

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Wednesday, February 28, 2024

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Guthrie, Vice Chairman Bernt, Senators Winder, Anthon, Harris, Lee, Toews, Wintrow, and Ruchti

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Guthrie** called the meeting of the Senate State Affairs Committee (Committee) to order at 8:00 a.m.

WELCOME: **Chairman Guthrie** welcomed all to the Committee meeting.

S 1252 **NATIONAL GUARD - Adds to existing law to establish the Defend the Guard Act.** **Senator Adams** stated that **S 1252** embodied the intent of the U. S. Constitution that only Congress had the power to declare war. He remarked that Article 1, Section 8 of the Constitution specifically addressed the State militia. He remarked that Idaho's National Guard had been deployed without a declaration of war from Congress. He stated that the executive and administrative branches of government were not granted the power to declare war. **Senator Adams** stated that the National Guard had a federal and a State mission, however, the federal mission was interpreted too broadly. He remarked that states had the right and responsibility to stand up for their citizens. He stated that the key was Article 1 of the U. S. Constitution.

Senator Adams shared a handout addressing **S 1252**. It appears in Attachment 1.

DISCUSSION: **Senator Wintrow** asked for clarification regarding the particulars of **S 1252**. She remarked that she wanted an explanation of active duty combat. **Senator Adams** replied that active duty combat was defined by the Department of Defense. He remarked that he was not aware of any current service members in active duty combat zones. He remarked that in 2023, there were National Guard service members in Syria, which was an active duty combat zone. He stated if **S 1252** went into effect and the National Guard were to be called overseas to a combat zone, then the Idaho Governor could deny that request. **Senator Wintrow** asked for a description of active combat. **Senator Adams** responded that any service member who was abroad could defend themselves when attacked. He stated that lines 22 through 28 of **S 1252** defined active duty combat.

TESTIMONY:

Dan Mcknight, thirteen year veteran of the U. S. Marine Corps, U. S. Army, and Idaho National Guard, stated that he served in Afghanistan and returned injured, angry, and confused. He remarked that he started an organization called Bring Our Troops Home. He stated that in the last 20 years, the National Guard was responsible for 45 percent of the troops on the ground. He remarked that legislation similar to **S 1252** had passed in Arizona and New Hampshire and was currently under consideration in other states. He stated that it was time for citizens to reclaim their authority through the state legislatures. He stated that the question was whether the State should withhold consent to the deployment of the Idaho National Guard to foreign wars that lacked the proper Constitutional authorization of a congressional declaration of war.

Mr. McKnight outlined the problems experienced by the National Guard service members. He stated that it had been 82 years since Congress had declared war. He remarked that the National Guard had accounted for nearly half of the military forces. He remarked that the National Guard service members had to fight the people that they armed in Syria. There was no declaration of war in Syria, rather, the justification of war came from an Authorization of Use of Military Force (AUMF). He stated that elected officials did not want to declare war due to the political repercussions. He stated that Congress had abandoned its responsibility, so it now fell to the states. He remarked that there was a threat that funds would be taken away due to **S 1272**, but this was not born out of the law. He remarked that if an order was not constitutional, then states were given authority by the 10th Amendment. He stated that he supported **S 1252**

Written testimony appears in Attachment 2.

DISCUSSION:

Senator Toews asked if **S 1252** would have prevented the Idaho National Guard from being deployed in Afghanistan. **Mr. McKnight** replied that it would. He remarked that it was a 2001 AUMF, and not a declaration of war, that resulted in deployment to Afghanistan.

TESTIMONY:

James Kroenke testified in support of **S 1252**. He stated he served 21 years in the National Guard. He was deployed 3 times and served as a contractor for the Department of Defense in Iraq. He didn't join the Army Reserves because he wanted to specifically serve the State of Idaho. He remarked that the National Guard was often called to Iraq and Afghanistan. He questioned why he was there for long deployments. He remarked that he realized Congress had written a "blank check" to the President of the United States. He observed waste and abuse. He stated that Congress should be responsible. He stated that **S 1252** placed the responsibility where it should be placed.

Kent Burns testified in support of **S 1252**. He served 20 years in the U. S. Army. He served in task force ODIN (Observe, Defend, Identify, Neutralize). He remarked that the last war that was declared by the Congress was World War II. He stated that in the following 80 years, there were no wars declared, yet there were many wars fought. He stated that Congress had the sole power to declare war. He remarked that he bore the scars from the wars he fought. He asked the Committee to learn more about Defend the Guard.

DISCUSSION:

Senator Ruchti stated that when he was serving in Germany, the National Guard was used to backfill positions for active duty units on deployment. He remarked that the National Guard units were not well trained because they were not full time. He believed that after he left the military, the role of the National Guard changed significantly. **Mr. Burns** replied that after the terrorist attacks of September 11, 2001, the role of the National Guard changed. He remarked that the National Guard now served principal missions.

