhile, in Texas, an internet age-verification bill strikingly similar to HB 498 has been challenged in court.² A court recently halted a Montana law that prohibited access to certain internet content; U.S. District Judge Malloy said the ban “oversteps state power and infringes on the Constitutional rights of users and businesses.”³

The ACLU has long-defended the freedom of expression – a precious right enshrined in our constitution – including online freedom of expression. HB 498 would force users to hand over personal and private information to companies or third parties to access protected speech online. HB 498 encroaches on the free speech rights of all users that seek access to regulated websites, robbing them of anonymity, and likely chilling privacy- and security-minded people from accessing these websites at all. Such a sweeping ban on free expression triggers the most exacting scrutiny under the First Amendment and tramples on the free speech of Idahoans. We respectfully urge you to vote against HB 498.

Amy Dundon, Legislative Strategist
 ACLU of Idaho