

SENATE ETHICS, ELECTIONS, AND CAMPAIGN FINANCE COMMITTEE

May 4, 1993 Hearing Room B 3:00 p.m. Tapes 56 and 57
MEMBERS PRESENT: Senator Grattan Kerans, Chair Senator Joan Dukes
Senator Dick Springer MEMBERS EXCUSED: Senator Neil Bryant Senator
Rod Johnson STAFF PRESENT: Annette Talbott, Committee Counsel Tamara
Brickman, Committee Assistant MEASURES CONSIDERED: Public Hearing and
Work Session HB 2277A Public Hearing SB 1073 SB 1074 Work Session SB 173
SB 292

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005 CHAIR KERANS: Calls meeting to order at 3:15 p.m.

WORK SESSION ON HB 2277A

018 CHAIR KERANS: Discusses the appropriate motion with Ms. Talbott.

024 MOTION: CHAIR KERANS: MOVES to delete the bill from line 2 and insert the HB 2277-A5 amendments. (EXHIBIT A) 030 SEN. DUKES: Asks if this motion would "keep" the june election date. 030 CHAIR KERANS: Comments that the committee will take up that discussion with HB 3496.

032 SEN. DUKES: Asks if they are going to "stuff that into another bill."

033 CHAIR KERANS: "That's the intention, yes." Discusses taking that up as an amendment to HB 3496. Explains what the motion does. It would allow an election on HJR 62. 041 SEN. BRADBURY: Arrives at the meeting to replace Sen. Bryant. Discusses his understanding of what the motion would do. Senate Ethics, Elections, and Campaign Finance Committee May 4, 1993 - Page 2

047 VOTE: IN A ROLL CALL VOTE: AYE: Sen. Bradbury, Sen. Springer, Chair Kerans. EXCUSED: Sen. Bryant, Sen. Dukes, Sen. Johnson. CHAIR KERANS: The MOTION IS ADOPTED. 050 MOTION: CHAIR KERANS: MOVES HB 2277A AS AMENDED to the FLOOR with DO PASS recommendation. VOTE: IN A ROLL CALL VOTE: AYE: Sen. Bradbury, Sen. Springer, Chair Kerans. EXCUSED: Sen. Bryant, Sen. Dukes, Sen. Johnson. CHAIR KERANS: The MOTION IS ADOPTED.

PUBLIC HEARING ON SB 1073

WITNESSES: NINA JOHNSON, Executive Assistant, Secretary of State LYNN ROSIK, Assistant Attorney General, Department of Justice

069 TALBOTT: Discusses SB 1073. (EXHIBIT B) 073 NINA JOHNSON, Executive Assistant, Secretary of State: Testifies in support of and explains SB 107 3. Discusses the standard to use in determining whether or not to take someone off the ballot or not be placed on the ballot. 117 LYNN ROSIK, Assistant Attorney General: Discusses that the requirement of inhabitancy "is unique to the Legislature" and that the Secretary of State's office would find it helpful to have a definition of inhabitancy "which appears to be something more than simple residency."

127 CHAIR KERANS: Discusses what other types of language might be able to be used in defining inhabitancy.

145 JOHNSON: Comments on Chair Kerans' remarks, in regard to language to define inhabitancy.

166 CHAIR KERANS: Discusses the issue of inhabitancy.

170 JOHNSON: Comments that the bill is a "blueprint" to deal with inhabitancy.

176 CHAIR KERANS: Asks what other "things" they are talking about where it says "but not limited to" with regard to establishing a legislative record.

183 ROSIK: "What we would intend here would be other indicia which are very comparable to these. " Discusses other possible types of indicia.

190 CHAIR KERANS: "So it's primarily those things which would provide evidence that the person did all their business from and to that address which was where they went to go at home to be with their family at night and where they got up and. ..went off to whatever it was they did during the day?"

197 JOHNSON: Asks if the suggestion is to narrow the language.

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199 CHAIR KERANS: Comments that it is OK as long as it is understood that it is the "factual data based upon public records or other documentary evidence that the person was conducting business whether personal or professional...that the place they were doing that from and where they could be contacted about it was their residence, where they inhabited." Comments on what that could include.

