

MINUTES
Approved by the Committee
Campaign Finance Reform Legislative Work Group
Wednesday, July 12, 2017
9:00 A.M.
Room EW 41
Boise, Idaho

Co-chair Representative Fred Wood called the meeting to order at 9:06 a.m. An oral roll call was taken. Work group members in attendance were: Co-chair Senator Patti Anne Lodge and Co-chair Representative Fred Wood; Senators Todd Lakey, Marv Hagedorn, and Michelle Stennett; Representatives John Vander Woude, Thomas Loertscher, and Sage Dixon. Work group members absent and excused were: Senator Mark Harris and Representative Mathew Erpelding. Legislative Services Office staff present were: Kristin Ford, Paul Headlee, and Tetiana Kanashuk.

Other attendees: Tim S. Olson, Steve Rectok - Pinnacle Business Group; Greg Casey, Sr.; Fred Birnbaum - Idaho Freedom Foundation; Nate Fisher - Fisher Public Policy; Betsy Russell - The Spokesman-Review; Jeremy Gugino - Democratic Caucus; Brody Aston; John Foster - Kestrel West; Mistie Tolman - Planned Parenthood; Joni Lawson - Idaho Hospital Association; Jesse Taylor; Lynn Tominaga - Idaho Ground Water Appropriators, Inc.; Elizabeth Criner - Veritas Advisors; Jess Harrison - Idaho School Board Association; Jayson Ronk - Micron; Carrie Foster - Lobby Idaho; Jane Wittmeyer - Wittmeyer and Associates, LLC; Brent Olmstead - College of Agricultural & Life Sciences; Mary Mosley - South West Idaho National Organization for Women; Jonathan Parker - Holland & Hart LLP; Skip Smyser - Lobby Idaho; Sharon Hawkins - Idaho Association of Commerce & Industry.

Co-chair Wood welcomed everyone and thanked the group for coming out to discuss the subject of campaign finance. He thanked the Speaker of the House and the Senate Pro Tem for forming the group. He noted that advisors to the Campaign Finance Reform Work Group will be Secretary of State Lawrence Denney and representatives from his office, and that representatives from the Attorney General's office will also participate in future meetings.

Co-chair Wood addressed the agenda for the work group meeting.

Co-chair Wood invited Kristin Ford, Senior Legislative Research Analyst, to read the scope of work statement from the Senate Pro Tem and the Speaker of the House for the work group:

"The Campaign Finance Reform Work Group will review the campaign finance and disclosure laws, with an initial focus on increasing transparency in the timing and reporting of contributions and expenditures by candidates, political action committees, lobbyists and other entities. The work group may also consider additional topics, such as the penalties for violations of the campaign reporting laws, reviewing current contribution limits, lobbyist financial disclosures, applicability of reporting laws to recall campaigns, special elections, revolving door policies, and personal financial disclosures. The work group is authorized to receive input, advice and assistance from interested and affected parties who are not members of the Legislature. The work group will report its findings and recommendations to the Second Regular Session of the Sixty-Fourth Idaho Legislature. Those findings and recommendations may include proposed legislation. The work group will conclude its work before the first day of the 2018 legislative session."

Co-chair Wood continued his opening remarks by saying that this is definitely a topic we need experience and guidance on. There is a need to keep the scope fairly narrow and as simplified as possible in order for the working group to succeed, at least in the first year. He expects this process may take several years. In his perspective, if every time someone spends or receives money, they have to report it that day, then it's pretty hard to get a foul of what people really intend when they talk about transparency in campaigns.

Co-chair Lodge thanked the members for rearranging their schedules in order attend this meeting. She thanked everyone for their interest in this topic and is looking forward to hearing their opinions on it. Her main concern is to make sure that the work group focuses on an "Idaho Solution" and on what is best for the citizens of Idaho, regardless of what other states do. She also noted the importance of making reporting and tracking easy in order to promote campaign finance transparency.

