

Approved 2-26-85  
Date

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

The meeting was called to order by Senator Gordon at  
Chairperson

1:30 ~~xxx~~/p.m. on February 13, 19 85 in room 522-S of the Capitol.

All members were present ~~except~~

Committee staff present:

Myrta Anderson - Legislative Research Department  
Ramon Powers - Legislative Research Department  
Theresa Kiernan - Revisor of Statutes

Conferees appearing before the committee:

Carol Williams - Kansas Public Disclosure Commission  
Jim Edwards - Kansas Chamber of Commerce Association

The meeting was called to order by the Chairman for the purpose of conducting hearings on SB 135 and SB 137.

Myrta Anderson, Legislative Research, briefed the committee on SB 135. Ms. Anderson stated that the bill amends K.S.A. 25-4153 to transfer the language making it a restriction for certain corporations and stockholders from contributing to either aid or oppose candidates or political parties to the campaign finance statutes. She further pointed out that Section 2 of the bill defines corrupt political advertising and provides that it is a Class C misdemeanor.

Carol Williams of the Kansas Public Disclosure Commission explained the bill, SB 135, and also the proposed amendments as set out in Attachment No. 1. Ms. Williams said the commission would like to be the agency that enforces this statute rather than have the Attorney General enforce this statute and this bill would give them that authority. Committee discussion centered on the language and definition of the words on page 2, line 64, to "aid, injure or defeat any candidate for nomination or election to public office" and asked that the Commission seek an opinion as to the clarification of that language. In answer to a question in regard to the reference of the misdemeanor charge Ms. Williams of the Public Disclosure Commission is to find out from the Attorney General as to how many cases have been prosecuted because of the misdemeanor charge in the bill which would be helpful in determining whether or not it would be wise to put this statute in the hands of the commission. Ms. Williams said that the bill as now amended contains only the new proposed section 2 and part subsection (c) of section 3.

In explaining SB 137 Myrta Anderson said the bill provides that treasurers for a campaign who are required to file a copy of the financial report with the Secretary of State shall also file a copy of the report in the office of the county election officer.

Carol Williams of the Kansas Public Disclosure Commission said that SB 137 was recommended by their agency and said that presently all finance reports from campaigns were filed with the Secretary of States office only.

Senate Bill 136 and Senate Bill 138. The Committee turned its attention to these two bills on which hearings had been held at the last meeting but no action was taken at that time.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

room 522-S, Statehouse, at 1:30 ~~am~~/p.m. on February 13, 1985

Jim Edwards, KCCI, who requested the introduction of SB138 distributed a handout on information pertaining to campaign contributions of other states. (Attachment No. 2).

Senator Hoferer moved to recommend SB 138 favorably for passage to the Senate. Senator Reilly seconded the motion and the motion carried.

Senator Hoferer made the motion that SB 136 be recommended unfavorably for passage to the Senate. Senator Vidricksen seconded the motion. Motion carried.

On motion of Senator Norvell and second by Senator Martin the minutes of February 6 were approved.

Meeting was adjourned.

Attachments:

- Attachment #1: Amended SB 135
- Attachment #2 Campaign Contributions
- Attachment #3 Attorney General Opinion
- Attachment #4 Guest List
- Attachment #5 SB 136 Committee Report
- Attachment #6 SB 138 Committee Report

Feb 13, 1985

Name	Representing
DAN LAGUE	K.A.N.U. RADIO
LYNN HELLOBUST	
Jim Edwards	KCCI
C Williams	KPDC
Jana Atchison	KPDC
Carol Wright	KCUL
She Ellen Boyd	KCUK

Attachment # 4  
S. Elect. 2/13/85

Attachment No. 1

Session of 1985

## SENATE BILL No. 135

By Committee on Elections

2-1

0017 AN ACT concerning elections; relating to campaign finance ~~and~~  
0018 ~~advertising~~; amending K.S.A. ~~25-4153~~, 25-4156, ~~25-4169~~ and  
0019 25-4170 and repealing the existing sections; also repealing  
0020 ~~K.S.A. 25-2407 and~~ K.S.A. 1984 Supp. 25-1709.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 25-4153 is hereby amended to read as fol-  
0023 lows. 25-4153. (a) The aggregate amount contributed to a can-  
0024 didate and such candidate's candidate committee and to all party  
0025 committees and political committees and dedicated to such can-  
0026 didate's campaign, by any person, except a party committee, the  
0027 candidate or the candidate's spouse, shall not exceed the fol-  
0028 lowing:

0029 (1) For the pair of offices of governor and lieutenant governor  
0030 and for other state officers elected from the state as a whole,  
0031 \$3,000 for each primary election (or in lieu thereof a caucus or  
0032 convention of a political party), and an equal amount for each  
0033 general election;

0034 (2) for the office of state senator, member of the house of  
0035 representatives, district judge, associate district judge, district  
0036 magistrate judge, district attorney or member of the state board of  
0037 education, \$750 for each primary election (or in lieu thereof a  
0038 caucus or convention of a political party) and an equal amount for  
0039 each general election.

0040 (b) For the purposes of this section, the face value of a loan at  
0041 the end of the period of time allocable to the primary or general  
0042 election is the amount subject to the limitations of this section. A  
0043 loan in excess of the limits herein provided may be made during  
0044 the allocable period if such loan is reduced to the permissible

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0046 person making such loan, at the end of such allocable period.  
 0047 ~~(c) No corporation carrying on the business of a bank, trust,~~  
 0048 ~~surety, indemnity, safe deposit, insurance, railroad, street rail-~~  
 0049 ~~way, telegraph, telephone, gas, electric light, heat, power, or~~  
 0050 ~~water company, or any company having the right to take or~~  
 0051 ~~condemn land or to exercise franchises in public ways granted~~  
 0052 ~~by the state or by any county or city, and no trustee or trustees~~  
 0053 ~~owning or holding the majority of the stock of any such corpo-~~  
 0054 ~~ration, shall pay or contribute in order to aid, promote, or~~  
 0055 ~~prevent the nomination or election of any person to public~~  
 0056 ~~office, or in order to aid, promote or antagonize the interests of~~  
 0057 ~~any political party. No person shall solicit or receive such~~  
 0058 ~~payment or contribution from such corporation or such holders~~  
 0059 ~~of stock.~~

Section 1.

0060 ~~Sec. 2.~~ K.S.A. 25-4156 is hereby amended to read as follows:

0061 25-4156. (a) Corrupt political advertising is:

0062 (1) Publishing or causing to be published in a newspaper or  
 0063 other periodical any paid matter which is designed or tends to  
 0064 aid, injure or defeat any candidate for nomination or election to  
 0065 public office, unless such matter is followed by the word "ad-  
 0066 vertisement" or the abbreviation "adv." in a separate line to-  
 0067 gether with the name of the chairman of the political or other  
 0068 organization inserting the same or the name of the person who is  
 0069 responsible therefor; or

state

0070 (2) broadcasting or causing to be broadcast by any radio or  
 0071 television station any paid matter which is designed or tends to  
 0072 aid, injure or defeat any candidate for nomination or election to  
 0073 public office, unless such matter is followed by a statement that  
 0074 the preceding was an advertisement together with the name of  
 0075 the chairman of the political or other organization sponsoring  
 0076 the same or the name of the person who is responsible therefor;

state

0077 or

0078 ~~(3) publishing or causing to be published in a newspaper or~~  
 0079 ~~other periodical any paid matter which is intended to influence~~  
 0080 ~~the vote of any person or persons for or against any question~~  
 0081 ~~submitted for a proposition to amend the constitution or to~~



0083 ~~at an election, unless such matter is followed by the word~~  
0084 ~~"advertisement" or the abbreviation "adv." in a separate line~~  
0085 ~~together with the name of the chairman of the political or other~~  
0086 ~~organization inserting the same or the name of the person who is~~  
0087 ~~responsible therefor; or~~

