

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By Senator Eleanor Vaughn, on April 6, 1993, at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Eleanor Vaughn, Chair (D)
Sen. Jeff Weldon, Vice Chair (D)
Sen. Jim Burnett (R)
Sen. Harry Fritz (D)
Sen. John Hertel (R)
Sen. Bob Hockett (D)
Sen. Bob Pipinich (D)
Sen. Bernie Swift (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Council
Deborah Stanton, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SR 6
Executive Action: SR 5, SR 6, SR 7

HEARING ON SR 6

Sen. Vaughn turned the gavel over to Sen. Weldon to conduct the hearing.

Opening Statement by Sponsor:

Sen. Vaughn, Senate District #1, presented SR 6 which is the resolution to confirm Ed Argenbright as the Commissioner of Political Practices for a term of six years ending January, 1, 1999.

Sen. Weldon stated Mr. Argenbright would have a few minutes to make any comments he would like to make.

Mr. Argenbright commented on how it seemed it had been a long time coming. He stated he had been on the job since the first of January and during that time he deemed a greater appreciation for the importance of the position and the competencies of the staff people he has worked with. "I believe that my qualifications are equally suited to giving this office the kind of results that the people of Montana want. I have been an educator for most of my career. I have my doctorate from the University of Montana. The important thing is that I have been a classroom teacher. I've been an administrator. I've been a state superintendent. I've been a director of the Recognition Divisions within the U.S. Department of Education for the past several years. In the private sector, I have owned a resort out of Big Timber. I have broadcast sporting events on radio and television. I've given flying lessons. I've worked in construction and have managed a sporting goods department in the past. The broadness of my experience is such that I can put myself in the shoes of the other person and be able to deal with the issues that come before me in a fair and impartial manner. I've been a base provost marshall and I think that my experience in the Air Force has given me a good deal of respect for the enforcement aspect of the law. As a classroom teacher I have maintained order and settled lots of disputes. I've supervised playgrounds and know that fairness is the name of the game. As a basketball coach I have engaged in refereeing duties and that also deals with the concept of applying the rules equally and fairly. I think those are experiences that I have had that lend me the necessary background to be qualified. One of the characteristics that I will bring to the position is that I have been through two statewide successful campaigns for State Superintendent of Public Instruction. I have built a campaign from the ground up. I've dealt with the media. I've gone through with the processes. I understand what you are talking about when, earlier this year, you had the bill before you to study the unfair charges that people make against one another in the campaigns. I can understand the need for fairness in campaigns and the enforcement of the rules and regulations. I believe I have the vision to look ahead and work to make sure the credibility of the office is maintained. I would maintain that Delores Colburg did a good job with a very limited staff and she has implemented a number of procedures that are important and fair and I intend to build on those procedures. I believe that my experience in a local community makes me public spirited or I would not be here. The opportunity to further make contributions to the State of Montana is exciting to me. I will bring energy to the position and the very basic notions that underlie the office. We will gather the required information for the financial reporting. We will make the information available to any Montana citizen. We will register the lobbyists and will have the statements and the reports on file. We will bring charges if people disobey. I will oversee the elections, publish the rules and do the investigations that are required in a fair

and impartial way. One of the directions that I would like to see for the office in the future is to increase it's efficiency. I was disappointed to see Sen. Fritz's HB 205 fail to get the money to get the computers to network our office. That is an area where we could make some improvements. My background as an educator will assist me in taking a preventative role toward avoiding campaign disputes to make sure people understand what the rules and requirements are beforehand. That is a critical thing. During this past session, I have stepped into the position and we have seen three bills that Delores Colburg proposed and they have gone all the way through the process. They deal with making the information available to the candidates. We are going to be changing the publication of the candidates booklet dealing with campaign laws and requirements. I believe that I can bring to the office the prospective of one who has run a program at the national level called the National Diffusion Network. This is a group of outstanding educators whose programs are disseminated to other teachers around the country and the same kind of procedure will be important in getting the information out to the people of Montana. We have to stay in touch with grassroots Montanans and keep the perception of being credible and fair. In closing, I would like to say that anyone who is in this position has to put aside their partisan past and deal with people on a non-partisan, impartial, fair basis and I am willing to do this. I had a conversation with Governor Pete Wilson's Commissioner in California. There is an individual who was appointed to be the Commissioner, it is the Office of Ethics in California, and the Governor's Office did not report \$7 million in media buys. That Commissioner prosecuted and it cost that campaign over \$100,000. So I think you have to pursue the violators and be fair and follow the procedures. I look forward to answering questions and working for the people of Montana to maintain a credible, fair election process. I am capable of doing the duties of the office."

Proponents' Testimony:

Sen. Bob Brown, Senate District #2, rose in support of Ed Argenbright as Commissioner of Political Practices. "I have known Ed since before he was elected Superintendent of Public Instruction. I regard him as a good friend. I stayed at his home in Washington, D.C. when he was in charge of the Diffusion Network and I have a very good relationship with him. He is a competent and honest individual who will serve very well in that capacity. He has a good background for this job. Not only has he served as an elected official he has served in various aspects of education going back close to 30 years. Most people who have had anything to do with him in his various capacities have a very high regard of him both for his abilities and as an individual. It would be most unfortunate if the committee were persuaded, because of this process that resulted in his selection, that he was not fit for this job. You should focus your attention to his fitness for the position that he has been nominated for. And if you do you will find that he is imminently qualified and fit for

this position. I have known him both professionally and personally. I served as Chairman of the Education Committee in the Senate four sessions during the period that he was Superintendent of Public Instruction. We had a very good working relationship. He would be equally successful in the position he has been nominated for. It is without reservation that I stand as a proponent for Mr. Argenbright."