218 ROSIK: Explains the purpose of the bill. "The idea is to have some objective criteria." 230 TALBOTT: "The way the bill's written that the Secretary of State's office would have the obligation to show by clear and convincing evidence based on these factors and any other like factors that the person was not an inhabitant of the district. So that the Chair reference preponderance, so I just wanted to make sure that that was clear for the record."

237 SEN. SPRINGER: Asks why the clear and convincing standard is being used. -"Why is there a presumption that attaches to an individual simply by a bald declaration or of assertion that we have to accept and overcome with clear and convincing evidence? Is that constitutional?"

244 ROSIK: Responds to Sen. Springer's question. Explains that the statutes for candidacy are written to require a candidate to declare, when they file, that they will qualify if elected. "Which has been interpreted as being a presumption that they are declaring that they meet the qualifications for purposes of the Legislative Assembly includes inhabitancy for one year." Discusses using the clear and convincing standard rather than preponderance.

267 SEN. SPRINGER: Discusses his reasoning why he is "not convinced it has to be clear and convincing evidence. preponderance. Preponderance applies to every other test I can imagine, except fraud. " Continues the discussion with regard to the clear and convincing standard. "I just want to make sure under section 2 when we talk about what can be considered it made reference to documentary evidence. I want to make sure that we can consider any testimony, an affidavit: I guess would be documentary. If the Secretary of State decides to conduct a hearing that oral testimony oath would be just as acceptable as quote any document."

295 CHAIR KERANS: Discusses that he believes that is within the intent. 304 ROSIK: Comments that the Secretary of State would have authority to investigate and to take affidavits. Comments that it would still need to be weighed against the factors in lines 8-11. Discusses the use of the clear and convincing standard and how its use may be "appropriate." 348 SEN. SPRINGER: Comments that because inhabitancy is in the constitution is "is supposed to mean something." Continues to discuss why he believes clear and convincing to be too high a standard.

377 CHAIR KERANS: Comments that the committee will take the subject under advisement. Discusses the issue of a candidate's own admission and whether or not that would be considered evidence. 394 ROSIK: Discusses a situation in which that occurred. 407 CHAIR KERANS: "How about the testimony of one or more other persons in a contested case hearing?"

423 ROSIK: Comments that she thinks it would be evidence and that the Secretary of State would have opportunity to weigh the evidence. - These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks represent a speaker's exact words. For complete contents of the proceedings please refer to the tapes. . Senate Ethics, Elections, and Campaign Finance Committee May 4, 1993 - Page 4

430 CHAIR KERANS: "What do we do about the business of the declaration which says that if elected you -plan what is that language and where do we find it?"

436 ROSIK: Explains that it is in ORS 249.031 (1)(f).

439 CHAIR KERANS: "Why don't we amend that, and say that you've got to have qualified for inhabitancy before you declare?" 447 SEN. SPRINGER: "From my understanding the situation which that may be addressed is that the person has to make the declaration that they will qualify. That means they will be an inhabitant for a year from the election date. You may make that declaration before that actually occurs."

458 ROSIK: "They could actually file for that office before that one year start with the intention of moving before the deadline. Of course this last year it wasn't the election date it was just December 31. They only had to move by December 31, so they could be making that declaration before they actually changed their residency. "

467 CHAIR KERANS: "Thank you. That's why we can't do that."

471 JOHNSON: "I think that language is intended primarily to deal with situations where somebody, for example, has to have a BPST training certificate by the time they're elected...I think that's why that language is in there for more of those qualifying things that can come much closer to the election."

487 CHAIR KERANS: Discusses inhabitancy issues.

035 CHAIR KERANS: Continues.

037 SEN. DUKES: Comments that she agrees with Sen. Springer on using a preponderance of the evidence rather than a clear and convincing standard. Asks why the Secretary of State's office wants to deal only with legislative candidates. Discusses an incident in her district involving a local candidate. Discusses the issue of defining residency for purposes of voter registration. Asks if it is possible to "broaden this out to be more than just Legislative Assembly?"

