Approved: 3-3-99

Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The joint meeting of the House Committee Governmental Organization and Elections and the Senate Committee on Elections and Local Government was called to order by Chairman Senator Janice Hardenburger at 3:30 p.m. on January 25, 1999 in Room 519-S of the Capitol.

All members were present except: Senator Lawrence
Senator Petty

Committee staff present: Dennis Hodgins, Legislative Research Department
Ken Wilke, Revisor of Statutes
Graceanna Wood, Committee Secretary

Conferees appearing before the committee: Professor of Law Richard Levy, Univ. of Kansas

Others attending: See attached list

Chairman Hardenburger informed the Committee that the interim Special Committee on campaign finance did not make any recommendations. The Committee did receive testimony from three members of the University of Kansas who provided an in depth look at campaign finance as it is related to *Buckley* vs *Valeo* and other court cases. She informed the Committee that she wanted the House and Senate Elections Committees to have the privilege of hearing Professor Richard Levy from the School of Law at the University of Kansas before consideration was given on any campaign finance legislation. Professor Levy has been willing to come and provide the same information and has also been willing to take proposed legislation back to his class for a critical review. Chairman Hardenburger introduced Professor Richard Levy to the Joint Committee.

Professor Levy addressed the Joint Committee regarding balancing the legitimate concerns for maintaining the integrity of the electoral process while protecting the important and fundamental right of free speech of those who participate in that electoral process. Of particular concern to the Committee is the question of express advocacy as it relates to disclosure. He informed the Committee that discussion of finance reform in the Constitutional scope has to begin with *Buckley* which is a 1976 decision whereupon the Supreme Court addressed the constitutionality of the Federal Election Campaign Act . Every decision regarding campaign finance draws on *Buckley*. The federal Election Campaign Act contains three main groups of provisions regarding campaign finance. First is dollar limits on the amount of contributions and expenditures that can be given to or made on behalf of candidates. The Second group of provisions are the reporting of disclosure requirements on contributions and expenditures. The third group of provisions provided public funding for elections and then limited the total amount of expenditures that could be made by a campaign as a condition of receiving those public funds. The act also establishes the Federal Election Commission to monitor and enforce the provisions of the federal Election Campaign Act.

The Supreme Court decided that *Buckley* would be subject to what is called "strict scrutiny" This is reserved for laws that infringe upon fundamental rights, and the right of free speech is one such fundamental right. In order to reach this conclusion, the court determined two important facts. The first was that campaign contributions and expenditures were themselves speech. Defenders of the Election Campaign Act attempted to distinguish between spending and money and speech itself. They wanted the court to treat the expenditure of money as conduct rather than speech, but the court rejected that contention and accepted the old adage that "money talks".

The second point that the court made was that the limitations in question were based upon the content of the speech in question. In the law of free speech, the court has distinguished between neutral measures that regulate speech even handedly, regardless of its content, and those measures which target particular speech for regulations because of the message that has been conveyed. Those laws which turn on the message of the speech are considered to be more dangerous in terms of First Amendment principles and are more strictly scrutinized. The regulation of campaign contributions and expenditures was a direct regulation of speech on the basis of its content and that would be subject to the most rigorous scrutiny.

Strict scrutiny requires two things. First, government has to have a purpose behind the legislation which is deemed to be compelling by the court. Secondly, the law in question has to choose a means of furthering that purpose by narrowly tailoring the purpose of the question. In other words, it cannot regulate any more speech than is necessary to accomplish the objectives in question. Using that basic framework, the court then evaluated each of the provisions of the Election Campaign Act under the First Amendment. The first topic addressed by the court were the limits on contributions and expenditures, the amount that individuals could give to campaigns or expend on behalf of campaigns. The court drew a distinction between contributions and expenditures for First Amendment purposes. As to contributions, the court concluded that limits imposed by the federal Election Campaign Act were constitutional.

Contribution limitations passed even the most rigorous Constitutional scrutiny because they served a compelling governmental interest and were narrowly tailored to meet that governmental interest. The interest the court identified was referred to quid pro quo corruption, i.e. the idea that individuals could gain favorable legislative or other governmental treatment in exchange for contributions given to individual politicians. The court also concluded that limits on contributions were narrowly tailored to meet the concern for the appearance or actuality of corruption. The court said limitations on contributions left open many other alternative avenues for expressing ones views. While the contribution limits were held constitutional in *Buckley,* the court invalidated the limitations that had been imposed on expenditures.

