Approved: 3-6-96
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Garry Boston at 1:30 p.m. on February 26, 1996 in Room 519-S of the Capitol.

All members were present except: Representative Ellen Samuelson, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Jack Selbe, Lucas, Kansas
Scott Hattrup, Lawrence, Kansas

Others attending: See attached list

The Chairperson opened the continuation of the hearing on **HB 2885** and stated the members had to be back on the Floor at 2:00 so time for conferees would be limited.

Jack Selbe, Lucas, testified neither as a proponent or an opponent to **HB 2885**, stating that the general misconception was that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. The power of Government comes from the people. The right to self defense is a God given right. No legal government has the power to deny the right of self defense. Mr. Selbe stated he was for concealed carry but opposed to **HB 2885** as it is nature's law, God's law. (See Attachment #1)

Scott Hattrup, Lawrence, testified as a proponent to **HB 2885**, stating he was at the hearing on February 20 and Jack Starbird, a fellow attorney was also here and submitted testimony. Mr. Hattrup stated he had done some extensive research on firearm laws and published a Law Review article recently on concealed carry. Legal use of self defense is a learned concept. The training program in this bill would teach citizens when it is proper and when it is not proper to use self defense. One of the opponent's of this bill mentioned that Home Rule is a limitation on the state's right to regulate weapons laws and mentioned a couple of cases, but in 1979 the Kansas Supreme Court cases conveniently left out the City of Junction City v. Mevis. The basic holding is that a municipality cannot simultaneously allow a citizen to exercise their right to keep and bear arms and yet restrict to the point where it becomes meaningless. The City of Junction City had completely eliminated the transportation of firearms in the city unless used for hunting. That restriction was not upheld by the Supreme Court. There are 627 cities in the state and 105 counties without preemption of the weapons laws on concealed carry. There is absolutely no way to know what the laws of the jurisdiction are when passing through. Criminal trespasses defined at K.S.A. 21-3721 covers area that was questioned earlier of whether the bill would prevent employers or business owners from restricting concealed firearm carry on their property through the preemption clause. This bill is aimed solely at counties, municipalities, or state agencies which might attempt to restrict the right to carry. Private property owners retain the statutory right to post their premises "No Trespassing." (See Attachment #2)

The following testimony was distributed: Zachary Starbird (See Attachment #3), Joseph G. Herold (See Attachment #4).

Additional testimony from Ron Smith, General Counsel, Kansas Bar Association, was distributed on **HCR 5039** and **HCR 5043**. (See Attachment #5)

The Chairperson closed the hearing on **HB 2885**. The next meeting is scheduled for March 5, 1996.

FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE: February 26, 1996

NAME	REPRESENTING
Jack Selbe	Self
Edward E. Ela	Self.
Marsha Lappin	KBI
HARRY L. MOBERLY, JR	MYSELF.
Myron Kelsey	WMSA
Edward W. Johnson	WMSA
Mary Selbe	Self
Megan Grisss	FOP
STEVE KEARNEY	FOP
REBECCA WOODMAN	KS Sentencing Comm.
Julie Meyer	KS Sentencing Comm.
Whitney Damron	KS Bar Association
Tom Burgess	KSAS
Phil Journey	KSAS
John Bailey	SOF/NRA
Terry Leatherman	KCCI
Jenifer L. Brandsberry	City of Overland Park

Jack Selbe

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for a law which violated the Constitution to be valid. This is succinctly stated as follows:

> "All laws which are repugnant to the Constitution are null and void." Marbury vs. Madison, 5 US (2 Cranch) 137, 174, 176 (1803)

> "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." Miranda vs. Arizona, 384 US 436, p. 491

> "An unconstitutional act is not law, it confers no rights, it imposes no duties, affords no protection, it creates no office, it is in legal contemplation, as inoperative as though it had never been passed." Norton vs. Shelby County, 118 US 425, p. 442

The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose, since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it.

