

SENATE ETHICS, ELECTIONS, AND CAMPAIGN FINANCE COMMITTEE

February 23, 1993                      Hearing Room B 3:00 p.m.                      Tapes 16 and 17  
MEMBERS PRESENT: Senator Grattan Kerans, Chair Senator Neil Bryant  
Senator Joan Dukes Senator Rod Johnson Senator Dick Springer STAFF  
PRESENT: Annette Talbott, Committee Counsel Tamara Brickman,  
Committee Assistant MEASURES CONSIDERED: Work Session SB 173 SJR3 SB  
269 SJR4

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. TAPE 16, SIDE A

006 CHAIR KERANS: Calls meeting to order at 3:14 p.m.

WORK SESSION ON SB 173

WITNESSES: COLLEEN SEALOCK, Director, Elections Division, Office of the Secretary of State LYNN ROSIK, Deputy Attorney General, Office of the Attorney General 013 COLLEEN SEALOCK, Director, Elections Division, Office of the Secretary of State: Comments that if the language in the hand engrossed version of SB 173 would have been in effect (particularly line 8) the Secretary of State's office would not have changed or rejected any of the arguments in favor of Measure 9 in the voters' pamphlet. Discusses the difficulty of interpreting line 8 and interpreting the words "hatred" and "hostility". (EXHIBITS A and B) 062 LYNN ROSIK, Deputy Attorney General, Office of the State Attorney General: Discusses the difficulty in applying this statute because of the Secretary of State's sensitivity to allow people the freedom to place opinions in the voters' pamphlet especially if the statements are germane to the measure. Comments that "hatred" and "hostility" are examples of words that are hard to interpret because people have differing opinions on the meaning of the words. Senate Ethics, Elections, and Campaign Finance Committee February 23, 1993 - Page 2

088 CHAIR KERANS: Asks if it would be helpful if the word "hostility" was left out and the list was shortened to contain words more objectively defined. Asks also if it would be possible to "rank order" the words "incites, promotes, or advocates." 118 ROSIK: Discusses the definition of the word "promote" in reference to Measure 9. Comments that she does not see much difference between the words "promotes and advocates." Refers to the words "promotes and advocates" as subjective as compared to the word "incite" which is a more concrete or active term. 137 SEN. JOHNSON: Discusses that "incites" is a more descriptive word. Comments that the words "abuse or violence" are words that actually produce physical actions. Comments that a person should have a chance to revise the statement(s) that the Secretary of State finds unacceptable. 187 SEALOCK: Responds by stating that the Secretary of State's office could throw out the statements that contain the "offensive words," but the office has chosen to extend to individuals the opportunity to change or edit remarks submitted to the voters' pamphlet. 199 SEN. JOHNSON: States that there should be a certain time limit on the Secretary of State's office to give notice to a person and the time in which the person can respond the request to change a statement in the voters' pamphlet. 202 SEALOCK: Comments that the Secretary of State would not be opposed to requiring a time

limit, but the amount of time required would need to be worked on so as not to interfere with the process of getting the pamphlet completed.

209 SEALOCK: Responding to a question from Chair Kerans, Ms. Sealock explains that the statements are read when they come in. 213 CHAIR KERANS: Asks that Committee staff and the Secretary of State's office work on a solution to the time line issue. 216 SEN. JOHNSON: Discusses, with Ms. Sealock and Chair Kerans, the issue of placing a statement on the forms used for submitting comments to the voters' pamphlet which would explain that certain remarks may not be allowed in the pamphlet. 238

ROSIK: Responding to Sen. Dukes, explains that definition of profane would include "swear words" and "obscene" would be defined as a broader category along the same lines. 247 CHAIR KERANS: Discusses the FCC's delineation between the words "obscene" and "profane." Comments that "profane" is larger than "obscene."

