

Senate Redistricting May 9, 1991 Page 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 COMMITTEE ON REDISTRICTING

May 9, 1991Hearing Room "B" 3:00 p.m. Tapes 45 - 46

MEMBERS PRESENT:Sen. Glenn Otto, Chair Sen. John Brennehan Sen. Jim Bunn Sen. Scott Duff Sen. Mae Yih

MEMBERS EXCUSED:Sen. Dick Springer Sen. Bill Bradbury

STAFF PRESENT: Gail Ryder, Senior Committee Administrator Joan Green, Committee Assistant Julie Muñiz, Committee Assistant

MEASURES CONSIDERED: HB 2465 - Relating to election laws, PH/WS SB 1052 - Relating to false political statements, WS SB 770 - Relating to campaign finance, WS SB 758 - Relating to lobbying, WS

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TAPE 45, SIDE A

007 CHAIR OTTO: Called the meeting to order at 3:21 p.m.

(TAPE 45, SIDE A)

PUBLIC HEARING

HB 2465 RELATING TO ELECTION LAWS

Witnesses: Warren Deras, Attorney Steve Lanning, Oregon AFL-CIO

014 WARREN DERAS, ATTORNEY: Has gathered signatures for many initiatives. Makes some suggestions to committee. This bill will compound the problem. Gives brief history of current law and process. Voters don't look at the corner of the signature sheet that tells them these petitioners are being paid. I've been solicited for my signature and then immediately after, for a contribution for the cause. It is legal in Oregon to agree to pay your signature gatherers for the signatures they collect. Doing that interferes with the signature process. This measure will not work because it follows the existing system of moving the check boxes in place of the existing statement where the voters won't see it. The box can be checked after the signatures have been gathered. This bill will interfere with the use of volunteers because they will miss requirements like this and make mistakes checking the boxes. I suggest allowing pre-printed statements and, if you want to use a statement, don't use a check box. Instead, use a bold print statement that says the gatherer is paid per signature. This would eliminate the risk of errors by volunteers.

078 BUNN: We're getting away from the original intent of the bill. Could we prohibit paying per signature and say it must be paid on an hourly or daily rate?

087 DERAS: If you can't restrict the fact that payment can be made, I don't know how you could restrict the mechanism by which the payment is being made. I do think with adequate notification to the solicited voter you can indirectly accomplish much of that purpose with the bold print.

095 BUNN: I think I understand what you're saying. When we're done, we should have two separate disclosures: one for a paid gatherer and one for a volunteer?

098 DERAS: You should have two pre-printed petition forms. The status quo does not allow that.

105 BRENNEMAN: Would you suggest any sanctions be taken for persons not using the proper form?

108 DERAS: There are no sanctions if you check the wrong box. I think there are some general sanctions at the end of 260. I have not gotten to the point of looking at what sanctions there are for false statements on a petition.

119 DUFF: What's the going rate per signature?

120 DERAS: I've heard \$.50 per signature. I'm sure it depends on how close you are to your filing deadline.

122 OTTO: What is wrong with the idea of having all petitions saying the gatherer is being paid and then if you are a volunteer you could black that out if you wish?

128 DERAS: Anything that requires a change in the petition form will cause errors and will invalidate signatures. It's very easy for the sponsors of the petition to provide a different printed form to the paid gatherers.

136 OTTO: What happens when they have 100 petitions saying "paid gatherers" and 100 with nothing on them?

140 DERAS: You could have on the other petitions a bold statement that says the gatherer is a volunteer.

141 OTTO: What happens if you run out of one group of petitions and still need more?

143 DERAS: You just copy more.

149 BUNN: When did we start requiring a notice of paid signature gatherers?

154 DERAS: Currently, petitioners are required to make a statement that they are or are not using paid gatherers. Then it's not a check box but a copy of that statement on the face of that petition. We don't deal now with the situation where you would amend your statement to using paid gatherers.

169 BUNN: Does anyone benefit from that?

171 DERAS: Unless your going to do it in a clear bold statement, it's not worth the trouble.

179 BUNN: Yes, I understand your concern.

182 DERAS: This bill just aggravates the problem. I think it can be done simply so it will work. 187 BUNN: I'm assuming there would be no problem with printing that the circulator is paid and having the volunteer carry that. What would be the down side of having a volunteer carry that?