> "No one is bound to obey an unconstitutional law and no courts are bound to enforce it." 16 Am Jur 2d, Sec 177 late 2d, Sec 256

Governments have powers. People have rights.

The powers of Government comes from the people. The right to self defense is a God given right.* No legal government has the power to deny the right of self defense. Second, it is guaranteed by the Bill of Rights, and don't forget the Constitution was not ratified until the Bill of Rights were guaranteed and in place. Government does not have the power to tell people what weapon they can or cannot have. This is part of the right guaranteed to you by the constitution.

Right of Revolution

A powerful justification for your right to an assault weapon, or any weapon of your choice is the general obligation to uphold the Constitution and protect the people, their rights, families, and institutions from tyrannous domestic government. Samuel Rutherford

*Nature's Law

FeSA
2-26-96
Atch #1

stated the right of revolution was proper use of the people's power since when a king abuseth his power to the destruction of his subjects. It is lawful to throw a sword out of a mad man's hand. For all fiduciary power when abused may be repealed. For what is true of the executive power is also true of the legislative power. Both branches of government are based on the fiduciary consent of the people to govern justly.

Thomas Jefferson in the Declaration of Independence summarized what most Americans believed. That to secure these rights, governments are instituted among men deriving these just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it.

Jefferson in a letter to James Monroe stated, "None but an armed nation can dispense with a standing army. To keep ours armed and disciplined, is therefore at all time important."

The U.S. Supreme Court has repeatedly upheld the individual right to keep and bear arms, and military style weapons, and rejected the 20th century invention, the discredited "collective right only" theory of the Second Amendment. Considerable legal scholarship also support an individual right to keep and bear arms on grounds other than the Second Amendment.

"The supreme power in America cannot enforce unjust laws by the sword, because the whole body of the people are armed and constitute a force superior to any band of regular troops that can be on any pretense raised in the United States," stated Noah Webster.

The best way to hold on to your rights is with your vote, not only at the ballot box but on any jury. You have the right not only to judge the facts but also the law.

Thomas Jefferson stated, "I consider trial by jury as the only anchor ever yet imagined by man by which a government can be held to the principles of its constitution."

Testimony before the House Federal & State Affairs Committee
February 21, 1996
HB 2885 — proponent

Mr. Chairman and members of the Committee,

My name is Scott Hattrup. I am an attorney licensed to practice law in the State of Kansas. I am a life-long resident of Kansas and speak today for myself as a citizen and voter.

As background information, please note that I testified before this committee last session on concealed carry and other firearms bills. I have studied firearms laws in some detail. I am also a co-author of an article that was recently published in the Temple Law Review dealing with state constitutionalism and the right to bear arms.

I am here to speak in favor of House Bill 2885, and hope this Committee will recommend it favorably to the House floor, as it did last year.

I. Legal Use of Self Defense is a Learned Concept

HB 2885 would allow law-abiding Kansans to obtain a license to carry a concealed firearm following a thorough background check and a training course, as provided in Sections 3 and 4 of the bill. One of the subjects to be taught at the training course is when deadly force is authorized under Kansas law. As a practicing attorney, I know when this force is authorized. Law enforcement officers also know when this force is authorized. However, we were not born with this knowledge; we *learned* it somewhere along the line. It was part of our training for our respective positions.

The concept at the heart of this discussion is self defense. Opponents of this bill would have you believe that appropriate use of self defense cannot be taught to a citizen off the street. This notion is belied by our jury system, where 12 individuals with no prior training in the law are asked to decide important questions such as, "Was deadly force reasonable in the circumstances presented at this trial?" If I and my fellow attorneys can learn it, if law enforcement officials can learn it, if randomly selected jurors can learn it, what could possibly prevent any Kansan from learning when self defense is authorized under Kansas law? The training program to be created by HB 2885 will adequately train licensees on this issue.