Hal Stearns rose in support of Ed Argenbright. He stated he had no need for notes because of his long association and admiration of Mr. Argenbright. "I've known him since he was a star basketball player for the Grizzlies. I've seen him over his career as an educator and am tremendously impressed. I have some ability to know something about the school system in Montana because I have had the honor of heading the bicentennial, working for two six-mill levy campaigns for the University system, traveled every county and on a couple of occasions had the opportunity to go to Hardin where Ed Argenbright was the Superintendent of Schools. He enjoyed a relationship in a reservation area that was excellent. He has a great deal of rapport with all people and has had experience and understands children, but more importantly, as Superintendent of Public Instruction, he was able to use those years as a school administrator to his advantage. Montana will be honored to have a man of his caliber occupying the position of Commissioner of Political Practices."

Tom Schneider, representing the Montana Public Employees Association, appeared to ask for support in confirming Ed Argenbright to the Commissioner's position. "In 1979, MPEA organized the Office of Superintendent of Public Instruction. We spent one year negotiating with the Superintendent of Public Instruction prior to the election of Ed Argenbright. In fact, we negotiated until midnight the night of the election and never reached an agreement with the Superintendent at that time. She hired an attorney and spent nearly \$40,000 keeping us from ever reaching an agreement in negotiations. We talked to Ed Argenbright the week after the election. He told us we would have a contract within 30 days after he took office on January 1 and we did have a contract 30 days after he took office. The contract was to his benefit, our benefit and the state's benefit. During the eight years that he was superintendent he dealt with us straightforward, completely honest, and in those eight years we never once arbitrated a case with the Superintendent's office and since that time that is not true. It was his ability to get to the crux of the problem, get with the people involved, and resolve the problem without having to go to that extent. For that reason, Mr. Argenbright would make a good Commissioner and the committee should support his confirmation."

Wayne Buchanan, Board of Public Education, spoke in support of SR 6 as a private citizen. "I have known Dr. Argenbright for a number of years. I first met him when he was running for the position of Superintendent of Public Instruction. I supported

his opponent in that race and contributed to Ms. Rice's campaign, and when Mr. Argenbright won the race I was sorry to see that happen. Over the years, I have learned to have tremendous respect for that Superintendent. I thought that the silver lining in his election was that we now had an administrator and all of the school controversies that would be brought to the Superintendent of Public Instruction would be from the standpoint of an administrator and from the standpoint of a Republican. We were soon to learn that that was not the case. We found that many of the school controversies that were decided by Mr. Argenbright were not decided either as a former school administrator or as a Republican. We all learned to have tremendous respect for this man. He has been a friend ever since and the second time he ran I am pleased to say that I did support him. He was a terrific Superintendent of Public Instruction. He is as fair and intelligent as you could get in this position. I don't think anyone would have the qualification that he would have to be the Commissioner of Political Practices and Montana would be very lucky to have him in that position."

Millie Woolley, from Sweetgrass, Montana, spoke in support of SR 6 on Ed Argenbright's behalf. "I've known Ed Argenbright in Sweetgrass County as a friend, businessman, co-worker, principal, administrator at the Big Timber School System. I worked on his election and re-election for the office of State Superintendent of Public Instruction for Montana from 1980 to 1988. During that time, I served on the state task force for the recertification of schools, which was very well organized and carried out very successfully. After that, when he was in Washington, D.C., he was very much involved with the Department of Education for our nation. While he was there, I again had the opportunity to participate in the national drug program for the nation's schools under the direction and organization of his department. This noteworthy program was very well organized and I was honored, as well as impressed by Mr. Argenbright and his staff in carrying out this program most effectively. No matter what capacity I have been associated with Mr. Argenbright, as a friend, co-worker, principal, administrator, director of programs, I always found him willing to listen to all sides of an issue, impartial. He handled all situations diplomatically. We did not always agree on the issues or the outcomes but he always worked for what was the best for the good of everyone. If it is the political affiliation that you are concerned with, let me assure you that his political philosophy has always been to consider the person, or the issue and what they or it represents and not his political affiliation. This qualifies anyone to be non-partisan in decisive issues concerning the overall good of the State of Montana. Without any reservations I would like to ask you to confirm his nomination to the Commissioner of Political Practices for the State of Montana. He will do an outstanding job for the State of Montana."

Steve Brown, attorney in Helena, rose in support of SR 6 confirming Ed Argenbright as Commissioner of Political Practices. "I was the chair of the Ad Hoc Committee comprised of Republicans and Democrats and people from all other political persuasions in 1973-74 that proposed the campaign reform law which created the Office of the Commissioner of Political Practices. I have some limited involvement from the work perspective with the Commissioner's office. Doty Colburg heard my story about the history of the campaign finance reform that took place in the 70's following Tom Judge's 1972 campaign and some other political questions that arose. It turned out that she was using the Attorney General's office for legal advice. The Attorney General's office in certain situations had a conflict and did not wish to advise her. Those conflicts involved situations where a state official was involved or in certain campaigns where Attorney General Racicot was the Republican candidate and had some limited involvement so she needed to have outside counsel and retained me. Over the past three or four years I have given her legal opinions about how to proceed. I have not done that on a regular basis. I want to disclose that I have no contract with Mr. Argenbright and do not anticipate that I will have one. Doty Colburg would also use me from time to time to get a second opinion. I also wish to emphasize that I am not a member of Mr. Argenbright's party. I do not believe that I ever supported him in either of his tries for political office. I do know Mr. Argenbright and that is why I rise to support him today. I disagree with a lot of his policies but I can tell you that he is honest, decent, a dedicated public servant, and you can go in and disagree with him legitimately and not end up in a shouting match. And in the end you can respect one another in the give and take that occurs. The objective, in my opinion, is to find a commissioner that will enforce and administer the campaign finance laws aggressively and in a non-partisan manner. I am satisfied that Ed Argenbright can meet both of those tests. We have had some long discussions about the importance of this office. There are a lot of people who have historically looked at the Commissioner's office and said that the Commissioner has not done this or that right and that will happen because being the Commissioner is a lot like being a judge. In every case referred to the Commissioner's Office, there is someone who thinks he or she did not violate the law, and someone who is absolutely certain that they did. So when the Commissioner renders his opinion someone is not happy. We're talking about bitter partisan disputes with a lot on the line. I don't know if you will ever find a person who can be a perfect Commissioner of Political Practices. That may be impossible. That is why we have to bring it back to the real test. Will that person be aggressive. Will they be non-partisan. Those are the issues you will need to examine in deciding on whether you will vote for Mr. Argenbright to be the Commissioner. In my conversations with him I am convinced that he understands his ethical obligations. He understands that he must be non-partisan. He must be aggressive in enforcing the campaign finance laws of this state. That is what keeps this system alive and well. We cannot allow the

public to lose confidence in our electoral system. Mr. Argenbright will maintain public confidence in that system by vigorously enforcing the campaign finance laws.