Secretary of State Lawrence Denney thanked the Legislative Council for convening the work group. He noted that this important issue was addressed last year when his office circulated an RS that prompted a lot of discussion, but the RS was not printed because there were so many different items and ideas voiced. Instead, the decision was made to have an interim study to explore these ideas. He explained that the purpose of the sunshine law was to promote openness in government and to avoid secrecy in government concerning those who provide financial support to election campaigns. The Secretary of State recommended having reporting requirements for local candidates if they reach a certain threshold and also for recall elections. He also spoke about how he would like to make available campaign finance information from city, county, state and federal candidates on the Secretary of State's web site in the future, although the information would also be available from the local offices. Secretary Denney would like to shine light on "dark money." Since the case of Citizens United, campaign donations have changed a lot. The majority of money now comes from PACs instead of individuals and we don't necessarily know who is behind the PACs. Secretary Denney would also like to have proper tools to prosecute violations of campaign finance law. Currently, the statutory fines for violations are so low that the Attorney General's Office has little incentive to investigate violations.

Discussion:

Senator Stennett told Secretary Denney that a problem arises when candidates sometimes do not know where portions of "dark money" comes from. She wants to know how the Secretary plans on implementing the reporting. Also, if the work group gives the Secretary of State more work, Senator Stennett inquired how the Secretary will deal with the staffing issues.

Secretary Denney explained that a lot of "dark money" comes in across state lines. Before it crosses into Idaho, his office does not have any authority over it. Depending on this work group, they could have the authority to require the receiving agency or PAC in Idaho report that "dark money" has come in and where it has come from. It is easy for people to donate anonymously, but "dark money" donations will slow dramatically once people are required to attach their name to the donation. Transparency will have a chilling effect on these dark money donations. Secretary Denney's staffing needs will depend on what solutions the work force comes up with, but implementing online reporting will help the efficiency of his office. Senator Lodge asked how many people Secretary Denney has in his office that work directly on election issues. Secretary Denney said his office has 6 people, including his chief deputy, that work on elections and sunshine laws.

Representative Vander Woude asked about the reports sent out by the Secretary of State's Office on contribution mismatches. Secretary Denney responded that his staff is manually going through the reports and calling those involved when they see a discrepancy in the reporting. Rep. Vander Woude asked if they will be going to an electronic system, and Secretary Denney replied that electronic reporting will make his office's efforts to track mismatches much more efficient.

Chairman Wood questioned Secretary Denney on how much capability his office has now and how much further capability his office is going to need to implement a program that would require reporting within twenty-four hours for candidates at all levels of government that reach a certain threshold, and what timeline his office is trying to achieve for this type of program. Secretary Denney clarified that his office does not take sunshine reports for local candidates for cities, schools, counties, etc. and then called on his chief deputy Tim Hurst to help answer the question.

Tim Hurst, Chief Deputy Secretary of State, noted that at this time their office does not have the capacity for instantaneous reporting because they have to manually upload the reports they receive. The system has room for improvement. Mr. Hurst described the Oregon state campaign finance reporting system in which all the candidates have to have special accounting system software to upload data on a regular basis, which is then immediately available for viewing.

Senator Lakey asked Secretary Denney about the ability for the public to access city, county and state information all in one location and how Secretary Denney envisions the system collecting this information. Secretary Denney explained that he would like to have a website that would provide access to city, county, and other local sunshine reports that they receive from the local entities.

Representative Vander Woude asked Secretary Denney what he believes is the biggest issue that needs to be solved. Secretary Denney answered that the biggest issue is transparency of who is making independent expenditures. Another issue that needs to be looked at is the reporting time for contributions. Secretary Denney explained that his focus is not on contribution limits but in making everything transparent. Representative Vander Woude asked if spending by the PACs is one of the biggest issues rather than the spending by the candidates. Secretary Denney agreed and said that money transfers between in-state PACS are called grey money, because it can be tracked if you take the time to trace it all back. Dark money is out-of-state money that is coming in to PAC's and cannot be tracked back; this is a problem.

Senator Stennett said that she disagreed about contribution limits, but asked about the software for instant reporting and how the treasurers and candidates would be trained, to be consistent with reporting. Secretary Denney responded that his office already provides training and the process is very simple. A problem does arise with statewide candidates if they already have accounting software that is not compatible with what the Secretary of State uses.