II. Kansas law

Inevitably, any discussion of a concealed carry bill will delve into the constitutional right to keep and bear arms. It shouldn't, because this discussion is about the legislature *permitting* an action involving this right rather than *prohibiting* an action. As legislators, you have the ability to control how the right to bear arms will be exercised in this state. I testified last session on several state and federal cases involving the right to keep and bear arms but will try to limit that

F&SA
2-26-96
Atch #2

aspect of my presentation today unless any of the representatives have questions regarding those cases. I will mention that characterizing the right to bear arms as "individual" or "collective" remains an open question, although most of the evidence available to date seems to suggest an "individual" rights approach.

A) Home Rule limitations & why state preemption is necessary

Mr. Kaup's testimony indicates that Home Rule allows cities the right to restrict firearms further than state law allows. As support, he cites City of Junction City v. Lee, 216 Kan. 495, a 1975 Kansas Supreme Court case. Mr. Kaup failed to note that the Kansas Supreme Court has ruled on another gun case since 1975, also involving Home Rule. The latter case *limits* the ability of cities to restrict the right to bear arms.

In City of Junction City v. Mevis, 226 Kan. 526 (1979), the Kansas Supreme Court was called upon to determine the constitutionality of a local ordinance that made it a crime for "anyone within the city limits to carry *any* firearm on his person or in any vehicle except when on his land or in his abode or fixed place of business. No exception was made for the transportation of a firearm from a place of purchase or repair or between a person's place of business and his home." 226 Kan. 526 (Court Syllabus ¶ 2)(emphasis added). Mr. Mevis was prosecuted under this ordinance after a city police officer found a pistol under Mr. Mevis's front seat during a routine traffic stop. Mr. Mevis committed no violation other than the firearms charge appealed. The Court held that prosecution for a violation of the city ordinance was *unconstitutional* because the city ordinance was "unreasonable and oppressive" legislation. 226 Kan. 526, 535. The Court noted that Junction City had instituted a handgun registration system and issued permits for their purchase, yet failed to provide a legal means to transport them within the city. 226 Kan. 526, 531-33. Implicit in the Court's decision is the rationale that a municipality cannot simultaneously allow a citizen to exercise the right to keep and bear arms, yet restrict it to the point where the right becomes meaningless.

Thus, even Home Rule has its limitations. Both Section 4 of the Kansas Bill of Rights, the right to keep and bear arms, and Article 12, Section 5, the Home Rule Amendment, are Kansas constitutional provisions. Those sections are both powers retained by the people and must be construed together to resolve any potential conflicts.

B) Why is state preemption necessary?

Cities in Kansas have shown their willingness in the past to severely restrict transportation and ownership of firearms. I mentioned Junction City, but there are many other cities even today that have restrictions on firearms transportation. State preemption on this issue is necessary in order to allow Kansans the ability to understand the laws with which they must comply to carry concealed firearms under a statewide licensing system.

If state preemption is not adopted as part of this bill, please allow me to illustrate some of the problems Kansans will run into when they try to follow the laws of all 627 cities in the state and the 105 counties. If one were to start in a car at Shawnee Mission Parkway and State Line Road in Johnson County, one would be between two cities, Mission Hills and Mission Woods. Within two blocks north lies another city, Westwood Hills. Driving west, one will pass through Westwood, Fairway, Roeland Park, Fairway again, Mission, near Country Side, Mission again, Prairie Village, and Overland Park. If one turns north on Roe, Kansas City, Kansas, and Wyandotte County are within two miles. If one continues west, Merriam and Shawnee are within 5 minutes, if you hit the stoplights right. If one continues south on I-35, Lenexa, Olathe, and unincorporated Johnson County, are all within a short drive.

