

MINUTES
Approved by the Committee
Campaign Finance Reform Interim Committee
Tuesday, July 17, 2018
9:30 A.M.
Room WW54
Boise, Idaho

Co-chair Fred Wood called the meeting to order at 9:30 a.m.; a silent roll call was taken. Committee members in attendance: Co-chair Senator Patti Anne Lodge and Co-chair Representative Fred Wood; Senators Mary Souza, Jeff Agenbroad, and Michelle Stennett; and Representatives John Vander Woude, Thomas Loertscher, Sage Dixon, Mathew Erpelding. Absent and excused: Senator Mark Harris. Legislative Services Office (LSO) staff present were: Kristin Ford and Ana Lara.

Other attendees: Betsy Russell - Idaho Press; Ryan Fitzgerald - Northwest Credit Union Association; and Carlie Foster - Lobby Idaho.

Electioneering Communications by Newspapers Owned or Controlled by a Political Party - Assistant Chief Deputy Brian Kane, Office of the Attorney General (OAG)

Co-chair Wood called upon Mr. Kane to provide his remarks regarding draft [DRKMF273](#). Mr. Kane directed the committee to page 2 of the draft and noted the addition of "political committee" under the exemptions for electioneering communications, specifically with regard to newspapers. He suggested that the change was proposed due to the letter drafted by the OAG on May 14, 2018 which analyzed a publication (The Idahoan) that had been distributed broadly just prior to the primary election. In the OAG's analysis, it was noted that the state's definition regarding the exemption for newsprint is narrower than the federal exemption. He noted that, had the state's definition been the same as the federal definition, it would not necessarily have changed OAG's conclusion, but likely would have required OAG to take a closer look.

Discussion

Senator Souza inquired about the definition of "electioneering communication," specifically as it pertains to the political process. Mr. Kane referred to Section 67-6602(6)(a) of the draft and explained that the definition includes not only the name of the candidate, but also any unambiguous reference to a candidate (e.g., the incumbent in district five). He noted that the definition was void of any mention of measures or issues. He reminded the committee that they were regulating their concerns under the First Amendment. He suggested that if the issue is regulated too broadly, it could be found unconstitutional by a court. He stressed the importance of the 60- and 30-day timeframes that narrow the applicability of the statute in order to resolve the potential concern of restricting the First Amendment. Mr. Kane explained that the draft legislation included two vital components of the First Amendment: freedom of the press and political expression. He stressed the importance of exercising caution when regulating the First Amendment.

Co-chair Wood asked to what degree the state might infringe on the First Amendment if it were to regulate components of electioneering year round rather than a short time before the primary and general elections. Mr. Kane opined that regulating electioneering communications year-long instead of in terms of when specific elections are held was too broad of an approach. He suggested the state would encounter First Amendment concerns and possibly enforcement and resource concerns in the Secretary of State's office.

Representative Erpelding asked if it would be beneficial to include "or paid for by" in the definition of electioneering communication found in Section 67-6602(6)(b)(i) of the draft. Mr. Kane responded that while this proposed modification had the potential of assisting as far as enforcement of the statute, he wasn't sure it was necessary. He explained that there was a legal test for the term

"control" in the definition; the Federal Elections Commission (FEC) has performed this analysis in similar situations on a number of occasions.

Co-chair Lodge asked what could be done to address the concern regarding political committees that are not registered as such with the Office of the Secretary of State (SOS) and are conducting electioneering throughout the entire election process. Mr. Kane asked for additional time to analyze and discuss this concern with the OAG and follow up with Co-chair Lodge at a later time.

Co-chair Wood requested that the committee members forward any questionable campaign literature that they might have to Mr. Kane for further analysis.

Introductory Remarks and Approval of Minutes - Co-chair Wood and Co-chair Lodge

Co-chair Wood called for approval of the March 27, 2018, minutes. **Co-chair Lodge made a motion to approve the March 27, 2018, minutes. Senator Souza seconded the motion. The motion passed by voice vote.**

Co-chair Wood asked the committee members to review and contemplate what the impediments had been to the proposed legislation brought forth during the 2018 legislative session. He suggested that the last election cycle had demonstrated the significant work that needs to be done in the area of campaign finance reform. He opined that the proposed legislation (S1337) from the 2018 legislative session may have been viewed as too overwhelming. He suggested introducing the proposed changes in smaller portions over a span of three years to facilitate the process.

Co-chair Lodge explained that the public is asking for transparency and that the application of the rules be followed by everyone consistently, not just by some people. She stressed the importance of prioritizing the work of the committee to ensure that the most significant concerns be addressed quickly.

Discussion of Drafts

Co-chair Wood referred to the number of drafts under consideration by the committee. He suggested prioritizing and refining a few of the drafts and proposing the changes in the form of two to three bills to the Legislature in the upcoming legislative session. He directed the committee to draft [DRKMF265](#).

Co-chair Lodge referred to Section 67-6602(1)(c) of the draft and asked if this would also include self-funding. Mr. Tim Hurst, Chief Deputy for the SOS, responded in the affirmative.