258 ROSIK: Refers to Subsection C, which states any language that "cannot legally be circulated through the mails." 263 CHAIR KERANS: Asks if the words "incites, promotes, or advocates" are necessary, or if one or two words would suffice. Suggests use of the words "incites and advocates," and removal of the word "hostility." 282 SEN. BRYANT: Asks Ms. Rosik whether the voters' pamphlet, which is state subsidized, is subject to "as much freedom of expression guarantees" as other publications. . These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes. Senate Ethics, Elections, and Campaign Finance Committee February 23, 1993 - Page 3

299 ROSIK: Explains that the argument could be made that because the pamphlet is distributed widely to every house in the state that it would be appropriate for the state to edit "obscene" materials from it. Comments that there are strong free speech implications; therefore, the state is very sensitive to freedom of expression issues. Comments that if the language is left "murky" there could be some inconsistency in executing the provisions which in turn would open legal problems.

337 SEN. BRYANT: Discusses, with Ms. Rosik and Chair Kerans, the language "ridicule and shame" previously used.

346 CHAIR KERANS: Discusses the right to free speech. A person might have the right to free speech, but how do you discriminate between the ability of the person to write his/her expressions in the voters' pamphlet or standing on the street corner and saying anything he/she wants. Questions whether even though people have the right to speak that you can discriminate between the two?

376 ROSIK: Comments that the standards placed in the statute need to be clear and fair.

383 CHAIR KERANS: States that the word "hostility" should be removed. Asks whether the word "incites" would be enough or if "incites and advocates" are needed. Asks also about the word "hatred." 399 SEN. BRYANT: Discusses that the initial draft intended to include any person or group, but now the list is specific. Asks if it wouldn't be preferable to have the statute protect any person or group from the incitement or advocacy of hatred abuse or violence. 418 ROSIK: Discusses that person or group is too broad. Comments that she felt more comfortable if the statute would be applied to the "well-known class)fications protected under civil rights laws and other things."

441 CHAIR KERANS: Comments that he likes enumeration.

459 ROSIK: Discusses the concern that the Secretary of State's office would be inundated with complaints about statements that had "derogatory" remarks to "somebody."

TAPE 17, SIDE A

030 ANNETTE TALBOTT, Committee Counsel: Comments that she thought the reason that the decision to enumerate was for the purposes of avoiding "uneven application by different Secretaries of State."

034 ROSIK: Comments that when generality is used questions arise as to how it would be applied in particular cases; the more specific the statute the better.

038 SEN. DUKES: "Does that mean if someone decides to use their voters' pamphlet statement to advocate hatred toward the Boy Scouts that that ones OK?" 040 ROSIK: Discusses that there are not very many limits on what can be said in voters' pamphlet statements; there is no requirement to adhere to a specific subject. 046 SEN. BRYANT: Advocates including all groups of people.

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051 ROSIK: Readdresses the issue of concern over applying this statute to a general group of people as opposed to specific groups of people. 070 SEN. DUKES: "There is nothing that says you have to address the issue is there?" 075 SEALOCK: Addresses the issue that the Secretary of State's office has a very short time to review the statements before actual publication of the pamphlet; therefore with more to look for it would create more delay. Adds that the statutes provide that a person can talk about anything he/she wants to, as well as decide whether the argument is a for or against argument, and which measure the argument relates to. Comments that Secretary of State's office is looking at introducing legislation to deal with format of the voters' pamphlet. 104 CHAIR KERANS: Asks to come back with a draft that reflects the changes in language that the committee has previously discussed. 132 TALBOTT: Asks for clarification on Sen. Johnson's issue of the process and the form by which the Secretary of State would notify a person that his/her argument needs to be edited.

WORK SESSION ON SJR3

WITNESSES: NINA JOHNSON, Executive Assistant, Office of the Secretary of State

146 TALBOTT: Discusses the hand engrossed version of SJR3 with the SJR3-1 amendments. Addresses the issue regarding the number of signatures required for recall petitions for holdover senators (p. 3, lines 21 -22). Also discusses additional items addressed by the amendments and the attempt to clarify the language on p. 3, lines 8-13. (EXHIBITS C, D, and E)

267 NINA JOHNSON, Executive Assistant, Office of the Secretary of State: Comments that the reasoning behind the statute is to keep two senators from representing the same district. The Secretary of State is required to assign every hold over senator to a district.

