

Approved: 2.24.98
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION & ELECTIONS.

The meeting was called to order by Chairperson Kent Glasscock at 9:00 a.m. on February 19, 1998, in Room 521-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department
Mike Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Fulva Seufert, Committee Secretary

Conferees appearing before the committee: Representative David Haley
Ms. Carol Williams, Executive Director, Kansas Commission on Governmental Standards and Conduct
Mr. W. Charles Smithson, Legal Counsel, Kansas Commission on Governmental Standards and Conduct
Ms. Harriett Lange, President/Executive Director, Kansas Association of Broadcasters (Written only)
Ms. Wendy McFarland, Lobbyist, American Civil Liberties Union

Others attending: See attached list

Chairperson Glasscock asked for the Committee's pleasure in regard to **HB 2838**. The Chair explained that this bill simply conforms a private cemetery to municipality law.

Representative Dillon made a motion to adopt the balloon to **HB 2838** and to pass out favorably. Representative Welshimer seconded. Motion passed.

The Chair asked the Committee to turn its attention to **HB 2759**. Representative Horst, Subcommittee Chair, explained that the amendment brought to the Committee by Representative Mason defines "city," "ordinance," and "qualified elector." It also says that within 30 days of an ordinance, the legal description of the area and the names and addresses of any electors shall be provided. It allows for a petition within 90 days by at least 20% of qualified electors to protest. The petition would cause the people to have an election to see if this could be enforced upon them. Also, on page 1, in line 19, striking "statute book" and inserting "Kansas Register."

Representative Wilk made a motion to adopt the Subcommittee report amending **HB 2759**, and Representative Gilbert seconded. Motion passed.

Representative Horst made a motion to pass **HB 2759** as amended marked favorable for passage, and Representative Sharp seconded. Motion passed.

Chairperson Glasscock opened the Public Hearing for **HB 2883**.

HB 2883 - Cities; relating to the rehabilitation of abandoned property

The Chair recognized Representative Haley who spoke as a proponent of **HB 2883**, but provided no written testimony. Representative Haley said that this was a simple concept which established guidelines for abandoned property. He said he felt the legislation was needed because there were some houses being torn down that could be renovated and others that should not be which were being left. The bill makes a provision for a 5 member board composed of county and city people to determine demolition.

Representative Welshimer asked if **HB 2883** applied to just residential properties, and Representative Haley said that the answer was "yes." Representative Welshimer also inquired about the owner's recourse, and Representative Haley said that there is usually a lot of interaction between owners and code enforcement after the owner has been notified. Representative Welshimer expressed concern over what might happen if a commercial situation would move in.

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Representative Ray said that she had two questions. The first concerned page 1, line 25, concerning the possibility of opening this up for not for profit as well. Representative Haley said that this was correct and his original intent was to let the average individual renovate before a structure is torn down. Representative Ray's second question concerned the opinion of unified government. Representative Haley said that he supposed they would support it, but that he had not actually checked. Representative Ray said that she would like some input from unified government.

Representative Wells said that he would like to know what qualified authorities would be evaluating the property and what would be the recourse if the property owner disagreed with the evaluators. Representative Haley said that the owners would have ample opportunity to go to court and to respond to notices as to why the property was not being maintained, etc.

Representative Huff asked about what the city was doing now and how it would alter what the city is actually doing now. He also wanted to know if the property was not being offered to someone now. Representative Haley said that it was not and that he wished he had pictures to show the Committee. He explained that in Wyandotte County where there is response to blighted property that the quickest way out is to order demolition.

Representative Cox asked if this bill was passed out of Committee if Representative Haley would promise not to bring it out as a floor amendment, and Representative Haley responded, "yes."

Representative Tomlinson had a question for staff as to whether this bill is specific to Wyandotte County which would make the entire act non uniform. He asked about the capacity of unified Wyandotte County to charter out. He was told that the definitely could charter out.

Representative Haley said that he does not know how they would address blighted conditions and renovate the neighborhood, but the State would give them the opportunity to do something. This would make this non uniform allowing the whole State to charter out. Representative Haley also said that it makes better sense to fix up those properties that can be renovated and to tear down those that cannot.

Representative Tomlinson expressed concern that this was the mortgage registration fee and that this bill would make it non uniform which would open the door for all to charter out.

Representative Sharp referred to the first page which stated that abandoned property had to be delinquent for 2 years and had to be unoccupied continuously by persons legally in possession for the preceding one year. Representative Haley said that this would give another way of saving a house while it is still salvageable.

The Chair recognized Mr. Chris McKenzie who said that general parts of the bill are specific for Wyandotte County. He pointed out that lines 8-14 on page 2, the notice requirement is eliminated, and in line 15, would also apply to Bonner Springs and Edwardsville. He referred to it by calling it a homesteading bill.

Representative Tomlinson added that in the case of Wyandotte County, it was a County matter and that the Register of Deeds collects the tax. He said that counties could not charter out to collect it, but could charter out not to collect. Representative Tomlinson asked Mr. McKenzie if other counties might be able to charter out, and Mr. McKenzie said, "yes." Mr. McKenzie said that he did think the bill contained some great ideas, but that it did need some amending.

Mr. Mike Heim, Research Dept., suggested the Committee might like to consider making it permissive, such as abandoned property review authority which would address the non uniformity issue.

The Chair closed the Public Hearing on **HB 2838.**

Chairperson Glasscock opened the Public Hearing on the following bills that came out of the Subcommittees:

H Sub SB 112, HB 2660, HB 2661, HB 2666, HB 2812, HB 2657, HB 2654, and HB 2663.

