



Testimony of Kathy Griesmyer
OPPOSE HB 620 – Public Integrity in Elections Act
Before Senate State Affairs Committee
March 9, 2018

The ACLU of Idaho stands before you today in opposition to HB 620 because it raises serious constitutional concerns about restricting First Amendment protected free speech.

In the proposed legislation, under section 74-604 it states that a public entity nor its employees shall make a public expenditure to advocate for a candidate or ballot initiative. It also states that public entities nor its employees shall use public property or resources to advocate for a candidate or ballot initiative. By enacting these provisions, HB 620 would significantly impede the First Amendment rights of teachers and students throughout Idaho's public schools, community colleges and state universities. For example:

- Politically active, school approved student groups (public entity) would be barred from using school computers or printers (public entity resource that members of the general public have no access to) to distribute information regarding candidates or ballot measures they support;
- Students would be barred from using K-12 libraries (public property belonging to a public entity) to have political discussions regarding candidates or ballot measures (with the understanding that these libraries aren't commonly open to the general public while school is in session);
- Students would be barred from using school computers (public resource belonging to a public entity) to share their private political beliefs on social media.

The violations provision of HB 620 also presents additional concerns. The legislation sets up a system where government, through the actions of the Idaho Attorney General, local prosecutors, and judges, will decide what is considered "factual information" or advocacy speech. Such determinations are subject to broad interpretation and creates a provision where government gets to determine what is true or false. This could essentially amount to political censorship, with parties arguing in court what are the boundaries of "factual information" or advocacy speech. As stated in a recent 9th Circuit Court of Appeals decision in *Animal Legal Defense Fund et al v. Wasden*, the court stated:

*"The pervasiveness of false statements, made for better or for worse motives, made thoughtlessly or deliberately, made with or without accompanying harm, provides a weapon to a government broadly empowered to prosecute falsity without more. And those who are unpopular may fear that the government will use that weapon selectively, say, by prosecuting a [politically unpopular individual who makes false claims], while ignoring members of other political groups who might make similar false claims."*¹

¹ <http://cdn.ca9.uscourts.gov/datastore/opinions/2018/01/04/15-35960.pdf>. Page 22-23.



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Essentially, under the violations provision of HB 620, government will now be empowered to sanction or silence particular types of speech, casting a chilling effect over the First Amendment rights of public employees or those who engage with public entities and their property and/or resources.

Ultimately, measures intended to root out corruption in elections cannot interfere with the private freedom of speech by teachers, students or others wishing to make their views known. Due to the speech concerns identified in HB 620, we ask that you vote "no" and hold this bill in committee.