276 SEN. DUKES: Asks if the reasoning of assigning hold senators to districts is because they have been elected or because "everyone deserves to be represented?"

277 JOHNSON: Responding to Sen. Dukes, explains that a person's term cannot be terminated earlier than the term for which he/she was elected.

330 TALBOTT: Discusses amendments. On page 3 of original SJR3 in subsection 9 the "unless otherwise ordered by a court" is crossed out. Subsections 10 and 11 address enactment of a congressional reapportionment plan. Ms. Talbott comments, "If the Legislative Assembly did enact a plan before July 1 and a court directs the Legislative Assembly to revise the plan, and the Legislative Assembly is still in session then...they have 60 days after the date of court order to make the change. If the Legislative Assembly fails to enact a plan within that 60 days, then the Secretary of State would make the corrections ordered by the court." Discusses the issue addressed by Subsection 11 on the new page 3A (EXHIBIT D) regarding who the real party at interest in court cases is. If the Legislative Assembly makes the changes then it is the real party at interest; if the Secretary of State makes the changes then it is the real party at interest. (EXHIBIT C)

419 SEN. BRYANT: "Where would that be inserted in the bill?"

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420 TALBOTT: "In Subsection 11 on the new page 3A. " Comments that SB 269 is related to SJR3, which deals with the statutory requirements used for reapportionment. Discusses LC 3686 creating the Oregon Redistricting Task Force, which was taken from the original SB 269 for the purposes of making SB 269 a non-fiscal bill. (EXHIBITS F and H) 466 SEN. DUKES: "We could introduce the task force as a separate bill?" 467 TALBOTT: Responding to Sen. Dukes explains the date of the draft and how many days the committee has to get it to the desk. (EXHIBIT H) 473 SEN. JOHNSON: "What are the rules in the Senate as far as introduction of committee bills?"

480 TALBOTT: Responding to Sen. Johnson, explains the rules regarding the introduction of committee bills.

487 SEN. JOHNSON: Continues discussing rules regarding introduction of committee bills. 490 SEN. DUKES: Continues discussion regarding introduction of committee bills.

TAPE 16, SIDE B

032 CHAIR KERANS: Continues discussion regarding introduction of committee bills.

039 SEN. DUKES: Reviews, for Chair Kerans, the discussion which took place while he attended business at the request of Senate President Bradbury.

041 CHAIR KERANS: Asks if the committee is in a position to take

action on SJR3. 061 TALBOTT: Discusses the fiscal impact statement of SJR3 which is based on the costs of referring the measure to the ballot. 069 CHAIR KERANS: Discusses, with Ms. Talbott, that this measure would appear on the ballot at the next general election. 075 MOTION: SEN. DUKES: Moves to ADOPT the SJR3-1 amendments dated 2122193.

VOTE: CHAIR KERANS: Hearing no objections the MOTION IS ADOPTED. All members are present.

077 MOTION: SEN. DUKES: Moves that SJR3, AS AMENDED, be sent to the Floor with a DO PASS recommendation. VOTE: All members are present and vote AYE. CHAIR KERANS: The motion CARRIES.

