

SENATE ETHICS, ELECTIONS, AND CAMPAIGN FINANCE COMMITTEE

April 6, 1993 Hearing Room B 3:00 p.m. Tapes 38 and 39
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 416

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TAPE 38, SIDE A

004 CHAIR KERANS: Calls meeting to order at 3:20 p.m. Refers to the decision making memo. (EXHIBIT C, from 411193)

027 CHAIR BRANS: Calls a recess.

028 CHAIR KERANS: Reconvenes meeting approximately two minutes later. Begins discussing page 3, starting with Pass-Through prohibitions. Discusses the intentions of pass-through prohibitions. (EXHIBIT C, from 411193) 069 SEN. DUKES: Asks what would be done with a balance in an account if pass-throughs are prohibited and the "Kerans PAC" has a balance left and "Senator Kerans" retires from public office.

078 CHAIR KERANS: Explains that the bill would allow that person to contribute to a "political caucus." Explains that current law allows that money to be spent for any lawful purpose. 093 ANNETTE TALBOTT, Committee Counsel: Responds to Chair Kerans' question and explains that SB 416 has a section that deals with the disposal of material assets (section 26). Discusses the subject of conversion of campaign assets and discusses possibilities from SB 143 (section 17). 112 CHAIR KERANS: Discusses section 17, of SB 143, and section 26, of SB 416 on the issue of conversion of campaign assets. 146 SEN. DUKES: Comments on Chair Kerans' remarks on conversion of campaign assets. Senate Ethics, Elections, and Campaign Finance Committee April 6, 1993 - Page 2

153 CHAIR KERANS: Discusses page 10 of SB 143 and the issue of converting money to personal use.

164 TALBOTT: "Can't convert it to personal use, such as buying tires for your car."

165 CHAIR KERANS: "You can use it for any lawful purpose, but you can't use it as a retirement fund."

167 SEN. DUKES: Continues the discussion of conversion of campaign assets. 172 TODD JONES, Assistant to the Secretary of State: "To clarify, I'm not certain whether section 17 of SB 143 and section 26 of SB 416 are dealing with two different issues."

175 CHAIR KERANS: "They are and they aren't. You're dealing with cash. You're dealing with the proceeds. You've got cash on hand."

178 JONES: Discusses the issues being addressed in section 26 of SB 416. "What you're trying to address there is how do I have to account for material assets in subsequent elections? Section 17 of SB 143 is not addressing material assets, it's addressing with what can I do with what

I have left." 187 CHAIR KERANS: Comments that both sections in SB 143 and SB 416 address the issue of conversion of campaign assets. Continues the discussion on conversion. Discusses what currently happens.

227 JONES: Discusses the difference of conversion of campaign assets between incumbents and challengers. 234 TALBOTT: Discusses what her understanding of what the intentions of the conversion of campaign assets provisions were from an earlier discussion with the Secretary of State's office. 244 CHAIR KERANS: Asks the people from the Secretary of State's office "should we be concerned that people are converting large amounts of campaign cash into equipment that has a high resale value to it, in the early part of its life, and that it goes off books after a one line report and then disappears into the ether...?"

253 COLLEEN SEALOCK, Director, Elections Division: Explains why there should be a concern with the conversion of campaign assets. "In the past I don't think it was particularly necessary for us to worry about what you did with that, but in connection with this bill I think it is something we have to deal with on an equal footing."

273 TALBOTT: Comments that the Secretary of State's staff has been working to create an "administratively feasible approach to this issue. Discusses that there are technical concerns and requests that the committee come back to this issue.

300 CHAIR KERANS: Comments on Ms. Talbot's statement.

316 JONES: Comments that HB 2648 contains material which deals with the issue of limiting personal use of campaign funds. 328 CHAIR KERANS: Asks counsel and the Secretary of State's staff to look at sections in SB 416, SB 143, HB 2648, and any amendments to HB 2648, for the purposes of dealing with both assets, conversion, and "termination of a committee and disposal" issues.

