

Testimony of
Richard D. Fry, Esq.
for the
Standing Committee on Education
of the
Kansas House

Regarding
House Bill 2099
(Amending the Student Data Privacy Act)

Hearing:
Friday, February 13, 2015, 1:30 PM, Room 112 N.

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*"The right to be left alone -- the most comprehensive of rights,
and the right most valued by a free people."
- Justice Louis Brandeis, Olmstead v. U.S. (1928).*

*"There are men in all ages who mean to govern well, but they mean to govern. They
promise to be good masters, but they mean to be masters"
— Daniel Webster*

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Position Statement

I am strongly opposed to the amendments proposed to the **Kansas Student Data Privacy Act** (SDPA) as such will lessen the protections provided in the original 2014 act to protect minor students and their parents from abuse to and invasion of the privacy of citizens and minors in particular, regarding their most private thoughts, beliefs and actions. Please oppose this bill.

Memorandum of Testimony

Legislative Background / Issue

This session (2015) the House Education Committee submitted a bill (HB-2099) by which to amend KSA §61-6219 by adding subsections which create an exception to the "written permission" of parents protection placed in the original bill only last session. The original bill required "written permission" by the parents before certain information could be collected. Under HB-2099's exception it puts the burden on the parents to "opt out" of participating in such data collection i.e., there is an automatic trigger.

Scope of Information Collected / Disseminated

The information collected is very broad and very, very personal.

Such amendment will make it easier to secure and provides less protection for student data *"...on issues such as the student's personal beliefs or practices on issues such as sex, family life, morality or religion..."* and about the *"...student's parents' or guardians' beliefs and practices on issues such as sex, family life, morality or religion..."*.

The phrase *"on issues such as"* is political speak for "and a lot of other un-named issues" such as political views and no doubt about guns and gun ownership.

One widely used survey promoted by the "Communities that Care", locally known as "Kansas Communities that Care" (KCTC), is called the Kansas Communities that Care Student Data Survey.ⁱ It is administrated through the Greenbush - Southeast

Kansas Educational Center (Greenbush). In a video on Greenbush's webpage it asks:

"How well do we really know our students? How do we know what goes on outside of school? How do we know how to help them if we do not have a full picture of their challenges as well as the positive influences in their lives?" ⁱⁱ

It is not the government's business to know what is going on in virtually every aspect of our lives including that of our children's life "away from school." We, including our children, are free and sovereign citizens and we have a right to our privacy including about what we think, feel, believe and perceive.

The government has no business having *"a full picture of [our children's] challenges as well as the positive influences in their lives..."* It is not the government's business to know what *"...the student's personal beliefs or practices on issues such as sex, family life, morality or religion..."* and about the *"...student's parents' or guardians' beliefs and practices on issues such as sex, family life, morality or religion..."*

For the government to spy on families through the eyes and ears of the children in the family sounds very Orwellian if not Nazisk. This sounds like the very dangerous collectivist philosophy of "it takes a village to raise a child."

It is the parents' moral duty to raise and direct their children. It is the parents' moral duty to determine what is and is not a "positive influence" on their children's lives.

Who exactly is the "we" to which Greenbush is referring when it says *"How well do we really know...?"* Is "we" Greenbush"? What right does Greenbush have to pry into the innermost thoughts of our children?

Later in the Greenbush video we find out the data is used / shared by:

A "**Community Coalition**", ostensibly a non-governmental organization (NGO), a "**Regional Prevention Center**" (possibly another NGO),

The video also says "It has publicly available state and county data and password protected district and building data...", so **state agencies, county departments and school districts** (emphasis added). A school principle in the video says "we

share the data with our **staff**, with our **parents**, with our **Site Council**, and with our [inaudible] **School Committee....**"

The SDPA says and implies that the information collected might go to:

A "**school district, the department, the state board of education, state agency, or other entity or third party** given access to student data..." ⁱⁱⁱ It further notes that the "state board" has to send a written report to the Governor and Legislature regarding "...changes to **federal reporting requirements** by the secretary of the United States department of education." So the federal **Department of Education**, "... for the **statewide longitudinal student data system...**" (Who has access to this?) ^{iv}

(The "statewide longitudinal student data system" is actually a federally promoted program related to the federal "Common Core Standards." It is a system to track our children virtually from cradle to grave.)

The reality is we do not know who all will receive this data, what they will do with it, how long they will keep it, or how secure they will keep it. The Kansas legislature simply expects the citizens to trust how the government will handle this data, and trust those non-governmental entities and "third parties" because the Kansas Legislature has [blindly] trusted them. In some cases the Kansas Legislature trusts some because the federal government "trusts" them. Yet many of these "other entities" are not yet on board and many are not disclosed.