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WORK SESSION ON SB 269 WITNESSES: MARC OVERBECK, Legislative Assistant to Governor Barbara Roberts

085 TALBOTT: Discusses issue of compactness. References the memo "The meaning of 'Compact.'" (EXHIBIT I)

126 CHAIR KERANS: "Why did we want to say compact?" 130 TALBOTT: Responding to Chair Kerans and explains that it was the request of either Sen. Bunn or Sen. Otto in the Interim Senate Government Operations Committee. Refers to the controversy of whether the district which extends from the Snake River to the Sandy River is considered "compact." 134 CHAIR KERANS: Asks what other kinds of considerations went into defining that district. 140 SEN. BRYANT: Comments that compactness does not clarify anything. 145 TALBOTT: Comments that in the other states, compactness seems to be one of the criteria for consideration in reapportionment. 149 CHAIR KERANS: "Do we need compact? I would rather do without compact as a value"

164 TALBOTT: Discusses a case in Colorado which revolved around a flag shaped district. The courts argued that it was "fine because there was a reasonable basis to make the sort of flag pole part of the district because it followed a city boundary...they basically said if there was a logical reason for not making it as compact as possible that it was OK."

172 SEN. BRYANT: Restates his opinion that compactness does not add anything.

174 CHAIR KERANS: Moves to strike be compact and leave standards of "based on the smallest population unit and the equal population test of plus or minus one percent or less."

180 TALBOTT: Discusses the issue of including the language " as nearly as practical the smallest population unit used would not be split in drawing a district." This language should be after paragraph (e) on lines 23A and 23B not 25A and 25B. (EXHIBIT F)

186 CHAIR KERANS: Asks if that language is a substitution.

193 TALBOTT: Responding to Chair Kerans explains that the language is in addition. Explains that Section 2 (old Section 4) allows the Secretary of State to share their proposed plan with the county election

officials for technical review purposes. Discusses the issue of Executive Appointments based on residency in a congressional district. There is a conceptual amendment to deal with this issue.

210 MARC OVERBECK, Legislative Aide to Governor Barbara Roberts: Discusses the issue of what happens when a person is appointed to serve on a specific board or commission based on congressional residency requirements and the district lines change. Refers to a specific instance which occurred in the Fish and Wildlife Commission in which the Governor made an appointment to a congressional district one position. After confirmation by the Senate the lines changed; therefore, the person's congressional district changed to

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congressional district 5 The governor's office wants to address "an oversight" in the law that would allow the person to continue serving on the board or commission after the district in which the person lives and was appointed for has changed due to reapportionment.

247 CHAIR KERANS: "Are there any that relate to an elective district other than a congressional district?"

249 OVERBECK: "There are not." 252 CHAIR KERANS: Discusses, with Ms. Talbott, the conceptual amendment which would remedy the situation addressed by Mr. Overbeck. Chair Kerans reads for the record the conceptual amendment. 274 MOTION: SEN. DUKES: MOVES to delete line 13 subsection D of section 1.

CHAIR KERANS: Hearing no objections the MOTION IS ADOPTED.

280 MOTION: SEN. DUKES: Moves that the language "as nearly as practicable the smallest population unit used and supplied by the United States Bureau of the Census shall not be split in drawing a district" be added after line 23 on page one. After subsection E and before subsection 2. CHAIR KERANS: Hearing no objections the MOTION IS ADOPTED. 288 MOTION: SEN. DUKES: Moves the adoption of SB 269-1.

CHAIR KERANS: Hearing no objections the MOTION IS ADOPTED.

294 MOTION: SEN. DUKES: Moves the adoption of the conceptual amendments subject to approval -by Legislative Counsel prepared by Committee Counsel which deal with the continued appointment of "someone" to a commission or board whose district changes through reapportionment. CHAIR KERANS: Hearing no objections the MOTION IS ADOPTED.

300 MOTION: SEN. DUKES: Moves SB 269 as amended to the FLOOR with a DO PASS recommendation. CHAIR KERANS: Hearing no objections the MOTION IS PASSED. 326 Motion: SEN. DUKES: Moves for the introduction of LC 3686 as a bill by the Senate Ethics, Elections, and Campaign Finance Committee. CHAIR KERANS: Hearing no objections the MOTION IS PASSED.