Opponents' Testimony:

John Heffernan, Chairman of the Board of Common Cause, rose in opposition to SR 6 and submitted written testimony (EXHIBIT #1).

Kelly Addy, attorney from Billings, spoke in opposition to SR 6. "I am not here on behalf of the Montana Democratic Party. I speak as a private citizen and ironically I was drawn into this issue some years ago because I was about to become a private citizen again. It was in the Spring of 1990 that news reports of alleged improprieties on the part of the Montana Republican Party were reported widely in the statewide press. I came to Helena and had the occasion to run into Jane Murphy who was the Executive Director of the Montana Democratic Party and asked if the party was going to do anything about this. These are apparently blatant violations of every campaign law I can think of and if the Democratic Party doesn't do anything about it, everyone will think the Democrats and Republicans are in cahoots on this. Something needs to be done by somebody. And Jane said, "we're involved in a lot of campaigns this year, and you're not. You are probably right that something should be done about this so if you will meet me at party headquarters, I will turn our press clippings over to you and good luck." So as a private citizen I became involved in this 1988 cycle of complaints and that is why I am here today. If the public is not completely convinced that the fix is not in on either side, that the campaign process is above a fix or a deal or even any hint of those kind of shenanigans, then both parties have a problem. Any party that elects, anybody who gets elected to any political post has a problem. This position should be held by Caesar's wife. The fact of the matter is and the reason that I have opposed this appointment since it was announced, I didn't even get to the name Argenbright in the story, I got to the name Stephens appoints political commissioner and I said this is wrong. This man is under investigation. In fact at that point it was in state court enforcement proceedings for alleged campaign violations and he was appointing the person who was going to carry on the investigation. He was appointing the person who was going to carry on the enforcement proceedings. This is wrong. Governor Racicot, in a previous life, was the head of the county prosecutorial services for the Attorney General. And he was called in by county attorneys that had serious crimes that needed to be prosecuted in their counties. And the way I see this being analogized to that, is if the person who is about to be prosecuted had the right to say, "I don't want Mr. Racicot. I want someone else called in. In fact, I want to appoint the person who is going to assist the county attorney in prosecuting this matter in district court in this district." It is just that difficult a situation. I have known Mr. Argenbright for a long time. In fact, he and I grew up in the same country, Cut Bank

and Shelby. But the appearance of a conflict is just manifest when someone who is under investigation gets to appoint, due to a glitch in history, the person who is going to carry on the investigation. I would also point out that while Mr. Argenbright does not have a partisan history, the person who appointed him does. And probably the most partisan person to hold that office in my lifetime. My last session in the Legislature, I was asked to carry a bill on behalf of a group that would not necessarily be seen as my natural constituency. And after some negotiation I agreed to carry it. The lobbyist was so happy that he went right down to Governor Stephen's office and told him, "our chances just improved because I got Kelly Addy to carry this bill." He said he had to scrape the Governor off of the ceiling when the Governor found that out. A year later, I ran into that same lobbyist on the airplane on the way to Helena. He had still not been allowed back in the Governor's office because he had gotten me to carry that bill. That is the kind of blood that is being brought into this appointment. It is perhaps an appointment of a person who otherwise has adequate qualifications and good intentions but it is made by a person who is under investigation. It is an appointment that should be above partisanship and it is being made by a person who has a very partisan history. As I sat and thought about this over the week there were other coincidences about this that bothered me as well. Mr. Argenbright's chief counsel as Superintendent of Public Instruction was appointed Chief Counsel for Governor Stephens when he took office. Mr. Argenbright's financial budget officer at the Office of Public Instruction was appointed as Governor Stephens first budget officer. The person that Mr. Argenbright hired to defend the Office of Public Instruction in the school equalization suit and to whom he paid many thousands of dollars in legal fees for defending the state is the person that Governor Stephens hired to defend him when the charges of campaign practices violations were made against him. The thing that maybe will be developed during question and answer is what are the plans to continue the state court proceedings that are now pending against former Governor Stan Stephens. Is there enough money there to continue those enforcement proceedings. Has there been any consideration given as to what will be required to complete that job. Now that it has begun, this is not the time to get off of the horse, since we are in the middle of the stream on this one. If the state runs out of money and just can't continue the enforcement proceedings, then our campaign practices laws are brought under serious question. The big allegation against Governor Stephens in the state case is that his campaign received contributions from the Republican Governor's Association along with a cover letter that said while this check is made out in the name of the Republic National Committee, every dime of it is Republic Governor's Association money but reported as Republican National Committee money. And it was reported as Republican National Committee money on the campaign finances form. That oversight was called "inadvertent" by Governor Stephens' attorney in the state court proceedings. The Senator, in this last campaign cycle that is involved, is somebody who

filed campaign statements and forgot to list a couple of billboards and a few thousand cookies as campaign expenditures although they were fairly involved in the campaign. His conversation with Mr. Argenbright resulted in Mr. Argenbright characterizing those oversights as "inadvertent." That scares me. Its the same word coming back out of a different mouth. A couple of weeks ago, I became aware of efforts to chill testimony in opposition to this nomination and they were messages that were sent to me through third parties. Common Cause received a message and the Senator I am talking about had a visit from somebody who told him that his opponent would file charges against him if he did not forget about his charges against his opponent. It just doesn't chill my testimony. It makes me really think that there is something up here when there is an effort not just to speak to the merits of the concerns that opponents to the nomination have, but there is an effort to get them to shut up and not get up. If there was any doubt about me being here today before then, there wasn't afterwards. I would just point out that the person who holds the Governor's seat today is not a member of the same political party to which I belong. But he is someone who has shown the willingness to deal with individuals on both sides of the aisle and someone who does not carry the burden of being under investigation himself. So if this nomination were not to be confirmed by the Senate there would be a better person from the standpoint of not appearing to have a conflict of interest involved in who is Commissioner. There would be a much better person making that decision. The process could be sanitized. For those reasons I am here to oppose the nomination.