Senator Hagedorn asked Secretary Denney if the information candidates currently use to fill out the form goes into a database for use by the Secretary of State. Secretary Denney confirmed that the data does go into a database held by the Secretary of State and can be used to generate special reports. This database will form the basis of a good system in the future, with a little additional programming.

Co-chair Wood thanked the Secretary of State and asked the work group members to provide their thoughts on priorities for the work group.

Senator Lakey suggested that the priority be on transparency of who is donating and who is spending; expansion and definition of who needs to report; dark/gray money reporting; and expenditure limits.

Senator Hagedorn expressed the need for enforcement of the rules for transparency, and the ability of the Secretary of State or the Attorney General to hold accountable individuals or PACs that present false information.

Co-chair Wood expressed concern about getting mixed up in the First Amendment issues of what people can say. He would like the work group to stick to transparency, disclosure and timeliness. He pointed out the issue of exemptions for those that do not have to disclose or report at this time in the State of Idaho. Independent candidates do not have to report for the first two reporting cycles, unlike candidates who belong to political parties. Disclosure loopholes need to be tightened up and timelines need to be examined.

Senator Lodge would like to see the reporting process streamlined and more efficient. She would like to be able to report as she goes and access the reports, the way that you can access your banking records, rather than waiting and reporting on the totals.

Representative Vander Woude noted that sometimes it is difficult for candidates to report checks immediately while campaigning. Checks may be put in your pocket or a drawer and you forget about it for a while. What about when checks are written at the end of a year but are not deposited until the start of the next year? Time matters need to be looked at carefully because various problems

arise; e.g., dates written on checks may be different from the dates checks are actually received. Simply increasing the fines is not going to solve these problems. Some leeway is needed.

Co-chair Wood remarked that candidates may need to change the traditional attitude and method of running campaigns concerning checks and donation timeliness. Problems do arise with dates on which checks are written and when they are received. This issue can be worked out. Senator Lakey agreed that problems do arise with check dates, but the ability to enter donations online in a timely manner is a very useful tool. He suggested that checks greater than \$1,000 should be reported within 48 hours throughout the year, but that smaller contributions could, but do not have to be, reported as you go.

Co-chair Wood asked Secretary Denney to come up with recommendations on who should have to report, how often, and the type of disclosure for the work group's next meeting, and also to provide information on what Secretary Denney feels were the major abuses from last year. Secretary Denney assured Co-chair Wood that he would provide this information by the next meeting.

Senator Hagedorn asked Secretary Denney about an issue that came up last year about a candidate that used money from one office campaign while running for another office. Some candidates need to understand the rules concerning the use of money and accounts when running for different offices. Secretary Denney said that it would be easier for his office to keep track of the money if candidates were able to use the same campaign account regardless of what office they are running for, as long as this does not violate Federal election laws. He feels a candidate should be able to create a new campaign account and transfer the money from the old account to the new account.

Representative Vander Woude asked why a change was made in the RS concerning the source of contributions; political committees or non-business entities may not donate to other committees unless a report is filed with the Secretary of State with the 5 donors that provided the largest sums of money to them in the previous 12 months. He asked what problem the Secretary of State was trying to resolve with this change. Secretary Denney explained that a non-business entity is not a PAC and they do not have to report contributions they receive. They can make independent expenditures or give money to a PAC and we do not know where their money is coming from. It is important for non-business entities to report where their money comes from. Representative Vander Woude asked Secretary Denney if he thought it was ok that current legislators in office do not have to make personal financial disclosures. Secretary Denney said that personal financial disclosure is outside the Secretary of State's focus.

Co-chair Wood commented on the reports provided by staff to the work group members regarding dark money and how other states reduce dark money involved in campaigns. He recommended the reports as worthwhile reading.

Senator Hagedorn asked if this information would be available for the public on the legislative website. Kristin Ford stated that the minutes of the meeting would be posted on the work group's web page, and links can be provided to the handouts if desired.

Co-chair Wood put the work group at ease at 10:15 a.m.

Co-chair Wood resumed the meeting at 10:32 a.m. and opened the floor to public testimony.