Representative Erpelding referred to Section 67-6602(1) and inquired whether a person would be required to complete any of the steps or all of the steps to be considered a candidate. Ms. Ford responded that it was common practice in the drafting of Idaho Code that the connector (e.g., or) be placed before the last item and explained that the connector applied to all the items. Ms. Ford suggested revising Section 67-6602(1) to make it clearer that any of the subsequent items would qualify an individual as a candidate.

Representative Vander Woude inquired whether it would be appropriate to include the requirement that SOS verify the eligibility of the candidate in this section of Idaho Code. Mr. Hurst responded that the requirement is found in Title 34, Idaho Code, and opined that it was unnecessary to include the requirement in this section regarding campaign finance. He clarified that Title 34, Idaho Code, required SOS to certify eligibility and suggested it might be beneficial to include in Title 34, Idaho Code, a requirement for SOS to verify the qualification of a candidate. Representative Vander Woude inquired whether Title 34, Idaho Code, had a timeframe for the SOS to certify candidacy. Mr. Hurst responded in the negative. Representative Vander Woude asked what the timeframe was for certification. Mr. Hurst responded that SOS is required to certify the candidates to the county clerks in a timeframe that is within 30 days after the filing period. He added that he would provide the exact timeframe to the committee at a later date.

Representative Wood inquired whether the two pending court cases would indicate whether Idaho's statute needs to be modified to comply with the Idaho Constitution or whether the Constitution needs amending. Mr. Hurst expressed his hope that the court cases would indicate a need for the statute and the Idaho Constitution to match. He suggested that the court cases would clarify whether an individual must be a registered voter or simply qualified to be registered, and also whether the individual must be a resident of the district for a period of time.

Co-Chair Wood directed the committee to page 3, line 39, specifically regarding the definition of "independent expenditure." Mr. Hurst expressed the SOS's concerns regarding the language in the definition, specifically that expenditures for electioneering communications would potentially not be required to be reported until after an election. Mr. Hurst reminded the committee that the option of amending reports was available if needed. Mr. Hurst explained that the current statute requires that an expense be reported at the time an expense is incurred.

Ms. Ford reminded the committee of the history of this proposed change. She stated that definition in the legislation recommended by the committee to the Legislature in the last legislative session was met with some resistance by people outside of the committee. The drafts for review by the committee were drafted by Mr. Phil McGrane, the elections clerk for Ada County, and were proposed as a compromise. She opined that the definition in this draft weakened the committee's goal to capture more transparency. Mr. John Eaton, representing the Idaho Association of Commerce and Industry, stated that they worked with Mr. McGrane on some of the drafts. He stated that they were attempting to solve a problem that occurs in the independent expenditure arena. After some discussion, the committee requested that the modification to the definition of expenditure on page 3, line 39 be removed and that any independent expenditure reporting concerns be addressed in Section 67-6611, Idaho Code.

Co-chair Wood directed the committee to page 6 of the draft and noted that it attempted to increase the reporting timeframe from 16 days before an election to 45 days before an election.

Co-chair Wood proceeded to the next page, noted the inclusion of a new subsection 67-6610(3), and inquired whether SOS had any objections to the proposed changes in the draft. Mr. Hurst responded that the SOS had no issues with the proposed changes on page 6 and 7 of the draft. Representative Vander Woude requested that a timeframe of "per election cycle" be clarified for both the primary and general elections in Section 67-6610(3).

Representative Erpelding asked what specific concern had prompted Section 67-6610(3) to be added to the draft. Co-chair Wood responded that multiple advertisements and fliers were released with names of groups that were not found to be registered with the state. Representative Erpelding suggested that the language in this section of the draft did not address the concern. Mr. Hurst agreed that political committees should be registered and suggested that the language is beneficial in that it places the enforcement on the recipient. Representative Loertscher asked whether it was not already unlawful for a group to provide independent expenditures without registering with SOS. Mr. Hurst responded that this section did not address independent expenditures but rather contributions from one political committee to another political committee. Representative Loertscher agreed with Representative Erpelding that the language in this section did not address the actual concern regarding independent expenditures and contributions by nonregistered entities.

Senator Souza asked what information political committees must provide when they register with SOS. Mr. Hurst responded that they are required to disclose the name of the PAC, its chairman, and its treasurer. He added that any contribution received by the PAC after it has been formed must be reported. Senator Souza inquired whether the reporting requirements for contributions were the same for PACs as candidate contributions. Mr. Hurst responded in the affirmative.

Senator Stennett asked, for clarification purposes, whether a candidate or PAC receiving a contribution from a PAC not registered in the state of Idaho would be required to return the contribution. Mr. Hurst responded in the affirmative. Representative Erpelding and Senator Souza

noted that the language in this section stated "more than \$1,000" and as candidates, they are not allowed to accept more than \$1000 in contributions; this language limits the applicability to political committees. Ms. Ford was asked to include "during any election cycle" to 67-6610(3), line 9.

The committee recessed for a break at 10:54 a.m.

The committee reconvened at 11:02 a.m.

Priorities for the Committee's Work

Co-chair Wood asked the committee to review what primary changes were included in the drafts and prioritize the most pressing concerns.

Representative Dixon offered as a priority the need for providing more transparency of local entities and local elections by including them in the reporting requirements.