Questions From Committee Members and Responses:

Sen. Burnett asked Mr. Addy if, under the circumstances, would the Governor have the right to withdraw Mr. Argenbright at any time prior to this time. Mr. Addy stated that he had spoken with Governor-elect Racicot to see if he would speak to Governor Stephens and ask him to withdraw the name. He declined. After he became Governor I researched that point and it is ambiguous. Governor Racicot could legitimately make the point that I do not have the authority to withdraw this appointment. I did my own research and talked to other people and asked them to look at the law and use their independent judgement. It is not clear.

Sen. Burnett asked Mr. Addy if he would assume under the circumstances that Governor Racicot would consider Mr. Argenbright an acceptable person for this office. Mr. Addy stated he would have to ask Governor Racicot.

Sen. Burnett asked Mr. Addy since the violation happened in 1988 if the action would be "outlawed" at this point in time. Mr. Addy said the most recent argument made by the proponents is that any action that has already been begun would not at this time be subverted by the person who is now appointed. And if it is subverted, there would be a bill next time to abolish the office.

Sen. Burnett commented that he had a bill to abolish the office to start with. Mr. Addy said that Sen. Burnett has had a lot of bills to abolish many offices and it was nice to see he was being non-partisan.

Sen. Burnett said he could recall \$94,000 that nobody asked about. Mr. Addy said there was no office back then and everybody jumped on it. Mike Greely jumped on it in May of 1988 and did not get the Democratic nomination and from then on Stan Stephens did not have to say anything about \$94,000 to win the election in November of 1988. He did not have to take \$6,000 from the Republic National Committee or the Republican Governor's Association, whoever it was, either.

Sen. Swift stated Mr. Addy made some comments about 1988 and asked him if that was when charges were brought against the Republican Party. Mr. Addy answered yes, he filed charges with the Federal Election Commission, and with the state commissioner as well. There are some entities that are strictly state reporting entities and therefore, are subject to the investigation by the State Commissioner and there are other agencies that are federal agencies and are only properly investigatable by the federal agency. That's one of the big arguments in the Stephens case, whether some of those agencies can be investigated by the State Commissioner.

Sen. Swift asked if Mr. Addy asked Ms. Colburg to investigate and look into those charges. Mr. Addy answered that he did.

Sen. Swift commented that nothing had come out of that. Mr. Addy said it seemed like forever until anything came out of it. That office has a limited enforcement budget. It was this last session of the Legislature, the 1991 session, that gave that office \$45,000 to enforce the allegations that she made. She finally did file a complaint in State District court that is pending right now. It's on hold because the Governor's attorney, Governor Stephens attorney, John Larson, is now a district judge in Missoula, because the Argenbright nomination had not been confirmed, and there is another reason that I cannot think of right now.

Sen. Swift commented that the Statute of Limitations had already run on the complaint that Mr. Addy filed. Mr. Addy said his complaint was filed before the statute of limitations ran out.

Sen. Swift said he hoped the reason that Mr. Addy was opposed to Mr. Argenbright's appointment to the position was not from the standpoint of the Republic Party being involved in some aspect of financial concerns or questions on legality. Mr. Addy said that investigation and enforcement action, once begun, has to be decided by a mutual third party, such as a district court. "If the matter is terminated prior to a decision by a neutral third party the whole process suffers. It isn't the Republicans, it isn't the Democrats, it isn't Stan Stephens, it isn't Ed

Argenbright, it's the whole process. I am very concerned that one of the prime defendants in the state action, Stan Stephens, is appointing the person who is in charge of continuing the action if this nomination is confirmed. It's the fox in the henhouse, the kid in the candy store, and all kinds of little phrases like that."

Sen. Swift asked Mr. Addy if, by innuendo or implication, he was accusing an individual of being less than honest or straightforward by this kind of presentation. Mr. Addy stated that we all have our biases, and our philosophical point of view. We tend to be blind to those things that don't lean the same way we do. Governor Stephens certainly was when he decided to make the appointment of the person who was going to investigate him.

Sen. Hertel called on Mr. Robert Lee, Special Counsel to the Montana Republican Party to comment on the allegations of Mr. Addy.

Mr. Robert Lee, attorney in Billings, stated he knew Kelly Addy. He said he was retained by the Montana Republican Party to act as special counsel in some of the matters that Mr. Kelly alluded to. "I was shocked to hear Mr. Addy say that he actually filed charges with Delores Colburg, not based upon anything he knew about wrongdoing, but because he was asked by the executive director of the opposing party which was based on press clippings which was based on a single lawsuit filed by the person who had been the executive director of the Republican Party and had been fired and was bringing a civil litigation to seek damages from the Republican Party. What we have is speculation built upon suspicion built on hearsay. Mr. Addy did make a complaint with Delores Colburg and he did make a complaint with the Federal Election Commission. Both of them based entirely on the civil litigation. We have a situation in which there has been four years of intensive investigation by Doty Colburg. She has looked at every allegation that has been suggested to you. In fact, she took no action prior to the time the statute of limitations expired. To suggest that Mr. Argenbright may be able to influence any pending proceedings or proceedings that might have been brought is unfair. Former Commissioner Colburg had a special counsel, Leo Gallagher. He will be able to tell you that he has never been brought to any influence on this. To say that a good man may be impugned because the person who appointed him is under investigation for something is missing the point. There was no wrongdoing. There was a suspicion of wrongdoing by a person whose level of suspicion is very low. Four years of intensive investigation by the former political commissioner has lead to no proceedings and to say that because he filed a complaint that is going to continue past the statute of limitations is simply incorrect. Had the Commissioner found any wrongdoing she would have been obligated to go forward and she didn't. After investigation she took no action against the Republican Party, any officer or employee of the Republican Party, or anyone who was involved with the Republican Party

during the 1988 election. Mr. Addy suggests some kind of impropriety. But in the case that is now pending that he is alluding to, there has already been a correction of the record to make the RNC the real party in interest because this matter was brought against a bureau, a department, of another entity as if it were a separate entity. Eventually a judge will resolve that case but to suggest a new commissioner could influence it or would is to impugn the integrity of Helena's finest attorney. Leo Gallagher will tell you that he is not going to be influenced by anything. He and Doty Colburg were forceful, aggressive, intense. They read every piece of paper generated by the Republican Party headquarters in 1988 and the time for acting on any complaints filed by Mr. Addy is past."