The Chair recognized Ms. Carol Williams, Kansas Commission on Governmental Standards and Conduct, who spoke as a proponent of the above-mentioned bills with the exception of **HB 2654** and **HB 2663**. Ms. Williams gave a quick synopsis of each of the bills. Ms. Williams said that **H Sub SB 112** would rename the Commission to the Governmental Ethics Commission which was the original name of the Commission from 1974 through 1981. She said that **HB 2660** would change the word "person" to "individual" in K.S.A. 25-4156 which requires the reporting of who is responsible for publishing or broadcasting political

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advertisements. **HB 2728** would require a candidate for local office that files an affidavit of exemption from filing receipts and expenditures reports to file his or her affidavit with the county election officer in the county in which the candidate is on the ballot. She said there was a technical clean-up for **HB 2065** which passed in the 1997 Legislative session, and that **HB 2065** required a local candidate to file his or her report in the county in which the candidate is on the ballot. (Attachment 1.)

The Chair recognized Mr. W. Charles Smithson, Legal Counsel, Kansas Commission on Governmental Standards and Conduct, who spoke as a proponent for **HB 2654**. Mr. Smithson said that this bill encompasses three of the Commission's recommendations concerning the governmental ethics laws. Section 2 amends K.S.A. 46-277 by changing violations of the governmental ethics laws from "specific intent" to "general intent." Section 3 amends the ethics laws by making it a violation for any person to intentionally aid, abet, advise, hire, counsel, or procure another person to commit a violation of the ethics laws. Section 4 amends the ethics laws by making it a violation for persons to be involved in a conspiracy to violate the ethics laws. A conspiracy requires an agreement plus an overt act to further the violation. Mr. Smithson said that Section 2 is important because it is very difficult for the Commission to enforce the ethics laws by having to show a specific intent. He said that Sections 3 and 4 allow the Commission greater enforcement power. (Attachment 2.)

Mr. Smithson next spoke as a proponent for **HB 2663** which amends K.S.A. 25-4158 and K.S.A. 46-260. He said that both of these laws concern the Commission's ability to issue investigative subpoenas and would amend the procedures used in issuing subpoenas in both the campaign finance act and the ethics laws. He also said this bill would remove the 30 days notification and response period before a subpoena could be issued and would aid in the Commission's ability to investigate violations under its jurisdiction. (Attachment 3.)

Representative Wilk asked Mr. Smithson how many subpoenas had been issued in the last five years. Mr. Smithson said there have been four in the last three years since he has only worked the past three years.

Representative Ray asked if there would be any change in the way of voting, and Mr. Smithson replied that there would not be any change.

Representative Campbell inquired about removing completely the 30 days or the ability to respond, and Mr. Smithson said that it would eliminate the Commission having to send a letter giving 30 days to respond. He said that this would allow for the element of surprise, but that they could not go under 10 days by the Commission's own rules.

The Chair called the Committee's attention to the written testimony of Ms. Harriett Lange, President/Executive Director, Kansas Association of Broadcasters. (Attachment 4.)

Chairperson Glasscock welcomed Ms. Wendy McFarland, Lobbyist, American Civil Liberties Union of Kansas and Western Missouri, who spoke as an opponent to the Campaign/Finance Reform bills. Ms. McFarland did not read her testimony, but spoke personally from the heart. She said that the ACLU believes that the provisions in the Campaign/Finance bills constitute a sustained and comprehensive attack on the First Amendment. Ms. McFarland particularly expressed dislike of the disclosure clause because she said anonymity is protected under the Constitution of the United States. She also said that she did not believe that Kansans wish to register each year and be forced to pay a fee for the right to lend their support to or speak out against any candidate. Ms. McFarland also pointed out that she did not believe Kansans wish to give any government commission the right to demand membership lists of an organization or club in which they are members. She finally said that she did not believe Kansans wish to forfeit their rights under the Fifth Amendment against self incrimination to enable the Commission on Governmental Standards and Conduct to subpoena them about any matter under their authority. (Attachment 5.)

Representative Tomlinson asked Ms. McFarland to clarify what she meant when she said that the Commission of Governmental Standards and Conduct had actually triggered additional subpoenas, and she maintained that their investigations do, indeed, generate additional subpoenas. Representative Tomlinson said that her statement had some elements of truth, but, in fact, was inaccurate.

Representative Wilk commented that if Ms. McFarland's testimony was taken literally and if truth is what we seek and if what we do is truthful, he wondered what was objectionable to any of this legislation. He asked the question that if one has been truthful, then what has one to fear? Ms. McFarland responded by saying, "Quite a bit." She continued by saying that not knowing a law is rarely accepted as an excuse.

Representative Haley said that he liked to think of himself as a supporter of civil liberties and said he definitely had concerns about how much money is being spent and who is spending it. He said people and groups can influence an election and the candidates do not even know who it is. He also said elections can be changed

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through misrepresentation, and that in a democracy some people will always have more power than others. Ms. McFarland replied that the inequity should be celebrated and that the legislators have "franking" privileges.

Representative Ray said that she wanted to set the record straight in that state legislators certainly do not have "franking" privileges.

The Chair closed the Public Hearing on the Campaign/Finance bills.

The meeting adjourned at 10:45 a.m.

The next meeting is scheduled for February 20, 1998



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony Before House Government Organization and Elections on Subcommittee Bills Supported by the Kansas Commission on Governmental Standards and Conduct

The Commission recommends passage of the following bills:

H Sub SB 112: This bill would rename the Commission to the Governmental Ethics Commission, the original name of the Commission from 1974 through 1981. Very few people can remember the current name of the Commission which makes it difficult for them to contact us by telephone or mail since they can't remember or find the Commission's name in a telephone directory.

HB 2660: This bill would change the word "person" to "individual" in K.S.A. 25-4156 which requires the reporting of who is responsible for publishing or broadcasting political advertisements. Current law defines a person to be an individual, committee, corporation, partnership, trust, organization, or an association. Therefore, in certain circumstances, this change would result in the name of an individual being reported, rather than just the name of a group or organization.