Co-chair Wood expressed concern that a number of candidates did not file sunshine reports until after the election. He explained that the SOS felt that they did not have enforcement authority. He opined that there should be significant consequences for candidates who do not provide sunshine reports on time. He suggested that the statute should be modified to provide the SOS with the absolute authority to address this concern with the use of significant fines, etc.

Co-chair Lodge inquired whether staff on-hand was required in order to timestamp a sunshine report received after 5:00 p.m. on the reporting date. Mr. Hurst responded that since candidates are required to file online, the report is automatically stamped when it's filed. He explained that there were a few exemptions for people that did not file online, and those were physically stamped. Mr. Hurst stated that additional staff would not be needed if they extended the filing deadline to midnight of the reporting date. Mr. Hurst emphasized that the real issue was compelling a candidate to file on time. As the statute is currently written, a candidate could potentially provide a report up to a few days after the election, before the SOS could begin issuing any fines for late filings.

Senator Stennett agreed that the SOS should have the authority to enforce the reporting deadline rigorously and suggested that, if the statute is changed, the SOS should have the resources needed to enforce the law. Co-chair Wood asked Ms. Ford to provide a few versions of draft language that could potentially address this concern to be discussed at the following meeting.

Co-chair Lodge expressed concern regarding mailers that were paid for by entities other than candidates that did not specify the name of the political committee. Co-chair Lodge referred to draft [DRKMF269](#) and emphasized that the statute needed updating to reflect new paid communication tools used in electioneering communication (e.g., e-mail, internet, and social media).

Senator Souza referred to draft [DRKMF266](#) and emphasized the need for centralizing all reporting for local and state elections on the SOS's website to assist the public in reviewing and accessing the reports. She explained that, in local elections, many of the sunshine reports are filed in paper form and it can take a considerable amount of time for the reports to be made available to the public.

Co-chair Wood referred to draft [DRKMF268](#) and reminded the committee that when it tried to address this issue in the last legislative session, there was some disagreement on whether the frequency of reporting should be performed quarterly or monthly. He suggested that this draft proposed a fair compromise.

Co-chair Wood expressed concern regarding the requirement that electioneering communication be reported only during a short timeframe prior to primary and general elections. He emphasized the need to find a compromise to address this concern and, at the same time, ensure that the state does not violate the First Amendment. He requested Ms. Ford formulate legislative language to extend the timeframes for reporting on electioneering communication as well as make the timeframes uniform for both the primary and general elections. He also asked Ms. Ford to confer with Mr. Kane regarding the proposed legislative language for the timeframes before the next meeting.

Co-chair Lodge expressed a concern regarding the small size of font used for the disclosure on some campaign mailings. She also suggested the committee discuss moving the filing date from February to January. She clarified that she had no preference either way, but it was something that had been suggested. Representative Vander Woude opined that if the filing date is changed, the period of time for filing should be changed from two weeks to one week. Ms. Ford explained that the filing date was found in Title 34, Idaho Code, and not in the campaign finance area, but offered to draft legislation for the committee's discussion. Co-chair Wood asked Ms. Ford to speak with Co-chair Lodge personally regarding the proposal for modifying the filing date or the period of time for filing since the proposal is outside of the area of campaign finance reform.

Co-chair Wood expressed a desire to focus on reporting requirements, the frequency of reporting requirements, and ensuring that all money is reported through the election day. He stated that draft DRKMF268 is meant to address the concerns regarding reporting requirements. Senator Souza referred to page 1, line 38 and inquired whether independent expenditures were included in the language. Ms. Ford offered to clarify the language to make it more readily understood that independent expenditures were not included.

After some discussion, Co-chair Wood asked Ms. Ford to make note that if the committee proceeds with the requirement of reporting monthly for the four months prior to an election, then the special reports for contributions of \$1,000 or more should likewise change from 45 days to 30 days prior to an election.

Current Local Reporting Requirements

Secretary Denney described the current process for receiving sunshine reports. He stated that in county elections, the reports are provided to the county clerk and in the city elections, they are provided to the city clerk. The reports may or may not be reported online, depending on the county; many of the reports are stored in files. It was his hope to require the local reports be filed online, with some exceptions for hardships. He also would like to be able to provide a link to the FEC so that the public can access reporting information for local, state, and federal officials.

New Campaign System Update

Secretary Denney stated that the SOS had closed the request for proposals (RFP) process on Monday. The RFPs are being scored at this time and he expected a vendor selection by the end of August. He estimated that the new campaign system process would take 12 months to complete. He informed the committee that the SOS had received an unsolicited federal grant for election upgrades or election security. He expressed concern regarding potential cybersecurity issues that could disrupt the process.

Final Committee Discussion

Co-chair Wood requested that the committee members provide their comments regarding the drafts to Ms. Ford. He stated that the committee should plan to meet for a full-day at the next meeting.

After some discussion, the committee selected August 14 and October 16 as the next meeting dates.

The co-chairs asked the committee members to review the drafts ahead of the next meeting and be ready to select a few drafts to present to the Legislature in the following legislative session.

The committee adjourned at 11:49 a.m.