Sen. Hockett stated that the hearing "was digressing quite a ways from the original intent of the questions and I resent having to sit here and listen to these things. I come in impartial but I am beginning to become a little less so, unfortunately."

Sen. Fritz asked Mr. Gallagher if he would respond to the argument that there is a conflict of interest and to Mr. Lee's statements. Mr. Gallagher stated he was hired by Doty Colburg to assist her in the investigation of complaints that were filed by Mr. Addy. The complaints were filed by Mr. Addy with both the FEC, the Federal Election Commission, and with the local party investigation office, the Commissioner of Political Practices. I was retained in late August, 1990. A complaint was filed in Helena District Court against Governor Stan Stephens, and an entity which was nominated as the Republican Governor's Association. That case is presently on hold because of three factors. The first is this pending nomination and whether or not Mr. Argenbright will be nominated. The second factor is there has been a change in leadership in the Republican National Committee, which has presently engaged Mr. Lee's services. The third factor is that John Larson has been appointed the District Judge in Missoula County. We have a very limited budget with which to get this thing finally resolved and rather than spinning wheels with unclear counsel we are putting things on hold until this thing resolves itself. There is a complaint that has been filed with the FEC. The FEC has not acted on that complaint. There has been a civil action filed by Common Cause in a Washington, D.C. federal court against the FEC to learn from them why they have not taken action on Mr. Addy's complaint. Common Cause also filed a complaint with the FEC as did Doty Colburg for inappropriate investigation of the 1988 campaign activities of the Republican National Committee and the Montana Republican Party. The statute of limitations did not run out at the time that the complaint was filed against Governor Stephens and the Republican Governor's Association. I am not clear as to whether the statute of limitations has run out with respect to federal jurisdiction. I will leave that to the federal courts."

Sen. Weldon stated he would like to give Mr. Argenbright a chance to respond to the topic of the Stephens lawsuit to see what his perceptions were and specifically to what his intentions were as the Commissioner.

Mr. Argenbright commented that he felt like a soccer ball. He stated he had been briefed by Doty Colburg and Mr. Gallagher and it is his intention to pursue that case. He reminded the committee of his statements regarding the conversation with the California Commissioner of Ethics. He was appointed by Governor Wilson and ended up, because their campaign fouled up by not reporting the media buy, with a fine of over \$100,000. "As an enforcer, as a former provost marshal, I understand that there is a process that you follow. When you assume the role of Commissioner you forget those past allegiances and the kinds of partisan that you have been involved in in the past. You put those aside when you become the Commissioner. In terms of being away from Montana for two and a half years and living on Capitol Hill in Washington, D.C., I was ready to come back to Montana. My wife and I are both natives. She is from Winifred, and I am from Cut Bank. We have lived all over the state and this is the ideal kind of opportunity for me to continue to be a contributing member of this kind of citizenry. I intend to do a good job and I resent the fact that I made application because a friend of mine called me and said Doty Colburg's term is expiring and why don't you think about it. My wife and I talked about it. I missed the Common Cause deadline so I wrote Verner Bertelson because I knew him from years back. He is on the board of Common Cause. I wrote him a letter and said I missed the deadline, I am interested and I will apply through the normal procedure. So I wrote letters to the leadership. I've sat through two court hearings. They say we don't have anything against you personally but this process is really something. You get kicked around here and there and it seems right now that it is getting partisan. I hope that that is not going to be the basis on which you make your judgements on my qualifications to do the job. I can tell you that I have hired some excellent staff members. It's a point of pride. One of the teachers from Big Timber is directing the National Teacher of the Year program and I feel really good about that. I take great pride in some of things that I have been able to accomplish. If Governor Stephens hired some of the folks who worked for me, it should not come my way in the form of some conspiracy. I've been gone for three and a half years and I have not really even paid attention to all of this business that we are dealing with here today. I came back and will try to do the job and I am trying to follow in the footsteps of what I consider to be a good Commissioner. I follow the procedure. One of the presenters here today said it is an impossible position to be in because the people who think that the charge is true and those that are charged do not think it is true, someone is going to get angry. You can only go so far in terms of following the procedure to be able to try to resolve these issues. There was an example of an opponent who was charged with not reporting some contributions. I followed the normal procedures and my staff

members told me that that was exactly the way it would be handled. Then someone did not believe it. At that point I said the normal procedure is to have a formal complaint where we can get on with an investigation and we can do it right. Now that's being thrown up to me as somehow not meeting expectations. I think you have to look at both sides of that kind of an issue."

Sen. Weldon said a lot of the testimony settles on this lawsuit involving the Stephens campaign. "Part of your statement is that you wanted to carry with you a perception of fairness in this job. One of the things concerning me here, what I've heard today and leading up to this hearing, is that you may enter this office with the perception of not being fair, something clouding your perception of fairness. You've had some time to be in the Commissioner's office. What is the status of that particular lawsuit and your office now?"

Mr. Argenbright answered that it was being pursued. He added that he had given Mr. Gallagher the direction to pursue any violation. "As far as I know we have been doing that with the exception of, there have been some changes and Mr. Gallagher listed the three reasons why it has not been moving forward. I intend to follow through with it."

Sen. Weldon said that his staff was small without an attorney on staff. Mr. Argenbright said he was working with Mr. Gallagher, the special attorney on that case, and he is working with one of the staff attorneys in Joe Mazurek's office.

Sen. Weldon asked if the Commissioner's office was contracting with Mr. Gallagher to pursue this case. Mr. Argenbright said that was correct.

