September 4, 2018

To: Joint Corporations Committee

From: Steve Klein

Cc: Legislative Service Office; Peter Michael, Attorney General; Ed Buchanan, Secretary of State; Kai Shon, State Election Director, Secretary of State’s Office

Re: Campaign Finance – House Bill 67 (2018) Revisited

This memorandum revisits House Bill 67, a bill drafted and introduced by this committee in the 2018 Budget Session.\(^1\) I suggest eliminating the provisions for “electioneering communications” from the bill and not adding a new regulatory regime or, alternatively, introducing these provisions in a separate bill.

House Bill 67 was mostly a housekeeping bill that would have updated Wyoming campaign finance law. The current election cycle has revealed the problems that emerge when the law does not keep up with constitutional developments. Attached is a newspaper article indicating that an independent candidate in Teton County was under the impression he could not raise funds for the general election until after the primary, because the law still plainly says just that. See Attachment A. The attorney general settled a case in 2014 and agreed not to enforce this provision—Wyo. Stat. 22-25-102(c)—against minor party and independent candidates. But the only way to know that is to locate the settlement at WyLiberty’s website.\(^2\) Since the last meeting of this committee, Wyoming’s robocall law was struck in federal court as a content-based prohibition.\(^3\) On Primary Day, according to a newspaper account, the Campbell County Clerk managed to make Wyoming’s unconstitutional

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\(^1\) I have not utilized an amendment adopted by the House Committee, HB67HS001, because a modified version of the full bill was never completed. See [http://wyoleg.gov/2018/Amends/HB0067HS001.pdf](http://wyoleg.gov/2018/Amends/HB0067HS001.pdf).

\(^2\) [https://www.wyliberty.org/wills-v-maxfield](https://www.wyliberty.org/wills-v-maxfield)

polling place buffer zone even more unconstitutional by labeling an entire governmental complex a polling place—including, apparently, the parking lot. See Attachment B. Each of these instances occurred after this committee’s last meeting.

It is counterproductive to mix in simple amendments with new, controversial regulation that will only add new hurdles to political engagement in Wyoming. Electioneering communications should be eliminated from this bill and, if they are to be considered at all, introduced separately. Added filing requirements will not solve the so-called “problem” of anonymous speech, nor will it counter “dark money.” It will simply make it harder for citizens without money to afford attorneys or accountants to enter the political arena without substantial risk of prosecution for violating a lengthy yet vague speech regulation.

Below, I propose a number of other amendments, attempting to define “coordination”—an issue that was one impetus for HB67—as well as “contribution,” which is necessary to make coordination regulation meaningful. I include a more specific amendment to recognize pre-general election fundraising. Finally, I attempt to define “political committee” to recognize the longstanding major purpose doctrine.


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<thead>
<tr>
<th>Page 1 – lines 5-6</th>
<th>Delete “requiring” through remainder of line 6.</th>
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<tbody>
<tr>
<td>Page 2 – lines 10-23</td>
<td>Delete entirely.</td>
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<td>Page 5 – lines 1-6</td>
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<tr>
<td>Page 5 – line 8</td>
<td>Delete “iii” and insert “i”.</td>
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<td>Page 7 – line 5</td>
<td>Delete “electioneering communications or”.</td>
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<tr>
<td>Page 13 – line 13</td>
<td>Delete “electioneering communication or”.</td>
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<tr>
<td>Page 13 – line 16</td>
<td>Delete “communication or”</td>
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<tr>
<td>Page 14 – line 9</td>
<td>Delete “communication or” and insert “independent”</td>
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</tbody>
</table>
Delete “an electioneering communication or”.

Delete “an electioneering communication or”.

Delete “electioneering communication or”.

Delete “communication or”.

**Independent Expenditure Housekeeping**

Before “expenditure” insert “independent”.

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**Define “Contribution”**

Insert “defining contributions”.

Insert “(iii) “Contribution” means:

(A) a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution, a deposit of money, or anything of value made to a candidate or committee to influence an election;

(B) payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge, however, this does not include volunteer personal services on behalf of a candidate or committee for which the volunteer or any person acting on behalf of or instead of the volunteer receives no compensation either in cash or in-kind from any source; or

(C) an expenditure made in consultation or coordination with a candidate.”.

**Define “Coordination”**

Insert “defining coordination”.

Insert “(ii) “Consultation or coordination with a candidate” means formal agreement or collaboration between a candidate, candidate’s campaign or a candidate’s or candidate campaign’s agent and a person or an agent of a
person concerning the following characteristics of the person’s expenditures:

(A) contents, including the specific wording, message or theme;
(B) timing, including the proximity to general or primary elections, proximity to other expenditures, and proximity to campaign events;
(C) location, including the proximity to other expenditures, or geographical targeting, or both;
(D) mode, including the medium (telephone, broadcast, print, etc.) of the expenditure;
(E) intended audience, including the demographic or political targeting, or geographical targeting; and
(F) volume, including the amount, frequency, or size of the campaign literature or campaign advertising.”.

