

Governor's Commission on Strengthening Utah's Democracy

State Office Building Auditorium, Utah State Capitol Complex
Salt Lake City, Utah

MINUTES

Thursday, September 10, 2009
3:00–6:00 pm

Commission Members Present: Acting Chair Kirk Jowers, Representative Rebecca Chavez-Houck, Dan Jones, Dick Richards, Doug Wright, Ken Verdoia, Dee Rowland, Senator Scott Jenkins, Randy Dryer, LaVarr Webb, Representative Craig Frank, Frank Pignanelli, Dave Hansen, Bruce Hough, Tom Love, Meghan Holbrook, Yvette D. Donosso

Commission Members Excused: Steve Starks, Senator Scott McCoy

Commission Staff Present: Taylor Morgan

Welcome (3:00 – 3:15pm)

- Acting Chair Jowers welcomed the audience, asking the students in attendance to indicate which high schools they represented. Mr. Jowers then acknowledged and thanked Karrie Thorne of the Capitol Preservation Board, Kristie Fink of the Utah Coalition for Civic, Character, and Service Learning, and all others involved with the annual Dialogue on Democracy.

Commission Business (3:15 – 3:30 pm)

- Approval of Minutes – July 31st Meeting
 - Motion to approve minutes made by Commissioner Ken Verdoia; seconded by Commissioner Meghan Holbrook; approved unanimously by all Commissioners in attendance.

Proposed Recommendation – Campaign Finance (3:30 - 4:30 pm)

- Presentation by Commissioner Randy Dryer
 - Commissioner Dryer reviewed the provisions of his Draft Proposal on Campaign Finance. *The Draft Proposal on Campaign Finance is available on the Commission's website – www.strengthendemocracy.org.*

- Commission Discussion:
 - Acting Chair Jowers moved that the Commission take time to discuss the proposal before voting on it. Commissioner Meghan Holbrook seconded; approved unanimously.
 - Commissioner Doug Wright asked Commissioner Dryer to clarify what is meant by “election cycle” in the proposal.
 - Mr. Dryer responded that the proposed limits would apply to a single office within a single election period.
 - Commissioner Hough asked if these limits would also apply to municipal races.
 - Mr. Dryer responded that, yes, they would.
 - Commissioner Dave Hansen asked about the potential issue presented by the carrying over of funds from one election cycle to another.
 - Commissioner Dryer responded that this would not apply, as the purpose of his proposal is to limit campaign contributions, not expenditures. Commissioner Dryer noted that constitutional issues would likely be encountered upon attempting to limit a candidate’s expenditures.
 - Commissioner Dan Jones noted that Utah is one of 5 states that does not have limits on campaign donations. Dr. Jones posed the question, “do people really understand campaign finance enough to have opinions as to whether or not it should be limited.” He then asked if “we” can prove that those states with limits have a more honest, high level of performance, than those states that do not have limits.
 - Commissioner Dryer responded that “we” cannot prove that states that do have campaign finance limits are more honest or not. Mr. Dryer emphasized that this combats a perception of corruption.
 - Commissioner Dick Richards thanked Commissioner Dryer for his hard work on this proposal. Mr. Richards noted that he felt there is a need for this proposal. He added, “I don’t know if it’s going to work, but if we can get something before the public and courts, it will help.” He then reminded the Commission to not overlook independent expenditures. Independent expenditures, Mr. Richards noted, can raise millions of which we cannot see in these reports. Mr. Richards stated, “In the past, there has been concern over bundling. Lately, we have had difficulties with unbundling as larger organization would facilitate excessive donations by individuals.”
 - Commissioner Dryer agreed that independent expenditures have become a way to circumvent campaign finance limits.
 - Commissioner Dan Jones asked Mr. Dryer to please explain independent expenditures to the students in attendance.
 - Mr. Dryer explained to the audience that independent expenditures are expenditures made by an entity that does not coordinate with and are not directly involved with a candidate. Under current law, these independent expenditures are unlimited. Because a candidate may be benefited, but does not have control over the content, these expenditures can be problematic. Mr. Dryer then noted that independent expenditures are indeed a significant concern, and that

they are currently before the United States Supreme Court for consideration.

