

Slush fund means never having to say you're sorry

Marty Trillhaase, Lewiston Tribune

The first thing that pops out at you from Associated Press writer Rebecca Boone's expose on Idaho's Constitutional Defense Fund is how little constitutional defending has been getting done.

The second is Idaho's perfect score - nine lawsuits, nine defeats.

But having a couple million bucks in a political slush fund means never having to say you're sorry - or even having to ask permission before you pull the legal trigger.

Two decades ago, Idaho GOP lawmakers brushed aside Democratic complaints and put \$1 million aside to defend the Gem State against an over-zealous federal bureaucracy.

This fund, said the late Senate President Pro Tem Jerry Twigg, R-Blackfoot, would warn Washington, D.C., against trying to balance the federal budget on the backs of the states - and would be used to defend the 10th Amendment.

State Rep. - and future House Speaker Bruce Newcomb, R-Burley - promised the fund would be used to defend Idaho's prerogatives over water issues and endangered species rights.

It started out on the right foot.

The money helped Gov. Phil Batt hold the U.S. Department of Energy at bay long enough to work out a court-ordered settlement mandating cleanup deadlines at the Idaho National Laboratory outside Idaho Falls.

But what has the all-GOP leadership done with it since?

Challenging how the federal government attaches strings to its highway dollars?

No.

Arguing against endangered species provisions?

No.

Opposing No Child Left Behind mandates on Idaho schools?

No.

As Boone reported, the state has burned through more than \$2.1 million fighting the culture wars in the courts. As the losing side, Idaho has been obligated to pay court-mandated fees to the lawyers on the winning side.

Those cases involve:

- Abortion - \$920,000. Most of this compensated attorneys who successfully challenged Idaho's unconstitutional parental consent and fetal pain statutes.
- Gay rights - \$751,000. Most of this went toward lawyers who represented four lesbian couples who overturned Idaho's unconstitutional ban on same-sex marriage. But Gov. C.L. "Butch" Otter insisted on hiring outside lawyers on the case, adding \$53,000 to the costs. Another \$70,000 went to lawyers who represented a woman who challenged Idaho's unconstitutional provisions forbidding her from being buried with her late wife in the Idaho State Veterans Cemetery.
- Political opponents - \$382,000 and counting. The state paid out \$155,000 trying unsuccessfully to place obstacles in the path of initiative campaigns. It spent another \$137,000 in a failed attempt to blunt the free speech rights of the Occupy Boise movement. Still unknown is how much Idaho will shell out to lawyers who successfully blocked the so-called "ag-gag" law that would have criminalized blowing the whistle on animal abuse at agricultural operations.
- Organized labor - \$75,000 and counting. The courts said Idaho lawmakers could not restrict the ability of members of unions, such as the Idaho Education Association, from voluntarily contributing toward political activity. Also tossed aside by the courts was an Idaho law that sought to stop unions from engaging in "market recovery" programs in which union dues are used to subsidize bids by union contracts. Still unknown is how much that case will cost Idaho.

That record is less about defending the state constitution and more about suppressing the rights of Idaho citizens under the U.S. Constitution.

Not that they haven't been warned.

Much of the time, Idaho lawmakers have ignored the Idaho attorney general's advice and proceeded to pass laws that were virtually certain to be overturned in the courts.

They might have paid more attention had there been no fund to insulate them from the consequences of their foolish choices. Had there been no fund, governors and lawmakers would have to pay the lawyers out of their own budgets.

Instead, Otter intends to ask lawmakers to replenish this slush fund next year - presumably to pay more lawyers who manage to overturn more unconstitutional state laws.

But when nobody is accountable, what else would you expect?