Sen. Weldon asked Mr. Argenbright what his relationship is with former Governor Stan Stephens, who is a party to this lawsuit.

Mr. Argenbright answered that he supported him in 1988. The process of the appointment was that he wrote a letter to Joe Mazurek, Hal Harper, Bruce Crippen and John Mercer and told them he was interested in the Commissioner's job and to consider him as an applicant for the job. "My name went forward with the procedure that I thought was all right. There was nothing that I did that influenced anything. My name went forward and it is my understanding that Governor Stephens interviewed every person whose name was put forward. My interview was conducted via phone. The Governor personally conducted the interview and I was asked questions about my qualifications and what approach I would take and the standard format questions. I applied like anyone else and was selected by Governor Stephens. I saw him in December briefly and have not seen him since."

Sen. Weldon asked Mr. Argenbright if he had talked to Governor Stephens about this particular lawsuit. Mr. Argenbright answered that he has not. He stated he had not talked about this lawsuit

with John Larson. He said he was briefed by Doty Colburg and Leo Gallagher.

Sen. Weldon said the two points Mr. Argenbright made were wanting to stay in touch with the grassroots part of this job and perceptions of fairness. He asked Mr. Argenbright how he intends to stay in touch with the grassroots part of his office.

Mr. Argenbright stated he has been invited by Secretary of State Mike Cooney's Office to participate with county clerks and recorders. He said he was going to be very active in working with those groups. From his experience as State Superintendent, he has had a number of advisory committees, special education purposes and vocational education. He intends to get some people who have some stature and interest in the office and the perception of fairness and enforcement to get in and donate some of their time because there is no money to pay them.

Sen. Weldon asked Mr. Argenbright if he thought the state's election and campaign laws are being fully enforced now. Mr. Argenbright said he believed Delores Colburg did a good job. She resolved a lot of things before they had to go to court and within the resources she did a good job. He stated he planned on continuing that kind of approach. In terms of enforcement, it is very difficult, because the office just had a complaint over the activities of a lobbyist. That's the first time in the history of the office that there has ever been a complaint of that nature. In talking with attorneys he said he had to find out just who had jurisdiction. He said he will work with the Attorney General and the county attorneys who oftentimes share those prosecution enforcement responsibilities with the Commissioner.

Closing by Sponsor:

Sen. Vaughn commented that the committee appreciates Mr. Argenbright's patience in this action.

HEARING ON SR 7

Opening Statement by Sponsor:

Sen. Vaughn, Senate District #1, presented SR 7. SR 7 is the resolution confirming the Governor's appointments. She listed the nominees and their boards.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Sen. Vaughn said she closed.

EXECUTIVE ACTION ON SR 5

Motion/Vote: Sen. Weldon moved to ADOPT SR 5. Motion to ADOPT SR 5 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SR 7

Motion/Vote: Sen. Weldon moved the PRELIMINARY APPROVAL for SR 7. The motion for the preliminary approval CARRIED.

Sen. Vaughn stated that she had spoken with Pat Lopach from the Governor's office about the termination dates of some of the board appointments. Ms. Lopach said they would look into the dates of termination and get back to the committee about the discrepancies.

There was additional discussion on the remaining appointments to be confirmed.

EXECUTIVE ACTION ON SR 6

Motion: Sen. Swift stated that in view of the fact that Mr. Argenbright has come a long distance in relocating, he moved that SR 6 be PRELIMINARY APPROVED.

Discussion: Sen. Pipinich said he had been doing a lot of checking and has been given notes about Mr. Argenbright, but he did not think there was any reason to not confirm Mr. Argenbright. The system is what went wrong in his appointment. He had talked with Common Cause and other people and it all went back to the closed door meetings when he was selected. There was nothing against him. What they wanted to do was not confirm him and start over again with the system. He said he could not find anything wrong with the appointment and Mr. Argenbright is a fairly upstanding citizen and would do the job well but they are all against the system. Starting with Stan Stephens and down the line but we cannot hold that against the Commissioner's office. He said some people wanted to abolish the office and it was already tried. As far as the confirmation of Mr. Argenbright he stated he had nothing against the appointment.

Sen. Fritz said the appointment put Mr. Argenbright in a very difficult position because it raises the appearance of impropriety with the office of the Commissioner and the ongoing case of the person who appointed him. All the testimony boils down to the key question that Sen. Weldon asked, what he would do with respect to the ongoing investigation. Mr. Argenbright promised that he would follow it up, work with Leo Gallagher and the staff attorney from the Department of Justice and that is all he could say and the best he could say in that instance. The case raises the possibility of the appearance of impropriety no matter how it comes out. It is a difficult position and he made the best of it.

Sen. McClernan said the only question he has for Mr. Argenbright, given the hassle he has gone through, is why would he want the job. "If I were him I would have bailed out of that position long ago. I've known Mr. Argenbright for ten or twelve years and worked well with him. I think he is an excellent person and I would support him."

Sen. Tveit stated it was the process versus the individual. Much of it surfaced around the process itself and trying to put Mr. Argenbright in the same kind of character as the former governor is totally unfair. He said he has known Mr. Argenbright since 1975 when he was the President of the School Board Association and Mr. Argenbright was the Superintendent of Public Instruction and he is an impeccable individual.

Vote: Motion to ADOPT PRELIMINARY APPROVAL OF SR 6 CARRIED.

ADJOURNMENT

Adjournment: 11:40 a.m.


SENATOR ELEANOR VAUGHN, Chair


DEBORAH STANTON, Secretary

EV/ds

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 6, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Resolution No. 5 (first reading copy -- white), respectfully report that Senate Resolution No. 5 be adopted.

Signed: *Senator Vaughn*
Senator Eleanor Vaughn, Chair

PRELIMINARY

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 6, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Resolution No. 6 (first reading copy -- white), respectfully report that Senate Resolution No. 6 be adopted.