- Commissioner Bruce Hough noted that the National Rifle Association (NRA) and the American Civil Liberties Union (ACLU) are on the “same side” in that case, which is interesting. Mr. Hough then expressed his view that campaign donations are a fundamental first amendment right to free speech. Mr. Hough stated that he is very concerned about adopting legislation that limits rights of individuals to speak out. Under federal law, Mr. Hough contended, I cannot buy a campaign advertisement 7 days before an election. Mr. Hough stated that he feels this infringes upon his right to speak freely. Mr. Hough then expressed his view that the most important, fundamental, issue is to not be governed by perception, but to govern by facts. Mr. Hough argued that “we” should educate the public on how they can have an influence and how they can participate in the political process. He stated his view that the supposed perception that money is causing bad behavior may not be factual. When we pass legislation to address a perception, Mr. Hough stated, we are on tenuous ground. He concluded that he feels there is something important about a state that establishes its own principles. This, he argued, is fundamental to the American process. We should never look first to the federal or “big-state” model on how we should govern ourselves.
 - Commissioner Dryer responded “this is not the “big-state” or federal model. There are plenty of small states that have similar statutes.” Mr. Dryer then stated “this proposal does not limit free speech. The United States Supreme Court has said that you can constitutionally limit the amount of a contribution.”
 - Commissioner Hough responded, expressing his view that campaign finance limits “really do impinge my free speech.” Mr. Hough then asserted that introducing complexity into the system will result in people finding their way around limits. Mr. Hough then expressed his view of the importance of “immediate disclosure.” He stated, “I agree with getting it on the internet. Let the public decide if someone gives (a candidate) \$50,000 is bad or not.”
- Commissioner Doug Wright asked, “How many people can buy a campaign advertisement 7 days before an election? How many people have that level of resources and wherewithal? The little guy would not have the resources to donate.” Mr. Wright concluded by stating, “The mandate of this Commission is to figure out why people are disengaged.”
- Commissioner Ken Verdoia, speaking to the high school students in the audience, asked them to “go home and ask your parents if they gave \$4,000 to any political candidate last year.” Mr. Verdoia noted that \$4,000 is a substantial contribution in the political process. He argued, “We’re not muffling the voice of democracy by saying there should be a reasonable limit. We are empowering the average donor as opposed to the rare large donor. These limits would not muzzle anyone.”
- Senator Scott Jenkins added, “We’ve hit on an important subject. I’m a hunter, I like to hunt. I like my guns. I belong to multiple organizations that promote

hunting and outdoor sports. By getting together with a group of people we express our voice.” Senator Jenkins then stated, “I do, in fact, agree with my colleague Bruce (Commissioner Hough) that transparency is the key. People are smart enough to understand what’s going on. Transparency is a fundamental goal of this Commission. People should be able to see what’s going on.”

- Commissioner Dave Hansen stated, “I have two important points: 1, everyone likely agrees that money is a corrupting influence in politics. To me, it seems un-American to not agree, so most Americans will agree that there’s too much money in politics. 2, people will also agree that campaigns are too long. If we agree that money is a corrupting influence, why don’t we limit the length of campaigns?”
 - Several Commissioners responded in unison, “That’s a great idea!”
 - Commissioner Dave Hansen then noted that there are more small donors today than ever, as facilitated by the internet, facebook, twitter, and other social networking sites. All these methods seem to have encouraged small donors.
 - Commissioner Dryer responded that yes, the number of small donors has increased on the federal level.
 - Commissioner Dave Hansen expressed his view that the number of small donors, on the state-level, has also increased in Utah.
 - Commissioner Dryer responded that, no, the percentage of campaign donations is gravitating towards larger and larger donors on the state-level.
- Commissioner Hansen stated “I am fundamentally against limits. Total transparency and quick disclosure is necessary. We should let the public decide.” Mr. Hansen then referred to Commissioner Hough’s comment earlier, that people who give money to campaigns will get creative (if limits were imposed). “What you’re going to have, he stated, is the creation of a number of electioneering committees. Money will flow to those organizations. They will be the ones making the expenditures. In effect, you’ll end up with nameless, faceless organizations effecting campaigns. I would rather that parties have responsibility over campaigns, not independent organizations.”
 - Commissioner Dryer responded that the proposal calls for all donors who give \$100 or more to disclose the organization to which they donate. If it’s a committee that advocates the election or defeat of a candidate, disclosure would be required.
 - Commissioner Tom Love asked, “What about issues? For example, vouchers?” Mr. Love then asked to know the five states that don’t have any limits campaign donations, and where they stand in regard to voter participation.
 - Commissioner Dryer responded, this proposal deals with candidates, not issues. Therefore, he said, issues would not apply. Mr. Dryer then listed the five states that do not have campaign donation limits as New Mexico, Virginia, Illinois, Oregon, and Utah.