In this context, we have to focus on independent expenditures. The court said expenditures that are made when they are coordinated with a candidate after consultation or at the direction or request of a candidate were the equivalent of contributions and could be treated as contributions and could be treated accordingly. But, expenditures that were made independently of candidates committee and its campaign were different. In this context, the court said there was no compelling governmental interest, and the law was not narrowly tailored.

Responding to quid pro quo corruption, the court said you don't have to worry as much about the actuality or appearance of quid pro quo corruption with independent expenditures, because those expenditures do not go into the pocket of the candidate. The individual making the expenditures is not giving something directly to the candidate. The candidate doesn't actually receive anything, so the government interest is really limited in this context. Moreover, when you make an expenditure, the Court said that the expenditure is focused on the message. It is not a broad undifferentiated symbolic message of support for a candidate, but rather can be quite specific as to the particular political issues or grounds for supporting the candidate. The conclusion was that reducing or limiting expenditures imposes a severe burden on an individual speaker's First Amendment's rights. As a consequence, there was no compelling interest. The law wasn't narrowly tailored, and limitations on independent expenditures were declared unconstitutional.

The court also indicated in the course of this discussion that any interest that the government asserted in the leveling of the playing field and equalizing one's ability to speak in that sense in limiting the effect of big money was an illegitimate purpose for government to be pursuing. When government attempts to increase some messages and tone down other messages that definitely runs afoul of the First Amendment. Any asserted interest in equalizing the ability of candidates to speak was simply improper.

After the discussion in which the Court upheld the contribution limits but struck down the limitations on independent expenditures, the Court turned to the reporting on disclosure requirements of the act. These requirements stand on a different footing than limitations on contributions and expenditures because they do not directly prevent or limit speech. Actually, reporting of disclosure requirements increases the amount of information that is out there rather than restricting it. Disclosure requirements do not directly limit speech. However, disclosure requirements do burden those who want to speak. It can be costly to comply with the reporting of disclosure requirements, and, in some instances, disclosure can lead to retaliation or at least the fear of retaliation against those who support a particular point of view. Disclosure could possibly chill a speaker and thereby prevent speech. The Court did not scrutinize these reporting and disclosure requirements as carefully as it did the contribution and expenditure requirements. It recognized that there was this chilling effect that might discourage groups from speaking if they were forced to disclose their membership, but the court said that was no reason to strike down the law on its face. The court said if a particular group had a reasonable fear of retaliation it could challenge the

application of the reporting of the disclosure laws by providing the possibility of retaliation. But, in general terms, reporting and disclosure requirements did not pose such an chilling effect as to be unconstitutional per se.

The Court indicated that reporting disclosure requirements could be applied, not only to contributions, including these coordinated expenditures mentioned earlier, but also could be applied to some independent expenditures on behalf of candidates. Here, the court drew another important distinction and will be the focus of most of the discussion today, that distinction was between issue advocacy and express advocacy of the nomination, election, or defeat of an identified candidate or candidates. The Court indicated that reporting and disclosure requirements could not be applied to advocacy that was issued oriented. The key point being that individuals and groups have a protected First Amendment right to speak on political issues and on candidates in relationship to those issues. Reporting and disclosure requirements burden that right, and, in this sense, when you're talking about issues there wasn't a sufficient justification to prevent or require the reporting or disclosure requirements. The burden of reporting and disclosure requirements can only be justified when speech crosses the line from issue advocacy to express advocacy of a candidate or candidates.

The Court construed the Federal Election Campaign Act narrowly, so that the reporting or disclosure requirements could apply only to individuals or groups engaged in express advocacy of the nomination, election or defeat of a clearly identified candidate. The Court indicated that the definition had to be clear. The message had to be objective in the sense that it had to turn off the subjective intention of the speaker to either support a candidate or speak to issues, but rather it had to turn on the message received by the listener or an average listener when hearing the message. That is an important factor. Finally, the Court indicated that the line had to be drawn in such a way that reporting a disclosure requirements could not reach issue advocacy but could apply only to express advocacy.