In addition, this bill would require all brochures, fliers, or other political fact sheets which support or oppose a candidate for state or local office to have an attribution statement as to who is responsible for the publishing of said literature. This attribution statement would be required for all individuals who expend \$1000 or more within a calendar year on brochures, fliers, or other political fact sheets. Current law requires this attribution statement to appear only on political advertisements which are published or broadcast. The Commission believes that political brochures that are mailed or distributed during an election should disclose the name of the person paying to have the information printed and distributed. This information would provide the citizens of Kansas with the identity of those who make monetary expenditures for brochures that aid or defeat candidates for office in Kansas. The added advantage would be that Commission staff time would be dramatically cut conducting inquiries into who has paid for mailings done independently of a candidate's campaign. K.S.A. 25-4150 requires any person who expends \$100 or more in a calendar year to support or oppose a candidate for state or local office to file a receipts and expenditures report. Having the names of those responsible for brochures, fliers, etc. listed on the brochure would assist the Commission in enforcing K.S.A. 25-4150.

HB2728: This bill would require a candidate for local office that files an affidavit of exemption from filing receipts and expenditures reports to file his or her affidavit with the county election officer in the county in which the candidate is on the ballot. The Commission believes that this is

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a technical clean-up for HB 2065 which passed in the 1997 legislative session. HB 2065 required a local candidate to file his or her report in the county in which the candidate is on the ballot. It was an oversight to not also include the filing of affidavits of exemption in the same office.

HB 2654: See separate written testimony

HB 2663: See separate written testimony



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

TESTIMONY BEFORE HOUSE COMMITTEE ON ELECTIONS IN SUPPORT OF HB 2654

By W. Charles Smithson, Legal Counsel

HB 2654, which is before you this morning, is a bill that encompasses three of the Commission's recommendations concerning the governmental ethics laws. Therefore, the Commission is in favor of the bill.

Section 2 amends K.S.A. 46-277 by changing violations of the governmental ethics laws from "specific intent" to "general intent". General intent requires an intent to do a bad act. In addition, the actor's conduct creates an unreasonable risk of harm plus a subjective awareness of the risk. The concept of "motive" is substantively immaterial. Specific intent requires more than just doing a bad act. It also requires an actual subjective intent to cause the proscribed result. This change would greatly enable the Commission to enforce the ethics laws.

Section 3 would amend the ethics laws by making it a violation for any person to intentionally aid, abet, advise, hire, counsel or procure another person to commit a violation of the ethics laws. The person being charged under this section must do some act in furtherance of the violation. There is already a criminal statute making such conduct illegal (K.S.A. 21-3205), but this is a general criminal statute. This section is tailored to the governmental ethics laws and allows the Commission to enforce such violations with civil enforcement sanctions. This section would require that the actor do some act to be liable. Mere agreement, without more, would not be a violation.

Section 4 would amend the ethics laws by making it a violation for persons to be involved in a conspiracy to violate the ethics laws. A conspiracy requires an agreement plus an overt act to further the violation. Any co-conspirator can do the overt act to trigger this section. There is already a criminal statute making it illegal to conspire to commit a misdemeanor (K.S.A. 21-3302), but this is a general criminal statute. This section is tailored to the governmental ethics laws and allows the Commission to enforce such violations with civil enforcement actions.

Section 2 is important because it is extremely difficult for the Commission to enforce the ethics laws by having to show a specific intent. While ignorance of the law is not an excuse,

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mistake of fact may be raised as a defense. In addition, it is often difficult to prove what is "in someone's mind". Sections 3 and 4 allow the Commission greater enforcement power. It is an agency in place to enforce the ethics laws and "specializes" in investigating and prosecuting these types of violations. Therefore, it should have the power to enforce such laws, as opposed to relying strictly on the Attorney General's Office or the appropriate district/county attorney to bring criminal actions.



KANSAS COMMISSION ON GOVERNMENTAL STANDARDS AND CONDUCT

Testimony before House Committee on Elections in Support of HB 2663 by W. Charles Smithson, Legal Counsel

HB 2663, which is before you this morning, amends K.S.A. 25-4158 and K.S.A. 46-260. Both of these laws concern the Commission's ability to issue investigative subpoenas and would amend the procedures used in issuing subpoenas in both the campaign finance act and ethics laws. The Commission supports the passage of this bill.

Under current law, a subpoena may only be issued after the following statutory steps have been taken:

1. an alleged violation of law brought before the Commission's staff;
2. a preliminary inquiry conducted by Commission' staff concerning the alleged violation;
3. if it is shown that the allegation has merit, the Commission's staff submits a report and explanation to the Commission and requests an investigation to be authorized;
4. if the Commission concurs that there is a reasonable suspicion that a violation has occurred, it votes to authorize the investigation;
5. the Commission then sends a letter to the person being investigated informing them of the allegation and allowing them 30 days to respond;
6. after reviewing the response or after the lapse of the 30 days, I then file a praecipe (application) with the Commission for subpoenas;
7. if the Commission, after reviewing the response, still believes that a reasonable suspicion of a violation exists, votes to issue the subpoenas & 7 out of the 9 Commissioners must vote in favor of issuing the subpoenas.

This bill would remove the 30 notification and response period before a subpoena could be issued. All of the other statutory protections would remain in place. This bill would greatly aid in the Commission's ability to investigate violations under its jurisdiction.



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February 18, 1998

TO: Chairman Kent Glasscock and
Members, House Committee on Governmental Organization and Elections

FROM: Harriet Lange, President/Executive Director

RE: SB 113 and HB 2666 / political advertising

The Kansas Association of Broadcasters (KAB) serves a membership of radio and television stations in Kansas.

The KAB has concerns with provisions in SB 113 and HB 2666 which call for additional disclosures in political ads.

The disclosure requirements in the bills are more onerous than the Federal Communications Commission (FCC) requires, further complicating for broadcasters, the already complex area of political broadcast rules. The FCC requires in the sponsor ID for political ads, the words "Paid for" or "Sponsored by" followed only by the name of the sponsoring organization/committee.

Although not the intent of the bills, they do discriminate against radio as an advertising medium. The additional disclosure requirements place radio at a disadvantage because of the time-bound nature of the medium. The preferred length of radio commercials is thirty (30) seconds.