- Commissioner Dave Hansen asked, “How much will this cost? My guess is that it will be fairly significant. Is this a valid expenditure of money?”
 - Commissioner Dryer responded, “Yes it will cost a significant amount.” However, he stated, “My proposal has nothing to do with enforcement.”
- Representative Chavez-Houck stated, “The charge of this Commission is to discover why the public is not participating in democracy at the level the Governor would like to see.” She concluded that she would like to hear more from the public regarding the perception of money as a corrupting influence in the political process.
 - Commissioner Dee Rowland posed the question, “Why are people not voting?” She then expressed her view that this issue is at the heart of the Commission’s activities.
- Commissioner Frank Pignanelli congratulated Commissioner Dryer on his work in preparing this proposal. Mr. Pignanelli then stated, “Transparency is a great idea. There are some good things in here. I’ve been around this game a long, long time. As a candidate, as a lobbyist, and as a campaign worker for more than 30 years.” Mr. Pignanelli continued, “Not long ago, we were one of the highest states in voter turnout. I often hear that people don’t vote because there aren’t competitive races. Let me tell you what it’s like to be a democrat in the (19)80’s. As much as I love to dump on Republicans, it’s not their fault that people aren’t voting. If campaign contributions are an issue, Orrin Hatch would have lost long ago. So why people may say that they hate money, they don’t vote that way. Something deeper is happening. I’ll argue that it’s not the Republicans; it’s not the money; it’s something deeper. We’re building this premise that money is bad. The overwhelming majority of candidates are good people.” Mr. Pignanelli added, “Who is the most powerful woman in this state? Her name is Gayle Ruzicka. How much does she give candidates? Nothing. She organizes, she gets out and she shows up. Her power is not money, it’s her organization. This proposal will have unintended ill-consequences. We cannot make a general statement that money is bad. We must build around transparency. There are a lot of people who run for the Legislature that cannot afford to run unless they can go out and get donations. So I would ask that we step back and remember that our charge is to get at the root of why people don’t participate.
 - Acting Chair Jowers stated, “I want to address one thing you said, Frank. In fact, I agree with a lot of what you said and in particular I do not think that imposing reasonable limits means that the Commission’s premise would be that money is bad. I do feel that political money is generally well-spent and I would like to see more money in politics. Thus, imposing campaign finance limits doesn’t necessarily mean that we want less money in politics, instead it may spur giving by more people. McCain-Feingold wasn’t perfect. In fact, it became far too complicated as both parties kept adding good and bad faith amendments. Nevertheless, before it was passed, parties had evolved to the point that they could raise unlimited amounts of soft-money. McCain-Feingold reestablished contribution limits for parties, and now parties have raised more than they did when there were no limits. Why? Look historically. Republicans under Reagan

used to be the party of small-dollar donors. That was because they built a very effective direct mail system that encouraged a relatively larger number of people to give small amounts. As we've seen recently, the Democrats have decided to invest in new technology and reach out to small-dollar donors - which was perfected under Obama. Now, one result of McFain-Feingold is a millions of new donors in the system and no companies giving \$4.2 million to one party and \$3.9 million to the other party in the same year. So, in short, limits don't necessarily mean less money in politics, but instead there is a very relevant case study that they do just the opposite."

- Commissioner Dryer responded, "This (proposal) is not based on the premise that money is bad. This (proposal) is based on limiting large donations and the (perception) that they have undue influence.
- Commissioner Tom Love added, "How does a \$4,000 individual limit prevent a candidate from going out and raising money?" Isn't the average donation much less than that amount?
 - Commissioner Frank Pignanelli responded "The average donation is much less than \$4,000. The problem is that, as its premise, this (proposal) says that money is evil."
 - Commissioner Dryer responded, "No it doesn't. There is no limit on the amount a candidate can raise and spend. There is only a limit on how much one individual can donate. I don't see how this emasculates candidacy."

Break (4:30-4:45 pm)

Public Comment (4:45 – 5:30 pm)

- Acting Chair Kirk Jowers invited the audience to express their concerns and comments regarding voting and campaign finance.
 - Several high school students in attendance stood individually and expressed their views regarding civic participation and campaign finance limits.
 - Commissioner Ken Verdoia reminded the audience that although it may appear as if members of the Commission disagree intensely, all are doing what they feel is in the best interest of the people of Utah. "Although we may disagree, a great respect for each other endures through this process. I trust every member of this body to do what they believe is in the best interests of the people of Utah."
 - Attorney David Irvine stood and expressed his support for Commissioner Dryer's proposal on campaign finance limits. He shared his view that there is indeed a perception among the public that large donors are a corrupting influence in politics.
 - Nancy Cooper, President of the League of Women Voters in Utah, stood and asked the Commissioners if they had viewed the DVD she provided entitled,

“Vote 18.” Ms. Cooper urged those Commissioners who had not yet watched it to do so.