0088 ~~(4) broadcasting or causing to be broadcast by any radio or~~  
0089 ~~television station any paid matter which is intended to influence~~  
0090 ~~the vote of any person or persons for or against any question~~  
0091 ~~submitted for a proposition to amend the constitution or to~~  
0092 ~~authorize the issuance of bonds or any other question submitted~~  
0093 ~~at an election, unless such matter is followed by the statement~~  
0094 ~~that the preceding was an advertisement together with the name~~  
0095 ~~of the chairman of the political or other organization sponsoring~~  
0096 ~~the same or the name of the person who is responsible therefor.~~

0097 ~~(b) Whenever any person sells space in any newspaper,~~  
0098 ~~magazine or other periodical to a candidate or to a candidate~~  
0099 ~~committee, party committee or political committee, the charge~~  
0100 ~~made for the use of such space shall not exceed the charges made~~  
0101 ~~for comparable use of such space for other purposes.~~

0102 ~~(c) Corrupt political advertising is a class C misdemeanor.~~

0103 ~~Sec. 3. K.S.A. 25-4169 is hereby amended to read as follows:~~  
0104 ~~25-4169. Charging an excessive amount for political advertising~~  
0105 ~~is intentionally charging an amount greater than that authorized~~  
0106 ~~by subsection (b) of K.S.A. 25-4156, and amendments thereto.~~

0107 ~~Charging an excessive amount for political advertising is a~~  
0108 ~~class A misdemeanor.~~

0109 ~~Sec. 4. K.S.A. 25-4170 is hereby amended to read as follows:~~  
0110 ~~25-4170. ~~Excessive Prohibited~~ campaign contribution is: (a) In-~~  
0111 ~~tentionally making any contribution in violation of any provision~~  
0112 ~~of K.S.A. 25-4153, and amendments thereto, or~~

0113 ~~(b) intentionally accepting any contribution made in viola-~~  
0114 ~~tion of any provision of K.S.A. 25-4153, and amendments thereto.~~

0115 ~~~~Excessive Prohibited~~ campaign contribution is a class A mis-~~  
0116 ~~demeanor.~~

0117 ~~Sec. 5. K.S.A. 25-2407, 25-4153, 25-4156, 25-4169, 25-4170~~  
0118 ~~and K.S.A. 1984 Supp. 25-1709 are hereby repealed.~~

Sec. 2

Sec. 3

Sec. 4



*Edwards*

# CAMPAIGN CONTRIBUTIONS

	CORPORATIONS		REG. INDUSTRIES		UNIONS	
	YES	NO	YES	NO	YES	NO
ALABAMA	X			X	X	
ALASKA	X		X		X	
ARIZONA		X		X		X
ARKANSAS	X		X		X	
CALIFORNIA	X		X		X	
COLORADO	X		X		X	
CONNECTICUT		X		X		X
DELAWARE	X		X		X	
FLORIDA	X		X		X	
GEORGIA	X			X	X	
HAWAII	X		X		X	
IDAHO	X		X		X	
ILLINOIS	X		X	(INS, BANKS, RAC)	X	
INDIANA	X		X		X	
IOWA		X		X	X	
KANSAS	X			X	X	
KENTUCKY		X		X	X	
LOUISIANA	X		X		X	
MAINE	X		X		X	
MARYLAND	X		X		X	
MASSACHUSETTS		X		X	X	
MICHIGAN		X		X	X	
MINNESOTA		X		X	X	
MISSISSIPPI	X		X		X	
MISSOURI	X		X		X	
MONTANA	X			X	X	
NEBRASKA	X		X		X	
NEVADA	X		X		X	
NEW HAMPSHIRE		X		X		X
NEW JERSEY	X			X	X	
NEW MEXICO	X		X	(INS)	X	
NEW YORK	X		X		X	
NORTH CAROLINA		X		X		X
NORTH DAKOTA		X		X	X	
OHIO		X		X	X	
OKLAHOMA		X		X	X	
OREGON	X		X		X	
PENNSYLVANIA		X		X		X
RHODE ISLAND	X		X		X	
SOUTH CAROLINA	X		X		X	
SOUTH DAKOTA		X		X		X
TENNESSEE		X		X	X	
TEXAS		X		X		X
UTAH	X		X		X	
VERMONT	X		X		X	
VIRGINIA	X		X		X	
WASHINGTON	X		X		X	
WEST VIRGINIA		X		X	X	
WISCONSIN		X		X	X	
WYOMING		X		X		X