Senator Wintrow stated that after September 11, 2001, Congress enacted the right to use necessary and appropriate military force against those involved in the terrorist attacks. She asked if the authorization only applied in that case or was it being used more broadly. **Mr. Burns** replied that he was not sure.

Senator Adams stated that in response to Senator Wintrow's question, the authorization of military force was interpreted broadly. He remarked that the average citizen believed that power was held in Washington; however, Washington derived its power from the consent of the governed. He stated that we are the governed. He remarked that citizens should push back against federal overreach. He stated that a congressional declaration of war gave clear definitions of victory. He stated that the current system did not.

Chairman Guthrie asked why Congress was not declaring war. **Senator Adams** replied that he suspected that it was political optics and the military industrial complex. **Chairman Guthrie** asked if an official declaration of war cleared a path for an elevated use of force or advanced weaponry. **Senator Adams** replied that a congressional declaration of war granted vast, broad powers.

Senator Ruchti stated he supported the concept of **S 1252**. He remarked that the two-tiered strategy required National Guard units to fulfill missions due to the elevated troop requirements. He stated that strategic plans were made at the highest levels with a view toward possible missions. **Senator Adams** replied that nothing in **S 1252** restricted training missions or going to countries that were not combat zones. He remarked that the bigger question was "are we at war or not."

Senator Winder remarked that Army recruiting was down 64,000 troops. He remembered Vietnam and the years it took to get recognition for the veterans. He stated that the President was the Commander in Chief, but only after the troops were called up. He stated the President was allowed to call up troops with some Congressional support, but without a declaration of war due to politics. He remarked that there was no definite commitment to identify and destroy the enemy, and this caused cultural confusion. He stated that a discussion was important.

DISCUSSION:

Senator Lee remarked that **S 1252** presented a difficult issue and generated a compelling and complex discussion regarding the duties and responsibilities of the National Guard.

Senator Anthon stated that he listened to veterans. He remarked that the discussion was important and he wanted to understand the ramifications.

Senator Bernt stated that he respected the sponsor and those who supported **S 1252**. He agreed with Senator Anthon that we needed to listen to our veterans. He looked forward to the discussion on the Senate floor.

Senator Wintrow stated that she appreciated veterans and that her brother

was a veteran, but she had some hesitancy regarding **S 1252**. She remarked that **S 1252** needed more discussion in Committee. She wanted input from the federal government and more information regarding world security.

Chairman Guthrie stated that **S 1252** had been in consideration for a long time, and Senator Adams had been methodical in his decision of when to introduce it to the Committee.

Senator Harris remarked that Congress had taken a back seat to the executive branch, and the executive branch of both parties had exercised military power without a war declaration. He stated that he supported **S 1252** and was looking forward to the discussion.

Senator Ruchti stated that he had served in the military and was informed with the issues. He remarked that **S 1252** had federal implications that required more consideration, but he supported sending **S 1252** to the Senate floor for discussion.

Senator Winder remarked that there was some apprehension from the National Guard officers that he had consulted. He stated that the ideas of **S 1252** had been discussed for a while. He appreciated the testimony and supported **S 1252**.

MOTION:

Senator Lee moved to send **S 1252** to the floor with a **do pass** recommendation. **Senator Toews** seconded the motion. The motion carried by **voice vote**. **Senator Wintrow** asked to be recorded as voting nay.

H 498

LIABILITY FOR PUBLISHERS AND DISTRIBUTORS OF MATERIAL HARMFUL TO MINORS ON THE INTERNET - Adds to existing law to establish provisions to protect minors from harmful material on the internet. **Senator Toews** stated that the pornography industry was connected to the trafficking industry. He stated that Senator Cook joined him as a front page sponsor on **H 498**, and the goal was to protect the children of Idaho. He remarked that 73 percent of teens between the ages of 13 and 17 had been exposed to pornography, and 58 percent stumbled upon it accidentally. He stated that the average age of first exposure was 12. He stated that content-based third-party age verification was an effective solution. He remarked that Louisiana passed a law similar to **H 498**, and traffic to pornographic websites dropped between 80 and 99 percent. He stated that **H 498** was legally defensible.

Senator Toews remarked that **H 498** was a cross-platform solution. He remarked that Article 3, Section 24 of the Idaho Constitution stated that "The foremost concern of all good government is the virtue and sobriety of the people, and the purity of the home." He stated that Idaho Code § 18-1515 prohibited disseminating material harmful to minors. He shared that **H 498** empowered parents of harmed children with due standing to sue perpetrating content providers for a civil remedy if they failed to take reasonable steps to ensure they were not providing such content to minors. He stated that **H 498** applied the Modified Miller Test. He stated that there was a high bar to meet the criteria. He remarked that for a commercial entity to be held liable, they must "knowingly and intentionally" publish material harmful to minors. He stated that identifying information was not retained due to privacy issues.