Page 5 – line 10 Delete “, candidate’s campaign”.
Page 5 – line 11 Delete entire line.
Page 5 – line 12 Delete “campaign committee and which”, insert “that”.

Primary / General Election Thresholds for Minor Party and Independent Candidates

Page 6 – lines 9-10 Delete “For a candidate participating in a primary election, n” and insert “N”.
Page 6 – line 11 After “election.” insert “This subsection shall not apply to candidates who are running unopposed in the primary election, minor party candidates who are nominated pursuant to W.S. 22-4-303 or independent partisan candidates who are nominated pursuant to W.S. 25-5-301.”
Page 6 – lines 17-18 Delete “For a candidate participating in a primary election, n” and insert “N”.
Page 6 – line 19 After “election.” insert “This subsection shall not apply to candidates who are running unopposed in the primary election, minor party candidates who are nominated pursuant to W.S. 22-4-303 or independent partisan candidates who are nominated pursuant to W.S. 25-5-301.”

Define “Political Action Committee”

Page 1 – line * Insert “defining political committee”.
Page 5 – line 19* Insert “(iv) “political action committee” is an association, organization or a group of two or more persons that makes contributions or independent expenditures in excess of five hundred dollars ($500.00) in the aggregate
during an election cycle and has the major purpose of the election or defeat of candidates or ballot propositions.”.

Page 11 – lines 1-2   Delete entirely.

Page 11 – line 3   Delete “election”.

I appreciate the committee’s consideration of this memorandum and invite questions or concerns about the Election Code at steve@statecraftlaw.com or (202) 804-6676.
JACKSON HOLE, WYO – It’s officially official: Slade Ross will be on the November 6 general election ballot after his petition to run as an Independent candidate for Sheriff was verified by the county clerk’s office.

“I’ve always believed that the Sheriff should not be a partisan position that puts up a barrier to the population that is not of...
Slade Ross petition approved, will make a three-way race for Sheriff - Buckrail, Jackson Hole News

the same party,” Ross said.

The way of the Independent in Wyoming is somewhat burdensome, Ross added. Independents get to skip the primary election where some party candidates are knocked out, but to run they must meet nomination petition requirements by garnering enough signatures.

In addition to that, Independent candidates also face more financial restrictions. Wyoming campaign finance laws state that they cannot accept campaign contributions until after the primary election on August 21, leaving Independent candidates with a much shorter time frame to raise funds before the election. Party candidates are able to raise funds all year long.

“This does put an independent at a disadvantage, but it’s important to me for Teton County to have a Sheriff who is able to represent everybody and unite the sheriff’s office and this community under the same objectives that are best for our county, its residents and our visitors,” Ross said.

Ross was on the TCSO for 19 years.

Ross is a sixth-generation valley native with family ties to one of the first game wardens and constables in the area. After 19 years with the Sheriff’s Office, Ross left in early 2017 after he and Sheriff Jim Whalen had a falling out.

Ross will face Matt Carr-D and Michelle Weber-R in the general election.
Foster Friess asked to leave Cam-plex after he was seen campaigning

By PATRICK FILBIN News Record Writer pfilbin@gillettenewsrecord.net  Aug 21, 2018

Foster Friess, a candidate for Wyoming Governor, was asked to leave Cam-plex grounds after he was seen campaigning around the polling place.

Campbell County Clerk Susan Saunders said that Deputy Clerk Linda Grose noticed Friess walking around the parking lot of Cam-plex around 1 p.m. and asked him to leave.

Saunders said Friess and his campaign then called the elections office and asked why he couldn’t be at Cam-plex.

It is against Wyoming state law to be campaigning within 100 yards of a polling place on the day of an election.

When he heard that, Friess reportedly said he would then campaign 100 yards away from the doors of the Wyoming Center, Saunders said.

That wouldn’t suffice, Saunders said, because the entire property of Cam-plex is technically the polling place.

A source told the News Record that Friess approached him in the parking lot a little after noon Tuesday.

"I can’t campaign today, but I want to thank you for voting," Friess told the man.

After the man told Friess that he had already voted, Friess thanked him again for voting.

Saunders said two young girls holding Foster Friess signs were at the corner of Boxelder and Garner Lake Road about 7 a.m. and had to be asked to move off of Cam-plex property.

Saunders added the two girls were very nice and moved across the street.

Saunders has been the County Clerk since 1995 and has never had to ask a candidate to leave the property of a polling place.

Bill Sni, a Friess campaign staffer, said Friess wasn’t aware the entire Cam-plex grounds was off limits.

Sni said there was confusion because Cam-plex is technically a government property, meaning the whole property is off limits and not just the building.

"Everyone on our team knows that rule and to break it is bad form," Sni said. "Cam-plex is just a bit of a different facility."


Attachment B