Mr. Greg Casey, Veritas Advisors, addressed the work group. He spoke about money being defined by law and broken into three categories: political money (which can be limited), issue advocacy money (which cannot be limited because it involves freedom of speech), and independent expenditures. He also reminded the work group that the more complicated a law is, the more fertile ground it is for clever people to skirt the law and hide money. The easiest and best campaign finance reform is clear, immediate and hard-pressed to avoid: no limits, but if you get it or spend it, you've got to report it. Senator Stennett asked Mr. Casey why he believes there should not be a limit on campaign donation amounts. Mr. Casey suggested that as long as the voters know where the money comes from, then it is up to them to decide whether someone is corrupt or not. Senator

Stennett reminded Mr. Casey that his opinion relies on the fact that voters know where the money comes from, but often the voters do not know. Mr. Casey replied that campaign finance reporting is already too complicated. The case of Citizens United is very complicated.

Representative Vander Woude asked Mr. Casey for his view on the new campaign finance laws that Oregon recently passed. Mr. Casey stated that he does not like the reporting of the top 5 or 10 donors, because it creates a chilling effect for donations. Rep. Wood spoke about the morality of being able to donate large sums of money without having to disclose one's name.

Mr. Fred Birnbaum, Idaho Freedom Foundation, addressed the work group. He pointed out that one of the reasons donor privacy was protected, goes back to a Supreme Court Case involving the NAACP. In this case, members were afraid of retaliation. A second point is that disclosure is not necessarily related to the efficient running of government. Another challenge is when a state legislature is under constant control of a single party, the state agencies become beholden to the government itself because there is no separation between the legislative and executive branches. We need checks and balances.

Senator Hagedorn suggested that PAC expenditure reports should contain more detailed descriptions of what the expense was for, as are candidate expenditure reports. Tim Hurst from the Secretary of State's Office informed the work group that the reporting requirements are the same for candidates and PACs, but the law could be revised to increase reporting for PACs. Mr. Hurst then asked if the work group will address lobbyist reporting. Sen. Hagedorn clarified that what he would like to see in PAC expense reports is what issues their expenses are being made to address. Mr. Hurst replied that the PACs are required to identify the issues, but that independent expenditures are not and that may be the real problem.

Co-chair Lodge questioned Mr. Hurst about independent expenditures and what the difference is between candidates "supported" or "opposed" versus candidates "referred to." Mr. Hurst explained that in such electioneering communications, you are not outright saying "Vote for Tim Hurst" or "Vote Against Tim Hurst" but instead you are saying "Tim Hurst is a jerk." With words such as "oppose", "vote for", "vote against", or "support", the communication becomes an independent expenditure instead of an electioneering communication.

Co-chair Wood asked Mr. Hurst what he was asking about regarding his earlier question about lobbyists. Mr. Hurst asked if the work group is content with lobbyist reporting, or if they would like to see changes, such as whether lobbyists should have to disclose their compensation.

Co-chair Wood stated that lobbyists must certainly be subject to the same disclosure and reporting requirements for their expenditures but he is not in favor of requiring lobbyists to disclose compensation.

Rep. Vander Woude had Kristin Ford re-read the charge to the work group pertaining to lobbyists.

Senator Lakey stated that there should really be no reason to go further than to have a lobbyist report what they spend on candidates and how the candidate is using their money. Senator Stennett, Senator Lodge and Senator Hagedorn discussed the unwritten legislative policy regarding legislators not fundraising or accepting contributions during the legislative session and the transparency of session contributions, and what about officials who are in the executive branch? Senator Lakey agreed that contributions should not be accepted during the session, but dealing with the issue is going to be difficult. A check may arrive during the session following a fundraiser prior to the session. Rep. Vander Woude objected to the assumption that Idaho state legislators can be bought. A donation does not necessarily mean a legislator will change his or her mind on an issue. However, he supports transparency. Co-chair Wood replied that the issue is the public perception of what is fair, and hiding money is not fair.