074 JOHNSON: Discusses that voter registration issues will be dealt with in a bill to comply with the national voter registration act. Discusses the differences between "residency" and "inhabitancy."

096 CHAIR KERANS: Comments that he would like to take up the issue of further refining "residency."

103 SEN. DUKES: Comments that it was not her intention to get registration involved in this bill. Asks if it is possible to expand inhabitancy to other elective offices, than the Legislative Assembly.

109 JOHNSON: Comments that is her understanding that the only office, for which "inhabitancy" is used, is Legislative. Comments that all other offices would be a residency issue. 113 CHAIR KERANS: "Is that based on the voter registration test for the other of fices? How do we determine that I am a resident?" .` , . 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 May 4,1993 - Page 5

118 ROSIK: Comments that the county clerk would rely on voter registration, "in the absence of any evidence - to the contrary." Comments that the other issue relates to a "duration to the residency."

127 CHAIR KERANS: "Is there state statute which governs or is that done by local ordinance or city ordinance?"

136 ROSIK: Comments the authority for the county clerk is in state statute.

139 CHAIR KERANS: "So we need to look to that statute which is a matter of residency and not inhabitancy, and look to the question of setting some standard there. Do we have a similar test for them?"

143 TALBOTT: Discusses ORS 247.035, dealing with qualifications for voter registration. Refers to ORS 247.174 which addresses when the clerk can reject registration. Discusses "residency" issues. "My understanding of the difference between inhabitancy and residency is that one place that you can be an inhabitant of, but you can have residence in several places." Discusses the issue of "inhabitancy." 167 SEN. DUKES: Discusses a specific incident in her district relating to voter registration. Discusses a court decision involved in the case.

184 ROSIK: Comments that she thinks Sen. Dukes has a correct interpretation. Discusses the intent of SB 107 3.

198 JOHNSON: Discusses the issue of qualifications for offices. Comments that many of the qualifications are "scattered throughout the

statutes" not necessarily in the elections code. Discusses ways the issue of cross referencing the offices.

214 SEN. DUKES: Comments that she would like to pursue the issue.

230 TALBOTT: Asks if there has been an opinion issued in regards to the Secretary of State's authority to refuse to place or remove a candidate's name from the ballot. Asks what type of evidentiary standard that decision is based on now.

239 ROSIK: Comments that the statute that allows a filing officer to remove a candidate who is not qualified is ORS 254.165. Comments that it does not contain a standard. Comments that it is her understanding there are no Attorney General opinions that reference specific standards.

258 TALBOTT: Discusses the issues relating to the standard.

265 CHAIR KERANS: Discusses an incident relating to registration.

PUBLIC HEARING ON SB 1074

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WITNESSES: LYNN ROSIK, Assistant Attorney General, Department of Justice
- NINA JOHNSON, Executive Assistant, Secretary of State

306 LYNN ROSIK, Assistant Attorney General: Testifies in support of SB 1074. Discusses the issue revolving around the American Party moving from a minor political party to a major political party. (EXHIBIT D)

340 CHAIR KERANS: Comments that this bill would allow them to go forward. 342 ROSIK: Discusses issues regarding to the American Party achieving major party status. "All this does, it backdates itself to the November election so that it would include the American party, is to basically provide some rudimentary transition language to allow them to select their leadership." Comments that the bill was drafted "knowing what the American Party has done." 375 CHAIR KERANS: "That's the sum of the bill. Is that correct?" 376 NINA JOHNSON, Executive Assistant, Secretary of State: "Yes, Mr. Chair."

377 CHAIR KERANS: Discusses what SB 1074 would allow the American Party to do. Asks what else SB 1074 would allow them to do. 387 JOHNSON: Explains that section 3 sets up the process. 399 SEN. DUKES: Discusses the issue regarding County Central Committee and that appointees can't vote and that the only people who can organize a county central committee are the elected precinct committee people.