DISCUSSION: **Senator Lee** remarked that minors bypassed age verification by turning off their virtual private networks or their Wi-Fi. She asked if **H 498** addressed this easy work-around. **Senator Toews** replied that he related it to having a fence. A fence did not stop all access, but was a reasonable barrier. **Senator Lee** asked how **H 498** was enforced without collecting and storing personal data. **Senator Toews** stated that third party age verification companies showed that they followed the process to verify age.

TESTIMONY: **Steve Fullmer** testified on behalf of himself and stated that he supported **H 498**. He remarked that he experienced significant harm in his life due to watching pornography. He stated that he was exposed at 8 years of age, and he suffered addiction and other issues. He stated that he had been in recovery for 2 years and believed his mission was to help others. He remarked that parents needed recourse, and the industry needed to be held accountable. He stated that he was creating a nonprofit company to help others who experienced porn addiction.

DISCUSSION: **Senator Bernt** thanked Mr. Fullmer for his testimony and his courage. He remarked that it was tough to be a minor in 2023.

Chairman Guthrie remarked that Mr. Fullmer's personal story was very powerful.

TESTIMONY: **Grace Howat**, Policy Assistant, Idaho Family Policy Center, testified in support of **H 498**. She remarked that the distribution of pornography must be restrained in a civilized society. She stated that minors were exposed to pornography at the average age of 12 years old. She commented that exposure to pornography correlated with higher rates of divorce, juvenile crime, property crime, and sexual violence. She remarked that recent polling showed that more than 85 percent of likely Idaho voters agreed that pornography websites should verify that users were over the age of 18.

Written testimony related to **H 498** appears in Attachments 2 and 3.

DISCUSSION: **Senator Toews** stated that the problem was clear, and **H 498** was a viable solution. He remarked that the privacy of minors was protected.

Senator Anthon commented that there was no First Amendment right to distribute pornography to children. He remarked that the Legislature declared pornography a public health risk in 2018. He stated that pornography could ruin one's life, and he erred on the side of stopping the epidemic. He remarked that the industry had not taken appropriate steps to stop the distribution of pornography to children.

Senator Lee remarked that it was stunning that there was no industry opposition on **H 498**. She stated that she was concerned about this and hoped it was not a false promise.

MOTION: **Senator Anthon** moved to sent **H 498** to the floor with a **do pass** recommendation. **Senator Bernt** seconded the motion. The motion carried by **voice vote**.

NOTE: **Chairman Guthrie** noted that there were many young people in the room. He asked them for a spokesman to introduce the group.

Ty Cavenall stated that the group was from Eagle High School. He remarked that they were seniors on a field trip for their government class.

Chairman Guthrie thanked them for their attendance.

RS 31436 **Relating to Congregate Care.** **Senator Lee** stated that she was the co-chair of the Child Welfare Oversight Committee. She remarked that foster care children were often housed in a short-term rental, temporary shelter care, or congregate care. She remarked that last year, 170 children were placed in congregate care, including children as young as 2 years old. She stated that **RS 31436** required the director of the Department of Health and Welfare to approve continued placement beyond 2 weeks.

MOTION: **Senator Winder** moved to send **RS 31436** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

RS 31475 **Relating to the Health and Social Services Ombudsman.** **Senator Lee** stated that significant work was done addressing the issues related to **RS 31475**. She remarked that a grievance process was established that resulted in immediate attention by the Department of Health and Social Services.

DISCUSSION: **Senator Wintrow** stated that she supported **RS 31475** and **RS 31436**. She remarked that **RS 31475** resolved conflict in an efficient and effective way.

MOTION: **Senator Harris** moved to send **RS 31475** to print. **Senator Anthon** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Chairman Guthrie passed the gavel to Vice Chairman Bernt.

RS 31524 **Relating to Liquor.** **Senator Guthrie** stated that **RS 31524** dealt with resort cities and accommodated the influx of tourism and recreation by creating a new type of liquor license subject to local control. He remarked that the new license was called the "resort city liquor license." He stated that restaurants in resort cities were allowed up to three additional licenses, subject to approval by the mayor and city council. He stated that the primary source of revenue was from food sales and not liquor. He remarked that the local licensing authority restricted areas where liquor was served. He stated that licenses were not sold, leased, or transferred.

MOTION: **Senator Anthon** moved to send **RS 31524** to print. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Vice Chairman Bernt** adjourned the meeting at 9:29 a.m.

Senator Guthrie
Chair

Peggy Caraway
Secretary