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345 SEN. BRYANT: Asks a question on whether a candidate's political committee can contribute funds to another candidate's political committee under SB 416. 349 CHAIR KERANS: Comments that it would not be allowed and would be considered a pass-through; however, it would not prevent one candidate from contributing personal funds to another candidate. 353 SEN. BRYANT: Asks if SB 143 allows pass throughs.

354 JONES: Responds to Sen. Bryant and explains that the same language appears in SB 143.

357 CHAIR KERANS: "Sen. Dukes wants to know whether under either bill if Senator Bryant could pay himself and then give the money to us. Under your bill, no, under my bill we don't have answer to that." Begins discussing the subject of pass-through prohibitions on page 3. Suggests using the pass-through prohibitions found in both SB 143 and SB 416. (EXHIBIT C, from 411193) 383 SEN. DUKES: "Do you have the personnel, or any way of following most of this good stuff that we're doing?"

400 JONES: Discusses how the C&Es are currently reviewed. Discusses how the proposal might change the way that C&Es would need to be reviewed. 423 CHAIR KERANS: Comments on making this process a complaint "driven" process. 456 SEN. DUKES: Continues the discussion

on the complaint process.

460 CHAIR KERANS: Continues the discussion. "What's the body's position on pass-throughs? Flat prohibition?" Hearing no objections to flat prohibition states "let's put a check mark next to that." (EXHIBIT C, from 411/93, page 3) Discusses independent expenditures, and explains what the intentions of SB 416 are in regard to independent expenditures. (EXHIBIT C, from 411193)

TAPE 39, SIDE A

034 CHAIR KERANS: Continues the discussion on independent expenditures. (EXHIBIT C, from 411 193) 042 TALBOTT: Comments that section 44 of SB 416 lists the violation of an independent expenditure as felony; however it does not delineate what class of felony.

048 CHAIR KERANS: "Let' look at the operative language in section 33." 050TALBOTT: Explains that section 33, subsection 8 is the definition of independent expenditure. 052 CHAIR KERANS: Remarks that this is new language for independent expenditures. Reads from section 33, subsection 8. Discusses that an individual "on his or her own motion decides that a candidate should be elected or defeated. . .has every right to do so" and that when the individual does that it is not " in concert with and to the aid and comfort of the candidacy of that candidate using the same personnel, same consultant..."

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078 SEN. DUKES: Asks if a person met a candidate once (at a rally or some event) and expressed that he or she would like to help, then could that person qualify as a true independent expenditure because of the language "communicated with" in the definition of independent expenditure. 088CHAIR KERANS: "I don't think if Joe Doe comes up and shakes my hand and says great speech Senator Kerans, I'm really for you and I'm going to do whatever I can and I'm going to say thanks you that's great...and shake the hand of the next person...I think he would be permitted to do this (independent expenditure)...If he came to my campaign manager and said I met the senator, heard the speech, shook his hand, told him I wanted to do whatever I could and I'm going to spend \$10,000 of my own money on my campaign and I need pictures, position papers, etc. and what's his beliefs about this etcetera, you've now cooperation and you're working in concert with."

098 SEN. BRYANT: "Somewhere in between the two, this person likes you and says I want a copy of the speech. I intend to use it in a newspaper add 3 days before the election. I'm going to pay for that add..."

102 CHAIR KERANS: "He'd be an agent of the campaign at that point."

103 SEN. BRYANT: "Even though you didn't solicit that help and were just providing him the information of the speech you gave in public?"

104 CHAIR KERANS: "That's correct."

105 TALBOTT: Comments that SB 416 lists criteria for determining what would be considered "in cooperation or consultation with...the real key is the expenditure issue and the expenditure is what is in cooperation with...and I believe that is how it is intended to read."

115 CHAIR KERANS: In regards to the expenditure he states "I want to count that against the total of the candidate under the expenditure limitation and advise that candidate that when you enter into this you need to stay away from that kind of thing." Discusses instances in which a candidate might become "hostage to someone" in regard to independent expenditures.