Newspapers can easily accommodate the additional disclosure requirements by adding a line or two of copy; television can accommodate the additional disclosure requirements by scrolling the information at the bottom of the screen; and the additional disclosures easily could be included in campaign brochures. Radio, however, can not as easily accommodate the additional disclosures.

(Over, please)

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Current requirements for state and local candidates and political ads include these disclosures:

- 1) The phrase "paid for" or "sponsored by" followed by the name of the sponsoring organization or committee; and
- 2) The name of the chairperson or treasurer or individual responsible for the ad.

The provisions in SB 113 and HB 2666 would require the additional disclosure of the city and state of residence of the individual responsible for the ad, or the city and state in which the sponsoring organization is located. This information is available in the station's public file.

Additionally, SB 113 requires that when an incumbent's voting record (on a multi-issue measure) is mentioned in the ad, a statement would be required that other issues were included in the measure that are not mentioned in the ad.

The net effect for radio is an additional 5 to 10 seconds in disclosures. That's a substantial chunk of time in a 30-second commercial. This would result in discouraging the use of radio to our competitors' advantage, or going to 60-second commercials. Forcing 60-second commercials would increase the cost of campaigns, and also cause inventory problems for stations because of the limited amount of commercial time available in an hour.

For these reasons we urge you not to adopt the provisions SB 113 and HB 2666 which require additional disclosures in political ads.

Thank you for your consideration.

American Civil Liberties Union of Kansas and Western Missouri

Wendy McFarland/ Lobbyist (785) 233-9054

Statement On Campaign Finance Reform
Presented To House Committee on Governmental Organizations
February 19, 1998

FREE SPEECH VIOLATION

THE ACLU SEES PROVISIONS FOUND IN THE MORE THAN 30 CAMPAIGN FINANCE REFORM BILLS CURRENTLY UNDER CONSIDERATION AS CONSTITUTING THE MOST SUSTAINED AND COMPREHENSIVE ATTACK ON THE FIRST AMENDMENT IN KANSAS HISTORY. HOW MANY KANSANS KNOW THAT A MAJORITY OF THEIR LEGISLATORS ARE ABOUT TO AMEND THE FIRST AMENDMENT?

HOW DID IT ALL BEGIN?

CAMPAIGN FINANCE REFORMS BEGAN WHEN SOMEONE SAID "WE NEED TO START REGULATING HARD MONEY." HARD MONEY IS GIVEN DIRECTLY TO PARTICULAR CANDIDATES FOR PARTICULAR CAMPAIGNS.

THEN SOMEONE SAID "WELL THAT DOESN'T WORK BECAUSE THE INCORRIGIBLE PUBLIC KEEPS BUTTING IN WITH SOFT MONEY THAT THEY GIVE DIRECTLY TO PARTIES FOR ISSUE ADVERTISING." SO THEY STARTED REGULATING SOFT MONEY TOO.

THEN SOMEONE SAID "THAT WONT WORK EITHER BECAUSE FREEDOM KEEPS ERUPTING MAKING IT MUCH HARDER FOR US TO CONTROL".

NOW WITH THE SIERRA CLUB ON THE LEFT AND THE NATIONAL RIGHT TO LIFE COMMITTEE ON THE RIGHT RUNNING THESE DARNED EXPRESS ADVOCACY ADS THAT EXPRESSLY ADVOCATE THE ELECTION OR DEFEAT OF A NAMED CANDIDATE, THAT SAME SOMEONE DECIDED THEY JUST HAD TO REGULATE THAT TOO AND BE DONE WITH IT.

BUT THEN THEY SAID, "THAT'S NOT GOOD ENOUGH BECAUSE THOSE INSUBORDINATE CITIZENS KEEP ORGANIZING INTO GROUPS AND RUNNING ISSUE ADS IN THE CONTEXT OF CAMPAIGNS SO WE'RE GONNA HAVE TO REGULATE THOSE KIND OF ATTEMPTS AS WELL."

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AND WHEN THEY SEE THE PUBLIC STILL ASSERTING THEIR RIGHTS TO INFLUENCE ELECTIONS AFTER REGULATING HARD MONEY, SOFT MONEY AND ISSUE MONEY, THEY REALIZE THE ONLY THING LEFT TO DO IS SET A PERMISSIBLE AMOUNT OF ALL SPEECH IN THIS COUNTRY PERTINENT TO POLITICS.

A RUNAWAY TRAIN REACHING UNCONSTITUTIONAL SPEEDS

THIS IS THE NATURAL PROGRESSION OF THE RUNAWAY TRAIN CALLED CAMPAIGN FINANCE REFORM WHICH SEEMS TO PICK UP SPEED WITH EVERY SUCCESSFUL UNSEATING OF THE HERETOFORE UNSEATABLES. THE STEAM FOR THIS MIDNIGHT TRAIN TO REELECTION IS BEING PROVIDED BY INCUMBENTS, MANY OF WHOM SURVIVED THE LAST GO-ROUND AND DON'T RELISH THE IDEA OF ANOTHER BATTLE WHERE THE WEAPONS OF CHOICE ARE FOUND NOT IN THE SECOND AMENDMENT BUT IN THE FIRST.

AND SINCE INCUMBENTS CURRENTLY OCCUPY THE STEAM ENGINE, SOME OF THEM WANT THE OPPOSITION'S BATTLE PLANS IDENTIFIED, REGISTERED AND PAID FOR UP FRONT TO AVOID ANY DERAILMENT OF THEIR REELECTION EFFORTS. SINCE THIS RUNAWAY TRAIN IS HEADING DOWN A PATH RIDDLED WITH CONSTITUTIONAL LAND MINES, THE ONLY WAY TO STOP IT IS FOR THE 1998 KANSAS LEGISLATURE TO REALIZE THAT ALTHOUGH THEY PAVE THESE TRACKS WITH THE GOOD INTENTIONS OF LEGISLATING MORE ETHICAL BEHAVIOR, THEY ARE NEVERTHELESS ON THE ROAD TO A HELL WHERE KANSANS CAN NO LONGER SPEAK FREELY ABOUT A CANDIDATE OR ISSUE.