The final set of provisions of the act involved public funding for elections. The Court held that public funding was permissible and did not violate the First Amendment even when the public funding was differentiated between groups on the basis of the level of their support. Public funding is very high for presidential candidates who get 25% of the vote in the presidential elections. Much less for candidates above 5%, and nothing for candidates who don't reach the 5% threshold. The Court indicated that this was permissible and that expenditure limits on campaigns could be imposed as a condition of accepting public funds. It is this part of the opinion that gives rise to the concept of "soft money". Contributions and expenditures that don't fall within the expenditures limits attached to public funding and thereby used to circumvent those expenditure limits are referred to as "soft money"..

The presentation, thus far, is the general idea of *Buckley*. When the Court was describing how express advocacy had to be defined, in a footnote to the *Buckley* opinion it gave examples of certain magic words that would constitute express advocacy such as "vote for", "elect", "defeat", "Smith for Congress", etc. It's not entirely clear what the status of those magic words are. They certainly are important in most definitions of express advocacy. Today, some people contend that the only definition is based upon the magic word of the *Buckley* footnote, and others would argue that it is possible to engage in a more comprehensive definition and still meet the Buckley requirements.

Overview and summary, after *Buckley* and subsequent decisions, first, contributions to candidates and their political committees can be limited. When talking about contributions that includes coordinated expenditures, but the limits that are set can't be set too low. Subsequent cases have invalidated laws that have contributions limits very low. Contributions cannot be limited with respect to ballot initiatives or referenda that don't involved individual candidates. The reason is because there is no corruption problem when you're talking about contributing to a issue as opposed to contributing to a candidate.

With regard to expenditures, those cannot generally be limited in the sense of independent expenditures cannot be restricted by the government. There are a couple of exceptions. Candidate and coordinated expenditures can be limited as a condition of accepting public funds, as was mentioned earlier. Secondly, in a later Supreme Court decision, the Court indicated that independent expenditures by corporations,

labor unions and other similar organizations could be required to be made from a segregated political fund or political action committee whose funds were drawn solely from voluntary contributions as opposed to corporate treasury funds or dues in the case, of unions. The decision here is called *Austin vs Michigan Chamber of Commerce.* The theory behind this decision is that unions and corporations can amass funds by virtue of special legal advantages that have been conferred upon them by the government. In the case of corporations, that's the corporate form, capacity, limited liability of corporate shareholders, all of which make it possible for corporations to function successfully. With respect to unions, you have mandatory dues and other similar protections from anti-trust laws that make it possible for unions to amass a treasury. The Courts reasoned that since these special economic advantages enabled these organizations to accumulate funds, the state could prevent those advantages from being used to distort the political process.

The idea that you can limit corporations and unions when they make contributions to candidates, or expenditures on behalf of candidates, has some exceptions to it that are important. First, they generally cannot be applied to voluntary political associations or non-profit corporations that meet three conditions: 1) The corporation or organization doesn't engage in business activities, 2) it doesn't have any shareholders or dues paying members whose interest might be compromised because they don't agree with the political message of the speaker and, finally 3) they don't act as a conduit for a corporation or union. These kinds of non-profit voluntary political organizations don't come under the restrictions of *Austin vs Michigan Chamber of Commerce* in terms of the ability to require expenditures from segregated funds.

The second exception to this requirement is that corporations and unions cannot be limited to the segregated fund requirements when we're dealing with referenda and ballot initiatives that involve solely issues as opposed to candidates.

Third, reporting and disclosure requirements are generally permissible with respect to contributions to candidates or their committees and political parties with respect to expenditures by candidates or committees and with respect to independent expenditures that engage in express advocacy. As indicated earlier, those requirements cannot be applied if there were to be a chilling effect because of the fear of retaliation in a particular case, and they cannot be applied to purely issue advocacy in that context.

This summary is not only the general parameters of constitutional limits, but also the importance of the concept of express advocacy for campaign finance reform. The distinction between express advocacy and issue advocacy is relevant in a variety of places. It's relevant to the distinction between coordinated expenditures and independent expenditures. It's relevant to limitations on expenditures by corporations and unions, and it's relevant to the application of reporting and disclosure requirements. That is our particular focus here because reporting of disclosure requirements are the principal tool that Buckley leaves available for policing independent expenditures.