190 DERAS: You'd probably lose volunteers.

192 BUNN: But would it be a problem statutorily?

198 DERAS: I would have no problem. The easiest thing to do is to say if your using a paid solicitor you must use the bold face statement and not to have anything said about the volunteer. Your focusing the consequences on the paid gatherer.

205 OTTO: Why did we go to paid gatherers?

207 DERAS: The US Supreme Court ruled it's a constitutional right to use paid gatherers.

209 OTTO: Yes, but why advertise if you're using a paid or unpaid person when you're circulating a petition. I don't think it makes a bit of

difference.

212 DERAS: I'm not sure that it does. We could create a cottage industry that would interfere with this process.

225 STEVE LANNING, OREGON AFL-CIO: Reads written testimony, Exhibit A. We think it does make some difference whether the gatherer is paid or not.

257 BRENNEMAN: Do you have any problem with the suggested changes made by Mr. Deras?

260 LANNING: No. I think that would still serve a purpose: if you're paid it would be on there, if you're not it would say nothing. It would make sense that if a box must be checked, to place it where you have to sign your name and put the county. We wouldn't have any trouble with that as long as it's indicated somehow.

WORK SESSION

280 OTTO: Are there any proposed amendments?

283 MOTION: SEN. BUNN MOVES MR.DERAS' CONCEPTUAL AMENDMENT.

293 DUFF: My preference is to leave it off altogether, but I don't think we're likely to do that. I think adding a box to check would compound the problem.

297 BUNN: I would suggest it be bold faceD and typed an adequate size -- 17 or 24 pt.

300 OTTO: Across the middle of the petition?

301 DUFF: I would suggest we not set a pt. The Secretary of State would approve that.

304 YIH: What would the language say? Would it just say that the collector is being paid?

308 OTTO: Something to that effect. We should have it on both sides if they're going to use both sides of the paper. Can you do that, Gail?

316 RYDER: I will have it done and returned at a later work session.

(TAPE 45, SIDE A)

WORK SESSION

SB 1052 RELATING TO FALSE POLITICAL STATEMENTS

Witnesses:Rob GersHB ein, Legislative Assistant to Sen. Bob Shoemaker

332 ROB GERSHB EIN, LEGISLATIVE ASSISTANT TO SEN. BOB SHOEMAKER: You had questions on SB 1052 as to how it would go into the voters' pamphlet. Reviews -1 amendments, Exhibit B. The -2 amendments were drafted at the request of the Ethics Commission. They would like a study, but this amendment doesn't fit in with this bill. We don't think the study is necessary for us to go ahead with the bill. The bill stands by itself.

380 OTTO: Any questions?

381 RYDER: Just to clarify, there are two amendments drafted, the -1 amendments and another one that would require an interim study. There was a question on the relating clause of that bill and the requirement of that study. That's why we don't have those amendments here today.

389 OTTO: That was the -2 amendments?

390 RYDER: You have the -1 in front of you. I don't remember the number.

394 OTTO: Do you know what the -1 amendments do?

395 GERSHB EIN: The Ethics Commission would be required to print a short statement saying the candidate violated truth-in-campaigning laws. This

is a change from the original bill that required the statement printed in the voters' pamphlet to follow the candidate for every election they are in.

419 OTTO: That would follow the candidate for the rest of his life?

420 GERSHB EIN: In the current bill it would.

434 BUNN: I'm not comfortable with the bill. I think we're getting into the area of what is a false statement. I have a problem taking the election violation and putting it under the Ethics Commission. We need to be careful about what is a false statement.

461 BRENNEMAN: The false statement of material fact is the more legal term. Maybe that would address Sen. Bunn's concerns.

467 GERSHB EIN: It is the legal terminology about what is a false statement. As we have it now, we do have a body of law that defines what a false statement is.

482 BUNN: To give you an example, an opponent once said that I had never visited a place when, in fact, we had visited it together. Is that a false statement?

Tape 46, Side A

037 GERSHB EIN: I think a false statement would require some intent of malice. I don't know the exact definition.

043 BUNN: Is it a material fact? That's part of my concern. If we can establish that someone made a statement that isn't correct, isn't it a false statement?