In total, with less than a one hour drive, one can visit 15 cities and two counties, all of which can have their own concealed carry laws without state preemption. Driving through the state on I-70 or I-35 can have a similar effect, although not as quickly as in Johnson County. The representative from the League of Kansas Municipalities could not state what all the gun laws are in these areas. I as an attorney cannot tell you what all the gun laws are in these areas. I challenge any legislator to explain to me what the gun laws are in these areas. Yet, without state preemption, we are challenging ordinary citizens to do just that. Citizens, however, run the risk of being charged with criminal conduct if they make a mistake on the gun laws of a particular area. This bill without state preemption is simply unworkable.

C) Private Property and Kansas' Trespass Statute

One of the witnesses yesterday questioned whether HB 2885 would prevent employers or business owners from restricting concealed firearm carry on their property through the preemption clause. This question is misguided because the bill is aimed solely at counties, municipalities, or state agencies which might attempt to restrict the right to carry. Private property owners retain the statutory right to post their premises "No Trespassing," "No concealed firearms," "No shirt, no shoes, no service," or any number of other restrictions.

Criminal trespass is defined at K.S.A. §21-3721 and reproduced below in relevant part:

> (a) Criminal trespass is: (1) Entering or remaining upon or in any land, . . . [or] structure . . . by a person who knows such person is not authorized or privileged to do so, and: (A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or (B) such premises or property are posted in a manner reasonably likely to come to the attention of intruders . . . . (c) Criminal trespass is a class B nonperson misdemeanor.

Currently, state regulation of all hunting seasons and licensing does not prevent a landowner from posting land as "No Hunting." The argument is similar to a trespassing hunter saying "The state hunting license I possess says I can hunt; therefore, I can hunt on your land even though it is posted 'No Hunting.'" That argument is positively ludicrous. Concealed carry should be no different once the state has occupied this field of law.

As a side note, businesses should consider whether they wish to risk potential civil liability for restricting licensees from carrying on their premises. Posting a "no guns" sign may have the unintended legal consequence of a business assuming personal responsibility for protecting a concealed permit holder should an unfortunate event occur. I am thinking specifically of a Luby's Cafeteria-type incident where a maniac comes through the wall in a pickup truck and starts shooting everyone in sight. If a business had posted "no guns," a plaintiff in a later lawsuit might be able to collect a considerable sum from the business owner. If this argument seems a little far-fetched, please consider that a jury recently awarded a woman $1.6 million for spilling hot coffee on herself at a McDonalds. Imagine what might happen if someone really got hurt because of a business owner's "no guns" policy.

III. Closing remarks

I urge the Committee to favorably recommend HB 2885. I will be available following the other testimony for questions if needed. Thank you.

Committee members with questions regarding my testimony on this issue are welcome to contact me at the following address and phone:

Scott Hattrup
2505 Winterbrook Drive
Lawrence, KS 66047

(913) 749-2168

Testimony of

ZACKARY STARBIRD

Before The

Federal and State Affairs Committee
House of Representatives
State of Kansas

Re: H.B. 2885 on the Right to Carry

Honorable Members of the Committee:

I come before you today neither as lawyer, nor as a spokesman for an organization. I speak to you as a resident of Topeka and a native of Kansas.

The bill you are considering today is part of a greater debate in our society, a continuing debate that has spanned many centuries. This debate is about the responsibility of individuals for themselves and for their communities. The fundamental question at the root of this debate is whether the average citizen is to be given the tools necessary to assume that responsibility.

As I said, I am speaking to you as an ordinary individual. I have no axe to grind. My day to day focus is on earning a living to support the family that my new wife and I hope to start in Topeka within the next few years and on improving the community within which we will live. I have always felt responsible not merely for myself but also for the community around me. I believe that Kansas are and ought to be good people. When I see people engaging in offensive conduct, I like to tell them about it. As an example, last year I visited Worlds of Fun like many of you. As I was walking up the ramp to the Fury of the Nile I saw a group of

F&SA
2-26-96
Atch #3

kids, maybe 15 or 16 years old, spitting on the people floating underneath them. Taking advantage of my size and stealth, I snuck up behind them and gave them the fright of their life. I let them know what I thought of their little activity. As another example, whenever I find myself waiting in a line, I make it a point to stop the increasing number of individuals who think they can cut in front of many women, the elderly, and anyone else who is unwilling to risk a confrontation.