127 SEN. BRYANT: "You could be set up that way, though too."

128 CHAIR KERANS: "You could indeed. If the opposition wants to blank out your whole budget, I suppose they could.."

130 SEN. BRYANT: "You've said something that I know angers 55% of your constituents and I want to advertise it, then I am going to make it appear that boy this is something where I really support you but I really don't I think it will hurt you more than help, so I don't care what you say I make sure that you are aware of it and then I run my add campaign."

134 CHAIR KERANS: Comments "we may have to look at this and find out whether I can make you declared a hostile committee...clearly what we need to do is move those two apart." Continues to discuss the language on independent expenditures.

153 SEN. BRYANT: "I have trouble with it being a felony." Asks if other states have language similar and whether they make it criminal. . 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 April 6, 1993 - Page 5

158 TALBOTT: Comments that most of this comes from the FECA and that there are some criminal penalties. Discusses the FECA.

171 CHAIR KERANS: Asks the Secretary of State's staff "what would be the effect if we were take away the criminal penalty and simply leave that over to you as your civil penalty process? You'd have a chapter 183 hearing if it were contested and you could levy a civil penalty up to something." 175 SEALOCK: Discusses the civil penalties, the maximum being \$250. Comments that there is another civil penalty section which would allow penalties according to a matrix. 183 CHAIR KERANS: Comments that he wants the penalties to be larger. 184 SEALOCK: Discusses the penalty structure under the penalty section of ORS 260.995, in which the maximum penalty is \$250. 188 CHAIR KERANS: Comments on making the penalty double the size of the expenditure. 190 SEALOCK: Comments that they would need to look at that to decipher how to write that in to make it work. 191 CHAIR KERANS: Asks what the Secretary of State's office would do if a candidate came in to report that there were independent expenditures (that were not necessarily independent) being made on behalf of her/his opponent applying the language in SB 416 section 33, subsection 8. 204 SEALOCK: "We'd have to make sure that we understand the concept of the way the bill is written to know the direction that we would be headed." 207 CHAIR KERANS: "I want those expenditures attributed to my opponent and to count against his total, either as an in-kind contribution on his overall expenditures if he's outside the expenditure limitation and have it limited under how much a person can give him as a total contribution which would be a violation." 213 SEALOCK: Comments

that she believes this is accomplished by the way it is currently written. Explains why she believes this to be true. 221 CHAIR KERANS: Refers back to discussion on campaigns being hostage to independent expenditures.

224 SEALOCK: "You wouldn't see it happen now because there's no limitations, but once you set those limitations."

225 CHAIR KERANS: "What if somebody did that? Somebody starts making independent expenditures for me and they are incredibly hostile to my interest! ...would you be able to determine that that was in fact hostile to my interests?"

232 SEALOCK: Comments that section 33, sub 8, sub b which speaks to in cooperation, consultation would need to be looked at to determine the answer. Continues the discussion on independent expenditures and the example Chair Kerans provided with the person using the candidate's speech in an add as an independent expenditure. Discusses, with Chair Kerans, when the person would be considered an agent of the campaign.

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260 SEN. BRYANT: Continues the discussion and provides an example in regards to "hostile" independent expenditures. 278 CHAIR KERANS: Continues discussing Sen. Bryant's example. Comments on leaving it up to the Secretary of State's office to determine hostility. 291 SEN. BRYANT: Continues to discuss his example of a hostile independent expenditure in the last two weeks of a campaign, with regards to losing campaign funds. 296 TALBOTT: Comments that the federal regulations are narrower. Discusses the federal regulations for purposes of possible consideration. 309 SEN. BRYANT: Comments that SB 143 seems to have adopted the federal regulations. 311 TALBOTT: "They do and actually the first part of the language in SB 416 is also the federal language, but the determination language about how you decide what it is is a little bit broader." 318 CHAIR KERANS: Comments that he likes the federal better and discusses the reasons why. "Let's propose that as an amendment for the language on independent expenditures..." Discusses the penalty structure with Sen. Dukes. Begins discussing the first question on partial public financing. "Should public financing be made available to all candidates who voluntarily agree to limit their expenditures? Or only to candidates who have an opponent?" His suggestion is to give it to candidates who have agreed to limit expenditures and have an opponent. He discusses his reasoning. (EXHIBIT C, from 4/1/93)