416 TALBOTT: Comments that SB 1074 is designed to allow them to elect party leaders. Comments that she is not sure whether this bill deals with whether or not the American Party would be able to appoint precinct committee people. Remarks that clarification might be needed.

433 SEN. DUKES: Asks, if they appoint people in the county it would

not make them a officially a central committee, would they have the statutory authority to interact with state party? 456 CHAIR KERANS: Asks if that is what the Secretary of State "envisions" SB 107 4 would do.

457 JOHNSON: Discusses that the issue of "macro issues, the voter registration list" is a bigger issue. Comments that Sen. Dukes issue is one that she would need to ask of Ms. Rosik.

473 CHAIR KERANS: "I don't see any reason why the first time round we wouldn't allow them to do that and then to allow to appoint precinct county persons within a county organization and organize within the county. So that you've got a functioning party apparatus...I think the first time round let them appoint and for all intensive purposes be a major political party..." Discusses the issue of giving them the ability to organize on a local level.

TAPE 56, SIDE B

034 CHAIR KERANS: Continues. \ .

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043 JOHNSON: Clarifies Chair Kerans' suggestion. . 047 CHAIR KERANS: Comments that they can lose major party status "quadrennial election."

048 SEN. DUKES: "Mr. Chair, without that you can't create a congressional district. You're going to have one heck of a time creating a state central committee because all those appointments come from a county level."

051 CHAIR KERANS: "Let's pursue that." 052 TALBOTT: Comments that "the bill wouldn't prohibit the state party, once official party leaders were elected, from setting its own rules." Discusses section 3.

061 CHAIR KERANS: Comments that that leaves out most of what they've just talked about. "Because precinct committee persons and those other things are controlled by the laws of the state aren't they?"

062 TALBOTT: Comments "arguably they aren't controlled until the next primary election when they can elect them. " Comments that the bill would let them "function as a party in transition. " Asks if the American Party would have to hold another convention. 076 JOHNSON: Discusses that SB 1074 "is an actual codification of what process they followed," and that they would not need to have another convention.

079 TALBOTT: Asks if they had already given notice that "they were going to convene a convention, ten days before...so that would be sufficient to say that they are a party organized under section 3."

084 JOHNSON: Comments that she believes that is the intent.

095 CHAIR KERANS: Comments that he agrees with counsel's opinion, but that it could be seen another way. Asks for some amendments.

WORK SESSION ON SB 173

113 TALBOTT: Refers to the hand engrossed SB 173. (EXHIBIT E)

120 CHAIR KERANS: Asks what the committee wants to do.

122 MOTION: CHAIR KERANS: MOVES to ADOPT the hand engrossed version of the bill dated 4128193. (EXHIBIT E) VOTE: Hearing no objections. THE MOTION IS ADOPTED. EXCUSED: Sen. Bryant, Sen. Johnson. 133 MOTION: CHAIR KERANS: MOVES SB 173 AS AMENDED to the FLOOR with a DO PASS recommendation. VOTE: IN A ROLL CALL VOTE: AYE: Sen. Dukes, Sen. Springer, Chair Kerans. EXCUSED: Sen. Bryant, Sen. Johnson. . 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 May 4, 1993 - Page 8

CHAIR KERANS: The MOTION CARRIES.