Signed: *Senator Naughtn*
Senator Eleanor Naughtn, Chair

PRELIMINARY

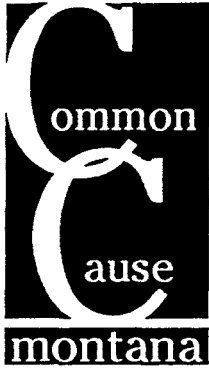
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 6, 1993

MR. PRESIDENT:

We, your committee on State Administration having had under consideration Senate Resolution No. 7 (first reading copy -- white), respectfully report that Senate Resolution No. 7 be adopted.

Signed: Senator Vaughn
Senator Eleanor Vaughn, Chair



SENATE STATE ADMIN.
EXHIBIT NO. 1
DATE 4-6-93
BILL NO. SR6

COMMON CAUSE TESTIMONY IN OPPOSITION TO
SENATE CONFIRMATION OF ED ARGENBRIGHT
AS COMMISSIONER OF POLITICAL PRACTICES
APRIL 6, 1993

P.O. Box 623
Helena, MT
59624
406/442-9251

Madame Chair, members of the Senate State Administration Committee, for the record my name is John Heffernan of Missoula, Chairman of the Board of Directors for Common Cause/Montana.

I come before you today on behalf of our Board to oppose Senate confirmation of Ed Argenbright as Montana's fourth Commissioner of Political Practices. This is an unfortunate position for us, one which our twelve-member Board -- Republicans and Democrats alike -- spent extensive time considering.

It is unfortunate, because although Common Cause is a strictly nonpartisan organization, and although we speak today on strictly nonpartisan concerns, we are concerned that this legislative body will criticize us for taking what can be characterized as a partisan stance. In fact, we have been cautioned by members of the Republican party who have told us "this is not our fight," that we should not give our opinion on this matter.

This is, of course, our fight. And we would be remiss if we chose not to take a position on this appointment. Because of the very nature of our work -- good government -- the office of the Commissioner is the most critical office in state government to us. We have worked to support that office in every way possible. Further, we have placed high demands on the holder of that office, expecting the Commissioner to carry out his or her mandate to the fullest ability.

While supporting the office of the Commissioner, we have and will continue to criticize the holder of that office if he or she is compromised or unable to perform the work required.

In 1986, we called for the resignation of Peg Krivec -- a Democrat -- when it was revealed that she had used state telephones to make nearly \$2,300 in personal telephone calls which were initially charged to and paid for by public funds. We felt very strongly that the Commissioner, as the enforcer of governmental ethics, must be beyond reproach.

In 1992, Common Cause filed a lawsuit against Commissioner Dolores Colburg -- also a Democrat -- for failure to complete five years of annual reports as required by Montana law.

We speak today against the appointment of Ed Argenbright for the same type of reasons we acted against the former two Commissioners. The political party of the appointee is irrelevant to us.

Since May of last year, Common Cause has worked to identify highly competent, nonpartisan individuals who could be our next Commissioner. Those people spoke with excitement and commitment as to why they wished the position. But, until today, we have been denied the opportunity to hear why Mr. Argenbright was selected by the Legislative Leadership and the Governor to take on this responsibility. Until today, we have not heard Mr. Argenbright speak publicly about the office of the Commissioner, why he feels qualified to hold this critical position, where he sees the office going in the next 6 years.

We oppose the confirmation of Ed Argenbright as Montana's fourth Commissioner of Political Practices for three significant reasons.

1. HISTORY HAS PROVEN THAT THE APPOINTMENT OF A "POLITICAL INSIDER" SEVERELY COMPROMISES THE INTEGRITY AND ABILITY OF THE COMMISSIONER.

Historically, the tendency has been for both the legislative leaders and the Governor to select a "safe" Commissioner candidate, one who would serve more as an "electoral file clerk" than an "electoral cop," thereby causing the least disruption in the way the electoral process is used or abused by political parties and other political insiders. This "insider status" becomes a severe liability for the Commissioner, as s/he inevitably ends up regulating those to whom s/he feels personal allegiance and with whom s/he shared many past circumstances.

The two most recent Commissioners, Peg Krivec (1981-1986) and Dolores Colburg (1987-1992), were both political "insiders." Both were actively involved in Democratic party politics, with both receiving the post at the end of lengthy political careers. In hindsight, those appointments were not good appointments, and should not have been made. Ed Argenbright's appointment is no different. His appointment is the Republican version of these two former Commissioners.

encl 1
4-6-93
SR-6

We strongly feel that history has proven that the past allegiances of a "political insider" renders the Commissioner unable and unwilling to rule on the more complex and controversial complaints. For example, Commissioner Krivec created a loophole in Montana's aggregate PAC contribution limit law by ruling that "in kind" contributions do not count toward PAC contribution limits. Commissioner Colburg was unwilling to reverse that administrative decision, a stance which Common Cause believes was secured by political connections and continued pressure from other political insiders.

The area of lobbyist disclosure has also suffered. Studies by Common Cause show great disparities in the way different entities report their lobbying expenses to the Political Practices office. Yet neither Commissioner Krivec nor Colburg attempted to establish uniformity in lobbyist reporting, or to follow through on delinquent reports. Similarly, while the office has the authority to audit lobbying accounting reports (5-7-212 MCA), such action has never been taken. Even though the Lobbying Disclosure Law passed with an overwhelming show of public support, both Commissioners Krivec and Colburg failed to implement the law in a meaningful way.

Follow-through on campaign violations has also been weak. In our opinion, this has been due to an unwillingness on the part of the Commissioner to follow through on controversial complaints. For instance, Colburg never resolved several complaints around the 1988 elections, including two concerning Initiative 113 (the Bottle Bill). Again, the Commissioner's role of "electoral cop" has been lacking.

2. THE SELECTION OF COMMISSIONER CANDIDATES WAS MADE IN VIOLATION OF THE OPEN MEETINGS LAW, AND THE PUBLIC DESERVES REMEDY.

As you may be aware, Common Cause filed a lawsuit against the statutorily-created selection committee and the Governor for violating the Open Meetings Law in the selection of Commissioner candidates. At least one meeting was held by the selection committee, unannounced to the public and without the presence of then Speaker Hal Harper. The Open Meetings Law clearly states that all meetings of legislative committees be open to observation by the public. The remedy for a violation of this law is that any decisions made in the meeting be void.