It puts a twist on the old Russian adage "Trust, but do not bother to verify."

The collection of such data is not within the authority of the government and trusting the government is not a duty of citizenship, at least in America, at least not as of now. In America, the citizens' duty is to look upon the government with a suspicious and jaundiced eye.

Invasion of Citizens' Privacy

HB-2099 makes a bad situation worse. This bill seeks to lessen the protections from abuse to, and invasion of the privacy of, citizens and minors in particular, which are now provided in the current KSDP. KSDP currently requires that before such information can be gathered, at school and out of the presence of the child's parents, the parents must be given notice of the intent to collect the data and require the parents to "opt in" by providing "written permission".

In essence, KSDP is requiring minor children and their parents to involuntarily or unwittingly participate in a psychological and / or sociological research or investigative program initiative and / or funded by the federal government.

Our children do not belong to the village and certainly not a village operated by the government and NGOs. This village has no right to pry.

The government and its schools have no authority to data mine our kids minds. This is an attempt to not only pry into the psyche of our children but to window peek into a family's with the eyes of their own children. It's another "See something, say something" to get family members to spy on each other. This is patently offensive and un-American!

It has been reported around the country that some of these "surveys" have an agenda including to spread political propaganda and to indoctrinate the kids.

As to the Communities That Care (CTC), the University of Kansas has reported the following problems:^v

- The CTC approach is only inclusive and participatory for certain people.
- CTC allows the choice of only a finite number of approaches.
- Choosing from among best practices may encourage communities merely to follow directions, rather than throwing heart and soul into the effort.
- CTC is narrowly focused on youth and specific behaviors.
- CTC is, to a certain extent, based on assumptions.
- CTC has a service to sell.

Bait and Switch on Parents Protection

This is an incremental bait and switch ploy being used by those promoting HB-2099. No doubt the "written permission" protection provision was placed in the original bill, when it was passed last session, due to the problems that arose around the nation with similar "opt out" provisions. And, no doubt part of the sell job on the original act was "yes we are prying into your personal information but we will protect such information. And, we won't collect it unless we are absolutely sure we have the parents consent."

As with other locations around the country, if this change is made, Kansas citizens will find out that their notice to "opt out" was not sent, was lost in the mail, was overlooked" and the most private information about their child and themselves has been collected.

The victims' only remedy for such governmental misconduct by an infringement of their most personal data will be to hope that certain specified governmental officers will seek a remedy, on the minor child's and parents' behalf, against other governmental entities.

Parents and Minor Child Left without a Remedy for Governmental Violation of their Privacy

In fact, the original act is deficient in that, although the infringement will occur to one of the most vulnerable members of our society, minor children, and their parents, neither the child nor the parents have a cause of action to stop, or remediate the damage themselves. Under the original act only the Kansas Attorney General or a District Attorney may file an action for the violation of this act.^{vi} And then, whether the Attorney General or a District Attorney actually files a suit, is totally up to their discretion. The law says that these governmental officers "may" file an action but does not require them to file the action that most likely will be against another governmental entity. If they refuse to file an action the citizen and minor child are left out in the cold.

Worse yet, the law only allows these governmental officers to seek "*...injunctive relief to enjoin ... from disclosing any student data...*" They do not have the ability to recall this highly private information even in the hands of an inappropriate party but can only have a court tell such entity not to further disclose such information.

Any personal embarrassment or other damage to the minor child or the parents is just "**too bad, so sad.**"

The amendment proposed by HB-2099 makes the likelihood of this scenario exponentially higher.

Propaganda and Indoctrination

Issues with such surveys and data collection are not limited to what information they gather but what information they subtly distribute. For instance, some have said that the Communities That Care carry an anti-firearms message.^{vii} One opponent to CTC noted^{viii}:

"For example, on the risk factors page, it places drug abuse and alcohol abuse and availability of firearms in the same category, all labeled as risk factors for behavior problems. In Heber, a lot of teenagers shoot guns but they aren't in gangs; they're hunting deer or recreationally shooting targets. There is a disconnect there. I quote two cited risk factors: one,

"Availability of firearms: Statistics show that the more available firearms are in a community, the higher the violent crime rates tend to be, and, conversely, fewer firearms in a community is correlated with lower violent crime rates." [Yikes. Where do they get those nutty statistics? Ask a Swiss citizen!]

The Real Motive: "Federal Dollars"

What is this data collection really about? It is interesting to note that this law is in chapter 72, "Schools", Article 62 "Federal Funds", and Sections 15- 23 (\$6215, etc.), "Student Data Privacy Act. Schools - Federal Funds - Student Data, says it all.