THIS TYPE OF CONTROL OVER OUR CELEBRATED RIGHT TO FREE SPEECH IN A FREE MARKETPLACE IN A FREE COUNTRY SHOULD NEVER BE ALLOWED.

MAKE NO MISTAKE, WHAT WE ARE ALREADY DEEPLY INTO IS GOVERNMENT JUDGING THE CONTENT OF SPEECH WHEN YOU LOOK AT THE LANGUAGE IN BILLS SUCH AS SB 112 AND 113. GOVERNMENT NOW SAYS THE CONTENT OF YOUR SPEECH WAS INTENDED TO AFFECT AN ELECTION. THEREFORE IT WILL BE PROSCRIBED.

THE PROBLEM OF GOVERNMENT REGULATING THEIR OWN ELECTIONS

THE MOST FUNDAMENTAL PROBLEM WITH HAVING THE GOVERNMENT REGULATE ELECTIONS IS THAT ELECTIONS ARE INTENDED TO CONTROL THE GOVERNMENT. THINK OF THE NATIONWIDE PUBLICITY KANSAS WOULD RECEIVE WERE YOU, OUR LEGISLATORS, TO SIMPLY RECUSE YOURSELF FROM VOTING ON THESE REFORM MEASURES WITH THE HONORABLE EXPLANATION THAT THERE APPEARS TO BE A CONFLICT OF INTEREST AND THEREFORE THESE MEASURES SHOULD BE VOTED ON BY THE PEOPLE.

ANONYMITY GUARANTEED! BUT ONLY WHEN IT SUITS A GOVERNMENT PURPOSE

THE GENERAL PROVISIONS COMMON TO MOST OF THE CAMPAIGN FINANCE REFORM MEASURES INCLUDE GIVING MORE MUSCLE TO THE KANSAS COMMISSION ON STANDARDS AND GOVERNMENTAL CONDUCT TO MAKE SURE EVERY KANSAN IS COMPLYING WITH THE COMPLICATED MASS OF REGULATIONS AT HAND. THIS COMMISSION HAS GIVEN CLEAR INDICATION OF THEIR WILLINGNESS TO ACT ON TIPS FROM ANONYMOUS SOURCES AND HAVE RECEIVED YOUR TACIT APPROVAL OF SUCH METHODS.

BY THIS VERY INDICATION THOUGH, THEY ACQUIESCE TO THE NOTION OF THE IMPORTANCE OF ANONYMITY WHEN IT PRESENTS ITSELF IN THE FORM OF ANONYMOUS TIPS AND YET THE APPRECIATION FOR ANONYMITY QUICKLY DISSIPATES WHEN THEY SEEK, AND YOU APPEAR POISED TO GRANT, POWER TO DISALLOW ANONYMITY TO THE LONELY PAMPHLETEER WHO STANDS ON THE STREET CORNER HANDING OUT HIS "VOTE FOR KILROY" MESSAGE OR TO THE SMALL GROUP OF NEIGHBORHOOD RETIREES ON MAPLE AVENUE WHO WOULD UNITE ONE TIME TO OPPOSE A BALLOT ISSUE THAT WOULD DOUBLE THEIR ALREADY EXORBITANT PROPERTY TAXES BY HANDING OUT LAPEL STICKERS IN THE STATEHOUSE.

VIRTUALLY EVERY REFORM MEASURE BEFORE YOU WOULD REQUIRE THAT PAMPHLETEER OR THE RETIRED RESIDENTS OF MAPLE AVENUE TO GIVE GOVERNMENT THEIR NAMES, TELL WHERE THEY GOT THE MONEY TO PAY FOR THE FLYERS AND STICKERS AND STATE THEIR PURPOSE FOR SPEAKING OUT.

AND IF THE INFORMATION PROVIDED DOESN'T PASS THE MUSTER OF THE NEW "ETHICS" COMMISSION, THEN THEY CAN EXPECT TO RECEIVE THE MOST INVASIVE OF SUBPOENAS, *DUCES TECUM*, , MEANING THEY ARE COMMANDED TO APPEAR AND BRING THEIR DOCUMENTS, ANOTHER POWER YOU SEEM POISED TO GRANT THIS COMMISSION.

THERE IS NO SIGNIFICANT DIFFERENCE IN THE REASONING USED TO JUSTIFY THE PROTECTION OF ANONYMITY FOR A SOURCE COMPARED TO THE ANONYMITY DESIRED BY ONE WHO CIRCULATES POLITICAL FLYERS. BOTH PRESUMEDLY WISH TO PROTECT THEIR PRIVACY, SOMETIMES IN AN ATTEMPT TO AVOID PERSECUTION OR RETALIATION BUT SOMETIMES JUST THE SIMPLE WISH TO BE LEFT ALONE.

ARE YOU NOW OR WERE YOU EVER A MEMBER OF THE...?

WHEN BILLS SUCH AS THOSE BEING HEARD TODAY FORCE THE IDENTIFICATION OF NOT ONLY A LARGE ORGANIZATION'S MEMBERSHIP LIST BUT ALSO THE SMALL GROUP OR INDIVIDUAL WHO SEEK ONLY TO PUBLISH A HANDBILL OR FLYER ANONYMOUSLY, IT IS QUITE CLEAR YOU ARE ENTERING AN AREA FILLED WITH CONSTITUTIONAL PROBLEMS. PRIVACY IS DEAR TO ALL KANSANS AND YOUR VOTE TO APPROVE THESE MEASURES SHOULD ONLY BE CAST AFTER LONG DELIBERATION OVER THE FREE SPEECH AND PRIVACY RIGHTS YOU WILL BE DENYING YOUR CONSTITUENTS WITH A YES VOTE.