I carried this attitude with me a couple of summers ago when I mowed lawns here in Topeka to earn some money for school. One of the lawns I mowed was in east Topeka at about 7th and Lime. Not all of you are familiar with that area, but its not known for its white picket fences and flower beds. Across the street from the lawn I mowed was a beautiful old building that used to be a Junior High. It's been closed for many years. In any event, this is a fairly rough neighborhood. I mowed this lawn for an absentee landlord. The house I mowed around was his childhood home, his parent's home. He'd lived there himself as a young man. But, the neighborhood started getting rough, and this gentleman began his family. Like many others, he moved his family to a better area rather than stand up to the growing crime and decay in the neighborhood.

I used to think to myself, now this is sad. It's sad when good people with good morals and good values get scared out of a community. I used to think to myself, people need to be brave and take responsibility for their communities; they need to persevere and seek to improve their neighborhoods. By moving, they merely

advanced the decline of their old, cherished stomping grounds. I used to think to myself, I'll never do this. I'll never let anyone or anything intimidate me out of my home.

That was before I got married. That was before I considered the risks that my young children will face when they begin playing in the backyard, roaming the neighborhood, or walking to school in the next few years. When I was facing risks alone, I hardly gave a thought to the possible consequences. As a 6'4" male I don't particularly feel as though I'm a likely candidate for assault. Now I am beginning to understand why people, like my old employer, make the difficult decision to leave their homes.

I understand what this bill does. It is not a cure-all and it will not, alone, ensure the safety of my children. The bill will, however, provide trained and law-abiding citizens with the opportunity to ensure their safety. If the opportunity to carry a concealed firearm provides middle-age couples whose children have left the home the sense of security they need to remain in their old communities, it will help prevent the tail-spinning exodus that wreaks havoc on our communities. It would instill in me the sense that I have a means of assuring the safety of my family outside the four walls of my home. It would help to restore the sense of security necessary to encourage people to spend time outside of their houses and among their neighbors building the bonds of a shared existence that results in a real sense of community.

This bill is important to me. It is important to our neighborhoods, our towns, and our state. I urge you to vote in favor of H.B. 2885.

JOSEPH G. HEROLD
Attorney at Law
1208 SW Tyler Street
Topeka, KS 66612-1735
(913) 223-8055 Telephone
(913) 234-8824 Telefax

To: House Federal & State Affairs Committee

Re: House Bill 2885 (Concealed Carry)

February 21, 1996

MEMORANDUM OF SUPPORT

I am an attorney in private law practice in Topeka and the purpose of my written testimony is to provide some historical and legal insight in support of this proposed bill. The views presented here are my own.

HISTORICAL BACKGROUND

There was no prohibition preventing the general public from carrying concealed weapons for self defense in Kansas at the time of statehood. The first statute to address this issue was Section 282 of the General Statutes of Kansas 1868. This statute stated in part:

> "Any person who is not engaged in any legitimate business, any person under the influence of intoxicating drink, and any person who has ever borne arms against the government of the United States, who shall be found within the limits of this state carrying on his person a pistol, bowie-knife, dirk or other deadly weapon...."

This statute was amended in 1903 by House Bill 72 which prohibited anyone other than law enforcement officers or their deputies from carrying concealed weapons. The amended statute can be found at Section 2365 of the General Statutes of Kansas 1905, however, unfortunately the House and Senate Judiciary Committee records and minutes for the 1903 session are not available at either the State Historical Society or the Legislative Administrative Services office for the purpose of reviewing the Legislature's intent in amending this statute.