- Corey Plott, a student at Mountain Crest High School, stood and said, “By not putting a limit (on campaign donations) aren't you muzzling the majority who cannot afford to give as much as the one who can give \$50,000?”
 - Acting Chair Jowers thanked all those who commented for sharing their experiences and views.

Commission Voting on Proposed Campaign Finance Recommendation (5:30-5:45 pm)

- Acting Chair Jowers noted that, “Before we vote, we have a few minutes left for discussion.”
 - Commissioner Dryer stated, “One change to this proposal can change it entirely. Rather than considering several amendments at this time, I prefer an up or down vote.”
 - Commissioner Tom Love added, “There’s an element where we’ve gotten sidetracked. The intent (of the proposal) is not entirely to assume that money corrupts politics. I see the intent as stopping or slowing the widening chasm between corporate donations and individual donations, and the perception of corruption this chasm creates.”
 - Commissioner Dyer agreed, stating that the intent is to receive more money from more donors.
 - Acting Chair Jowers reminded the Commissioners that passing a law to “level the playing field” so to speak is unconstitutional. The only constitutionally-sound basis for passing campaign contribution limits is to address corruption or the appearance of corruption. “There is a right to free speech, but not equal speech,” he stated.
 - Commissioner Frank Pignanelli reminded the Commission to recognize that large money donation come from not only corporations, but also unions.
 - Commissioner Love expressed his agreement with Mr. Pignanelli.
 - Commissioner Dryer stated, “I’d like to hear from Commissioners who haven’t spoken. If those who haven’t spoken already don’t wish to, we should vote.”
 - Commissioner Dee Rowland noted, “I teach participation as a profession in my church. If we claim to be Christian and we live in a democracy, we have an important responsibility to vote.” Commissioner Rowland then pointed out the inconsistency with arguments that campaign finance reform is not needed because there have been few or no complaints. Ms. Rowland noted, in its last General Session, the Utah State Legislature passed a law requiring voters to present identification before voting. The expressed motive for that law was voter fraud, yet there was little or no proof of fraudulent voting in Utah. That law, Commissioner Rowland explained, may inhibit voting in future elections for some and cause delays for all. Therefore, it is inconsistent to demand proof of corruption before dealing with campaign finance limits.

- Commissioner Meghan Holbrook called the question. Commissioner Dryer moved to vote on his draft proposal; Commissioner Holbrook seconded; approved unanimously.
 - ROLL CALL VOTE ON CAMPAIGN FINANCE PROPOSAL, SPONSORED BY COMMISSIONER RANDY DRYER:
 - Commissioner Yvette D. Donosso: YEA
 - Commissioner Randy Dryer: YEA
 - Representative Craig Frank: NAY
 - Representative Rebecca Chavez-Houck: YEA
 - Commissioner Dave Hansen: NAY
 - Commissioner Meghan Holbrook: YEA
 - Commissioner Bruce Hough: NAY
 - Senator Scott Jenkins: NAY
 - Senator Scott McCoy: (absent)
 - Commissioner Dan Jones: YEA
 - Commissioner Tom Love: YEA
 - Commissioner Frank R. Pignanelli: NAY
 - Commissioner Dick Richards: YEA
 - Commissioner Steve Starks: (absent)
 - Commissioner Ken Verdoia: YEA
 - Commissioner LaVarr Webb: NAY
 - Commissioner Dee Rowland: YEA
 - Commissioner Doug Wright: YEA
 - Acting Chair Jowers: NAY
 - The Proposal passed, 10-7.
 - Commissioner Ken Verdoia, having voted in the majority, moved to reserve the right to amend the proposal. Motion seconded by Meghan Holbrook; approved unanimously.
- Representative Craig Frank noted that he would like to provide the Commissioners with information on the Legislature’s response to what we’ve discussed thus far. “I’ve had it (a document) drafted my Government Operations Committee attorney. I am looking forward to items as potential pieces as legislation. We may consider bills pertaining to some of the things we’ve discussed.”

Conclusion (5:45 – 6:00 pm)

- Acting Chair Jowers noted that the Commission’s next meeting will be held on Thursday, September 24, 2009, from 3:00-6:00 pm on the campus of Weber State University in Ogden, Utah.
 - In preparation for the next meeting, Acting Chair Jowers encouraged all members of the Commission to carefully examine the Commission’s mandate and consider draft proposals to bring before the Commission. He stated, “Any proposal is welcome as they facilitate discussion and debate.
 - Acting Chair Jowers thanked members of the Commission and the public for their attendance. “We appreciate your attention and insight,” he concluded.