I want to make clear in this context that this is an adherently difficult concept to define. The nature of language and the way we communicate makes it difficult to distinguish between what's express advocacy and what's issue advocacy, and context is highly relevant. Let's suppose we have a statement or a message that is distributed or disseminated or broadcast that says the following: "candidate X voted for the ban on partial birth abortions, candidate Y voted against the ban on partial birth abortions". Is that express advocacy of election or defeat of a candidate? The message the listener receives from such statements might vary depending on the context. If that statement is disseminated by Kansans for Life, listeners might receive one message. If it's disseminated by the Kansas Abortion Rights Action League, a different message might be perceived. If it is distributed by the League of Women Voters as part of the general information package on the position of candidates, it might have yet another message, and, if it's published in the Topeka Capital Journal as part of a vote on a legislative session, it has yet another message. The point would be that it is very, very difficult to construct a definition of express advocacy that is going to be meaningful in all context and establish a clear and bright line, and it might be quite easy to interrupt the same message in various ways. Thereby, what is express advocacy to one listener might be issue advocacy or non advocacy to another, depending on the context.

Senator Becker expressed that the message as it's received by the listener, not the message that goes out but how it is received. That is subject to interpretation because everyone receives a message different.

Mr. Levy advised the message received is what is really important and his purpose of the illustration was twofold, one that many messages are sufficiently ambiguous that they can be interpreted by different listeners in different ways, but moreover, the context in which the language is used has a significant impact on how it is interpreted. It is very difficult to identify some definition that is going to be useful when you're dealing with language that is inherently ambiguous and inherently contextual.

Given this inherent difficulty, what do we know about how you can define express advocacy from *Buckley* and subsequent cases. First, it is important to recognize that *Buckley* saw this difficulty, the Court said: "Therefore require that the definition be very clear, very white line and objective". It essentially said doubtful cases have to be resolved in favor of free speech as opposed to in favor of campaign finance regulations. Any definition which is essentially sufficiently ambiguous that it is susceptible of application to what would be regarded as issue advocacy would tend to violate *Buckley*. The two basic requirements of *Buckley* are that there has to be a clear bright line test, and it has to be an objective test based upon the message received.

As mentioned earlier, the question of *Buckley's* magic words formulation is an important one that has received a lot of attention. *Buckley* used these magic words as part of its narrowly construction of the federal statute. It narrowed the statute in order to make the statute constitutional. For that reason, some people contend that the Constitution requires the use of the magic words. Others, however, are skeptical of that position because the magic words are only a construction of the federal statute. They would argue that an alternative definition that meets *Buckley's* general requirements of a clear bright line test that doesn't reach issue advocacy, and is objective in terms on the message received rather than the intention of the speaker could pass muster. Mr. Levy's view is the best interpretation of the case law is that the magic words are not constitutionally required in every case, although it is an easy formulation that one knows it will pass constitutional muster. He referred to those who are interested, to a case called "Massachusetts Citizens for Life " where the court seemed to indicate that the magic words formulation were not constitutionally required.

Assuming that we're addressing the problem of express advocacy, Professor Levy discussed alternative approaches that might be taken to define express advocacy and some of the strength and weaknesses of those formulations. The first formulation that one might focus on is the magic words. As mentioned, a definition based on the magic words would seem to be OK after *Buckley*. Most definitions of express advocacy do incorporate the magic words as part of the definition. The problem with this is the definitions which are strictly limited to the list of magic words are easily evaded. No matter how clever you are in coming up with the list of magic words, there is always going to be some words that are not on the list that people can use and still convey a very clear message of express advocacy. If you use "vote for", "elect", "defeat", those kinds of words, someone is going to say "trounce candidate X" or "unseat candidate Y" or "put candidate Z in office". If you expand the list to include those, they will come up with some others. You may try to avoid that problem by adding a sort of generic or other words or phrases to similar effect at the end of the list of magic words, but even then it is possible to come very close to saying expressly what the magic words say without quite using them. Therefore, many definitions and many advocates of campaign finance regulations want some kind of broader definition that is not limited to magic words or their equivalent in the sense of words that have synonyms with "elect" or "defeat" or "nominate". If the state does want to go beyond the magic words formulation, I think it has to provide some definition. You can't just say express advocacy includes the magic words but isn't limited to them. If it does that then it offers no definition for express advocacy beyond the magic words and that is probably not sufficiently clear under the Buckley requirements. Even if it doesn't violate *Buckley*, a statute that is limited to the magic words is not going to be very clear or effective in accomplishing its goals. A second alternative would be to supplement the magic words list with some kind of general definition of express advocacy which attempts to accomplish what *Buckley* says such a definition has to accomplish, that is, be clear and bright line. For example, there is a Ninth Circuit decision, the decision, Furgach which defines express advocacy as that must when read as a whole and with limited reference to external events be susceptible of no other reasonable interpretation than an exhortation to vote for or against a specific candidate. The Court said Furgach was not a statute itself but that's what the Court said express advocacy had to be, but a lot of statutes have used that interpretation or approach in order to try to satisfy *Buckley*. The idea is that the phrase "no other reasonable interpretation" is a clear bright line test that can't reach issue advocacy and it turns on the message received because a reasonable listener couldn't interpret it in any other way.