31      19      26      24      42      8

SOURCE: STATE AND FEDERAL ASSOCIATES EXECUTIVE HANDBOOK ON POLITICAL CONTRIBUTIONS

*Attachment # 2  
2/13/85 S. Elect.*



RECEIVED  
MAR 22 1983  
KANSAS PUBLIC  
DISCLOSURE  
COMMISSION

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL  
2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

December 30, 1982

MAIN PHONE (913) 296-2215  
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 82- 280

Jerry L. Harper  
Douglas County District Attorney  
Judicial and Law Enforcement Center  
Lawrence, Kansas 66044

Re: Elections -- Corrupt Practices -- Corporate  
Contributions

Synopsis: K.S.A. 25-1709 (as amended by L. 1982, ch. 156, §1) is not unconstitutional as violative of the "free speech" clause of First Amendment to the U.S. Constitution. Moreover, a recall election is a question submitted election to which 25-1709 no longer applies. Finally, savings and loan associations are subject to the provisions of K.S.A. 25-1709, as amended, since for purposes of that section, they are "carrying on the business of a bank." Cited herein: K.S.A. 1981 Supp. 9-701, K.S.A. 9-702, 9-1101, 17-5101, 17-5501, 25-1709 (as amended by L. 1982, ch. 156, §1), 25-1710, 25-2503, 25-4301, 25-4314, 25-4318, 77-201, U.S. Const., Amend. I.

\* \* \*

Dear Mr. Harper:

You request the opinion of this office regarding the constitutionality and application of K.S.A. 25-1709, an act which prohibits certain political contributions by corporations engaged in certain regulated industries. We will respond to each of your inquiries in the order in which they were presented.

First, you ask:

"In light of the U.S. Supreme Court decisions in 1st National Bank of Boston v. Bellotti, 435 U.S. 765 (1978) and Buckley vs. Valeo,

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424 U.S. 1 (1976), is the absolute prohibition of K.S.A. 25-1709 on corporate contribution for the purpose of aiding, promoting or preventing the nomination or election of any person to public office constitutionally permissible?"

We begin our discussion with a brief history of K.S.A. 25-1709. Originally enacted in 1911 [L. 1911, ch. 137, §3], this statute reads:

"No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, or water company, or any company having the right to take or condemn land or to exercise franchises in public ways granted by the state or by any county or city, and no trustee or trustees owning or holding the majority of the stock of such corporation, shall pay or contribute in order to aid, promote, or prevent the nomination or election of any person to public office, or in order to aid, promote or antagonize the interests of any political party [or to influence or affect the vote on any question submitted to the voters]. No person shall solicit or receive such payment or contribution from such corporation or such holders of stock."

The bracketed language was deleted by the 1982 Kansas Legislature [L. 1982, ch. 156, §1]; however, the invalidity of this portion of the statute was determined in 1978. Attorney General Schneider, relying upon First National Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978), concluded the prohibition against corporate contributions on question submitted elections was unconstitutional and therefore unenforceable. Kan. Att'y Gen. Op. No. 78-214. The Attorney General noted that the remaining prohibitions of 25-1709 were not called into question by the Bellotti decision and are enforceable. Id. at 3. You now express concern that the remaining restrictions of the Kansas statute may be unconstitutional in view of Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). In that case, the U.S. Supreme Court, in a plurality decision, struck down portions of the Federal Election Campaign Act which limited independent expenditures of moneys by individuals and groups on behalf of political candidates for federal office. While upholding portions of the Act, including some limitations on

political contributions, the Court based its decision regarding independent expenditures upon the "free speech" clause of the First Amendment to the U.S. Constitution.