THE LONELY PAMPHLETEER AS REPORTER

THE FIRST AMENDMENT IS IN NO WAY LIMITED TO REPORTERS FOR THE ESTABLISHMENT PRESS...LIBERTY OF THE PRESS IS THE RIGHT OF THE LONELY PAMPHLETEER WHO USES CARBON PAPER OR A MIMEOGRAPH MACHINE JUST AS MUCH AS THE LARGE METROPOLITAN PUBLISHER WHO UTILIZES PRESSES THAT WOULD FILL THIS ENTIRE ROOM. THIS DISTINCTION WAS CLEARLY STATED IN *BRANZBURG v. HAYES* AND *LOVELL v. GRIFFIN*.

IN ANOTHER CASE, THE COURT WROTE 'IF PERSONS CAN BE REQUIRED TO DISCLOSE TO GOVERNMENT THE IDENTITY OF ALL PERSONS WHO WORKED ON A PAPER OR PAMPHLET THAT CONTAINED INFORMATION ABOUT AN ISSUE OR CANDIDATE, THEN ANY

EDITOR, REPORTER, TYPESETTER OR CAMERAMAN COULD BE COMPELLED TO REVEAL THE SAME INFORMATION ABOUT HIS PAPER OR TELEVISION STATION IF HIS PAPER OR STATION CARRIED THIS STORY'. THE COURT CONCLUDED THE FIRST AMENDMENT CLEARLY FORBIDS THIS RESULT.

TO SPEAK ANONYMOUSLY...OR NOT AT ALL

REQUIRING DISCLOSURE OF EXPENDITURES UNDER THESE CIRCUMSTANCES DESTROYS THE TIME HONORED RIGHT TO POLITICAL ANONYMITY. ANONYMITY IS A PRECONDITION TO FUND RAISING BY CONTROVERSIAL PARTIES AND HAS TRADITIONALLY RECEIVED STRONG CONSTITUTIONAL PROTECTION THE MOST RECENT OF WHICH CAN BE FOUND IN MCINTYRE v. OHIO.

IN TALLEY v. CALIFORNIA THE COURT HELD THAT "DISTRIBUTION OF ANONYMOUS POLITICAL LEAFLETS IS A CONSTITUTIONALLY PROTECTED ACTIVITY BECAUSE THESE PUBLICATIONS HAVE PLAYED AN IMPORTANT ROLE IN THE PROGRESS OF MANKIND. PERSECUTED GROUPS AND SECTS FROM TIME TO TIME THROUGHOUT HISTORY HAVE BEEN ABLE TO CRITICIZE OPPRESSIVE PRACTICES AND LAWS EITHER ANONYMOUSLY....OR SIMPLY NOT AT ALL."

THE TRUTH AND THE FALSE OF IT ALL

MANY OF THE 1998 KANSAS REFORM BILLS WERE INTRODUCED BECAUSE SOME LEGISLATORS FELT THEY WERE THE TARGET OF FALSE OR MISLEADING CAMPAIGN LITERATURE AND THEY WANT TO PUT A STOP TO IT.

EFFORTS TO REFORM CAMPAIGN FINANCE BOTH AT THE FEDERAL LEVEL AND IN OTHER STATES HAVE, IN THE PAST, FUELED THE ADOPTION OF BROAD CONTROLS THAT INEVITABLY TURNED TO CONTENT REGULATION OF CAMPAIGN LITERATURE BY OUTLAWING FALSE OR MISLEADING CAMPAIGN STATEMENTS. OF COURSE, WHAT APPEARS FALSE AND MISLEADING TO ONE CANDIDATE IS DEEMED ULTIMATE TRUTH BY ANOTHER. MOST OF THESE ATTEMPTS HAVE BEEN INVALIDATED BY THE COURTS.

IN THOMAS v. COLLINS THE COURT TOOK A STRONG POSITION AGAINST GOVERNMENT DEFINING WHAT IS FALSE OR DECEPTIVE CAMPAIGN SPEECH REALIZING THIS POWER WOULD CHILL POLITICAL ADVOCACY. THEY WROTE "THE VERY PURPOSE OF THE FIRST AMENDMENT IS TO FORECLOSE PUBLIC AUTHORITY FROM ASSUMING A GUARDIANSHIP OF

THE PUBLIC MIND...IN THIS FIELD, EVERY PERSON MUST BE HIS OWN WATCHMAN FOR THE TRUTH BECAUSE THE FOREFATHERS DID NOT TRUST ANY GOVERNMENT TO SEPARATE THE TRUE AND THE FALSE FOR US."

THE CHRISTIAN COALITION'S CULINARY TALENTS WITH PORK

IF POLITICAL PUNDITS AROUND THE STATEHOUSE ARE ACCURATE, THEN THE PURPOSE OF THESE MEASURES IS TO QUELL THE EFFECTIVE METHODS OF PUBLICATION EMPLOYED DURING THE LAST ELECTION BY THE CHRISTIAN COALITION IN UNSEATING THOSE WHO WERE THOUGHT TO BE UNSEATABLE. THE ACLU SHOULD REMIND YOU THAT AT THE SAME TIME YOU FIND COMFORT IN QUASHING THEIR METHOD OF USING A VOTING RECORD BY REQUIRING THE BURDEN OF EXPLANATION TO IT'S USE, YOU WILL ALSO BE SANCTIONING GOVERNMENT SPONSORED FISHING EXPEDITIONS THAT WILL NET THE BIG AND SMALL FISH ALIKE EFFECTIVELY MAKING SILENT ANY KANSAN WHO MIGHT NOT WANT THEIR MEMBERSHIP TO CONTROVERSIAL ORGANIZATIONS MADE PUBLIC BY SUBPOENA OR FORCED DISCLOSURE.

THE ACLU IS SYMPATHETIC TO THOSE AMONG YOU WHO ARE HONEST, HARDWORKING, ETHICAL LEGISLATORS WHO HAVE BECOME THE TARGET OF ANONYMOUS ATTACKS ON YOUR VOTING RECORDS BUT ENACTING LAWS THAT WILL SUFFOCATE AND BURDEN THOSE WHO ONLY WISH TO PARTICIPATE IN THE ELECTORAL PROCESS IS NOT THE ANSWER. PORK BARRELING LEGISLATION MAKES YOU VULNERABLE TO SUCH MISUSE OF YOUR VOTING RECORD. EITHER ACCEPT THIS OR ENACT A LIMITATION ON YOURSELVES THAT PROHIBITS PORK BARRELING.