050 GERSHB EIN: If you would like Sen. Shoemaker to address that, I can.
. .

053 DUFF: Sen. Bunn, was your example in writing? That seems to be one of the requirements.

054 BUNN: Yes. It was a campaign piece mailed to the district.

055 GERSHB EIN: The terminology this uses is "reckless disregard." It's a phrase that says it's not merely a slip of the tongue.

058 BUNN: So when your in a political campaign, who's going to decide what's "reckless disregard."

062 GERSHB EIN: Those are the issues the Ethics Commission addresses.

065 BUNN: In addition to "reckless disregard," we have the words "with knowledge." So if you said something with knowledge, then reckless disregard doesn't count?

068 GERSHB EIN: No, if you knew something was true, then. . .

077 BUNN: Can we have Warren Deras visit with us on this for a minute?

079 DERAS: Quotes phrase attributed to Oliver Wendle Holmes about First Amendment and falsely shouting "fire" in a crowded theater. Falsehood has an unprotected role under the First Amendment, but it's only certain kinds of falsehood that you can legislatively prohibit, that's falsehood combined with "actual malice." "Actual malice" was defined as being knowledgeable that the statement is false or a reckless disregard of whether the statement is true or false. I would suggest the constitutional concerns are the presumptions in (2) & (3) in §2.

110 BUNN: Do you know what penalties we have now?

111 DERAS: Under existing law, the only remedy for a false statement in a political campaign is an action brought by the injured candidate or political committee.

115 BUNN: If a false statement is made and is proven, that can't change the outcome of an election, can it?

117 DERAS: Not a legislative election because the Constitution reserves to the Legislature the power to judge the qualifications of its officers. The statute does set aside the result of an election for intentional violation of election laws.

128 BUNN: That is the part I'm getting at. Would this tie in with the election laws, as a violation of the laws that would allow an election to be set aside in non-legislative races?

132 DERAS: No, it's not in the election laws, it's in Chapter 244.

134 OTTO: Sen. Shoemaker is tied up in a work session. We could go to another bill until he gets here.

138 GERSHB EIN: What the current law states is that you, as a candidate, can file a libel suit against your opponent. If you win that suit and prove that this statement changed the results of the election, you can nullify that election. It's pretty rare that it would happen.

149 YIH: Does this have a referral to Ways and Means?

152 RYDER: I don't believe it does. I can double check that for you.

(TAPE 46, SIDE A)

WORK SESSION

SB 770 RELATING TO CAMPAIGN FINANCE

196 MOTION: MOVED TO TABLE SB 770.

212 VOTE: MOTION CARRIED, 4-0. (EXCUSED: SEN. BRADBURY, SEN. SPRINGER, SEN. YIH).

(Tape 46, Side A)

WORK SESSION

SB 1052 RELATING TO FALSE POLITICAL STATEMENTS

Witnesses: Sen. Bob Shoemaker, Oregon State Senator, District 3

222 BUNN: Warren Deras mentioned that the language in §2, (2) & (3), was based upon ORS 260 .532 and that the courts had ruled that unconstitutional.

227 SHOEMAKER: You'll have to educate me on that.

228 BUNN: The language you use on this was taken out of election laws and deals with making false statements, and portions of that have been declared unconstitutional.

234 SHOEMAKER: I'm not aware of that.

235 BUNN: Reviews earlier example. Would that be covered by the bill?

240 SHOEMAKER: Yes.

241 BUNN: If she made that same statement on the radio, would it be covered by the bill?

243 SHOEMAKER: Yes.

244 BUNN: If she stated that in a speech?

245 SHOEMAKER: No, it pertains to written materials.

252 BUNN: So anything on the radio or television would not be covered by the bill, just written matter?

254 SHOEMAKER: That's the way it's written. I wouldn't object to broadening it.

255 BUNN: Why is the Oregon Ethics Commission selected to deal with the campaign violation rather than the Elections Division?

257 SHOEMAKER: The Ethics Commission is a non-political body. It seemed to be a body with more credibility than an individual or other body that could get caught up in partisanship.