This is mainly the approach taken by both **SB 23 & HB 2022** which have identical definition of express advocacy. There are potential problems with this approach to defining express advocacy. The distinction between issue advocacy and express advocacy as mentioned earlier is inherently difficult to draw and am not sure that this kind of definition provides much guidance. It doesn't provide much guidance to a speaker. While one listener might say there is only reasonable interpretation of a particular message, another listener might believe the message is acceptable on more than one interpretation. It also is problematic in the sense that it leaves a lot of discretion to the enforcement arm of campaign finance regulation, the administrative agency or whatever would be given a lot of room to make judgments about whether a particular message would be express advocacy or issue advocacy. It is difficult to draw this sort of definition but it is also better than nothing. It seems to be the approach that is most likely to pass muster under *Buckley* while still going beyond the magic words formulation.

Another approach that has come into vogue lately is what we might call the name or likeness approach. This approach has been used in self proposed federal legislation. It was adopted by rule by an administrative agency in Michigan, and it has been suggested by other advocates of campaign finance reform. The basic idea here is that you draw a definition in which any communication that includes the name or likeness or otherwise unmistakably identified as a candidate with in a certain time period of the election is treated as by definition constituting express advocacy. The theory would be your only mentioning a candidate in this situation because you either oppose or support them. This test has the virtue of being very bright line, very objective, very easy to apply. Its vice is that it also would apply to a great deal of issue advocacy or even non-advocacy. All four examples specifically identify the name of a candidate or candidates. All four of them could be disseminated within 60 days of an election and under a pure name or likeness approach, they would all be regarded as express advocacy even though at least two of them, the League of Women Voters and the newspaper article would not be advocating anything. They would simply be recording information that listeners could use.

For this reason, the case law on the name or likeness approach is generally against it. The two Michigan cases that are in the materials that have been distributed, *Right to Life of Michigan, Inc. vs Miller* and *Planned Parenthood of Michigan vs Miller*, both sides of the abortion issue challenging this same law, recently invalidated a rule that was adopted in Michigan. The rule said that express advocacy constituted "except as otherwise provided in this rule, an expenditure for a communication that uses the name or likeness of one or more specific candidates is subject on the prohibition of contributions and expenditures, if the communication is broadcast or distributed within 45 calendar days of an election in which a candidate's name is eligible to appear on the ballot." In both Courts, this rule was considered and determined that it violated *Buckley* because it could apply to a wide range of issue advocacy and non-advocacy as well as express advocacy.

Although these two decisions are both dealing with limitations of restricting corporate contributions to segregated funds, they probably apply as well to express advocacy definitions for purposes of reporting and disclosure requirements. In *Buckley*, the Supreme Court used express advocacy concept in several places and defined it in the same way. The indication would seem to be that express advocacy means the same thing in all context of campaign finance regulation.

The rule was very broadly drawn but there was a more crafted rule that drew on the name and likeness approach which might be OK but, the rule, as it was adopted, was sort of a blunder bust approach that would reach too broadly. There is a similar case, called West Virginians for Life, which is not in the material. It invalidated a statutory provision that created a presumption that voter guides using a name or likeness would be treated as express advocacy for purposes of reporting and disclosure requirements. Again, the statute was not very well drafted and said any person, association, organization, corporation or other legal entity who publishes discriminates, distributes or disseminates any score card voter guide or other written analysis of candidates position or votes on specific issues, within 60 days of election, is presumed to be engaging in such activities for the purposes of advocating or opposing the nomination, election or defeat of any candidate. Once again, this would apply to newspapers that were published with neutral, truthful information about the records of candidates and treat that as advocacy, for example. So, it was very broadly drawn, and was invalidated.