146 MOTION: CHAIR KERANS: MOVES to RECONSIDER the vote by which SB 173 AS AMENDED was sent to the FLOOR with a DO PASS recommendation. VOTE: CHAIR KERANS: Hearing no objections THE MOTION CARRIES. EXCUSED: Sen. Bryant, Sen. Johnson. 149 TALBOTT: Discusses that the committee had set aside SB 173 in an earlier work session. Comments that the amendments had been further amended on 2123193. "The amendment was the 314 193." 162 CHAIR KERANS: Asks if they conflict with what's before the committee. 164 TALBOTT: Discusses the differences between the amendments. Explains that the 4/28/93 amendment refers to "any person or group." (EXHIBIT E) 179 CHAIR KERANS: "We want the enumeration?" TALBOTT: "Their proposal is to not have the enumeration, so if you want to further amend the bill based on your previous amendment on 314193, the deletion would be after group, strike the 'by reason of' and the rest of the list through the end of that series." 186 SEN. DUKES: "If we adopted what your motion said dated 4/28/93 this is just what we sent out and adopted. If it's different in any way then what we adopted before it rescinds what we adopted before. So I don't think there was any problem." (EXHIBIT E) 191 CHAIR KERANS: "I'm just trying to figure out if there is any language here, especially in the question of not)fication, it says if not not)fied under sub A, do we pick up that language and provide for not)fication?" 196 NINA JOHNSON, Executive Assistant, Secretary of State: Comments that she did not get that in to these amendments but that it had been adopted by the committee. Explains that they want to keep the not)fication language. 199 CHAIR KERANS: "That would be to include in subparagraph B line F of the 4/28/93 allow the person if not)fied under subsection A an opportunity to revise the statement. Then further down under page 2, line 28 F subparagraph B allow the person in not)fied under sub A. Is that correct?" JOHNSON: "Yes. " 209 CHAIR KERANS: Asks why the enumeration of the protected classes was taken out. 211 JOHNSON: Explains the reasons. 221 MOTION: CHAIR KERANS: MOVES to further amend the hand engrossed version dated 4128193 to include the amendments regarding notification. VOTE: CHAIR KERANS: Hearing no objections THE MOTION IS ADOPTED. EXCUSED: Sen. Bryant, Sen. Johnson.

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224 MOTION: CHAIR KERANS: MOVES SB 173 AS FURTHER AMENDED to the FLOOR with a DO PASS recommendation.

VOTE: CHAIR KERANS: Hearing no objection THE MOTION CARRIES. EXCUSED:
Sen. Bryant, Sen. Johnson.

WORK SESSION ON SB 292

232 TALBOTT: Comments that the county clerks had a meeting earlier in
the day regarding SB 292.

238 VICKI ERVIN, Director of Elections, Multnomah County: Updates the
committee on information with regard to SB 292. Comments that the
National Voter Registration Act allows this to happen, but only for
registration for federal elections.

263 CHARLES STERN, Yamhill County Clerk: Discusses that the clerks do
not want two voter registration systems. 281 SEN. DUKES: Asks if the
federal legislation is mandatory.

284 ERVIN: Explains that it is a permissive provision.

286 SEN. DUKES: Asks a question in regard to setting up two systems for
voter registration.

290 ERVIN: Responds to Sen. Dukes.

293 STERN: Comments that there are some provisions that the federal
legislation does, by which cancellations and purges will be done. "Those
will probably be the sections of this bill that will be tweaked as we
see what finally falls out of the conference committee. Rather than the
bill dealing that you have permission to update your voter registration
based on the information from the postal service. 302 CHAIR KERANS:
Asks what the number of that bill will be, dealing with the National
Voter Registration Act. ERVIN: Explains that it will be HB 2280.

305 CHAIR KERANS: Discusses holding SB 292 over as a possible
amendment to HB 2280.

320 ERVIN: Explains that she has no problem with that suggestion.

335 CHAIR KERANS: Adjourns the meeting at 4:33 p.m.

Submitted by:

Reviewed by:

Tamara Brickman
Counsel

Annette Talbott Assistant

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Campaign Finance Committee May 4, 1993 - Page 10 EXHIBIT LOG A - HB
2277-A5 amendments dated 5/3/93 - Committee Staff- 5 pages B -
Preliminary Staff Measure Summary on SB 1073 - Committee Staff - 1 page
C - Preliminary Staff Measure Summary on SB 1074 - Committee Staff - 1
page D - Memo from Lynn Rosik to Colleen Sealock - Lynn Rosik - 3 pages
E - Hand Engrossed version of SB 173 dated 4/28/93 - Committee Staff - 2
pages F - Preliminary Staff Measure Summary on SB 292 - Committee Staff
- 1 page

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