269 BUNN: If we're dealing with material fact, isn't that similar to the current election violations that we have?

276 SHOEMAKER: On material filed with the Secretary of State, yes we are. I don't know if it follows that everything of that nature should be in the Secretary of State's province.

284 BUNN: Would you oppose the bill if it called for the Secretary of State to do that?

285 SHOEMAKER: No. Having sanction is more important.

293 OTTO: What's the feeling of the Committee? Would you prefer the Ethics Commission or the Secretary of State to do that?

294 BUNN: I think I've made my position clear. I think the Elections Division is the logical one to tackle those problems.

305 BRENNEMAN: I agree. They all get political at times, but that's the duty of the office. I think that's where it belongs.

308 DUFF: I don't see a problem putting it in the Ethics Commission.

313 OTTO: I think both the Ethics Commission and the Secretary of State can deal with the problem. I'm comfortable with it being put in the Secretary of State's office.

316 YIH: I think it should be in the Ethics Commission. We just gave them two investigators and we gave them a time line. It's non-partisan. I think that's where it should go.

327 BUNN: Well, the time line is broken by this anyway. The staff is provided specifically to deal with the new requirements. The main concern is assuming the Secretary of State is partisan, they're dealing with our elections and it's critical they operate in a fair manner. I would like to deal with someone who will answer to the voters for his actions.

351 YIH: This is dealing with the conduct of the candidates which is what the Ethics Commission is set up to consider.

360 SHOEMAKER: My staff advised me that in their discussions, the Ethics Commission is more in favor of this than the Secretary of State's office.

376 MOTION: SEN. BUNN MOVED TO CONCEPTUALLY AMEND SB 1052 TO REPLACE THE ETHICS COMMISSION WITH THE SECRETARY OF STATE ELECTIONS DIVISION

400 VOTE: MOTION FAILED, 3-2. VOTING NO: SEN. DUFF, SEN. YIH. (EXCUSED: SEN. BRADBURY, SEN. SPRINGER).

403 BRENNEMAN: I think Sen. Bunn brought up the issue of radio and television being included here.

408 SHOEMAKER: I have no problem with that.

412 MOTION: SEN. BRENNEMAN MOVES TO INCLUDE SPEECHES, BROADCASTS, RADIO AND TELEVISION TO SB 1052.

428 SHOEMAKER: I'm concerned about putting "speeches" in. We could get in trouble with that.

437 BUNN: I agree. If the Ethics Commission had to take in debate and decide if it's true or false, I think there'll be trouble with it.

452 MOTION: SEN. BRENNEMAN MOVES TO AMEND THE MOTION TO DELETE "SPEECHES"

468 VOTE: MOTION CARRIED, 5-0. (EXCUSED: SEN. BRADBURY, SEN. SPRINGER).

485 BUNN: The -1 say "either or both the next primary or general election." Does that mean the Ethics Commission could put it in just the primary or just the general, or do they put it in the primary and then in the general?

493 SHOEMAKER: That's what I meant.

496 BUNN: So it will be put in both if it's possible.

TAPE 45, SIDE A

033 SHOEMAKER: Yes. Of course, if the false statement occurs in the primary, then it would appear in the general and not in the next primary.

036 UNKNOWN: You say the statement will be the same point type as the voters' pamphlet statement. I'm assuming that's within the text.

039 SHOEMAKER: Correct.

041 MOTION: SEN. BRENNEMAN MOVES TO ADOPT THE -1 AMENDMENTS TO SB 1052

047 VOTE: MOTION CARRIED, 5-0. (EXCUSED: SEN. BRADBURY, SEN. DUFF).

(TAPE 45, SIDE B)

WORK SESSION

SB 758 RELATING TO LOBBYING

056 RYDER: Sen. Springer is not here; it's his bill. Would you like me to get him here or do you want to reschedule?

059 OTTO: We can reschedule.

Meeting adjourned at 4:23 p.m.

Submitted By:

Reviewed By:

Julie Muñiz
Assistant

Joan Green
Assistant

EXHIBIT LOG

A - Written testimony, Steve Lanning, 1 pg. B - SB 1052-1, Sen. Shoemaker, 1 pg. C - Hand engrossed SB 1052-1, Staff, 3 pgs.