For a number of reasons we do not believe Buckley requires us to declare 25-1709 unconstitutional. Statutes are presumed to be constitutional [State ex rel., Stephan v. Martin, 230 Kan. 747, Syl. ¶2 (1982)], and if there is a way to construe a statute as constitutional, that should be done. Board of Greenwood County Comm'rs v. Nodel, 228 Kan. 469, Syl. ¶1 (1980). Noting that 25-1709 forbids certain corporations to "pay or contribute in order to aid, promote, or prevent the nomination or election of any person to public office," such language may be construed as restricting contributions to others, particularly the political candidate or his or her election committee. It does not have to be interpreted as restricting expenditures for purposes of making direct speech for or against a political candidate. In other words, restrictions on expenditures for direct speech are a different matter than restrictions involving "speech by someone other than the contributor." Buckley at 21.

In addition, Bellotti (decided after Buckley) specifically recognized that a state prohibition restricted to certain regulated corporations and applying to elections for public office was not necessarily unconstitutional. The Bellotti court stated in pertinent part:

" . . . §8 also proscribes corporate contributions or expenditures 'for the purpose of aiding, promoting, or preventing the nomination or election of any person to public office, or aiding, promoting or antagonizing the interests of any political party.' [See for comparison K.S.A. 25-1709 as amended by Ch. 156, 1982 Session Laws.] In this respect, the statute is not unlike many other state and federal laws regulating corporate participation in partisan candidate elections. Appellants do not challenge the constitutionality of laws prohibiting or limiting corporate contributions to political candidates or committees, or other means of influencing candidate election. [Citations omitted.] About half of these laws . . . do not apply to referendum votes. . . .

"The overriding concern behind the enactment of [such] statutes . . . was the problem of corruption of elected representatives through the creation of political debts. [Citations

omitted.] The importance of the governmental interest in preventing this occurrence has never been doubted. [O]ur consideration of a corporation's right to speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office." Bellotti at 787, fn. 26.  
(Emphasis added.)

Other courts have recognized the distinction between referendum votes and elections. See, Let's Help Florida v. McCrary, 621 F.2d 195, 200 (5th Cir. 1980); C & C Plywood Corp. v. Hanson, 583 F.2d 421, 424-25 (9th Cir. 1978).

It is to be remembered that Buckley concerned a federal statute placing a blanket limitation on personal and corporate contributions, both direct and indirect. That case, in our opinion, cannot stand for the proposition that a state may not restrict speech of certain corporations or restrict expenditures for other than direct speech. Either may be permissible.

Therefore, in our opinion, K.S.A. 25-1709 (as amended) is not unconstitutional.

You inquire next:

"Does an election to recall a Lawrence city commissioner come within the ambit of the conduct intended to be prohibited by the phrase 'nomination or election of any person to public office' or with the ambit of the phrase 'any question submitted to the voters' for purposes of K.S.A. 25-1709?"

Recall elections for local officers in this state are governed by the terms of K.S.A. 25-4301 et seq., specifically K.S.A. 25-4318. We note that K.S.A. 25-4314 provides that "[e]xcept as otherwise specifically provided by this act, laws applicable to question submitted elections shall apply to elections held under this section." We note also that the recall ballot itself indicates that a question is being submitted to the voters. See K.S.A. 25-4314. Consistent with this, K.S.A. 25-2503, in defining "question submitted elections," clearly distinguishes "city election."

Therefore, we are of the opinion that a recall election is a "question submitted election" as that term is defined by K.S.A. 25-2503. Such election is not held for the "nomination or election of any person to public office" as that phrase is used in K.S.A. 25-1709. Since K.S.A. 25-1709 was determined



to be unconstitutional as applied to question submitted elections and has since been amended so as not to apply to such elections, contributions by corporations covered by 25-1709 are not prohibited in such elections.

Finally, you inquire whether a savings and loan institution is a "corporation carrying on the business of a bank" for purposes of K.S.A. 25-1709.

In Kansas, state banks are incorporated under K.S.A. 1981 Supp. 9-701 et seq., and savings and loan associations are governed by K.S.A. 17-5101 et seq. We note, however, that the language of K.S.A. 25-1709 is not limited to "banks" as defined in K.S.A. 1981 Supp. 9-701; rather, the Act applies to any corporation "carrying on the business of a bank." According to K.S.A. 77-201 Second:

"Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such peculiar and appropriate meaning."

