

IN THE HOUSE OF REPRESENTATIVES

HOUSE RESOLUTION NO. 3

BY STATE AFFAIRS COMMITTEE

A HOUSE RESOLUTION

1 STATING FINDINGS OF THE HOUSE OF REPRESENTATIVES AND PROVIDING FOR THE ADDI-
2 TION OF A NEW RULE 78 TO THE RULES OF THE HOUSE OF REPRESENTATIVES.
3

4 Be It Resolved by the House of Representatives of the State of Idaho:

5 WHEREAS, the House of Representatives deems it necessary and desirable
6 to add a new Rule 78 to the Rules of the House of Representatives.

7 NOW, THEREFORE, BE IT RESOLVED by the members of the House of Represen-
8 tatives, assembled in the First Regular Session of the Sixty-fourth Idaho
9 Legislature, that the Rules of the House of Representatives shall be amended
10 by the addition thereto of a new Rule 78 to read as follows:

11 RULE 78

12 Contest of Election -- Procedures. This Rule governs procedures lead-
13 ing up to and including a hearing on the contest of election. It should be
14 read in conjunction with Chapter 21, Title 34, Idaho Code. For purposes of
15 this Rule, the term "Party" means either the CONTESTEE or the CONTESTOR; the
16 term "Parties" means both.

17 (1) Any proof of the CONTESTEE's or CONTESTOR's legal arguments, in-
18 cluding depositions, affidavits, production of papers, and examination
19 of poll books and ballots (herein "Record") that either CONTESTEE or
20 CONTESTOR desires the House of Representatives to consider in adjudica-
21 tion of a Contest must be completed on or before December 29. CONTESTEE
22 and CONTESTOR's Record must be delivered to the Office of the Secretary
23 of State no later than the close of business on the next business day.
24 Any Record or evidence from the CONTESTEE or CONTESTOR not delivered
25 to the Office of the Secretary of State by that day and time will not be
26 considered by the House of Representatives.

27 (2) The Parties must file a Memorandum that outlines their claims, de-
28 fenses, legal authority, legislative precedent, proposed form of re-
29 lief, and a description of witness fees and discovery costs that are in-
30 curred. The Memorandum must be filed with the Office of the Secretary
31 of State no later than the close of business four (4) business days fol-
32 lowing delivery of the Record to the Office of the Secretary of State as
33 provided in paragraph (1). However, CONTESTEE is not required to file a
34 responsive pleading to the Contest.

35 (3) Any Party may file a Responsive Memorandum. If a Party chooses to
36 file a Responsive Memorandum, it must be filed with the Office of the
37 Secretary of State no later than the close of business on the first day
38 of the next Regular Session.

39 (4) If an unresolved discovery or Record dispute exists and continues
40 between the CONTESTEE and the CONTESTOR, and on motion duly made, the
41 presiding officer or his designee may rule on the dispute. Neither the

1 CONTESTEE nor the CONTESTOR will be granted any additional time beyond
2 December 29 to develop or deliver his Record.

3 (5) Committee hearing procedures. If the House of Representatives
4 refers the Contest of Election to a Standing or Special Committee, the
5 Committee Chairman will notify the Parties of the Committee hearing
6 procedures. The following procedures, subject to the discretion of the
7 Committee Chairman, will govern the hearing:

8 (a) No additional testimony or Record may be presented, taken, or
9 allowed by the Parties beyond the Record delivered to the Office of
10 the Secretary of State as provided in paragraph (1) of this Rule.

11 (b) Neither CONTESTEE nor CONTESTOR may examine or cross-examine
12 any witness that testifies before the Committee. All examination
13 will be performed by Committee members.

14 (c) Pursuant to Section 34-2104, Idaho Code, only the named points
15 in the Notice of Contest of Elections may be argued.

16 (d) The Committee may send for and receive persons, papers, and
17 records, whether written or oral, including from the Office of the
18 Attorney General, other State Elected Officers, State officials,
19 County Elected Officers, County officials, or other witnesses
20 that the Committee determines will reasonably assist the Commit-
21 tee in the performance of its constitutional duty as a "judge of
22 the election, qualifications and returns of its own members," Sec-
23 tion 9, Article III, Idaho Constitution.

24 (e) In all other respects, the Committee will be governed by the
25 rules of the House of Representatives.

26 (6) The Committee may adopt any of the following as part of the hearing
27 procedures:

28 (a) Permit the Parties to have counsel present at Committee meet-
29 ing(s); and

30 (b) Establish a time limit for the CONTESTEE and CONTESTOR to ar-
31 gue their positions to the Committee.

32 (7) Neither CONTESTEE nor CONTESTOR, nor their counsel, may partici-
33 pate in ex parte communication with any member of the Idaho House of Rep-
34 resentatives regarding the merits of the Contest of Election prior to
35 final House of Representatives determination.

36 (8) Service of all Record, Memorandum, Responsive Memorandum, motions,
37 or objections must be made on the other Party as provided in Idaho Rules
38 of Civil Procedure 5(b), excepting subpart 5(b)(2)(D). The Parties must
39 also provide a proof of service as provided by Idaho Rules of Civil Pro-
40 cedure 5(e). The Parties must work in good faith to ensure reasonable
41 and timely service, considering the limited time periods.

42 (9) Nothing in this Rule limits or restricts the House of Representa-
43 tives in the performance of its duties as the judge of the election,
44 qualifications and returns of its members.