375 SEN. DUKES: "If you then picked up an opponent or third political party you would..?" 378 CHAIR KERANS: "You'd then be able to come back in. I think we have a consensus on that question." Begins discussing the second question on partial public financing from the decision memo. Explains why the current language is for a 50% threshold for the primary election. Comments that there should be some demonstration by the candidate of significant public support before the "public treasury makes a commitment to the campaign." (EXHIBIT C, from 4/1/93)

410 SEN. DUKES: "You are saying when they have raised half?"

411 CHAIR KERANS: "Then you get a matching process above that. "
Continues the discussion on how partial public financing would work.

420 SEN. BRYANT: "Maybe this will tie in to the Secretary of State's
bill on definition of major/minor political parties." 422 CHAIR
KERANS: Comments that the committee will be working on that subject.

425 SEN. BRYANT: "Could they be tied together. Could that definition
ultimately work into this somewhat?" 427 CHAIR KERANS: Discusses Sen.
Bryant's question.

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441 JONES: Comments that the Secretary of State's office is compiling
information on all the states that have public financing. Comments that
most states that have public financing have a threshold which requires
candidates to raise a minimum amount of money under certain contribution
limits. 455 CHAIR KERANS: Discusses public financing and reasons for
threshold levels on candidates. Suggests that the committee maintain the
50% threshold level. Discusses the amounts that this would require for
the different races. It would be \$10,000 in the primary for a State
Representative out of which there would be a minimum of 200
contributions at the maximum \$50 in order to meet the threshold for
partial public financing. Discusses the reasoning for this. Asks if
there are any objections to leaving the level at 50%. Hearing no
objections, the decision to leave the threshold at 50% for primary
elections.

TAPE 38, SIDE B 032 CHAIR KERANS: "If we make it one to one above that,
then the reward for going through all this effort is 25% of the total in
the primary, which is the way the bill is written now. Is that correct?"

035 TALBOTT: "Mr. Chair once you reach the 50% in the primary, but the
way that it's written is that once you meet the 50% in those applicable
limits, such as a state representative the \$50 if you receive
contributions in excess of \$50 those wouldn't qualify for matching
funds."

CHAIR KERANS: "They would count against your total." 041 TALBOTT:
"They would count against your total for the expenditure limitation, but
you might get less than a 50% match. The other issue is it doesn't count
in kind contribution." CHAIR KERANS: "That would also count against the
total limit limitation." 045 TALBOTT: "Expenditure limitation, but
you wouldn't get matching funds. The Secretary of State has also asked
that it might be helpful to clarify that you wouldn't necessarily get an
in kind contribution for a loan that you had either..." 049 CHAIR
KERANS: Suggests an amendment for the partial public financing provision
"to say that above the 50% threshold that they can match the difference
that isn't off set by loans, in kind contributions, and contributions
over the \$50 limit but still permitted under the statute." Provides an
example for clarification purposes. "I think there ought to be a 1 to 1,
2 to 1, or some other advantage to continue to seek contributions and
receive the partial public financing out of the Campaign Integrity Fund,
but not just simply they cut you a check and your fund raising is done."
084 SEN. DUKES: "I raise my 50% under all those total conditions, then
at the point you're saying that for every dollar that qualifies after

that I get 2?"

CHAIR KERANS: "1 or 2 or something else." 087 SEN. DUKES: "Why do the contributions have to be over \$50?"

CHAIR KERANS: "Under \$50."

089 SEN. DUKES: "So I get up to my 50%, with \$50 or less contributions."

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CHAIR KERANS: "And then you'd continue to get contributions \$50 or less and matching them for each 50 you raise you get a 100."

092 SEN. DUKES: "I can't get up to the 50% if I take, however, \$250 contributions?"

CHAIR KERANS: "You haven't begun to reach the threshold."