"WELL MR. CHIEF JUSTICE, AT THE TIME THIS
SEEMED LIKE THE EASIEST WAY TO MAKE EM'
PLAY FAIR"

THE UNITED STATES SUPREME COURT HAS SAID THEY WILL ONLY RECONSIDER THEIR FIRM POSITION FAVORING THE FREEDOM OF INDIVIDUALS TO SPEAK POLITICALLY WHEN ALL OTHER LESS INTRUSIVE MEASURES TO SOLVE CAMPAIGN FINANCE REFORM PROBLEMS HAVE BEEN CONSIDERED BY GOVERNMENT.

WHO AMONG YOU CAN HONESTLY SAY YOU HAVE GIVEN SERIOUS CONSIDERATION TO ANY OTHER REMEDIES THAT WOULD AVOID THE CHILL THESE MEASURES PLACE ON FREE SPEECH? IF THESE AND OTHER BILLS BECOME LAW AND ARE CHALLENGED BY THE ACLU OR OTHER PARTIES, THE COURT WOULD DEMAND A DETAILED LIST OF ACTUAL ABUSES TO JUSTIFY THE HEAVY HAND OF KANSAS GOVERNMENT AND ABSENT THOSE ACTUAL EXAMPLES, THEY ARE NOT LIKELY TO UPHOLD THE DRASTIC LIMITATIONS THIS BILL PLACES ON RIGHTS OF SPEECH AND PRIVACY.

IN RUSSIA, THEY'D ARREST YOU FOR SAYIN'
THAT

WHEN VISITORS FROM FOREIGN SOILS VISIT OUR COUNTRY, THE ONE SINGLE GREATEST ENVY THEY SHARE OF OUR UNITED STATES IS THE FREEDOM WE ENJOY TO SPEAK PUBLICLY OR PRIVATELY WITHOUT FEAR OF GOVERNMENT RETALIATION.

IF THE ACLU APPEARS TODAY AS OVERLY PASSIONATE IN OUR OPPOSITION, THEN I MUST PLEAD GUILTY. WHEN THIS CELEBRATED RIGHT IS UNDER THREAT OF PREREGISTRATION, PRIOR RESTRAINT, FORCED ATTRIBUTION AND TAXATION BY THOSE WE ELECT TO PROTECT IT, THEN EVERY KANSAN SHOULD BE CONCERNED.

AS AN ACLU LOBBYIST, I AM FORBIDDEN FROM OFFERING ANY OF YOU SO MUCH AS A PIECE OF HARD CANDY TO GET YOUR VOTE. THE ACLU WILL NEVER ENDORSE OR SUPPORT ANY CANDIDATE FOR OFFICE. PRIOR TO ACCEPTING MY POSITION WITH THE ACLU HOWEVER, I WAS A KANSAN WHO ALWAYS SPOKE FEARLESSLY FOR WHAT I BELIEVED IN AND CAMPAIGNED FOR THOSE I WISHED TO SEE IN OFFICE. I WOULD NOT HAVE RELISHED THE IDEA THEN OF HAVING TO REGISTER MY INTENT WITH GOVERNMENT TO PROTEST, CRITICIZE OR SUPPORT ANY POLITICAL CANDIDATE OR ISSUE.

IN CONCLUSION:

WHAT KANSANS **DON'T** WANT

1. WE DO NOT BELIEVE KANSANS WISH TO GIVE UP THE RIGHT TO PUBLISH HANDBILLS OR PAMPHLETS ANONYMOUSLY IF ANONYMITY IS ALL THAT WOULD PROTECT THEM FROM UNFAIR RETALIATION OR DISCRIMINATION.

2. WE DO NOT BELIEVE KANSANS WISH TO REGISTER EACH YEAR AND BE FORCED TO PAY A FEE FOR THE RIGHT TO LEND THEIR SUPPORT TO OR SPEAK OUT AGAINST ANY CANDIDATE.

3. WE DO NOT BELIEVE KANSANS WISH TO GIVE ANY GOVERNMENT COMMISSION THE RIGHT TO DEMAND MEMBERSHIP LISTS OF AN ORGANIZATION OR CLUB OF WHICH THEY ARE MEMBERS. FOR THOSE WHO SEE THIS AS AN EXAGGERATION THEY NEED LOOK NO FURTHER THAN OUR NATIONS CAPITOL FOR PROOF. LAST AUGUST SOME 26 NON-PROFIT ADVOCATES APPEALED TO THE AMERICAN CIVIL LIBERTIES UNION FOR HELP WHEN THEIR MEMBERSHIP LISTS AMONG OTHER INTERNAL MEMOS WERE SUBPOENAED BY THE SENATE COMMITTEE EMPOWERED TO INVESTIGATE CAMPAIGN FINANCE. AMONG THEM, ON THE RIGHT, THE CHRISTIAN COALITION, THE NATIONAL RIGHT TO LIFE COMMITTEE, THE HERITAGE FOUNDATION AND THE BETTER AMERICA FOUNDATION, CREATED IN 1993 BY OUR OWN BOB DOLE. GROUPS ON THE LEFT INCLUDED THE NATIONAL EDUCATION ASSOCIATION, THE SIERRA CLUB, THE AMERICAN TRIAL LAWYERS ASSOCIATION, THE AFL-CIO AND EMILY'S LIST. THE ACLU PROMISED TO CHALLENGE WHAT WERE OBVIOUSLY POLITICALLY MOTIVATED SEARCH MISSIONS. IT WOULD ONLY BE A MATTER OF TIME AND CIRCUMSTANCE BEFORE IT WOULD HAPPEN HERE.

4. WE DO NOT BELIEVE KANSANS WISH TO FORFEIT THEIR RIGHTS UNDER THE FIFTH AMENDMENT AGAINST SELF INCRIMINATION TO ENABLE THIS COMMISSION TO SUBPOENA THEM ABOUT ANY MATTER UNDER THEIR VAST AUTHORITY WITHOUT THE BURDEN OF REASONABLE SUSPICION BEING MET. THEIR NEW PROPOSALS STRIKE THAT REQUIREMENT WHICH IS CURRENT LAW.

5. WE DO NOT BELIEVE KANSANS WISH TO BE TOLD BY GOVERNMENT THAT IF THEY WISH TO USE THE VOTING RECORD OF A CANDIDATE IN THEIR FLYER, THE BURDEN OF PROTECTING THAT CANDIDATE'S VOTING RECORD FROM BEING MISUNDERSTOOD, FALLS TO THEM WHEN THEY ARE FORCED TO PRINT ON THEIR FLYER THE FACT THAT SOME BILLS CONTAINED MANY MEASURES OTHER THAN THOSE BEING ADDRESSED IN THE FLYER. THE PORK BARRELING OF LEGISLATION IS AN ISSUE OF YOUR OWN CREATION AND IT DOES NOT SEEM RIGHT THAT THE PEOPLE OF KANSAS SHOULD BEAR THE BURDEN OF EXPLAINING IT. FRANKING PRIVILEGES SHOULD BE USED TO MAKE YOUR VOTING RECORD UNDERSTOOD.

6. WE DO NOT BELIEVE KANSANS WISH TO HAVE PRIOR RESTRAINTS PLACED UPON THEIR RIGHT TO SPEAK BY HAVING TO REGISTER THEIR INTENT TO DO SO.

7. AND LASTLY WE DEFINITELY DO NOT BELIEVE KANSANS WISH TO HAVE A GOVERNMENT COMMISSION DECIDING WHETHER STATEMENTS ABOUT CANDIDATES USED IN POLITICAL CAMPAIGNS ARE TRUE OR FALSE! ESPECIALLY WHEN THE COMMISSION WHO RENDERS THIS VERDICT ARE THE ONLY ONES WHO STAND TO BENEFIT FROM THE \$5,000 DOLLAR FINES.

WHO DO I REPORT THIS POTATO SALAD TO?

I PERSONALLY DO NOT WISH TO SEE THE EXPRESSION OF SERIOUS CONCERN ON THE FACE OF A RESPECTED HOUSE MEMBER AS WITNESSED A FEW WEEKS AGO IN THIS VERY COMMITTEE. HIS CONCERN STEMMED OVER WHAT FORMS OF SPEECH REQUIRE REPORTING AND WHAT DO NOT. ALREADY HE APPEARED TO BE ASKING THE YET TO BE RENAMED "ETHICS COMMISSION" WHETHER HIS ANNUAL BARBECUE WOULD BE SUBJECT TO THE REPORTING REQUIREMENTS FOR EVERYONE WHO ROLLED UP THEIR COLLECTIVE SHIRTSLEEVES TO DISH UP THE POTATO SALAD AND HOT DOGS.

THE TRUTH WE MUST FACE BY THE VERY INTRUSIVE AND AMBIGUOUS NATURE OF THESE PROPOSALS IS THAT HIS CONCERN WILL BECOME YOUR CONCERNS AND THE CONCERN OF EVERY ELECTED OFFICIAL, EVERY CANDIDATE, EVERY CLUB, EVERY ORGANIZATION, EVERY BUSINESS AND MOST OFFENSIVELY, EVERY INDIVIDUAL KANSAN WHO PARTICIPATES IN AN ELECTION.

MOST OF THE WRONGS YOU SEEK TO RIGHT CAN BE MOST EFFECTIVELY DEALT WITH IN THE OPEN EMBRACEMENT OF YOUR FIRST AMENDMENT RIGHTS TO RESPOND TO UNFAIR CRITICISMS OR MERELY BY SAYING NO TO A CONTRIBUTION OF QUESTIONABLE SOURCE.

ETERNAL VIGILANCE MAY BE THE PRICE OF LIBERTY BUT MUST IT BE REPORTED AS A CONTRIBUTION OR AN EXPENDITURE?

THE ACLU HAS SUCCESSFULLY DEFENDED THE RIGHTS OF NAZIS TO MARCH IN SKOKIE ILLINOIS, NOT BECAUSE WE AGREED WITH THEIR MESSAGE BUT BECAUSE WE HAVE NEVER LOST SIGHT OF THE FACT THAT IT IS THE MOST UNPOPULAR SPEECH THAT MUST BE VIGILANTLY PROTECTED TO INSURE THE RIGHT OF EVERY AMERICAN TO SPEAK. WE LOST OVER A MILLION MEMBERS AS A RESULT OF THAT CASE...OVER HALF OUR MEMBERSHIP LEFT US BUT WHEN YOUR CLIENT IS THE BILL OF RIGHTS, YOU DON'T COMPROMISE.

PLEASE TRY TO SEE BEYOND THE PRESENT DAY POLITICS OF THESE MEASURES AND REALIZE THE HISTORIC IMPORTANCE OF PROTECTING THE RIGHTS OF YOUR CONSTITUENTS TO PARTICIPATE IN GOVERNMENT BY SPEAKING FREELY, AT TIMES ANONYMOUSLY, AND ALWAYS WITHOUT FEAR OF REPRISAL OR CENSORSHIP.

AS ROGER BALDWIN, THE FOUNDER OF THE AMERICAN CIVIL LIBERTIES UNION ONCE EXTOLLED UPON OUR PURPOSE, "THERE ARE SPACES RESERVED IN HELL FOR THOSE WHO REMAIN QUIET DURING TIMES OF TROUBLE." WRITE LAWS THAT ENCOURAGE BOISTEROUS DEBATE AND ACTIVE GRASS ROOTS PARTICIPATION, NOT LAWS THAT PLACE CONSTRAINTS UPON OUR ABILITY TO DO SO.