In Kansas Attorney General Opinion No. 81-177 this office considered, at length, the business of banking. In that opinion, we concluded that a wholesale company accepting deposits from its employees was engaged in the business of banking for purposes of the banking code. And in State of Kansas v. Hayes, 62 F.2d 597 (1932), the Tenth Circuit Court of Appeals held that a trust company having certain powers of a bank, especially the holding of public funds, was not subject to the bankruptcy laws since banks were excepted from the Bankruptcy Act. In that opinion, the Court said, quoting Sterling v. Tatum, 5 Boyce (28 Del.) 409, 94 A. 176, 182:

"As a general proposition it is unquestionably true that the investing of a corporation with banking powers makes it a bank, no matter by what name it is called. Calling an institution a bank does not make it a bank in legal contemplation if it is not given the powers of a bank. And conversely, calling an institution a trust company does not prevent its being a bank within the meaning of the law, if it possesses and exercises all the powers of a bank."

Similarly, a savings and loan association which received deposits of money from the general public, permitted withdrawals

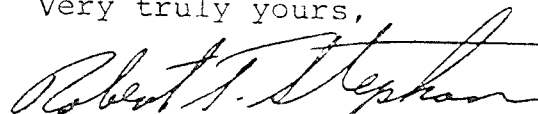
and paid interest on deposits was a bank within state statute governing banks. First Federal Sav. & L. Ass'n of Puerto Rico v. Zequeira, 305 F.Supp. 37 (1969).

Although regulated by different state boards, banks and savings and loans associations are engaged in regulated industries which may conduct business in this state only with state authorization. Likewise, state banking corporations and savings and loan corporations have many similar, if not identical, powers. For example, both receive deposits or investments of money from the general public and pay interest or dividends thereon. See K.S.A. 9-1101(1) and 17-5501(g). Both have authority to make loans for a variety of purposes. K.S.A. 9-1101(4) and K.S.A. 17-5501(h), (i), (l) and (w).

We note further that "banking" is defined in K.S.A. 9-702 which excludes, specifically, building and savings and loan associations along with national banks, credit unions and certain other regulated financial institutions. But for this specific exclusion from the state banking code, savings and loan associations would most likely be "amenable" to the provisions of the banking code. Hence, we believe that for purposes of K.S.A. 25-1709, state licensed savings and loan associations are "carrying on the business of a bank." In so doing we are not unmindful of the penalty provisions of K.S.A. 25-1710. However, we do not believe strict construction of 25-1709 is in order. Generally, statutes for the public's benefit are liberally construed even when they contain penal provisions. See State ex rel., Murray v. Palmgren, 231 Kan. 524, 530, 531 (1982).

Therefore, it is our opinion that K.S.A. 25-1709 (as amended by L. 1982, ch. 156, §1) is not unconstitutional as violative of the "free speech" clause of the First Amendment to the U.S. Constitution. Moreover, a recall election is a question submitted election to which this statute no longer applies. Finally, savings and loan associations are subject to the provisions of K.S.A. 25-1709, as amended, since for purposes of that section, they are "carrying on the business of a bank."

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot  
Deputy Attorney General

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Elections

Recommends that Senate Bill No. 136

"AN ACT amending the campaign finance act; prohibiting contributions by certain corporations and stockholders thereof; amending K.S.A. 25-4154 and repealing the existing section; also repealing K.S.A. 1984 Supp. 25-1709."

Be not passed.

\_\_\_\_\_  
Chairperson

*Attachment #5*  
*S. Elect. 2/13/85*



REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Elections

Recommends that Senate Bill No. 138

"AN ACT concerning elections; relating to campaign contributions;  
repealing K.S.A. 25-1710 and K.S.A. 1984 Supp. 25-1709."

Be passed.

\_\_\_\_\_ Chairperson

*Attachment #6*  
*S. Elect. 2/13/25*