

Approved: Feb. 22 1999
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS.

The meeting was called to order by Chairperson Lisa Benlon on February 10, 1999 in Room 521-S of the Capitol.

All House Committee members were present. Except for: Douglas Johnston, excused
Committee staff present: Dennis Hodgins - Research, June Constable- Committee Secretary. Mary Galligan was excused

Conferees appearing before the committee: Proponents: Rep. Dave Gregory, Rep. Lynn Jenkins, Gene Neely, KNEA

Opponents: Bruce Demmitt, John Lewis of Kansas Lawyer Publication.

Others attending: See Guest List, attached to these Minutes.

Silent roll for the House Committee was taken by the Secretary of that Committee.

Minutes for February 8 were approved. Rep. Huff moved that said minutes be approved as written. Rep. Powers seconded the motion. Motion carried.

Chair Benlon brought it to the attention of the committee that HB 2086 was, in error, placed on the General Calendar instead of the Consent Calendar as reflected in the February 8, 1999 Minutes. Rep. Johnston moved that the Minutes of February 8 should be amended to reflect that error, Rep. Welshimer seconded. Motion carried.

Chair Benlon asked Revisor Teresa Kiernan to give the committee an overview of HB 2022. (Attachment #1) Rep. Powers asked if there was a sister bill in the Senate - SB 23.

Proponent Rep. Lynn Jenkins gave testimony on the bill which she requested, HB 2022. Written testimony was provided. (Attachment #2) Comments and questions from the committee: Rep. Welshimer stated that bad campaign tactics are nothing new. Rep. Toplikar asked about the size of type font in written ads and legibility. Rep. Shriver commended Rep. Jenkins on the handling of her campaign in the face of the methods used. Rep. Powers stated he had similar experiences as Jenkins, and asked who would monitor the candidates if the legislation passed. Rep. Vining asked about the limit of 60 days in the bill. Rep. Palmer asked for clarification of timelines. Rep. Powers noted that with this bill, 60 days prior election "the gloves are off". Rep. Long asked what the penalty would be to the candidates if they violated this act. Rep. Vining asked Carol Williams what the process is to form a PAC. Rep. Barnes asked if the law had been in place during Jenkins campaign, would the voters have known she was innocent of the implied wrongdoing.

Proponent Dave Gregory addressed the committee and provided written testimony, (Attachment #3) regarding corrupt campaign practices. Comments and questions from the committee: Rep. Powers asked if KNEA is a PAC and asked if they are a PAC do they have to put acknowledgment on mailing. Rep. Welshimer stated that some of the ads in his packet look good compared to what her experiences were in her campaign. Rep. Palmer asked how one knows who sent money for a particular ad. Rep. Horst asked if the legislation of HB 2022 would prevent the current wording on PAC ads. Rep. Storm stated in view of Prof. Levy's testimony, Express Advocacy is not the definition in this bill.

Proponent Gene Neely, Spoke as President of the Kansas National Education Association and provided written testimony (Attachment #4), apologizing for the former tactics of KNEA during certain campaigns. Rep. Huff stated that he admired the testimony of Mr. Neely and commended him for coming forth with that.

Opponent John Lewis, Publisher of Kansas Lawyer Weekly, spoke to the committee without written testimony. His presentation was in support of free speech and the constitutionality of the present system. Stating there is an overriding right for people to speak anonymously. Rep. Powers stated he believed that the Opponent may be right in his basic premises. Rep. Storm admonished the committee to remember Prof. Levy's testimony.

Opponent Bruce Dimmett spoke and provided written testimony (Attachment #5), as a lobbyist for Kansas Right to Life, giving the committee reasons why the bill is flawed as to Express Advocacy verses

Issue Advocacy. There were no questions of the Opponent.

There being no further questions or testimony and there being no further business to come before the Chair, meeting was adjourned. The next meeting scheduled is February 15, 1999, at 3:30 in room 521-S

June Constable.

House Governmental Organization
and Elections
Guest List

2-10-99

Your Name	Representing
Mark DeBetti	KNEA
Gene Neely	KNEA
JAMES MINNIX	SCOTT COUNTY
Rep Dave Gregory	Dist 94
Marc Hamann	Div. of the Budget
Carl Williams	GEC
Vera Barnaway	GEC
John Lind	KDHE
Lorraine Cole	Sen. Tyson - Intern
Barb Saldívar	Kansans for Life
Bruce Dimmitt	a u n
Harriet Large	Ks Assn of Broadcasters
A Laura Williams	Governor's Office
Nancy Sargent	League Women Voters

#6

Theresa

11 CFR Ch. I (1-1-97 Edition)

§ 100.18

"the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia."

(60 FR 35304, July 6, 1995)

§ 100.18 Act (2 U.S.C. 431(19)).

Act means the Federal Election Campaign Act of 1971 (Pub. L. 92-225), as amended in 1974 (Pub. L. 93-413), 1976 (Pub. L. 94-283), 1977 (Pub. L. 95-216) and 1980 (Pub. L. 96-187).

§ 100.19 File, filed or filing (2 U.S.C. 434(a)).

With respect to reports, statements, notices, and designations required to be filed under 11 CFR parts 101, 102, 101, 105, 107, 108 and 109, and any modifications or amendments thereto, the terms file, filed and filing mean either of the following actions:

(a) A document is timely filed upon delivery to the Federal Election Commission, 999 E Street, NW, Washington, DC 20063; or the Secretary of the United States Senate, Office of Public Records, 119 D Street NE, Washington, DC 20510 as required by 11 CFR part 105, by the close of the prescribed filing date.

(b) A document is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day before the date of the election. Reports and statements sent by first class mail must be received by the close of business of the prescribed filing date to be timely filed.

[45 FR 15094, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985, 51 FR 6095, Feb. 16, 1986]

§ 100.20 Occupation (2 U.S.C. 431(13)).

Occupation means the principal job title or position of an individual and whether or not self-employed.

§ 100.21 Employer (2 U.S.C. 431(13)).

Employer means the organization or person by whom an individual is employed, and not the name of his or her supervisor.

§ 100.22 Expressly advocating (2 U.S.C. 431(17)).

Expressly advocating means any communication that—(a) Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!"; or

(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) be cause—

(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

(60 FR 35304, July 6, 1995)

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

Sec.

101.1 Candidate designations (2 U.S.C. 432(e)(1)).

101.2 Candidate as agent of authorized committee (2 U.S.C. 432(e)(2)).

101.3 Funds received or expended prior to becoming a candidate (2 U.S.C. 432(e)(2)).

AUTHORITY: 2 U.S.C. 432(e), 438(a)(1).

See

① Buckley express advocacy can be regulated

② Furgatch (92 cur)

③ Main Right to Life v FEC (12 cur) Found (8) unconst 10/6/97

M. ... this part

Gov. Org. & Elect
Feb 10, 1999
Attachment #1

DATE: FEBRUARY 10, 1999

TO: COMMITTEE ON GOVERNMENTAL
ORGANIZATION AND ELECTIONS

FROM: LYNN JENKINS

RE: SUPPORT FOR HB 2022

G.O.E.
2/10/99

Attachmar 2

2-1

Vince Cook...

Vince Cook has been taken to court by numerous creditors.

He even had his driver's license suspended this year because he couldn't bring himself to pay a ticket after being cited for no liability insurance.

Cook usually pays his bills within a year or two after a court orders him to, but even appointment to the legislature didn't motivate him to pay his delinquent state income taxes.

Of course, the Democrats never said anything.

A copy of all supporting documents has been delivered to the reference desk at the Topeka and Shawnee County Public Library for your inspection. All documents are also available at the Shawnee County Courthouse.

...in Charge of the Budget

Vince Cook...

Vince Cook, a creative and determined deadbeat dad, had to be found in contempt of court and have his wages garnished before he would pay his child support.

He wouldn't pay a \$32.50 doctor bill even after he was made aware that his son's doctor would withhold medical services until the bill was paid.

Oh, and he was a Democrat until very recently.

A copy of all supporting documents has been delivered to the reference desk at the Topeka and Shawnee County Public Library for your inspection. All documents are also available at the Shawnee County Courthouse.

...and Family Values

LYNN JENKINS

REPRESENTATIVE, FIFTY-SECOND DISTRICT

5940 SW CLARION LANE
TOPEKA, KANSAS 66610
(785) 271-6585STATE CAPITOL, ROOM 182-W
TOPEKA, KANSAS 66612-1504
(785) 296-7637

TOPEKA

HOUSE OF
REPRESENTATIVESCOMMITTEE ASSIGNMENTS
GOVERNMENTAL ORGANIZATION
AND ELECTIONS
INSURANCE
KANSAS 2000 SELECT
LEGISLATIVE POST AUDIT
TAXATION

DATE: FEBRUARY 10, 1999
 TO: COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS
 FROM: LYNN JENKINS
 RE: SUPPORT FOR HB 2022

Thank you Madam Chair and committee members. I would like to take just a few minutes to tell you why this piece of legislation is so important to me and my constituents.

Just over a year ago I was simply a part time CPA who enjoyed staying at home with my two small children. I had volunteered on a few campaigns over the past few years, but that was the extent of my political involvement. Then out of the blue, I was recruited to run for an elected office. My husband and I thought long and hard about it, knowing some of the risks involved. I knew that politics could sometimes get a little messy, but I knew the only way for me to do it, was to run a nice, straight forward, clean campaign. There were no skeletons in my closet, so I also knew that I could defend myself against any mud my opponents might sling. So with blind exuberance, I decided to give it a try. I was confident that if I worked hard I could make a respectable showing and possibly win. I knocked on most doors in the district twice during the primary and was feeling very good about getting involved in the political process. I was very proud and appreciative of all the hard work my family and many volunteers had put into the campaign. However, as you all know, in those last few days of a campaign, as you tire, you start to see shadows and the bogeyman everywhere you look. That's how I was feeling as we headed into the last week of the campaign. But in my heart I knew we had run a positive, text book campaign, and that our hard work was about to pay off.

And then it happened.

A few days before the primary election, I went to the mailbox hoping to find some last minute campaign contributions, but instead found the first of three anonymous mailings. These mailings were unbelievable - viciously attacking my opponent. I read and reread the postcard, knowing that everybody who went to their mailbox that day would think that I sent these cards. Panic soon engulfed our household, with neighbors over the backyard fence talking and questioning if I was responsible. I immediately tried to call my opponent to assure him I had nothing to do with these mailings, and that we would do everything we could to find out who might be behind them. He wouldn't take my calls, and I couldn't blame him. The week was a sleepless one. We frantically tried to track the bulk mail number to the printer. We finally reached them and begged them to stop the mailings. We thought surely this type of mailing must be illegal, so we called the Ethics Commissioner and learned that it was not only legal, but the anonymous group had run it by her office, prior to mailing them, to verify that everything was within the letter of the law.

Another blurred day passed and a second postcard landed. Finally, a reporter from the Topeka Capital Journal broke the story, reporting that a special interest group was responsible. However, my opponent continued to blame me for the attacks. By this point my mailbox was full of letters from constituents saying they would never vote for either one of us. The answering machine was filled daily with voters asking me to come and pick up my yard signs - signs that I had proudly placed in their yards just a few weeks before. I was eager to clear my name, but had no money or time left to do it. I tried to go door to door knowing I didn't have enough time to get to everyone, but hopeful that I could convince a few voters that I was not responsible. My hope soon faded as the doors I knocked on did not hide the hostility and resentment towards me. Doors were slammed in my face with just a few words exchanged or with no words at all. My heart was breaking. I will never forget the Sunday afternoon before the primary as I stood at yet another door to collect my once displayed yard sign. The man who came to the door scolded me for resorting to such tactics just to win an election. As I stood there with tears streaming down my face, I told him that I could care less about any election, I didn't even want his vote, all I wanted was to have my integrity back. Integrity that my Kansas family had worked six generations to build - integrity lost because of the selfish actions of some anonymous group.

I would like to go much farther than this bill proposes and get back to where elections are won and lost solely on the merits and hard work of the candidates. Where honesty and integrity replace the anonymous money, revenge and third party sabotage of a campaign.

There are still theories being kicked around as to the ultimate responsibility, motive and intended outcome of these anonymous mailings. I'm thankful to the newspaper for reporting the truth to their readership. Many people, however, still believe that somehow I was responsible. Even after all that was reported, as I started my door to door in the general election, I continued to meet folks who said they would never vote for me because of what they thought I had done.

This entire ordeal obviously hurt my opponent and his family, and it obviously hurt me and my family, but most importantly, it hurt the voters in my district. It cheapened the political process, turned off the voters, and diminished democracy. Folks in my district have been jaded by the political process at its very worst. People have the right to know who is trying to influence their vote. And the simple fact remains that unless these types of tactics are stopped, the next election cycle will have more of the same, but the next election could be yours!

DAVE GREGORY
 REPRESENTATIVE, NINETY-FOURTH DISTRICT
 632 N. VALLEYVIEW
 WICHITA, KANSAS 67212
 (316) 773-2405
 OFFICE:
 STATE CAPITOL, 156-E
 TOPEKA, KANSAS 66612-1504
 (785) 296-7659



TOPEKA

HOUSE OF
 REPRESENTATIVES

HB2022

COMMITTEE ASSIGNMENTS
 TAXATION
 KANSAS 2000
 JUDICIARY

**Testimony Before The House Committee On
 Governmental Organizations & Elections on HB2022
 February 10, 1999
 Representative Dave Gregory**

Thanks you Chairperson Benlon and distinguished members of The Governmental Organizations and Elections Committee for the opportunity to speak to you about working to eliminate corrupt political advertising. I support Rep. Jenkins efforts to curb the these abuses.

Before, I go any further I want to say I hold teachers and the teaching profession in the highest regard. I respect them greatly. The KNEA has probably done a lot of good for Kansas. However, the political leaders of the KNEA stooped to the lowest level of corrupt political advertising this past year. The most corrupt and cowardly advertising award of the 1998 primary election must be awarded to the KNEA's political managers.

My campaign was the victim of a spineless advertising campaign orchestrated by the KNEA (Kansas National Education Association). Either I'm saintly enough or my opponent asked them not to sling mud – but for some reason they didn't throw any mud in my campaign.

The KNEA did decide to run an advertising campaign for my opponent without placing the KNEA's PAC name in the fine print.

In a vicious attack on Steve Graber titled, "Is there a line in the sand?" the KNEA chose not to list their PAC's name. There is a line in the sand that the KNEA crossed. They did not have the guts to list their own name when they threw the mud at Steve Graber.

I was amazed to learn that the KNEA didn't have to place the name of the PAC in the ad – due to a loophole in the law and the Political Leaders of the KNEA did what everyone else assumed was unlawful and immoral. It turns

*Gov. Org + Elec
 Feb 10, 1999
 Attachment # 3
 3-1*

out its only immoral to run ads without a PAC name. It is lawful through a loophole in the law.

I wrote an open letter to editor in the Wichita Eagle asking the teachers of Kansas to demand the resignation of their political leaders for their underhanded actions. The KNEA has besmirched politicians, the political process and ultimately teachers. They are still employed at the KNEA. Since the teachers who were embarrassed by their leader's actions could not oust them, I ask the KNEA to avoid stooping as low as they did in the past election and I would ask that you pass Rep. Jenkins bill to stop future violations of the sort KNEA perpetrated.

Rep. Jenkins bill goes a long way to correct the problem we saw in Vince Cook's Primary race. However, it does not address the ad campaigns the KNEA used in Steve Graber or my campaigns. To eliminate the ads which were targeted against Mr. Graber and me, I would suggest adding the phrase "and if sponsored by a political committee, the name of such committee" in several places. I had drafted my own bill before I knew Rep. Jenkins had developed HB2022. I have conferred with Rep. Jenkins about offering a balloon amendment to her bill, which would address my issues. She considers the amendment friendly and I have included a copy for you to consider.

I have also included a copy of several of the KNEA ads, which were run for my opponent and one which was run against Mr. Graber. Please review the fine print at the bottom of the my opponent's ads, which reads: "An independent expenditure by the supporters of Judy S. Park. Bruce T. Goeden, Treasurer. In the successful attack-ad targeted at Mr. Graber, the fine print reads, "This postcard was paid for through an independent expenditure by concerned Kansans. Gene Neely, Chairperson. Please notice the missing PAC name.

With the changes I have asked for, this bill would have mandated the KNEA to identify their PAC name in fine print. I ask for your support and that you pass HB2022 favorable with my suggested amendments.

Traditional Values...



Judy S. Park

Judy S. Park, Candidate
Kansas House of Representatives

Judy S. Park is a traditional Republican. Traditional values like faith, family, personal responsibility and public service are deeply a part of who she is. Judy S. Park believes that among the keys to better government are citizen participation, communities that pull together and hard work by all concerned.

An Exceptional Candidate

An independent expenditure by supporters of Judy S. Park.
Bruce T. Goeden, Treasurer

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traditional
integrity and
is. Judy S.
government
pull together

Park

An Exceptional Candidate

An independent expenditure by supporters of Judy S. Park.

Bruce T. Goeden, Treasurer.

Judy S. Park...



Judy S. Park

Judy S. Park, Candidate Kansas House of Representatives

Judy S. Park, a traditional Republican, believes how candidates have done with their own families and their own professional lives says more than all the promises in the world. Judy S. Park's 32 year marriage and her highly acclaimed 20 year career are shining examples in an age that sorely needs shining examples.

Leading By Example

An independent expenditure by supporters of Judy S. Park.
Bruce T. Goeden, Treasurer.

Leading By Example

An independent expenditure by supporters of Judy S. Park.
Bruce T. Goeden, Treasurer.

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Is There A Line In the Sand?

The Rocky Mountain Rendezvous

At the Rocky Mountain Rendezvous, an invitation-only gathering of 160 white men on October 23-25, 1992, at a YMCA in Estes Park, Colorado, plans were laid for a citizens' militia movement like none this country has known. It is a movement that has already led to the most destructive act of domestic terrorism in our nation's history.

Steven W. Graber was there.

A copy of Morris Dees' book *Gathering Storm* subtitled *America's Militia Threat* is available or can be ordered at any bookstore.

Oklahoma City Is A Line In The Sand.

This postcard was paid for through an independent expenditure by concerned Kansans
Gene Neely, Chairperson.

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copy of Morris Dees' book *Gathering Storm* subtitled *America's Militia Threat* is available or can be ordered at any boo

Oklahoma City Is A Line In The Sand.

This postcard was paid for through an independent expenditure by concerned Kansans
Gene Neely, Chairperson.

1 subsection (a) of K.S.A. 25-4172, and amendments thereto.

2 (p) "Local office" means a member of the governing body of a city
3 of the first class; any elected office of a unified school district having
4 35,000 or more pupils regularly enrolled in the preceding school year, a
5 county or of the board of public utilities.

6 Sec. 3. K.S.A. 1998 Supp. 25-4156 is hereby amended to read as
7 follows: 25-4156. (a) (1) Whenever any person sells space in any news-
8 paper, magazine or other periodical to a candidate or to a candidate com-
9 mittee, party committee or political committee, the charge made for the
10 use of such space shall not exceed the charges made for comparable use
11 of such space for other purposes.

12 (2) Intentionally charging an excessive amount for political advertis-
13 ing is a class A misdemeanor.

14 (b) (1) Corrupt political advertising of a state or local office is:

15 (A) Publishing or causing to be published in a newspaper or other
16 periodical any paid matter which expressly advocates the nomination,
17 election or defeat of a clearly identified candidate for a state or local
18 office, unless such matter is followed by the word "advertisement" or the
19 abbreviation "adv." in a separate line together with the name of the chair-
20 person or treasurer of the political or other organization sponsoring the
21 same or the name of the individual who is responsible therefor;

and, if sponsored by a political committee, the
name of such committee;

22 (B) broadcasting or causing to be broadcast by any radio or television
23 station any paid matter which expressly advocates the nomination, elec-
24 tion or defeat of a clearly identified candidate for a state or local office,
25 unless such matter is followed by a statement which states: "Paid for" or
26 "Sponsored by" followed by the name of the sponsoring organization and
27 the name of the chairperson or treasurer of the political or other organ-
28 ization sponsoring the same or the name of the individual who is respon-
29 sible therefor; or

and, if sponsored by a political committee, the
name of such committee; or

30 (C) publishing or causing to be published any brochure, flier or other
31 political fact sheet which expressly advocates the nomination, election or
32 defeat of a clearly identified candidate for a state or local office, unless
33 such matter is followed by the name of the chairperson or treasurer of
34 the political or other organization sponsoring the same or the name of
35 the individual who is responsible therefor

and, if sponsored by a political committee, the
name of such committee.

36 The provisions of this subsection (C) requiring the disclosure of the
37 name of an individual shall not apply to individuals making expenditures
38 in an aggregate amount of less than ~~\$2,500~~ \$100 within a calendar year.

39 (2) Corrupt political advertising of a state or local office by a candi-
40 date, candidate committee or party committee is a class C misdemeanor.

41 Corrupt political advertising of a state or local office during the sixty-
42 day period preceding the election by an individual or a political committee
43 is a class C misdemeanor.



KANSAS NATIONAL EDUCATION ASSOCIATION / 715 W. 10TH STREET / TOPEKA, KANSAS 66612-1686

**Gene Neely Testimony Before
House Gov. Org. and Elections
Wednesday, February 10, 1999**

Thank you Madame Chair. I am Gene Neely, president of the Kansas National Education Association and chair of the KNEA Political Action Committee. I am here today to speak in support of HB 2022.

It may seem ironic that I speak in support of this bill in light of my organization's activities during the primary election last summer. As you are probably aware, KNEA participated in a number of independent campaigns and did so in a legal manner. Even so, it was clear from the reaction of our members to our campaign that our behavior should have been in accordance with what HB 2022 promotes.

Anton Ahrens, a KNEA member who teaches at Topeka High, was fairly typical of our members when he wrote us last summer that "we should never be an anonymous organization. When we take a stand on an issue we should openly support and defend our position. Voters should never be in the position of wondering who may be influencing their votes." I agree with Anton.

It is extremely important that voters be as knowledgeable as possible and that includes knowing who is providing information to them about candidates and hence trying to influence their votes. When our members made it very clear that this is what they expect from KNEA, I believe they were representing the position of voters everywhere in Kansas.

During the general election, KNEA continued to participate in independent campaigns. However, we included the full name of our political action committee and my name was listed as chair on every piece of external mail we sent. Regardless of whether or not HB 2022 is ultimately enacted into law, I will do what I can to see that my organization continues to provide such information to voters we are trying to influence. I believe it is a standard to which all political action committees should adhere.

Thank you for your consideration of our position.

*Gov. Org. & Elec.
Feb 10, 1999
Attachment # 4*

**STATEMENT BY BRUCE DIMMITT
ON HB NO. 2022
BEFORE HOUSE COMMITTEE
ON GOVERNMENT ORGANIZATION
AND ELECTIONS
February 10, 1999**

Madam Chairman and members of the Committee:

I am registered as a voluntary lobbyist for Kansas for Life. I appreciate the opportunity to comment on HB 2022.

My comments on the bill are as follows:

In general, Kansans for Life supports less regulation of political speech. Substitute HB2662 last year could have been much worse but still goes in the wrong direction. There is a heavy burden the government must meet before it can explicitly or in effect deny, restrict or chill citizen or group exercise of 1st Amendment rights to free political speech. The legislature should be looking at reversing the trend of over-regulation of political activity. Consider the impact of over-regulation: low voter turnout and citizen indifference.

1. Lines 20, 21, 22 & 23 of subsection (h) on page 3 of the bill are flawed and subject to over-broad interpretation. This can be remedied by replacing those lines with the following:

“Expressly advocates” means any communication that in express or explicit words advocates the nomination, election or defeat of a clearly identified candidate, including, but not limited to the following examples:--- (See copy of a February 8, 1999, letter to me regarding companion bill SB 23 from James R. Mason, III, Esq., of Bopp, Coleson & Bostrom, Terre Haute, Indiana.)

2. Subsection (h) (2) and (3) is language from 11 C.F.R. 100.22 ruled to be unconstitutional by every Federal court to consider it to date. See:

- Right to Life of Dutchess County v. FEC, 6 F.Supp. 2d (S.D.N.Y. 1998)**
- Maine Right to Life Committee, Inc., v FEC, 914 F Supp 8 (D.Me. 1996)
Aff'd per curiam, 98 F. 3d 1 (1st Cir. 1996)**
- Iowa Right to Life Comm., Inc. v. William's, No. 4-98-CV-10399 (S.D. Iowa Oct. 23, 1998) See pertinent excerpt attached).**

*Gov. Org. & Elec.
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Attachment # 5
5-1*

The language tends to blur or obliterate the required bright line between express advocacy and issue advocacy required by the U.S. Supreme Court and would require subjective interpretation and enforcement unfair to entities subject to regulation.

3. We would strenuously object to the change of \$2,500 to \$100 on line 38 of page 5. To have such a low threshold would have a severe chilling effect on free speech and be contrary to the US Supreme Court decision in *McIntyre v. Ohio Election Commission*, 514 U.S. 334 (1995). This decision affirms the right to anonymity on printed political speech, especially where there is minimal expenditure.

Thank you for your consideration of these comments. I will be happy to try to answer any questions you might have.

**BRUCE DIMMITT
(913) 381-9413 (home)
(816) 807-0971 (cell phone)**

)

JAMES BOPP, JR.

Senior Associates
RICHARD E. COLESON
BARRY A. BOSTROM

Associates

ROBERT J. NEWMAYER¹
SCOTT M. LUCAS
GLENN M. WILLARD²
HEIDI K. MEYER³
JAMES R. MASON, III⁴
RAEANNA S. MOORE

¹admitted in Cal. & Okla. only
²admitted in Colo. & Mich. only
³admitted in Ind. & Fla.
⁴admitted in Or. only

BOPP, COLESON & BOSTROM

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THOMAS J. MARZEN
PAUL R. SCHOLLE
DALE L. WILCOX

February 8, 1999

VIA FACSIMILE

Bruce Dimmitt
Kansans for Life

Re: Proposed "expressly
advocates" legislation

Dear Mr. Dimmitt:

The proposed legislative definition of "expressly advocates" that you read to me over the phone earlier today is based almost word for word on the FEC's regulation at 11 C.F.R. 100.22. Part (b) of that regulation has been ruled to be unconstitutional by every federal court to consider it to date. The cases are: *Right to Life of Dutchess County v. FEC*, 6 F.Supp. 2d (S.D.N.Y. 1998); *Maine Right to Life Committee, Inc., v. FEC*, 914 F. Supp 8 (D.Me. 1996) *aff'd per curiam*, 98 F. 3d 1 (1st Cir. 1996). In *Iowa Right To Life Comm., Inc. v. Williams*, No. 4-98-CV-10399 (S.D. Iowa Oct. 23, 1998), the federal district court preliminarily enjoined the State of Iowa from enforcing a state regulation that was based on the federal regulation. Iowa has appealed that court's decision to the Eighth Circuit Court of Appeals. The Kansas legislature would be well advised not to adopt part (b).

As Professor Levy of the University of Kansas pointed out in his November 4, 1998 letter to the Legislative Research Department, the current statute lists examples of express advocacy, but does not clearly define the class of speech in which the examples fall. To remedy that problem and to bring the statute clearly within the constitutionally required "bright-line" rule required by the Supreme Court, I would recommend that the statute be written as follows:

"Expressly advocates" means any communication that in **express or explicit words** advocates the nomination, election or defeat of a clearly identified candidate, including, but not limited to the following examples:

- (A) "vote for the secretary of state";
- (B) "re-elect your senator";

- (C) "cast your ballot for the republican challenger for governor";
- (D) "Smith for senate";
- (E) "Bob Jones in '98";
- (F) "vote against Old Hickory";
- (G) "defeat" accompanied by a picture of one or more candidates; or
- (H) "Smith's the one."

Sincerely,

BOPP, COLESON & BOSTROM



James R. Mason, III

RECEIVED

OCT 26 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FILED
IOWA

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CITIZEN SERVICE CENTER
SOUTHERN DISTRICT OF IOWA

IOWA RIGHT TO LIFE COMMITTEE,)
INC. and IOWA RIGHT TO LIFE)
STATE POLITICAL ACTION)
COMMITTEE.)

Plaintiffs.)

vs.)

KAY WILLIAMS, in her official capacity)
as Executive Director as Executive Director)
of the Iowa Ethics and Disclosure Board.)
BERNARD McKINLEY, JAMES)
ALBERT, GWEN BROOKS, MARIE)
THAYER, MICHAEL FORREST, in their)
official capacities as members of the Iowa)
Ethics and Disclosure Board; THOMAS)
MILLER, in his official capacity as Iowa)
Attorney General; and JOHN SARCONI,)
in his official capacity as County Attorney)
for Polk County, Iowa, and as a)
representative of the class of County)
Attorneys in the State of Iowa.)

Defendants.)

CIVIL NO. 4-98-CV-10399

The Court has before it plaintiffs' motion for preliminary injunction, filed July 17, 1998.

On August 14, 1998, the Court set a hearing on the motion for August 21, 1998. Defendant Miller, as well as the officials of the Iowa Ethics and Campaign Disclosure Board ("the state defendants") resisted the motion on August 17, 1998.

On August 19, 1998, plaintiffs filed a motion to continue the hearing to allow them an opportunity to amend their motion and complaint. The Court granted their motion, and continued the hearing indefinitely.

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five hundred dollars in the aggregate, or incurs indebtedness in excess of five hundred dollars in the aggregate in a calendar year to cause the publication or broadcasting of material in which the public policy positions or voting record of an identifiable candidate is (sic) discussed and in which a reasonable person could find commentary favorable or unfavorable to those public policy positions or voting record.

Iowa Code § 56.2(16). In addition, IRLC challenges Iowa Code § 56.6, which requires permanent organizations that are organized primarily for other purposes to form a political committee if they spend more than \$500.00 to support or oppose a candidate.

On July 9, 1998, the Iowa Ethics and Campaign Disclosure Board (the "Board") adopted 351 IAC 4.100(1). This regulation provides in relevant part:

For the purposes of Iowa Code chapter 56 and this division, the following definitions apply.

4.100(1) Express advocacy. "Express advocacy" means communication that either:

a. Uses phrases such as "vote for the Governor," "re-elect your State Senator," "support the Democratic nominee," "cast your ballot for the Republican challenger for Iowa House seat 101," "Smith for County Auditor," "Jane Jones in '98," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote 'yes' for the cable franchise," "vote for the kids," "support the gambling referendum," "vote against Old Hickory," "vote 'no' on the local option tax," "defeat" accompanied by a picture of one or more candidate(s), "defeat the referendum," "reject the incumbent," "reject gambling," or communications of campaign slogan(s) or individual word(s) or symbol(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s) or a ballot issue such as posters, bumper stickers, or advertisements, which say "Branstad's the One," "Campbell '94," "Fitzgerald/Zimmerman," "Ray!", "New City Library," "Float the Boat," or "ERA"; or

b. When taken as a whole and with limited reference to external events such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) or a ballot issue because:

- (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
- (2) Reasonable minds could not differ as to whether it encourages action to elect or defeat one or more clearly identified candidate(s) or a ballot issue

or encourages some other kind of action.

351 IAC 4.100(1). Subsection (1)(b) is taken almost verbatim from the definition of "expressly advocating" found in 11 C.F.R. 100.22(b), which governs federal elections.²

IRLC does not challenge subsection (1)(a) of the above regulation, but contends that subsection (1)(b) is overbroad, and therefore, unconstitutional. According to plaintiffs, those charged with enforcing chapter 56 of the Iowa Code will apply subsection (1)(b) in determining whether money IRLC spends on its voter registration guides is "express advocacy." IRLC fears it will be subjected to enforcement actions for violating the ban on the use of corporate funds or for failing to organize as a political committee. Because it plans to publish a voter guide prior to the November 1998 election, IRLC filed the present action seeking to enjoin enforcement of the challenged statutes and regulations.

B. Challenges Made by IRLSPAC

Plaintiff IRLSPAC is a state political action committee ("PAC") affiliated with IRLC. IRLSPAC alleges it is not directly associated with any political candidate, campaign

² As noted in plaintiffs' reply brief, the Federal Election Commission ("FEC") adopted 11 C.F.R. § 100.22(b) in reliance on the Ninth Circuit's holding in *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), which is discussed in the body of this decision. 11 C.F.R. § 100.22(b) sets forth the following definition for "expressly advocating" as an alternative to the express or explicit words and phrases set forth in 11 C.F.R. § 100.22(a):

- (b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonably person as containing advocacy of the election or defeat of one or more clearly identified candidates(s) because—
- (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and
 - (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

11 C.F.R. § 100.22.

Constructors, Inc. v. Foley Co., 959 F.2d 97, 98 (8th Cir. 1992); *Tullios v. Parks*, 915 F.2d 1192, 1196 (8th Cir. 1990).

B. Plaintiffs' Probability of Success on the Merits

1. Whether 351 IAC 4.100(1)(b) is Unconstitutional

The first factor to be considered is the probability that plaintiffs will succeed on the merits. Both parties agree that the "heart" of this case rests on the distinction between "issue advocacy" and "express advocacy," under the language set forth in 351 IAC 4.100(1)(b). Defendants do not dispute they will rely in part on this subsection to determine whether a communication constitutes "issue advocacy" for purposes of Chapter 56. Communications viewed by defendants as "issue advocacy" would not subject IRLC to the chapter's reporting and disclosure requirements.³

Again, the parties do not dispute that the words and phrases in subsection (1)(a) of section 4.100 are consistent with the "magic words" set forth by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*), and *FE(v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*") to define "express advocacy." IRLC states in its Amended Memorandum that the voter guide it plans to publish later this month will not contain communications that would fall within the scope of subsection (1)(a). It does fear, however, that defendants may interpret some

³ In *Buckley v. Valeo*, 424 U.S. 1, 79-80 (1976) (*per curiam*), the United States Supreme Court held that the government may not regulate funds spent to publish communications that contain what is generally referred to as "issue advocacy." As explained by the Court:

[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people."

Id. (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).

of the language as meeting the definition of "express advocacy" contained in subsection (1)(b).

In arguing that subsection (1)(b) is constitutional, defendants rely largely on the Ninth Circuit Court of Appeals' decision in *Furgatch*, 807 F.2d 857, 864 (9th Cir. 1987), which held that a communication need not contain "express words of advocacy" provided that the communication "when read as a whole, and with limited reference to external events, [is] susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate." Defendants further contend that as a policy issue, the Board has no intention "to force IRLC to report and disclose communications that do not rise to the level of 'express advocacy.'" Supplemental Brief in Support of Resistance to Preliminary Injunction by Miller and Williams *et al.*, ("Defendants' Supplemental Brief"), at 9.

This Court cannot agree with defendants' position. The First and Fourth Circuit Courts of Appeals recently have rejected *Furgatch's* "read as a whole" language--which would allow defendants to consider external factors such as the timing of the communications--in favor of the "bright-line rule" requiring explicit or express words of advocacy set forth by the Supreme Court in *Buckley* and *MCFI*. See *FEC v. Christian Action Network, Inc.*, 110 F.3d 1049 (4th Cir. 1997) ("CAN II"); *Maine Right to Life Comm., Inc. v. FEC*, 914 F. Supp. 8, 11 (D. Me.), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996), *cert denied*, 118 S.Ct. 52 (1997) ("MRLC"). See also *Right to Life of Duchess County, Inc. v. FEC*, 6 F. Supp.2d 248 (1998) (following *CAN II* and *MRLC*). Similar to the present case, in *MRLC* the Maine Right to Life Committee, Inc. brought a pre-enforcement action to challenge the constitutionality of 11 C.F.R. § 100.22(b), which was to go into effect on October 5, 1995, approximately one month before general elections. As explained by the district court in *MRLC*, the Supreme Court's decision in *Buckley* clarified that:

FEC restriction of election activities was not to be permitted to intrude in any way upon the public discussion of issues. What the Supreme Court did was draw a bright line that may err on the side of permitting things that affect the election process, but at all costs avoids restricting, in any way, discussion of public issues. The Court seems to have been quite serious in limiting FEC enforcement to express advocacy, with examples of words that directly fit that term. The advantage of this rigid approach, from a First Amendment point of view, is that it permits a speaker or writer to know from the outset exactly what is permitted and what is prohibited. In the stressful context of public discussions with deadlines, bright lights and cameras, the speaker need not pause to debate the shades of meaning in language.

MRLC, 914 F. Supp. at 12. The *MRLC* court later noted, "what is issue advocacy a year before the election may become express advocacy on the eve of the election and the speaker must continually re-evaluate his or her words as the election approaches." *Id.* at 13.

As discussed above, defendants in the present case do not dispute they would apply 351 IAC 4.100(b) to determine whether a particular communication is subject to regulation under Iowa Code §§ 56.2(16) and 56.15. Like the plaintiffs in *MRLC*, therefore, as of July 1998, IRLC must re-evaluate all of its intended communications in light of subsection 4.100(b). Based on the well-reasoned opinion of the district court in *MRLC*, as well as the Fourth Circuit's decision in *CAN II*, the Court finds plaintiffs would likely succeed on the merits that the regulation is unconstitutionally overbroad, and acts to "chill" their First Amendment rights to inform the public of various candidates' positions on certain issues.

Defendants' "policy of nonenforcement" does not alter the Court's decision. As argued by plaintiffs in their reply brief, the fact the Board adopted not only 351 IAC 4.100(1)(a) but also subsection (1)(b)—and did so after the decisions in both *MRLC* and *Duchess County*—strongly suggests its interpretation of "express advocacy" is more closely akin to that set forth in *Furgatch* than *Buckley* or *MCFL*. The Court therefore finds IRLC is likely to succeed on the merits with

regard to 351 IAC 4.100(b).

2. Whether Iowa Code § 56.15 is Readily Susceptible to a Narrowing Construction

Plaintiffs next challenge the express language set forth in Iowa Code § 56.15. Subsection (1) prohibits corporations in general from using corporate funds “for the purpose of influencing the vote of an elector.” Plaintiffs contend this subsection is overbroad on its face, and should be struck down. With regard to nonprofit corporations such as IRLC, subsection (4) provides:

The restrictions imposed by this section relative to making, soliciting or receiving contributions shall not apply to a nonprofit corporation or organization which uses those contributions to encourage registration of voters and participation in the political process, or publicizes public issues, or both, but does not use any part of those contributions to *endorse or oppose* any candidate for public office

Iowa Code § 56.15(4) (emphasis added). Plaintiffs note that the words “endorse or oppose” in this subsection are not defined in the act or regulation, and under their ordinary meaning, could potentially be used to encompass IRLC’s voter guide.

Additionally, plaintiffs challenge 351 IAC 4.82, which was adopted to implement section 56.15. This regulation provides:

These rules do not prevent a corporate entity from providing or publicizing voter registration procedures, election day information, voting procedures or other voter education information, so long as the information provided is not *designed to influence the vote of the elector*.

351 IAC 4.82 (emphasis added). Plaintiffs contend that the phrase “designed to influence the vote of the elector” creates a third standard by which defendants may determine whether an entity has improperly used corporate funds, and request that this Court strike down the regulation.

In *Buckley*, the Supreme Court evaluated the phrase “for the purpose of influencing” as

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