During the same time when concealed carry was legal so was the death penalty from statehood until 1907 (then again from 1933 until 1972, and finally once again in 1994). The last legal hanging prior to 1907 was in 1870 when William Dickson was executed at Leavenworth. Thus during the time period generally acknowledged as the wild west (i.e., the 1870's and 1880's), Kansas apparently did not have enough of a crime problem to warrant the use of the death penalty. An argument could thus be made that our state's history would appear to indicate concealed carry did not result in an inordinate number of "wild west" shootouts during the actual days of the wild west in Kansas, at least based upon the lack of any application of the death penalty for the same.

FedSA
2-26-96
Atch #4

LEGAL BACKGROUND

History aside, the Kansas Supreme Court's holding in Robertson v. City of Topeka, 231 Kan. 358, 644 P.2d 458 (1982), should leave no doubt Kansas citizens must at times look to themselves for defense from criminal threat.

In Robertson the City of Topeka was sued for monetary damages for the destruction of some residential property based upon the alleged negligence of three police officers. The policemen were called to a house by the owner for the purpose of removing a man whom the owner believed to be intoxicated and capable of burning down the owner's house. However, the policemen chose to leave the trespasser at the house and removed the owner. Fifteen minutes later the house was burned by the trespasser.

In Robertson the Court stated in part at page 363:

> "...It is generally held that the duty of a law enforcement officer to preserve the peace is a duty owed to the public at large, not to a particular individual....Absent some special relationship with or specific duty owed an individual, liability will not lie for damages...." (Emphasis added).

Although the Supreme Court decided the Robertson case based in part upon the discretionary function exception of the Kansas Tort Claims Act, the language quoted above was the second basis and is the law of Kansas. The police simply owe no specific duty to protect any one individual from criminal harm, just the public in general. This applies even when the police may make bad decisions in the exercise of their duties.

Since the police cannot protect everyone, everywhere and at all times, the question which should be asked when considering a concealed carry law is: Shall Kansans be allowed the opportunity of exercising reasonable self defense for themselves? This is the real issue to be addressed when you debate the merits of this bill.

Thank you for your time and consideration.

Very truly yours,

Joe Herold

Joseph G. Herold
Supreme Court #12015

Testimony on HCR 5039
Initiative and Referendum

Ron Smith, General Counsel
Kansas Bar Association
February 22, 1996

KBA opposes this constitutional amendment.

It is ironic this hearing comes on George Washington's birthday. Washington was not much of a populist. In 1792 as part of his writings on the First Amendment's petitioning clause and noting the lack of a written English constitution on the unchecked powers of Parliament, Washington's close friend, James Madison, wrote of the need for written constitutions and unalterable rights, free from the unguided or misguided passions of a majority. It is the "tyranny of the legislative branch that I fear most," Jefferson wrote Madison. If they feared an unregulated legislative branch of government, clearly the founders were not in favor of unbridled legislation in the hands of people generally.

Madison and Jefferson felt written guarantees were needed in constitutional form because the body politic might often produce undesirable results if permitted to govern exclusively by majority rule.

Madison preferred a system of elected lawmakers who exercise their best collective judgment, and that those lawmakers not be bound to petitions and instructions from home. In that regard, the federal constitution disallows initiative and referendum, preserving instead a "republican" form of government.

Madison did not oppose petitioning and instruction forms of lawmaking. Petitioning and instruction was a form of initiative and referendum, and was common in the 18th Century colonies. Unlike petitioning, which requires no vote, initiative and referendum puts issues in front of voters for their decision. This was not unlike the French system of the day, where the French revolution that led the aristocratic Bourbons to the guillotine and then made new laws through "citizen committees." Madison and many of the founding fathers were shocked by this form of direct government, and wanted no part of it.

They wanted a system of checks and balances on legislation so they created a two-house Congress, and used the makeup of the Senate, and the veto power of the President to control the House of Representatives. Most of all Madison made it hard to enact a law, because he feared the lawmaking branch of government above all others. He wanted the factions – the special interests – to control each other through debate and compromise. His theories haven't always been right, but for 205 years the lawmaking process he created has worked well.