Standing alone in name or likeness approach wouldn't pass constitutional muster, but it might be effective or workable if it was supplemented by some additional requirements, such as a requirement that the use of the name or likeness was accompanied by a message of support or opposition for the candidate in context. Or if it was included.

There are many people in favor of campaign finance reform, and there is a lot of efforts to draft legislation that would get around *Buckley*. There is a notion that *Buckley* is an obstacle to what would otherwise be good finance regulation. I would certainly encourage you not to think about getting around *Buckley*, but in terms of thinking about how to preserve legitimate free speech within the context of *Buckley* and to improve the electoral process at the same time but certainly not how much you can get away under *Buckley* in limiting people's free speech.

The committee discussed the constitutional issues and the current changes that have occurred. (Attachment #1)

Meeting was adjourned at 5:15 p.m. Next meeting scheduled for January 26, 1999.

SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE COMMITTEE GUEST LIST

DATE: January 25, 1999

NAME	REPRESENTING
Bruce Dimmitt	Kansans for Life
Edward Rowe	League of Women Voters/KS
Charisse Pavell	Kansas Bar Association
Tim Carpenter	Lemon. Found. Wald
Tom Whitaker	KS Motor Carriers Assn.
Vera Gannaway	KS Gov. Ethics Comm.
John Smith	Tobacco Free Kansas coalition
Brad Bryant	Sec. of State
Mark Hamann	Div. of the Budget
Tatiana Cole	Sen Tyson - Intern
Derek A. Blaylock	Intern for Teresa Sittenauer
Will Votypka	Senator Oleen

The Joint Meeting of the House Committee Governmental Organization and Elections and the Senate Committee on Elections and Local Government

Monday, January 25, 1998

Room 519-S, 3:30 - 5:30 p.m.

Enclosed Packet Information:

- ❑ **1998 Interim Report from the Special Committee on Local Government Report, "Soft Money and Independent Expenditures in Kansas Elections"**

- ❑ **Professor R. Levy's written testimony submitted to the Special Committee on Local Government, October 14, 1998, "The Constitutional Parameters of Campaign Finance Reform."**

- ❑ **Professor Levy's Supplemental written testimony submitted to the Special Committee on Local Government, November 4, 1998, "Senate Bill No. 432 and House Bill No. 2662 (1998 Session)."**

- ❑ **Federal district court cases, *Right to Life of Michigan v. Miller*, 1998 WL 743712 (W.D. Mich. Sept. 16, 1998) and *Planned Parenthood Affiliates of Michigan v. Miller*, (E.D. Mich. Sept 21, 1998).**

- ❑ **Senate Bill 432 and Chapter 117, *Session Laws of Kansas*, Substitute for House Bill No. 2662**

The Constitutional Parameters of Campaign Finance Reform
Written Testimony of Richard E. Levy Before the
Special Committee on Local Government

October 14, 1998

Few issues today are more controversial than campaign finance reform. Fueled by a widespread public belief that the political process has been improperly distorted by the immense costs of running for public office, and the resulting perception that those who make significant campaign contributions or independent expenditures may exert undue influence on the legislative process, a number of proposals for campaign finance reform have been introduced at both the federal and state levels. At the same time, however, government regulation of political campaigns raises concerns that lie at the core of the First Amendment's protection of freedom of speech. Uncertainty regarding the permissible constitutional parameters of campaign finance reform further complicates the already difficult task faced by legislative bodies considering campaign finance reform legislation.

The purpose of my testimony today is to help clarify these constitutional parameters for the Special Committee on Local Government, and thereby provide assistance to the legislature on this complex issue. My goal is not to advocate a particular position on the merits of campaign finance reform, but to explain the current state of the law in as neutral a manner as possible. In particular, the Committee has asked me to address the related subjects of "independent expenditures" and "soft money." In responding to this request, my testimony consists of three parts. First, I will review the United States Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), which established the basic constitutional principles governing campaign finance regulation. Second, I will discuss the development of the *Buckley* principles in subsequent judicial decisions, with particular reference to the implications of the caselaw for regulation of independent expenditures and soft money. Finally, I will attempt to summarize the permissible scope of campaign finance regulation.