So this is really an issue of invading the privacy of our students and their parents to obtain "federal dollars". To say it in a different way, it's about the willingness of some in the Kansas Legislature to sell out the rights (privacy) of Kansas citizens at the behest of the federal government in exchange for "federal dollars".

This data collection was dreamed up, initiated and appropriated by those politicians in Washington, D.C.

As one NGO (Community Coalition) in the Greenbush video said:

*"The data reports are extremely useful to us. We use it in grant writing and grant reporting. **We just received a major drug free community federal grant because our school district takes the KCTC survey.**"^{ix}*

As the voice-over said:

*"Schools like yours, and others who help children, rely upon the data to plan programs and activities and **to secure funding.**"*

With the emphasis on "funding".

A Free Federal Lunch

Greenbush stresses that the schools do not pay the cost for its services in administering and analyzing the data collected survey. A school Superintendant says on the video:

*"Here's an opportunity [with the survey] for **free, it doesn't cost a dime** to be able to look at what is happening with things that are going to directly affect these kids lives."*

So perhaps we have finally found the proverbial "free lunch" that is not supposed to exist.

No, the reality of it is, though it escapes the Superintendent, and some of our legislators, "We the People" are footing the bill with our tax money. There is no such thing as "federal dollars"; it is all the citizens' dollars. The gold at the end of the federal rainbow is merely fool's gold.

Federal Strings: A Federal Noose

And, to be sure, there are federal strings attached to those federal dollars. The SDPA refers to such when it says the state board has to report to the Governor about: "...changes to **federal reporting requirements** by the secretary of the United States department of education."

Wikipedia describes "Communities That Care" as:

"Communities That Care (CTC) is a program of the [Center for Substance Abuse Prevention](#) (CSAP) in the office of the United States Government's [Substance Abuse and Mental Health Services Administration](#) (SAMHSA). CTC is a coalition-based prevention operating system that uses a [public health](#) approach to prevent youth problem behaviors such as [violence](#), [delinquency](#), [school drop out](#) and [substance abuse](#).^[2]"

Lack of Transparency Regarding HB-2099

A foundational pillar to preserving the citizens Liberty is their ability to know what their "public servants" are doing. Unless the "public servants" actions are disclosed the citizens cannot fulfill their moral and patriotic duty to hold public officials accountable.

Such failure of disclosure occurred with HB-2099 as it is being offered behind a vial of anonymity. It indicates it is being offered by the "Education Committee". However, we know that the members of the Education Committee did not get together and draft this bill. Instead one or more individual representatives brought it to the Committee. And, likely such bill was introduced at the behest of a special interest group through a paid lobbyist.

In other words, our "public servants", as to HB-2099, are putting the protection of a special interest group and the political career of one of their colleagues, ahead of the citizens' right to know and to have their rights protected.

Who will the citizens hold accountable for this failure in transparency? Should it be the Committee chair mentor, who could prohibit anonymous bills, or all its members?

Conclusion

HB 2099's amendments to the SDPA only make a flawed law worse by increasing the potential for the improper (wrongful) collection of very private and personal data about minor students and their families. It does nothing to address the fact that the SSPA offers no legal remedy to the minor citizen and his /her parents who have their privacy invaded by governmental action.

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ⁱ Transcript of Video on homepage of Greenbush website,
<http://www.greenbush.org/communities-that-care-survey.html>

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<http://www.greenbush.org/communities-that-care-survey.html>

ⁱⁱⁱ KSA 72-6221

^{iv} KSA 72-6223

^v **University of Kansas**, Community Tool box, Chap. 2 Sect. 8 . **Communities That Care**
<http://ctb.ku.edu/en/table-of-contents/overview/models-for-community-health-and-development/communities-that-care/main>

^{vi} KSA 72-6220. Enforcement of act. The **attorney general** or any **district attorney may enforce** the provisions of K.S.A. 2014 Supp. **72-6215** through **72-6222**, and amendments thereto, by bringing an action in a court of competent jurisdiction, and **may seek injunctive relief** to enjoin any educational agency, any employee or agent thereof, or any other entity in possession of student data from disclosing any student data in violation of the provisions of K.S.A. 2014 Supp. **72-6215** through **72-6222**, and amendments thereto.
History: L. 2014, ch. 124, § 6; July 1.

^{vii} **Common Core: Education Without Representation, What is “Communities That Care”**
<https://whatiscommoncore.wordpress.com/2012/08/30/what-is-communities-that-care/>

^{viii} Common Core Education Without Representation, 10 Reasons Not to Adopt Communities That Care
<https://whatiscommoncore.wordpress.com/tag/what-is-communities-that-care/>

^{ix} Transcript of Video on homepage of Greenbush website: Video at
<http://www.greenbush.org/communities-that-care-survey.html>