States were free to adopt other forms of government. Many have, including our neighbors. After the civil war, initiative and referendum began in the populist era when legislatures were perceived as being unresponsive to the needs of the time. That is not, and has not been, the situation in Kansas. Generally this state has had a very responsive and responsible legislative system. While some Kansans believe the legislature may not have always acted in their best interest, they can rarely criticize or point to legislation that was necessary that was not enacted because the legislature was controlled by "special interests."

Initiative is one way of governing a state. Our problem with this concept is that we do not believe it is the best way to govern a state. Initiative and referendum is not the answer to those who feel a legislature has not done the right thing.

The least valid reason to enact initiative and referendum is the number of other states with the law. In states with initiative and referendum it often makes ballot counting more difficult and leads to ballot confusion. Sometimes contradictory issues are on the same ballot, and pass not on their merits but because voters were confused. The concept also can be lead to extreme positions by the majority of voters who react to fear campaigns.

As was stated by the National Association of Attorneys Generals in a 1988 position paper on individual rights: "It is an unfortunate fact of American history that if the rights of blacks, Indians, women, Hispanics, Italians, or Jewish citizens were put up to a popular vote at particular stages of history, the results would be catastrophic." A deliberative legislative body has, in the past, been an instrument of

F&SA
2-26-96
Atch #5

discrimination. One need only look to the old jim crow segregation laws of the 1890s for validation. While a legislature is not a guarantor against discrimination, it is easier to hold legislators accountable for their votes than to hold the public accountable for misleading statements and tactics in media oriented initiative and referendum campaigns.

The major beneficiaries of initiative and referendum are newspapers and media who benefit from the advertising. Other beneficiaries include political operatives who hire out to manage media campaigns. Studies in California and other initiative states show it is the special interests who use initiative and referendum as offensive weapons. The other beneficiaries are the lawyers, since in states with initiative many lawsuits are filed to enjoin action or the implementation of such laws, lawsuits which do not necessarily arise in a legislative system. All you have to do to confirm this fact is read the Pacific 2nd Advance sheets reporting the new cases in Arizona, Oregon, Washington, California, Colorado, and some of the western states with Initiative and Referendum. Someone is always filing suit.

Initiative allows the following things to happen, which we feel are not virtues of lawmaking:

laws that are edicts, and without the crucible of compromise.

less well-crafted laws (these people will not have benefit of the reviser's office) demagoguery discrimination against minorities it mostly benefits urban areas, since that is where the votes are. The process forcing urban-rural compromise is lost.

The process also burdens the election process. My brother lives in Los Angeles. The voter guide to initiative issues in California was 146 pages long. It was mailed to each registered voter. Someone had to put it together and pay for it. Then you get five minutes to vote on all that material. The drop off rate between the number of people who vote for candidates and those who vote for issues is considerable. Most people believe they can make character judgments among representatives. Most others do not feel qualified to decide important and complex issues at the ballot. That's what they send you here to do for them.

William Allen White once wrote, "If anything <u>important</u> happens in America, it first happens in Kansas." Over the years, that has proven true. Kansas was among the first states to regulate lobbying (1909), enact workers compensation laws (1911) and regulate child labor (1911?). We were among the first states to provide for the property rights of married women (1859, 1868), and regulation of Blue Sky laws. Kansans historically have found their legislative process responsive and responsible, and that initiative and referendum was not that important.

In my years here, I have found that historically there are three power points in government: (1) the legislature, (2) the governor, and (3) the people, acting collectively. When any two of these three entities get together – no matter what the issue – something happens. Initiative and referendum does not improve that equation. Absent a showing that the Kansas Legislature is historically unresponsive to the people it serves, we do not believe initiative and referendum is needed nor is it desirable.

Thank you.