327 CHAIR KERANS: Discusses the request for introduction of LC 3281 by Representative Shields and LC 328 2 by Representatives Shields and Edmunson. The request is that the committee request the introduction of the drafts through the rules Senate Rules Committee. (EXHIBITS K and L) ~ . These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents

367 MOTION: SEN. DUKES: Moves the committee introduce LC 3282 as requested by Representatives Shields and Edmunson. 373 OBJECTION: SEN. JOHNSON: "I don't think as a general proposition that we should be using our committee to get Frank Shields...or anybody else in the House around the rules that they were to follow regarding the submission of their deadlines. Also I would point out that they in the House rules have two priority bills they can submit after their deadline if they want to use their own priorities. "

383 CHAIR KERANS: "The problem is that they have already had them introduced and are being in no uncertain terms they will never see the light of day and will not get a public hearing and that it were more likely to occur here." 388 SEN. JOHNSON: "If they want things to be introduced in the Senate they should run for the Senate " 390 VOTE: In a roll call vote all members are present. Voting AYE: Sen. Dukes, Sen. Springer, Chair Kerans. Voting NAY: Sen. Bryant, Sen. Johnson. CHAIR KERANS: The motion CARRIES. 397 MOTION: CHAIR KERANS: Moves that LC 3281 be introduced at the request of the committee on behalf of Representatives Shield and Edmunson with the permission of the rules committee. 404 OBJECTION: Sen. Johnson: Same objection as previously recorded.

VOTE: In a roll call vote all members are present. Voting AYE: Sen. Dukes, Sen. Springer, Chair Kerans. Voting NAY: Sen. Bryant, Sen. Johnson.

CHAIR KERANS: The motion CARRIES.

#### WORK SESSION ON SJR4

431 TALBOTT: Comments that there are no proposed amendments to SJR4. Discusses the language referring to the appointment of office vested in the Legislative Assembly. "The Legislative Assembly has had the authority to directly appoint through an election in their own body...the Railroad Commissioner, which is no longer in existence, so at this point there is no body or office which the first reference refers to " Discusses Ms. Beaufait's comment that at some time the Legislative Assembly might create an office by which the authority to appoint a person would be vested in the Legislative Assembly. Ms Beaufait says that the language has also been used to make the argument that the Legislative Assembly has appointment authority generally

478 CHAIR KERANS: "We would then have just the words on lines 10 and 11, deleting the words twenty and inserting 61 days prior to such general election?" 489 TALBOTT: "That's correct Mr Chair "

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492 CHAIR KERANS: "So we have a 41 day period where someone would get the appointment...and go on to the next general election as opposed to falling through the 20 days of grace."

TAPE 17, SIDE B

031 SEN. DUKES: Discusses the use of the word "precinct" in line 9 because if a "precinct" person dies then the vacancy would not be able to be filled until the next general election. "If we could just take out or precinct and move the or over, unless there is some other precinct elected office that I am not aware of that should take care of it."

042 CHAIR KERANS: Holds SJR4 over for another meeting. 052 CHAIR KERANS: Adjourns the meeting at 4:44 p.m.

Submitted by:

Reviewed by:

Tamara Brickman

Annette Talbott Assistant

Counsel EXHIBIT LOG A - Proposed Amendments to SB 173 (SB 173-1) - Secretary of State - 1 page B - Arguments in support of Measure 9 - Secretary of State - 5 pages C - Proposes Amendments to SJR3 (SJR3-1) - Committee Staff - 2 pages D - Handengrossed SJR3-1 - Committee Staff - 4 pages E - Vacancy Deadlines Table - Committee Staff - 2 pages F - Handengrossed SB 269-1 - Committee Staff - 3 pages G - Proposed Amendments to SB 269 (SB 269-1) - Committee Staff - 1 page H - LC 3686 - Committee Staff - 4 pages I - Fiscal Analysis of SB 269 - Committee Staff - 2 pages J - Memo regarding "The Meaning of 'Compact'" - Committee Staff - 2 pages K - LC 3282 - Representatives Shields and Edmunson - 1 page L - LC 3281 - Representative Shields - 2 pages

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