1. THE *BUCKLEY* DECISION:

In *Buckley*, the Supreme Court considered the constitutionality of the Federal Election Campaign Act (FECA), which was adopted in the wake of the Watergate scandal. FECA was a complex statute with several key components:

(1) it set contribution and expenditure limits for candidates and individuals or political groups that supported candidates;
(2) it imposed reporting and disclosure requirements on candidates, political committees, and individual contributors;
(3) it provided for public funding of presidential election campaigns, on the condition that recipients of public funds limit their total expenditures; and
(4) it established the Federal Election Commission (FEC) to implement and enforce the Act.

The Court upheld some of these provisions and struck down others, in the process establishing the key principles that constrain campaign finance reform.

The central premise of *Buckley* is that campaign contributions and expenditures are themselves a form of political speech, which lies at the core of the First Amendment's protections. Moreover, since campaign finance regulations turn on the message of the speaker, they are "content based" restrictions that must survive the most rigorous First Amendment scrutiny to pass constitutional muster. The Court expressly rejected the arguments that campaign spending is a form of "conduct" or symbolic speech rather than "pure speech," and that campaign finance regulations should be regarded as "content neutral" time, place, or manner restrictions. Proceeding from its basic premise that campaign finance regulation is a content based restriction on political speech, the Supreme Court in *Buckley* evaluated FECA's contribution and spending limits, reporting and disclosure requirements, and public funding provisions separately.[1]

a. Contribution and Spending Limits

FECA placed strict limits on campaign contributions to, and expenditures on behalf of, candidates for federal office. Because these limits effectively prohibited speech based on its content, the Court applied "strict scrutiny." Under this test, which requires a content based restriction on speech to serve a "compelling" governmental interest, and to be "narrowly tailored" to serve that end, FECA's contribution limits were constitutional, but its expenditure limits were not.

The Court concluded that the contribution limits were narrowly tailored to serve a compelling governmental interest. The Court recognized that the interest in preventing the actuality or appearance of "quid pro quo" corruption; i.e., the procurement of legislative favors through large contributions, is compelling. And the limits imposed, which included a cap of $1,000 per candidate for an individual or group, $5,000 per candidate for a "political committee," and $25,000 overall per individual, were narrowly tailored in the sense that they did not severely impair the contributor's ability to communicate a given message. The Court reasoned that a contribution sends a largely symbolic message of undifferentiated support for a candidate, and that this message is not greatly enhanced by increased size. Moreover, the Court reasoned, contributors had ample alternative means of conveying their message because FECA's expenditure limits were invalid (see below).

FECA included limits on individual expenditures that paralleled the contribution limits described above, as well as limits on a candidates' expenditures from personal funds and limits on overall campaign expenditures. Although expenditures that were requested by or coordinated with a candidate could be characterized as contributions and thus be subject to FECA's limits, the limits were unconstitutional as applied to independent expenditures. First, the governmental interest in preventing the actuality or appearance of quid pro quo corruption was not compelling in the context of independent expenditures, because the danger of such corruption was much weaker when expenditures are independent. Second, the expenditure limitations were not narrowly tailored because they imposed direct and substantial restrictions on speech. Unlike contributions to

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[1]The Court also held that certain powers could not constitutionally be granted to the FEC because its members were not appointed in accordance with Article II, Section 2, Clause 2, of the United States Constitution. This portion of *Buckley* applies only to the federal government and need not concern the Committee in this context.

candidates, which convey an undifferentiated symbolic message of support, expenditures convey a more focused message whose impact is greatly enhanced by greater expenditures. In addition, regulating expenditures greatly restricts the avenues of communication available to the speaker. Finally, the Court flatly rejected the idea that "leveling the playing field" could be a compelling governmental interest, reasoning to the contrary that the First Amendment was intended to prohibit precisely this kind of government effort to mute the message of some speakers while enhancing the message of others. Thus, FECA's limits on independent expenditures failed strict scrutiny and were unconstitutional.

b. Reporting and Disclosure Requirements

FECA also contained reporting and disclosure requirements designed to inform the voting public and to facilitate enforcement of the Act's substantive provisions by providing information to the FEC. One set of provisions required political committees, defined as groups that receive contributions or make expenditures in excess of $1,000 in a calendar year and under the control of a candidate or whose major purpose is the nomination or election of a candidate,[2] to report to the FEC the name of everyone contributing more than $10 in a year, and for contributors of over $100 in a year, to include the person's occupation and principal place of business. Another provision required every individual or group (other than a candidate or political committee) who makes contributions or expenditures of over $100 in a calendar year, other than by contribution to a political committee, to file a statement with the FEC. Because these provisions did not limit speech, they were not challenged as a direct infringement of First Amendment rights, but rather as vague and overbroad, on the theory that required reporting and disclosure would deter protected speech; i.e., would have a "chilling effect."