095 SEN. BRYANT: "Once you meet your threshold, you get a \$100 contribution, you still get 50% match don't you?" CHAIR KERANS: "Not interested in doing that." 097 TALBOTT: Comments on the administrative feasibility of the suggestion. 108 SEN. JOHNSON: "Are we changing the rule that says that contributions under \$50 you don't have to send in with your C&E?" CHAIR KERANS: "No you wouldn't that would be all subject to audit." 113 SEN. JOHNSON: "How are you going to know if you don't even keep track of that?"

CHAIR KERANS: "You've got to have a record of it. The law says you've got to have a record of it."

115 JONES: Comments that the bill does not change what Sen. Johnson is asking if the bill changes. Explains that there would still be a line on the C&E for contributions of \$50 or less.

121 CHAIR KERANS: "And that is subject to your audit?" 122 JONES: "To clarify this new proposal, keeping in mind a voluntary expenditure limit of \$20,000, if I have raised my \$10,000 and met my 50% threshold then in sense...you're offering an incentive to keep raising money, even though I can't spend it in this election."

CHAIR KERANS: "No. "

127 JONES: "You're going to give me a 1 to 1 match if I get that \$10,000 in small contributions. That takes me up to \$20,000 right there, which is the most I can spend under the voluntary expenditure limit."

129 CHAIR KERANS: Discusses an alternative suggestion that once the threshold is met the candidate would need to get 1/3 in additional \$50 contributions and 2/3 in matching funds to "close out the 20,000."

154 JONES: "Once I've hit that 50% threshold, I haven't become eligible for money. All I have become eligible for is the opportunity."

CHAIR KERANS: "To match that 2 to 1. Yes." 157 JONES: "to match at a 2 to 1 rate. So from that point on I have to raise roughly a third to bring me up to my \$20,000?"

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158 CHAIR KERANS: "Right. I've got to get up \$3,333 to get a \$6,600 maximum. Shouldn't be too tough. Shouldn't be too hard to figure on a complaint driven basis your audit abilities." 164 SEN. JOHNSON: "If that is what we are going to do why don't we just make the threshold \$13,333 and then you get \$6,667 and call it quits? I'd rather have it be 10 and 10..."

169 CHAIR KERANS: Asks the committee members who supports the 10 and 10. Sen. Dukes, Sen. Johnson, and Sen. Springer comment they favor the 10 and 10 suggestion. 174 CHAIR KERANS: "Let's go with 10 and 10 for the moment, but take the matter under advisement." 180 SEN. BRYANT: "I think if it's over \$50 it should still count as if it were a \$50 contribution, so a \$100 contribution... "

CHAIR KERANS: "Only the first \$50 counts. Is that what you're saying? And the second \$50 wouldn't? Let's take that under advisement."

186 TALBOTT: "Perhaps one alternative because of what Sen. Johnson brought up is that the \$50 amount is only going to be credited at one line on the C&E about how many \$50 they got. You could raise it just to \$100 for matching funds and then you would be clear where that money came from, at least, because any thing above \$50 they have to specifically identify. But that changes the policy that you are looking at in terms of the small contributions, but it does allow you then to track for purposes of matching funds where that money came from as opposed to the one line on the bottom of the C&E."

196 CHAIR KERANS: "Yes and no. But that would then require people to give you contributions greater than \$50 in order to identify the source. A \$35 check would still be eligible and you wouldn't have to report."

199 SEN. BRYANT: "Can you accumulate?"

CHAIR KERANS: "If he came back and gave me another \$35."

201 JONES: Comments that there is at least one state that does what Sen. Bryant is suggesting. Discusses that the easiest administrative approach is to look at the "one line on the C&E report, theoretically every other line you filled in on your C&E is more than 50 we can just count the lines and multiply it by 50." 210 SEN. JOHNSON: "That's only from individuals, right?" 211 CHAIR KERANS: Comments that he thinks that seems reasonable. 219 SEN. DUKES: "A lot of people list under \$50 individually, anyway. I've seen \$1 and \$2 contributions listed on C&Es by name and all of that. To some extent they are going to be going line item by line item." 222 CHAIR KERANS: Discusses partial public financing in regards to the general election. Comments that a person who won the primary is a serious candidate and that person should focus on "voter education committee activities, going to town hall meetings, going door to door,...so I would suggest that a 25/75...make the threshold lower and simply give them their money."