The case was heard in the First Judicial Court, but the Judge declined to rule on whether there was a violation of the Open Meetings law. Therefore, he declined to order that the selection process be redone. Rather, the Judge noted that:

...Plaintiffs are not left out of the process or without recourse. The appointment of Mr. Argenbright is subject to confirmation by the Senate. If Plaintiffs have concerns with Mr. Argenbright as the commissioner or even with the process, they can express those at the confirmation hearing. Traditionally, that is the forum for airing those concerns.

Today we "air those concerns" and ask that the Senate reject this confirmation in order to ensure that the candidate selection process is redone in a manner that includes participation by the public.

3. GOVERNOR STEPHENS' APPOINTMENT SHOULD BE REJECTED ON ETHICAL GROUNDS, DUE TO THE PENDING INVESTIGATION OF STEPHENS BY THE COMMISSIONER'S OFFICE.

On June 5, 1992, Commissioner Colburg filed suit in district court against Governor Stephens and the Republican Governors' Association for five separate violations of Montana's election laws, primarily revolving around Stephens exceeding contribution acceptance limits. The suit asked for a minimum judgement against Stephens of \$48,000 and against the RGA of \$24,000.

The case was not resolved before the end of Commissioner Colburg's term of office. Rather than abstaining from making the Commissioner appointment for the clear and very personal conflict of interest it posed, Governor Stephens chose to quickly appoint Mr. Argenbright in November of last year. In effect, then, Mr. Stephens has chosen his own prosecutor. Mr. Argenbright will now have to follow through with the suit, or dismiss it.

Certainly, how Mr. Argenbright will choose to act on the lawsuit is not now known. However, Common Cause feels that the conflict of interest posed by Governor Stephens making the appointment is so strong, that the Senate should reject this confirmation in order to pass on the appointment to Governor Racicot.

* * * * *

4-6-93

SR-6

Madame Chair, members of the Committee, as you consider this appointment, please keep in mind that the Commissioner of Political Practices is NOT an Executive Branch agency head. The Commissioner is not accountable to the Governor, and therefore the Governor cannot be held accountable for his actions. In fact, the Commissioner of Political Practices is accountable only to the public. It is the public's watchdog over the political process.

For this reason, the Commissioner must be able to withstand intense public scrutiny. As the enforcer of our political practices laws, the Commissioner must be uniquely qualified, and beyond reproach. There must be no question in the public's mind that the Commission can and will carry out these responsibilities in a competent, thorough, and impartial manner.

We feel that Mr. Argenbright's appointment -- particularly given the process by which he was appointed -- does not meet these standards. Therefore, we urge this committee and the Senate to reject his confirmation. Once again, we call for the selection process to be redone in a manner that is forthright, thorough, and inclusive of the public whom the Commissioner will represent for the next 6 years.

W. M. VAUGHEY, JR.

P.O. BOX 46
HAVRE. MONTANA 59501-0046

(406) 265-5421

March 22, 1993

SEN. TO STATE SENATE
LETTER NO. 2
DATE 4-6-93
BILL NO. SR6

The Honorable Bob Hockett
Montana State Senate
Capitol Station
Helena, MT 59620

RE: In support of the nomination of Ed Argenbright to serve as
Commissioner of Political Practices

Dear Bob:

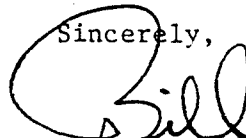
This is written to you because you are my State Senator, but a copy is being directed to Chairman Vaughn and the balance of the State Administration Committee.

I have known Ed Argenbright for 15 years. While admittedly I met him through the Republican Party due to his effort to be elected State Superintendent of Schools, he has never struck me as a strongly partisan person. As a matter of fact, his nature is such that I am certain he would be a fair, evenhanded, Commissioner of Political Practices.

I am prompted to write by a squib in the Daily carrying charges by Kelly Addy. Honest to goodness, Bob, I don't think any of these charges hold water, but I particularly object to one directed to Ed when he served on the State Republican Central Committee. From having served in that body myself, I know that really only the Party Chairman and Chief of Staff pass on the legality of contributions to the state organization received from the national.

I will go a step further by reminding you of the high regard in which Marc Racicot is held from the standpoint of his own personal values. It is inconceivable to me that he would nominate Ed Argenbright for this position were it not the case based on a number of years of observing Ed that he, the Governor, was anything but convinced that Ed Argenbright would make an honest, strictly judicial and unbiased Commissioner of Political Practices. I certainly urge you as my Senator to vote in support of this nomination.

Sincerely,



W. M. Vaughey, Jr.

cc: State Senator Greg Jergeson

✓ Balance of the members of the Senate State Administration Committee

SENATE SECRETARIAT
PAGE NO. 3
DATE 4-6-93
FILE NO. SR6

1290 East 5th street
Libby, MT 59923
March 30, 1993

To: The Honorable Senator Vaughn
From: A. R. "Rocky" Schauer
Re: The appointment of Mr. Ed Argenbright

During my tenure on the Board Of Public Education Mr. Argenbright was Superintendent of Public Instruction. Our board interacted with Mr. Argenbright frequently during those years and I found him to be a capable, caring administrator. While we did not always agree he was well researched in his arguments and when a strong case for or against a proposal was presented he was willing to move his position. I feel that his nomination should go forward and be confirmed.

Sincerely,
A.R. "Rocky" Schauer
A.R. "Rocky" Schauer

*1290 E. 5th
Libby, MT 59923*

DATE 4-6-93

SENATE COMMITTEE ON State Admin.

BILLS BEING HEARD TODAY: SR 6, SR 7

Name	Representing	Bill No.	Check One	
			Support	Oppose
Victoria Braaten				
Mildred Skollev				
Edred Brown				
JAN HOFFMAN	COMMON CAUSE	SR 6		✓
Tom Schneider	MPSA	SR 6	X	
ROBERT EDD LEE			X	
Maria Ombatt Mason				
Kelly Aldy		SR		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY