Approved: 1-29-98
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE.

The meeting was called to order by Chairperson Janice Hardenburger at 1:30 p.m. on January 22, 1998 in Room 529-S of the Capitol.

All members were present:

Committee staff present: Dennis Hodgins, Legislative Research Department
Mike Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Graceanna Wood, Committee Secretary

Conferees appearing before the committee: Bruce Dimmitt, Kansans for Life
Michael Welton, Independent
John Lewis, Independent
Carl Peterjohn, Kansas Taxpayers Network

Others attending: See attached list

Chairman Hardenburger asked for introduction of bills.

Chairman Hardenburger informed that the Committee had had a hearing on **SB 391** on January 15, and time was permitted only for the proponents on that date, therefore, opponents would be scheduled for today.

The first conferee Bruce Dimmitt testified in opposition to **SB 391**. (Attachment #1)

Senator Becker questioned whether anonymous pamphleteering which he interpreted as a situation comparable to someone putting out a flyer going door to door anonymously the night before an election is a problem. Mr. Dimmitt said that right is protected by the U. S. Constitution.

Senator Gooch asked Mr. Dimmitt if Constitutional rights give a person the right to put out false information against a candidate prior to the election? Mr. Dimmitt said yes.

The second conferee Michael Welton, who represented himself, testified in opposition to **SB 391,** particularly $100 limit. (Attachment #2)

Senator Gooch stated he thought the bill only asked for the right to know who is responsible. Conferee Welton stated his organization does not do anything anonymous; they put their name on everything, but his main concern is there are so many bills relating to this same situation.

The third conferee John Lewis who testified on the civil liberties and Constitutional aspects of **SB 391**. (Attachment #3)

The fourth conferee Karl Peterjohn, Executive Director of Kansas Taxpayers Network testified in opposition of **SB 391**. (Attachment #4)

Senator Huelskamp asked if it is possible to directly or indirectly influence the results of an election. Mr. Peterjohn stated all their literature is identified. Senator Gooch asked Karl Peterjohn if his organization was against this bill, since his organization spends money on election issues.

Hearings were closed on **SB 391.**

Meeting was adjourned at 2:30 p.m.

Next meeting will be at 1:30 p.m., January 26, 1998.

# ELECTIONS & LOCAL GOVERNMENT COMMITTEE
# GUEST LIST

DATE: JANUARY 22, 1998

| NAME | REPRESENTING |
|---|---|
| Dale Sprague | Linn Co Ks for Life |
| John VanNice | |
| Dara Leaming | Ft Scott KS for Life |
| Cindy Vance | Ft. Scott, Kans. KFL |
| Allan Elstrom | |
| Janice Elstrom | Johnson Co. KYOL |
| Richard Marshall | Ft Scott Ks. for Life |
| Sister Barbara Karleskint | Ft. Scott KS "for Life" |
| Nancy Wells | Olathe, KS KFL |
| R E Wells | Olathe KFL |
| Capt. Jeff Dennis | Topeka Alumni Assoc. |
| John Lewis | Self |
| Harriet Lange | Ks Assn Broadcasters |
| Velma Russell | Ft Scott, Ks KFL |
| Charlie Smithson | KCGSC |
| Carl Miller | " |
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# SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE COMMITTEE GUEST LIST

DATE: JANUARY 22, 1998

| NAME | REPRESENTING |
|---|---|
| Karl Peterjohn | Kansas Taxpayers Network |
| George Petersen | " " " |
| Patricia Rafferty | Fort Scott KS, Birth Line |
| Kim Haben | KFL |
| Cindy Thorn | KFL |
| Mary Stanbrough | Linn County |
| Jacob Stanbrough | Linn County |
| Darrell Stanbrough | Linn County |
| Kevin Stanbrough | Linn County |
| Dale Sprague | Linn Co Ks for Life |
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# SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE COMMITTEE GUEST LIST

DATE: JANUARY 22, 1998

| NAME | REPRESENTING |
|---|---|
| Bob Chasen | KFL |
| Betty Chasen | KFL |
| Frances Glenn | KFL |
| Tina Anderson | KFL |
| Bruce Dimmitt | KFL |
| Maxine Moore | KFL |
| Hattie Johnson | KFL |
| Marietta Slater | KFL |
| Joe Slater | KFL |
| Johnnie K. Cole | Senator Tyson |
| Estelle J. Cole | Senator Tyson |
| Corrie Kangas | KFL |
| Keith Couch | Self |
| Myrtha Couch | Self |
| Matt Baker | KFL |
| Linda Baker | KFL |
| JoAnn Hughes | Wy. County Comm. Area Woman |
| John Rieder | Linn County |
| Grace Rieder | Linn Co K. F. L. |

# STATEMENT OF BRUCE DIMMITT TO SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE REGARDING SB 391 - CAMPAIGN FINANCE, INDEPENDENT EXPENDITURES

January 15, 1998

Madam Chairman and members of the committee, I appreciate the opportunity to present my views concerning SB 391. I believe campaign finance is a very important issue. However, **I speak in opposition to SB 391**.

The purpose of the bill seems on its face to be for the purpose of simply requiring the reporting of information (to be made available to the public) as to the identification of any person (**including associations or organizations**) that make expenditures (as defined in the bill) in the aggregate of over $100 per calendar year (or disseminating information) **for the purpose of, or having the effect of**, directly **or indirectly influencing** the nomination or election of a candidate or other outcome of an election when such person does so **independent of the candidate**. The specific information to be made available would include not only the identification of the individual but also the amount **and source** of money for such expenditures.

The entities covered apparently would include associations and organizations that are politically non-partisan tax-exempt organizations such as unions, churches, environmental organizations, newsletters published in the public interest, league of women voters, etc. And such entities would apparently be covered even if they addressed one or more issues of public interest without expressly advocating the election or defeat of a candidate or party.

In *Buckley v. Valeo*, 424 U.S. 1 (p.656); L.Ed.2d 659; 96 S.Ct. 612 (1976), the court majority said: "---But we have repeatedly found that compelled disclosure in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.---" This was confirmed by *McIntyre v. Ohio Elections Commission*, (see attached copy of Kansas Lawyer Article). *Buckley*, at p. 657, goes on to say "---group association is protected because it enhances '(e)ffective advocacy.' --- The right to join together 'for the advancement of beliefs and ideas,' --- is diluted if it does not include the right to pool money through contribution, for funds are often essential if 'advocacy' is to be truly or optimally 'effective.'

**Elec. & Local Gov.**
**Date:** 1-22-98
**Attachment:** #1

In *McIntyre* the court held that political speech is the essence of First Amendment expression and no form of speech is entitled to greater constitutional protection. It further held that **anonymous** phamphletering is not a pernicious, fradulent practice, but an honorable tradition of advocacy and of dissent; anonymity is a shield from the tyranny of the majority.

The infringement on First Amendment rights could concededly be justified if there is a compelling governmental interest such as to prevent corruption and to ensure the purity and openness of the election process. But, the burden of showing the existence of sufficient corruption to outweigh infringement of First Amendment rights is a very serious and heavy burden and it would have to be clearly met by those supporting the adoption of this bill. **That burden is not met**. Organization or association spending affecting the outcome of an election is not corrupt because of any likelyhood of a quid pro quo. Moreover, in *New York Times v. Sullivan,* 376 U.S. 254, 269 (1964), the U.S. Supreme court held that even false statements of a political nature about a public official are protected speech under the First Amendment. I understand that laws do not require an organization's political speech to be free of libel, falsity or fraud. The tenets of one man are the terror of another. Name-calling or insults are not illegal. The reputation of politicians is vulnerable to vigorous attack, subject only to proof of actual malice.

I must candidly say that I believe the actual, though of course unstated, purpose of the bill is not to avoid corruption but to harass and intimidate participants in their grassroots-level participation in civic matters. The rate of participation in many elections is at an embarrassingly low level already (compared for example, to citizen involvement rates of new and emerging democracies around the world) **To require the kind of reporting and disclosure by organizations and associations that this bill requires would clearly have a chilling affect on citizen participation levels.**

**Such chilling is exactly the wrong outcome that we need. Low citizen involvement is due at least in part to the feeling that self-interested, elite, big-money interests are in control and that grassroots-level involvement of ordinary citizens is futile.**

**But the answer to lack of citizen involvement in the political process is to mitigate the significance of contributions from the most affluent elements of our society by stimulating more involvement by ordinary citizens at the grassroots level - <u>the voters.</u>**

PUBLISHED WEEKLY

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VOL 7, NO. 7 7 K.L. 77 FASTEST REPORTING OF OPINION SUMMARIES FEB. 23 – MAR. 1, 1997

# Disregarding U.S. Supreme Court Ruling, Kansas Lawmakers Wage Bold Attack on Freedom of Speech

## *Bill Pushing I.D.'s on Citizens' Political Literature 'Obviously Violates First Amendment'*



BY JOHN LEWIS

Kansas House and Senate committees last week passed companion bills that legal authorities have determined to be in direct violation of the First Amendment of the U.S. Constitution.

The legislation would prohibit anonymous campaign literature in elections for political office.

The legislation brazenly contradicts a recent U.S. Supreme Court ruling that struck down such laws.

Legal experts in the state said the Kansas measure, if it is passed by the two chambers, will not be enforceable.

"Obviously, the proposed legislation ...violates the First Amendment of the U.S. Constitution," said Harold S. Herd, a former Kansas Supreme Court Justice and now Distinguished Jurist in Residence at the Washburn University School of Law, in a written statement. "The federal Constitution applies to anonymous speech protection. I can think of no stronger statement of the principle of law than the court used."

Mike Merriam, a media law attorney in Topeka, agreed that the U.S. Supreme Court's 1995 decision in *McIntyre v. Ohio Elections Commission* renders the Kansas proposal unenforceable.

"The *McIntyre* decision does stand for the proposition that this type of legislation will not be upheld," Merriam pened to them in the last campaign, so they pass some punitive legislation to keep it from happening again," said Merriam. "Politicians don't pay much attention to court cases."

The Senate Elections and Local Government Committee passed the bill early last week.

The House Governmental Organization and Elections Committee on Friday did discuss the constitutional issue before sending it on to the full chamber for consideration. Committee Chairman Kent Glasscock said legi

### WHAT THE U.S. SUPREME COURT SAYS

In *McIntyre v. Ohio Elections Commission*, the U.S. Supreme Court said the following:

"The freedom to publish anonymously is protected by the First Amendment, and ... extends beyond the literary realm to the advocacy of political causes."

"Under our Constitution, anonymous pamphleteering is not a perni-

### WHAT THE PROPOSED LEGISLATION SAYS

Senate Bill 113 and House Bill 2128 would amend K.S.A. 25-4156 to criminalize publishing or causing to be published any brochure, flier or other political fact sheet which is designed or tends to aid, injure or defeat any candidate for nomination or election to a state or local office, unless such matter is followed by the name of the chairperson of the political or other organization or the name of the individual who is responsible therefor.

to be in direct violation of the First Amendment of the U.S. Constitution.

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"The *McIntyre* decision does stand for the proposition that this type of legislation will not be upheld," Merriam said.

Even a lawyer for the state Commission on Governmental Standards and Conduct, which is apparently the driving force behind the bill, bemoans its constitutional problems.

"Admittedly, we are walking a minefield," said the Commission's attorney, Charles Smithson. "There are constitutional issues everywhere."

So why are the two Legislative committees leapfrogging the constitutional implications and pushing the legislation forward?

"They don't like something that happened last week.

The House Governmental Organization and Elections Committee on Friday did discuss the constitutional issue before sending it on to the full chamber for consideration. Committee Chairman Kent Glasscock said legislators relied on the assurance of Revisor of Statutes Norm Furse, who apparently said the bill would somehow pass constitutional muster because it would apply only to persons who spend more than $100 a year.

But the rationale for that argument, and its $100 spending floor, is a mystery.

Smithson, the Commission attorney, attempted to justify the legislation by making a vague reference to "some states back east" that had established such spending floors. But readers of the

CONTINUED ON PAGE 2

attention to court cases.

The Senate Elections and Local Government Committee passed the bill early

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"The freedom to publish anonymously is protected by the First Amendment, and ... extends beyond the literary realm to the advocacy of political causes."

"Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority."

"[A state's] prohibition of the distribution of anonymous campaign literature abridges the freedom of speech in violation of the First Amendment."

"[I]t is a regulation of core political speech. Moreover, the category of documents it covers is defined by their content – only those publications containing speech designed to influence the voters in an election need bear the required information."

"No form of speech is entitled to greater constitutional protection than Mrs. McIntyre's."

"The simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures that she would otherwise omit."

"The State may, and does, punish fraud directly. But it cannot seek to punish fraud indirectly by indiscriminately outlawing a category of speech, based on its content, with no necessary relationship to the danger sought to be prevented."

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4-1

# Legislators Push Ahead, Despite Contradictory U.S. Supreme Court Ruling on Anonymous Political Literature

CONTINUED FROM PAGE 10

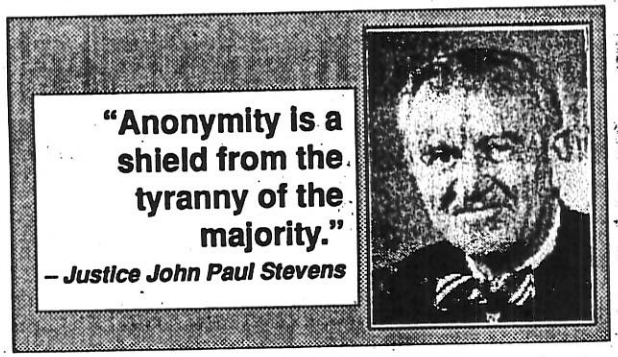
*McIntyre* decision see no such dollar-amount exception.

"I don't either," Smithson conceded.

Perhaps those states "back east" were confused by an earlier opinion in which the Supreme Court did approve a particular law requiring that independent (non-candidate) expenditures in excess of a threshold level be reported to the Federal Election Commission.

But the court drew a strong distinction between that decision and the banning of anonymous literature, strongly stating that the earlier ruling was "a far cry from compelled self identification on all election related writings."

Thus, despite supporters' attempt to shoehorn the measure into the Constitution, it appears that the H.B. 2128 and S.B. 113 effort is a hollow endeavor, except to the extent that, if passed, the law might initially serve to intimidate would-be literature distributors, even if it is unconstitutional.




That, of course, may be good enough for some legislators.

Sen. Janice Hardenburger, the Senate committee chairwoman, said the law is aimed at particular groups, including labor and religious organizations.

"It would identify not just unions, but also Christian Coalition activity," she said.

The otherwise invalid law could be effective nonetheless if such groups would be leery of a criminal indictment. They might balk at the mere prospect of having to defend themselves against the substantial resources of the state attorney general.

If so, then the legislation, even if unconstitutional, will have muzzled certain persons and groups, thereby fulfilling an important political purpose for some officeholders who, having been the targets of such literature, wouldn't mind at all.

This, the Supreme Court said, is the very reason why laws prohibiting anonymity must be held unconstitutional. "Anonymity is a shield from the tyranny of the majority," Justice John Paul Stevens wrote for the court. "No form of speech is entitled to greater constitutional protection."

"The *McIntyre* decision does stand for the proposition that this type of legislation will not be upheld."
– *Mike Merriam*

"We are walking a minefield. There are constitutional issues everywhere."
– *Charles Smithson*

"It would identify not just unions, but also Christian Coalition activity."
– *Sen. Janice Hardenburger*

# Bill Would Prohibit Intimidation by Lawsuit

Kenneth Clark has handled hundreds of legal cases and is not afraid of lawsuits, his former law partner and friend told the Senate Judiciary Committee last week.

But last April, Clark called Allen Shelton, an Oberlin attorney, and pleaded, "Get me out of this lawsuit any way you can."

Clark, 76, who practices law in Bogue, was temporarily intimidated by a $60 million lawsuit filed against him and nine small communities in northwest Kansas by a telecommunications company that was denied cable television franchises in those towns, Shelton said.

The company accused Clark and the

against public participation," or SLAPPs, by establishing a process for getting them quickly dismissed.

Professor George W. Pring of the University of Denver College of Law, who has written a book about them, defines them as "outrageous lawsuits to intimidate and silence citizens, businesses and organizations, and keep them from communicating their views to you

SLAPPs deny people that right, Pring said, because they are "chilled into silence by the threat of SLAPPs."

Senior U.S. District Court Judge Dale Saffels of Topeka dismissed on Jan. 30 the lawsuit brought against Kenneth Clark. But it isn't over, because two claims remain unresolved and an appeal is expected, Shelton said.

He said Kenneth Clark already owes

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The company accused Clark and the towns of engaging in an alleged conspiracy to violate anti-trust laws, claiming the defendants had damaged its reputation.

"It almost worked," Shelton added. "I drove down to Bogue and we talked about it. The more we discussed it, the madder he got. So he stayed in the case.

"But you can imagine what the reaction of the ordinary citizen would be to getting sued for 60 million bucks."

Shelton said he concluded the sole purpose of the lawsuit was to silence Clark.

Shelton, who practiced law with Clark for 25 years, testified in support of a bill introduced by Sen. Stan Clark, R-Oakley, who is not related to Kenneth Clark.

The bill is aimed at diminishing the intimidation factor created by what have become known as "strategic lawsuits against public participation," or SLAPPs, by establishing a process for getting them quickly dismissed.

Professor George W. Pring of the University of Denver College of Law, who has written a book about them, defines them as "outrageous lawsuits to intimidate and silence citizens, businesses and organizations, and keep them from communicating their views to you – their government authorities and officials."

Pring told the committee the filing of SLAPP lawsuits has increased dramatically since 1970.

"We found SLAPPs almost never win in court – the majority are eventually dismissed – but they often win in the real world, devastating citizens and their families, destroying groups, cutting off government officials from their constituents and threatening the future of democracy in our country."

The average SLAPP lawsuit, Pring said, takes three years to get dismissed, and one in Utah continued for 11 years before it was dismissed.

He said intimidating individuals and groups from speaking out on issues violates as basic a right as a democracy can convey on its citizens.

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Senior U.S. District Court Judge Dale Saffels of Topeka dismissed on Jan. 30 the lawsuit brought against Kenneth Clark. But it isn't over, because two claims remain unresolved and an appeal is expected, Shelton said.

He said Kenneth Clark already owes $23,000 in legal costs as a result of the lawsuit, and has had to take time away from his own law practice to defend the lawsuit.

The bill, on which the committee took no action, would declare the state's intent to protect citizen participation in government as an inalienable right, and would grant immunity from civil lawsuits when people express their views to government. There would be no protection if the speech is directed at anything other than a governmental matter.

Ten states have passed such laws. They don't block lawsuits, Pring said, but they can bring about their swift dismissal.

"When the SLAPPers are slapped back, and hard, they will begin to hesitate to use the courts in this fashion," Shelton said.

## *Frankfort Lawyer Leaves $150,000 for KU Journalism Scholarships*

A graduate of the University of Kansas' journalism and law schools has given the KU Endowment Association $150,000 for scholarships.

David H. Anderson, an attorney who worked in Frankfort, died of cancer in December 1995 at age 49. The David H. Anderson Memorial Scholarship Fund will give preference to students from the Midwest who attend the university's journalism school.

"A primary goal of the school of journalism is to establish endowed scholarships and we are deeply grateful for the generous gift of Mr. Anderson," said Mike Kautsch, dean of journalism.

Anderson received a bachelor of journalism degree in 1968 and earned his law degree in 1971.

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# EXCERPTS FROM NATIONAL GOVERNOR'S CONFERENCE BROADCAST ON C-SPAN NOVEMBER 22, 1997

**Gov. John Engler (Michigan)**

I'm curious about the uh one observation Mark mentioned this, and the union coverage and union political role uh, Clinton's first act almost was the repeal of the Bush uh long overdue executive order on the Beck decision but for a long time there has been this emphasis on corporate PACs and corporate activity, major business contribution, but the union side has been pretty much just accepted, its sort of like fund raising is some of the churches that goes on and I just accept it and I'm - do you sense a change coming now in the attention in the coverage because I think the largest ongoing permanent political operation in the country would be what the unions run and those are highly paid full-time operatives who are available to go as Christy Whitman told in very large numbers to NJ to run paid operations and that has never really been discussed if it were uh certainly it were Philip Morris doing that, that would get a lot of attention but it really doesn't come out and I'm curious if the, you know, the collective problems of teamsters and Sweeney and Trunka and that now is going to lead to a little different focus.

**Mark Halperin (ABC Political Director)**

I think, like I said before, I think there is going to be a lot of coverage next year uh, all their problems uh, the teamsters' special election, the ongoing Congressional uh investigation in Washington that are going to look a lot at union stuff. The newspapers cover it in a fair amount. The networks don't very much in any aspect of the union. I, one of the questions I'm trying to figure out the answer to is how the press is going to cover the effort in California and elsewhere to stop the automatic use of union dues for political activity, I don't know the answer as to how its going to be covered except I know that unions will be in the news very much because of all the investigations.

**Charles Cook (The Cook Report, Editor)**

We are seeing the spotlight shown at places that have been pretty dark for a long time and I think the offensive that's out there is is effective we are seeing examination of the money that we have never seen before. I think you are already seeing though the very first signs of the counter-attack is going to like, like, though where democrats, labor is going to come in and say yes but what about shareholder funds, what about membership in trade associations, should their money be used, be used for political purposes without the permission of either the members or the shareholders and once that fight is engaged, I'm not sure that either party is going to want to continue pushing it and I suspect is going to end up falling back because neither party wants to really hammer one of their bases of core of fund raising.

**Doug Bailey, (The Hot Line, Founder & Publisher)**

In terms of press coverage, uh, Gov. I can tell you just by monitoring the clips that come in to the Hot Line every day, uh, there will be more and more and more focus on both union involvement in elections and fund-raising and the role of consultants a lot more attention to the technical side of a campaign given by the press that is largely going unnoticed and without much attention and certainly the proposition in California will increase the focus on the unions.

**Gov. Engler**

I just think that this has been one of the real missed stories in American politics and I think frankly the answer is not particularly satisfactory in the sense and I don't know, there is no way to settle this is a, this has been a major impact on politics for a very long time and just taking the recently concluded Whitman campaign, it was mentioned but it sort of is true that so what, there were literally hundreds of paid employees of major unions in NJ working against Whitman for a long period of time and they are observable, I mean a camera actually, an ABC camera actually could catch that and uh an investigative reporter could discover it. Uh, I'll tell you being on the other side of some of those campaigns, you sure feel it and it just seems to me that doesn't get, that whole dynamic has, has sort of been uh missed in American politics. It's a big factor and it does why on something like uh the fast track legislation, with all the logic and I think all the argument before the agreement labor comes in because labor controls the nominating process for those democrats and thats why they won't buck the president, it has nothing to do with sending any messages, that labor is so dominant in the nominating side on the democratic side if you buck them there you might be kissing your nomination good-bye to run as a candidate, not about November.

**Cook**

I would argue, though, that we have probably read more about labor's soft money in the last year than we've read in the last 20 and there is a sign of the acceleration of the examination so I would argue press coverage is certainly headed the way you are talking about.

**Gov. Engler**

I think while the Whitman campaign was going on, it was missed, so I mean ---

**Bailey**

I think a lot of the focus has been on the ads and not on the workers.

**Engler**

Yeah.

**Gov. Bill Graves (Kansas)**

This probably uh segues into that rather well because my, my question has to do with issue advocacy uh and uh we, we had a fairly spirited discussion of this in our session the other day and it seems to me like while we are obviously aware of constitutional rights of expressing oneself, uh, I happen to personally think that the explosion of money flowing through issue advocacy campaign uh has the uh the possibility of of further uh discouraging Americans. I mean I think we will drive what we see in the way of advertising uh to an all-new low uh in this country and and/or further irritate and, and the American public who has already had enough of, of money and the kind of mud slinging and things that goes into various campaigns, I'm just curious for any observations about if you see issue advocacy just growing unchecked and we just live with it because its a constitutional right or uh ---

**Bailey**

Let, let me add to the question, does anybody see uh reforms coming out of Washington on this subject or on others?

**Cook**

I, I don't see issue advocacy addressed, I mean I really don't. I think personally, think its awful, I'd love to ban it. But the Federal courts have basically uh all but abolished election laws in this country, and uh this is the wild west, I mean you know we sort of had, I mean there was hanky panky 10 or fifteen years ago but for, for now there is nothing that anyone needs to do or wants to do that they can't legally do. There isn't anything, there are no limits anymore. I think its a crime and I don't know how to address it constitutionally.

**Mona Charen (Syndicated Columnist)**

Uh I, I may be in the minority here. I've never run for office and I've never had the issue ads run you know against me but uh it seems to me we are in the peculiar position in this country at the moment where the supreme court ruled that nude dancing is a form of protected speech but there is a good segment of this population that believes that an ad that says don't vote for governor "y", he vetoed whatever, that that should be illegal. I mean, it seems if there is anything that is at the core of the first amendment, it is issue advocacy.

**Gov. Arne Carlson (Minnesota)**

Thank you, I agree.

**Halperin**

I think that if it hadn't been for the attention on the irregularities from the cycle that everyone was saying that 98 was going to be a, an explosion of 3rd party ads uh and I think now thats a little bit up in the air. I'm not sure we'll see as many. I think a lot of groups that fund those ads are worried about scrutiny and so I, I don't think there will be a law in Washington that will, will bar them in any way because I think there are first amendment concerns that will win out but I don't think you will see quite as much and I think thats also open not just for candidates but for initiatives and other things because I think people are gonna be concerned about, about scrutiny and if there are disclosure laws that disclosure laws Federal and state laws that allow that scrutiny, I think that may be part of that solution.

**Bailey**

Gov. Carlson has been trying to get in here.

**Gov. Carlson**

Thank you a lot. I think this has been a great discussion and I commend you for it. I think what bothers me as a person who has been around like for some 30 years is that we are so busy criminalizing every aspect of economic participation in politics. Yesterday's reforms are now hinted at today's scandals. Uh, the problem I have is one thats inherent to the business of the press, which is that they zealously guard their rights to participate in the first amendment. Theres no constraints, no restrictions, no nothing, but so many of them come back with their editorials and advocate incredible restrictions on those of us who choose to participate in the political process and I for one am thankful that the supreme court has exercised at least some judgment in restraint. I fail to understand why we as a nation can't welcome participation in American politics regardless of viewpoint, regardless of how much you want to economically participate as long as we have full disclosure and then the people will decide (much applause).

**Stuart Rothenberg (The Rothenberg Report, Editor & Publisher)**

Can I just, uh, this is not really as a response but I'll comment on your suggesting its not unreasonable but your suggesting also that you will have to blow contribution limits as speech. Its possible but right now just looking at the hill, just looking at the political realities of the hill, uh, I think that there's very much, there's very much of a bias towards the status quo which some people like and some people don't. Obviously Senator McConnell likes it very much. There is no indication at all that there is going to be

acceptance of this proposal to treat legislative advocacy ads as campaign commercials and therefore under limits within 60 days thats been, thats been proposed and I, and I think its also, however, difficult to make the blow all the caps argument because the other side then defines that as special interest big money, big guys trying to buy it so we're in this, this awkward position. I think, I think there is a problem with legislative advocacy purely from a technical point of view. I mean you're trying to run a campaign, you aren't but lets assume you are now trying to run a campaign, you have outside groups essentially dictating the campaign discussion and agenda, maybe you don't want to talk about an issue, maybe you want to talk about it in a different way so it, it creates some more chaos,, now chaos isn't always bad but there are many campaign strategists or consultants who feel that the outside groups are disruptive in terms of a dialogue between the candidates.

**Gov. Carlson**

The first amendment is designed to be disruptive, uh (applause). That's precisely what its all about. But here's a problem I've got on caps. The only person who can participate in American politics without caps is the fabulously wealthy and there's no caps on them whatsoever. They are given total access to the first amendment and you're beginning to see in state after state, the millionaire set gets in, no restrictions, etc. The average person who chooses to participate has all sorts of constraints and then the media has unlimited access to free speech. Uh, that's not a fair, that's not a level playing field.

**Cook**

I don't know whether, let me just say one sentence on the previous, my problem on the issue advocacy thing is that there is no disclosure. I mean not one piece of paper has to go to the Federal Election Commission or anything else and you have bogus committees that are set up God knows where the money came from that are financing ads from groups that nobody ever heard of and were just created five days before the ads went out so thats part of my problem with it. But in terms of, I don't see a concerted effort by the White House to like go after certain people that they see as potential rivals President Bush President Clinton could move to Texas and I don't think that it would affect Gov Bush's reelection margins one iota. Uh, I mean, I just don't, you know in a dream he could affect something like that. I think there might be some money spent here or there to kind of dust people up a little bit but usually I think messing around with the other side's camp doesn't you know usually isn't terrible effective.

**Governor Elect Jim Gilmore (Virginia)**

With respect to the issue of campaign contributions, I see it as an effort to close down speech, really close down uh, the first amendment, through campaign contribution limits. Uh, we in Virginia don't have limits on contributions but we do have full disclosure and that allows us to deal with the concern about rich candidates there was a candidate who ran for the Virginia US Senate who spent ten million dollars of his own money uh and almost uh won an election but didn't because we have the ability to raise money in Virginia

and we were very concerned in the Governor's race we were running against a millionaire and it was always very very disconcerting so you can level the playing field by being able to raise money. Uh #1, and #2, with respect to the media, the media do shape and frame the issues of a campaign which ultimately shapes and frames the outcome of an election. They do that and the only way to be able to level that playing field is to be able to raise money so that you can go directly to the people with your own advertising and guess who charges the money for the advertising - the media (laughter) so we have to be able to level this playing field. The campaign fund raising is being driven by the media who we have to pay in order to be able to reach the people and ultimately the people still vote, this is democracy and we have to be able to go, we have to be able to go to the people.

**Governor Pete Wilson (California)**

Thankyou Doug. Actually its I confess not a question, its an answer. Gov. Keating asked quite legitimately with great justification and I'm sure with great frustration shared by all of us. Why is it that governors, why is it that republicans who are in fact educational reformers are portrayed as being against education and what can we do about it. The answer to the first part of the question is, we are portrayed by the enemies of reform as being against education, and they do it with paid media, with substantial paid media because they are able to dunn teachers who do not agree with them, good teachers, skilled dedicated teachers who support you governor in the reforms that you were seeking for the public schools and we are not talking about vouchers. Vouchers is only a part of it. It has to do with merit pay, it has to do with class size reduction, it has to do with the kind of teacher requirements that are necessary to have effective people in the classroom, all the things which each of us has tried to do at one time or another and if we did not have republican majorities in our legislature, saw killed by the democratic legislative majorities at the behest of the teacher's union. What can we do about it? There are a lot of dedicated skilled teachers I would venture to say a majority, who in states like mine are compelled to be members of a teachers union, or at least who pay agency fees and their dues, and those fees are used against their will and many, in many cases without their knowledge not only to defeat candidates but to defeat efforts that appear on the ballot to bring about reform because we can't get them through the legislature. The answer as to what it, and its broader than just the teachers union, but they are a splendid example, there ought to be the kind of paycheck protection that we have just qualified for the June ballot in California and I hope that happens in Congress. I hope that happens nationwide (applause).

**Greetings, Senator Hardenburger, and fellow members of the Senate Committee on Elections and Local Government.**

**Upon first glimpse of SB's 391, 390 and 410, a betting man might well wager this legislation's $100 limit on free speech that its proponents must not realize that this stuff is clearly unconstitutional.**

**But, on further reflection it becomes apparent that to the contrary they do know it is unconstitutional. The only conclusion one can come to is that the people supporting this kind of unconstitutional legislation have calculated the cost of giving away their first amendment and have decided that the cost is worth it if they can gain some short term advantage over their political opponents.**

**I would like to propose to this committee that when the proponents of this bill calculated the cost of giving away their first amendment they forgot to factor in an important part of the equation. I believe they forgot that when they give away their first amendment, they also give away their children's and grandchildren's first amendment. The people proposing this first amendment give away, have had the benefit of free speech all of their lives and apparently now take it for granted. I ask them to consider the possibility that future generations may not take free speech for granted and like our founding fathers and more recently like people in eastern Europe and Russia, their grandchildren may some day . . . long to have their free speech returned.**

**Once given away, the right of free speech is not always easy to reclaim. Could it be they have grossly miscalculated the cost? Will their children and their children's children curse them for giving their freedoms away?**

**What is really the worth of their free speech?**

**You know, just before Nathan Hale was hung, he stated that his only regret was that he had only one life to give for his freedom of speech . . .**

**And when you think of how Rev. Martin Luther King, Jr. gave the only life he had for his grandchildren's free speech . . . and I believe he would have given his life twice for them, if he could have.**

**It makes us all look rather foolish, I would say . . . gathered here today with the audacity to even debate whether or not we should place a paltry hundred dollar limit on any citizen's right to free speech . . .By the way, how much is your's worth? Thank you.**

**Michael Welton, 13223 W. 107th Court, Lenexa, KS 66210 (913) 469-5496**

**Elec. & Local Gov.**
**Date:** 1-22
**Attachment:** # 2

**Testimony of John Lewis**
**on S.B. 391**
**January 15, 1998**

I am John Lewis, the editor and publisher of *Kansas Lawyer*. I wish to comment upon the civil liberties and Constitutional aspects of this legislation.

When the year 1984 passed, those who know their literature rather chuckled and observed that, "Well, I guess George Orwell was wrong." But S.B. 390 and 391 and 410 indicate to me that Orwell wasn't wrong, he was just 14 years early. "Big Brother" appears to be here.

Has there ever in this state been a proposal to give an agency more devastating power than the proposal you are contemplating? Not only does this plan frivolously skip over so-called "minor details" like the First Amendment, it also directly affronts a person's Constitutional right to due process. The newly muscled Ethics Commission would handle the entire procedure, from beginning to end, with no apparent provision for appeals. This new "Super Agency" would have both the police power AND unchecked administrative power to levy fines. Has there ever been proposed a more arrogant and oppressive piece of legislation to be foisted upon the people of Kansas?

Just listen to this language from S.B. 390: "This commission may investigate, or cause to be investigated, any matter required to be reported upon by any person under the provisions of the campaign finance act, or any matter to which the campaign finance act applies irrespective of whether a complaint has been filed in relation thereto...[T]he commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commission deems relevant or material to the investigation."

In an era when people are demanding more Constitutionally-protected personal liberties and when they are demanding tax cuts and smaller government, what kind of monster is being created here?

How can this legislation possibly be effectively enforced? Who are you going to subpoena when most of the activities are going to be done anonymously anyway? How will the "Speech Police" keep their eyes on so-called "violators" when in most cases they won't even know who they are? Will the Speech Police be sitting in the corners of the Oak Park Mall parking lot, keeping their eyes peeled for people who are putting flyers on car windshields? Are they then going to chase these people for blocks until they tackle them and force them to disclose their identification? It is obvious that this legislation will be mostly unenforceable for these purposes.

The Act defines an "expenditure" as "directly or indirectly influencing the nomination or election of any candidate." Just how "indirect" does it have to be? The potential for harassment, even unintended, far outweighs any benefits of this legislation. How will we determine if an expenditure "directly or indirectly" influences an election? Who makes this determination? If Rich Becker sort of, kind of, or "has a feeling" that several Holy Trinity Catholic Church parishioners are responsible for some campaign signs that went up in his Lenexa neighborhood, and he thinks, but isn't sure, that they might have spent more than $100, does this mean those parishioners can be ordered to appear before the Speech Police for questioning? (Rich is my neighbor, so I can use him as an example.)

What about churches that speak out because of their strongly-held religious beliefs? Now we're going to regulate the speech of religious people based upon how much they try to spread their religious tenets, which they may believe they are asked to do by their God?

This legislation would empower the Commission, the "Speech Police," to haul people into an interrogation about whether a handbill or any other excercise of their free speech rights was "intended" to somehow, even slightly, indirectly influence an election.

**Elec. & Local Gov.**
**Date:** 1-22
**Attachment:** #3

Presumably, a person living in Liberal would have to take two days out of his life to drive to Topeka for questioning – in addition to the emotional trauma of the ordeal itself. But this prospect is just as horrific if the "suspect" is only having to drive from Tonganoxie. And what if the so-called "indirect influence" is found not to be violative at all? The potential for abuse of citizens is very high. What kind of a society would this be that, in effect, arrests people for merely speaking their minds? This is indeed mindful of George Orwell's 1984 scenarios. It brings to mind a Gestapo-like or KGB-like authoritarianism. I personally find it dreadful and frightening. Neither the McIntyre nor Buckley decisions, of the U.S. Supreme Court, approved of this kind of omnipotent subpoena power. It would clearly give government more power than it already has over the personal liberty rights of individuals.

One legislator on this committee last year told our newspaper that the legislature's disclosure efforts were aimed primarily at the pro-life advocates in the state. If it is true that the motivation for this legislation is to target one particular group, then it is clearly bad legislation. But it appears that these are, indeed, the politics of this bill. Numerous candidates have complained about the pro-life people who exercise their Constitutional right to campaign anonymously. "So we come up with a piece of Constitutionally questionable legislation to force them to report their activities to a menacing government watchdog with very big teeth. Our ideas have difficulty competing against the ideas of our enemies, so our solution will be to punish these citizens by taking away their Constitutional rights to remain anonymous.

What's going on here is not an effort to "reform" anything that's broken. Free and open political debate is a hallowed tradition rooted in the Constitution of this country and the Constitution of this state. What's going on here is entirely political – exposing the Constitutionally-protected campaign activities of people by trampling on their rights to conduct those activities anonymously. This legislation isn't about what the people want. The people certainly don't want to put this kind of oppressive power in the hands of a state agency in Topeka. It's about what politicians want. It's a collective temper tantrum.

Some might say that this legislation is needed as a way to identify those who are responsible for "fraud, false advertising and libel." This legislation solves none of those problems. Let's say that a citizen who is pro-life prints and hands out a bunch of leaflets disparging Candidate Smith. How does this legislation allow for a determination that the leaflets were fraudulent or libelous? Besides, there are already fraud, libel and slander laws on the books.

This legislation is replete with threats to people's free speech rights. Because people are required to report their political activities, they can, by definition, no longer remain anonymous.

Our Supreme Court has fervently protected the right to anonymous communication. Justice Black noted that "persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all." It was the only way, for fear of reprisal.

The Supreme Court has said, "On occasion, quite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent. Thus, even in the field of political rhetoric, where 'the identity of the speaker is an important component of many attempts to persuade,' the most effective advocates have sometimes opted for anonymity."

The Supreme Court has also said: "Even the arguments favoring the ratification of the Constitution advanced in the Federalist Papers were published under fictitious names." Those authors who published the letters anonymously were none other than James Madison, John Jay and Alexander Hamilton.

The U.S. Supreme Court, by its own words, has "embraced a respected tradition of anonymity in the advocacy of political causes." Indeed, the 1995 McIntyre decision specifically ruled in favor of anonymous campaign literature.

And although the 1976 Buckley decision left the door open for some reporting requirements, S.B. 391 completely removes the right of people to remain anonymous, which is what the Supreme Court has protected. Because S.B. 391 requires people to disclose their identities, their anonymity is lost.

Even referring to the Buckley decision, the USSC admitted that requiring disclosure statements was a transgression upon people's First Amendment rights of free speech.

Addressing this type of legislation, George Will recently wrote: "Nothing in American history...matches the menace to the First Amendment posed by campaign 'reforms' advancing under the protective coloration of political hygiene.

"What today's compaign reformers desire is a steadily thickening clot of laws and an enforcing bureaucracy to control both the quantity and the content of all discourse pertinent to politics.

[R]eformers want to arm the Speech Police with additional powers to ration the permissible amount of 'express advocacy,' meaning speech by independent groups that advocates the election or defeat of an identifiable candidate.

But the political class will not stop there. Consider mere issue advocacy, say, a television commercial endorsing abortion rights, mentioning no candidate and not mentioning voting but broadcast in the context of a campaign in which two candidates differ about abortion rights.

Such communications can influence the thinking of voters, Can't have that, other than on a short leash held by the government's Speech Police. Thus is the First Amendment nibbled away, like an artichoke devoured leaf by leaf. Reformers produce such laws from the bleak, paternalistic premise that unfettered participation in politics by means of financial support of political speech is a 'problem' that must be 'solved.'"

There are other troubling matters:

• The Buckley decision says it is not unconstitutionally vague for a provision to require disclosure for independent expenditures when it is narrowly construed "to apply only when they make an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate." But S.B. 391 goes too far, because it impermissably would apply to all elections in the state, not just those involving candidates for office. The U.S. Supreme Court, in the McIntyre decision, said that independent expenditure disclosure requirements, at issue in the 1976 Buckley decision, may only apply to candidate elections. The Supreme Court has not approved independent expenditure mandatory reporting for referenda or other issue-based ballot measures. The court's reasoning was that such a requirement would be too broad and a true infringement on free speech.

• This legislation makes an exception for broadcasting stations, newspapers, other periodical publications and internet communications. How do we define a "newspaper" or "a periodical publication?" With today's technology, any person can start a newspaper, magazine or newsletter in 15 minutes. Any person or group could legally create a general interest newsletter or newspaper that contains editorials advocating the election or defeat of a candidate. The freedom to start a publication is available to anyone, as it should be. Newspapers and other publications cannot be licensed by the state. Imagine the outcry from the media when you try to do that.

• S.B. 391 requires persons to file statements containing the information required in K.S.A. 25-4148 and amendments thereto. This requirement is astoundingly vague. Which parts of this statute is S.B. 391 referring to? The language in 25-4148 is, by definition, inapplicable to individual members of the public.

This is an imperfect society, but our founding fathers created it to be just that. They knew that perfection was not of this world. They craved personal liberty. They craved, first and foremost, free and unfettered speech. They never dreamed their progeny would someday face a threat to have the cost of their communications reported to a government "Big Brother" and to be threatened with a subpoena for noncompliance.

**KANSAS TAXPAYERS NETWORK**
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22 January 1998

Testimony to the Senate Elections Committee

By Karl Peterjohn, Exec. Dir.

The Kansas Taxpayers Network (KTN) has two unique reasons for testifying in opposition to S.B. 391.

1) KTN was sued twice by the City of Wichita for circulating an "illegal petition" under the Kansas municipal initiative statute. KTN ended up in front of the Kansas Supreme Court where in 1994 KTN and myself lost and the petitions were stopped.

2) KTN has fought in tax referendum elections where the advocates for increased taxation relied upon "informational" campaigns by both the city and school districts. In several Wichita elections, KTN prevailed with voters in the high tax 1990's.

I won't repeat the 1st Amendment arguments stated by other opponents except to say that KTN believes this legislation has substantial problems in this area. Attached to this testimony is a recent Wall Street Journal editorial which discusses the invalidation by a federal court of California's most recent attempt to enact campaign finance reform.

The main point I would like to leave this body with is the equal protection problems contained within this legislation which violate the 14th Amendment to the U.S. Constitution. Current Kansas law excludes reporting of expenditures by certain entities in Kansas. This is contained in K.S.A. 25 which specifically excludes large cities and the largest school district from reporting expenditures under the campaign finance reporting requirements. This creates a non uniformity within state statutes and would allow every other city in Kansas to exercise home rule powers under Article 12 Section 5 of the state constitution and opt out of these reporting requirements. I don't know how many cities have done so.

Sen. Hensley described this legislation as containing provisions which would exclude newspapers, unions, businesses, and professional groups from some of the arbitrary provisions which are contained in this legislation. KTN is a citizen organization made up of a large number of Kansans and Kansas businesses which would be impacted by this statute if enacted into state law. We would be in a second or perhaps, third class status under this law. I have brought copies of KTN's 1997 legislative vote rating and KTN has a Taxpayer Protection Pledge which is circulated to state and local candidates prior to elections which is reasons behind the Democrats, since only senate Democrats, are sponsoring this bill.

In Kansas I have talked with members of the tax committees about the second class status of retired Kansans receiving private pensions paying state income tax while government pensions are income tax free. This legislation creates a similar class difference in Kansas which I believe is abhorrent to the 14th Amendment and similar provisions within the Kansas Bill Of Rights.

The disparate treatment of different Kansans contained in this legislation makes this law extremely vulnerable on constitutional grounds. I find it incredibly ironic that Kansas statutes currently allow government tax funds to be used to solicit support in "informational campaigns" for raising taxes while this legislative body is considering legislation which would provide a prior restraint upon a citizen's involvement in the political process. If this legislation is enacted in its current form it will place constraints on individual Kansans, citizens groups, and others who aren't in one of the protected classes and this will result in polarization, alienation, decreasing political participation, and create a harsh discord within the Kansas body politic. I urge this committee to reject this legislation.

**Elec. & Local Gov.**
**Date:** 1-22
**Attachment:** # 4

# Sticking Up for Free Speech

The news coverage made much of the fact that Bob Dole called for a five-year phaseout of "soft money" contributions in written testimony last week to Senator Fred Thompson's committee. They somehow ignored his call for tightening restrictions on foreign contributions—"If you can't vote, you can't contribute"—along with his strong plea for fairness for union members. "To give teeth to the Supreme Court's *Beck* decision, federal law should be amended to require unions affirmatively to receive permission from their members before using forced dues payments for political purposes," Mr. Dole said.

It's no surprise that coverage of campaign finance reform is so one-sided; we have compared the fanatical support for such legislation around the Beltway to the earnestness of the Hale-Bopp cult. Inconvenient dissents from campaign finance theology—most of them delivered by the courts—are given short shrift. The latest exhibit: last week's decision by U.S. District Chief Judge Lawrence Karlton, who overturned California's new campaign contribution limits as unconstitutional.

Judge Karlton was a Jimmy Carter appointee to the bench, and is clearly sympathetic to the cause of campaign reform. He noted "this court cannot emphasize the hesitancy it experienced" in striking down Proposition 208, which limited contributions to legislative candidates at $250 per election and for statewide candidates to $500 per election. But Judge Karlton made clear that "because campaign contributions translate into a candidate's speech, and are protected as associational rights, they may not be restricted to a degree unnecessary to achieve the governmental purpose."

This reinforces the link the Supreme Court has found time and again between the propagation of a candidate's views and free speech. The judge identified that link when he found that the contribution limits would "make it impossible for the ordinary candidate to mount an effective campaign for office." However, certain candidates—namely those with vast independent wealth—would have faced no restrictions on getting their message out.

Take Democrat Al Checchi, the former Northwest Airlines CEO, who has already spent more than $6 million of his own money in a quest to become California's Governor in an election 10 months away. Darry Sragow, a Checchi adviser, has said that other candidates dare not compete with his man because "no one can match Al Checchi's wallet." At least Judge Karlton's decision will give less-advantaged Democrats a chance to compete with the Checchi fortune. Isn't that what the Democratic Party says it's all about?

California good-government lobbies are despondent over Judge Karlton's reminder that if the First Amendment means anything it must apply to campaigns. We have a constructive suggestion for them while they plan their next attempt at limiting political speech. Last year, California passed a perfectly constitutional campaign reform they can help implement and monitor. It requires campaigns to report all money received quickly on the Internet. Such posting becomes mandatory in 2000, but is voluntary this year.

We have long agreed that full disclosure with real penalties for noncompliance was appropriate, and we encourage campaign reformers to help and prod all candidates to sign up for Internet disclosure this year. At least that represents an expansion of information rather than its restriction.

4-2