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246 TALBOTT: Explains that section 33 subsection 3 of SB 416 "seems to suggest that there would be a two tier raising of money in that general election, and it is a drafting error. It is meant to read as the Chair just describe. If you raise 25% of the applicable expenditure limit through either \$200 or \$100 contributions, depending on what race, then you are allowed the 75%, that's what the intent of it was. It needs to be re written if that's the committee's desire." 258 CHAIR KERANS: Asks the committee if there is any objection to Ms. Talbott's suggestion so they can have a working document. Explains that if members take that position now it does not lock them into that, it would be for purposes of working. Comments that the proposal is the same as the bill in 1991.

266 SEN. DUKES: "Would this apply to a third party candidate who got in by party conventions and did not go through a primary, did not get out and raise money and campaign and all of that?" 269 CHAIR KERANS: Comments that the bill has not addressed that issue. Explains that issue is a decision the committee will need to make. 276 SEN. DUKES: "I suppose there isn't a whole lot of difference between that and someone who ran an uncontested campaign and chose not to campaign in that primary." 280 CHAIR KERANS: "Hearing no objection let's go ahead and use that for the working portion of the bill. Comments that a decision would need to be made about a third party candidate. Begins discussing the question "If the payments requested from the fund exceed the amounts raised by the tax checkoff, should monies be diverted from the general fund to insure all payment requests are honored?" Comments that is how the bill was written in 1991, and how SB 416 is currently written. Comments that he would like SB 416 to be as "revenue neutral" as possible. Explains that currently 6 or 7 million dollars are currently being spent per biennium for candidates who don't have any limits set upon them. Explains how his proposal would be "revenue neutral."

(EXHIBIT C, from 4/1193) 327 SEN. BRYANT: "It is a double shot to the state as far as the hit. You lose the tax credit and now you are taking some money out of the general fund." 330 CHAIR KERANS: "No not a double shot. It's possible depending on a number of people whonumber of candidates who agree to the voluntary expenditure limitation and then there activities under it, that you would be able to say that in addition to that there might be some additional contribution not now being made. " 339 SEN. BRYANT: "How much do you anticipate raising from the tax checkoff?"

342 TALBOTT: Comments that the number the Department of Revenue listed on the fiscal statement came from the last time there was a political party checkoff on the tax form, either in 1988 or 1989. Discusses the other checkoff programs on the tax forms. Comments that information is still being gathered on this subject. (EXHIBIT B)

361 CHAIR KERANS: "The fact of the matter is the way the bill is constructed we are going to try and say to all those people who got a tax credit eligible contribution in the past the only way you can get one now is to voluntarily limit your expenditure. To all those people who got a tax credit eligible contribution in the past when they gave to a PAC our answer is you're out of business..." Discusses policy issues the committee is considering in regards to partial public financing. "I consider this to be the baseline question of how we

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reform government."

414 SEN. DUKES: "If I were contributing to a campaign and wanted to get my tax credit I could contribute to Senator Bryant's campaign because he's agreed to the spending limits and I couldn't contribute to my corporate PAC, or my union PAC, or any of those PACs and get a tax credit. And then Sen. Bryant because he did that and once he got his (threshold) would then qualify for the public financing."

432 CHAIR KERANS: Explains that "those receipts would come in through two sources. One the Campaign Integrity Fund, which is a checkon on the front of the form 40...and back filled through the general fund the receipts the tax credits that are not now being given." Continues to discuss issues in regards to public financing.

460 CHAIR KERANS: Adjourns meeting at 4:48 p.m.

Submitted by:

Reviewed by:

Tamara Brickman
Counsel

Annette Talbott Assistant

EXHIBIT LOG

A - Campaign Finance Reform Matrix - Committee Staff- 2 pages B - Fiscal Analysis Statement on SB 416 - Committee Staff -

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