Mr. Lynn Tominaga explained that the origin of the unwritten rule of why fundraisers are not held during the legislative session was so that a legislator could not hold a lobbyist's bill hostage

to a request for donations. He also addressed the problem of requiring lobbyists to disclose compensation because it may not all be tied to their lobbying of the legislature. He suggested that the important issue to focus on is the issue of dark money.

Co-chair Wood pointed out that a law passed in Alabama that prohibited transfers of money from PAC to PAC. This law was taken to court and upheld by the 11th U.S. Circuit Court of Appeals. Co-chair Wood asked for anyone in the room to comment if they had knowledge of this law. Co-chair Wood thought this law would be a good way to remove dark money from campaign contributions.

Representative Vander Woude asked if lobbyists in the room have issues with the transfer of money from PAC to PAC. Mrs. Elizabeth Criner addressed the question. She reasoned that PACs and lobbyists should be kept separate. PACs provide support for caucus events, which is a PAC-to-PAC contribution. This is different from PACs shuffling money back and forth through multiple PACs. In the latter case, this provides grey areas and places to hide money. Simplicity and timeliness are important when it comes to making contributions.

Co-chair Wood opined that, with respect to personal financial disclosures by lobbyists, the State is far too involved in what are private contracts. The State should not be involved in private contracts. The State's interest is in transparency and disclosure, nothing else. With good transparency and disclosure laws, everything else would take care of itself.

Co-chair Wood called a recess of the work group for lunch at 11:27 a.m.

Co-chair Wood reconvened the meeting at 1:04 p.m. and asked for a discussion of what information should be brought back to the next meeting.

Senator Hagedorn suggested finding out what the resource requirements would be to consolidate the reporting requirements for local candidates on the Secretary of State's web site, thus removing the burden from the cities, counties and districts. Co-chair Wood asked that the Secretary of State identify the areas of greatest concern to them with respect to transparency and disclosure, and to identify the funding, staffing and technology needed to address the concerns. Sen. Hagedorn pointed out that a PAC is reported with the State but a PAC could contribute to a local race. Consolidating the reporting on one site would help simplify reporting, especially when a PAC is engaging with multiple different local districts and there are so many different places to hunt down this information. The Secretary of State's web site is where everyone looks and expects to find this information and he thinks it makes sense to use the same database for all of this information. Mr. Hurst said that the information is supposed to be in both places, but the rules are not clear and information is sometimes not on the Secretary of State's website.

Senator Lakey agreed that transparency is the main focus. Contribution limits should not be adjusted at this time. He does not want to go down the road of prohibiting PAC-to-PAC donations. He would like to see the definitions of candidate and elections expanded by the Secretary of State to include those that might be triggered by a threshold spending amount. He would also like to see the frequency of reporting looked at, as well as the ease of use for reporting contributions. He would like to hear from local reporting entities about how they feel about consolidating campaign finance databases. He would like to learn more about methods of combating dark money. Co-chair Wood would like to see immediate reporting of expenditures made, as opposed to immediate reporting of monies received, as it is much clearer when you write out a check to spend money.

Representative Dixon would like to promote the public confidence in government. Representative Vander Woude would like to hear from the Secretary of State on how other states have succeeded in reforming campaign contribution laws. We need to know what actually works and whether or not these states have benefited from these new laws. Senator Hagedorn asked the Secretary of State's Office to provide language recommendations for money following the candidate to different seats in the legislature. He would also like to see the unwritten rule of prohibiting donations during the session turn into a written rule. A written rule would increase the public confidence in government.

Representative Loertscher cautioned the work group not to create a whole new set of problems while attempting to solve other ones. Incumbents would be handicapped by not being able to fundraise during the session, because opponents are already raising money.

Co-chair Wood remarked that they work group had heard many concerns aired today and he thinks there is plenty of low-hanging fruit for the work group to address. He suggested again that they keep the group's scope limited and not get hung up on all of the other issues. In the past, retired Chief Justice Jones had a campaign finance study group and none of their suggestions were introduced, probably because of scope and other issues. We ought not try to fix anything that is not an obvious, glaring hole.

Co-chair Wood set the date for the next meeting for August 28th.

The work group adjourned at 1:30 p.m.