With regard to the reporting and disclosure requirements for political committees, the Court concluded that there was an insufficient showing of possible retaliation or intimidation against contributors to political committees and minor parties to support a facial challenge to the statute under the vagueness and overbreadth doctrines. The Court recognized that compelled disclosure of support for groups can have an unconstitutional chilling effect on associational rights under *NAACP v. Alabama*, 357 U.S. 449 (1958). But the Court distinguished *NAACP v. Alabama* on the ground that there had been a strong factual record supporting the fear of "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility" that would come with disclosure of membership. The Court indicated that the application of the reporting and disclosure requirements could be challenged as applied in individual cases, and expressed confidence that if the fear of reprisal is a realistic one, it would not be difficult to compile the necessary record.

The reporting and disclosure requirements, however, did have vagueness and overbreadth

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[2]FECA itself did not require political committees to be under a candidate's control or to have the nomination or election of a candidate as the major purpose, but lower courts had imposed this narrowing construction on the Act, and the Supreme Court referred approvingly to it in explaining why reporting requirements relating to the expenditures did not pose the same vagueness and overbreadth problems as reporting and disclosure requirements for individual expenditures.

problems insofar as they applied to all expenditures "for the purpose of . . . influencing" the nomination or election of candidates for federal office. The Court reasoned that because "issue advocacy" often tends to support the election or defeat of a candidate, this provision might be read to place reporting and disclosure requirements on individuals and groups that were engaged solely in issue advocacy. To prevent the constitutional difficulties associated with such a reading, the Court construed the reporting and disclosure requirements for individuals and groups (other than candidates or political committees) as applying only to expenditures that were (1) earmarked for political purposes or authorized or requested by a candidate or a political committee; or (2) for communications that expressly advocate the election or defeat of a clearly identified candidate. This narrowing construction is generally understood as expressing the constitutional limits of reporting and disclosure requirements for political expenditures, even though its precise constitutional rationale remains unclear.

c. Public Funding

Because the public funding provisions upheld in *Buckley* are not directly relevant to the Committee's deliberations, I will summarize that aspect of the Court's decision only briefly. FECA provides public funding for presidential candidates on a sliding scale basis, with major party candidates receiving the largest funding, minor candidates with over 5 percent of the vote receiving some funding, and candidates below the 5 percent threshold receiving no funding. As a condition of public funding, the candidates must agree to limit total expenditures and fundraising to the public funding amounts.[3] The Court upheld the provision of public funding as consistent with the First Amendment because it facilitated speech rather than restricted it, and rejected the argument that the sliding scale funding improperly discriminated against smaller parties and candidates. In connection with its analysis of the latter point, the Court reasoned that while minor candidates would not receive funding, this disadvantage was counterbalanced by the fact that they would not have to accept fundraising and expenditure limits, thus implicitly approving the voluntary limits attached to acceptance of public funding.

2. POST-*BUCKLEY* DEVELOPMENTS

Under *Buckley*, there is a key distinction between contributions and expenditures. Contributions, which may include expenditures requested or coordinated by candidates, may be limited to prevent the actuality or appearance of quid pro quo corruption. Independent expenditures may not be limited. While reporting and disclosure requirements may have a somewhat broader reach than spending limits, they may be applied only to independent expenditures that expressly advocate the election or defeat of a clearly identified candidate, and may be unconstitutional as applied if the threat of reprisals in particular cases creates too great a chilling effect. While the Court in *Buckley* thus upheld some aspects of FECA, its invalidation of limits on independent expenditures

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[3]Specifically, because the public funding is financed by a voluntary federal income tax check-off, there is no guarantee that there will be enough to fund the full amounts established under the statute. In such cases, candidates who accept public funding may engage in fundraising to reach the full amounts.

and imposition of restrictions on disclosure requirements for independent expenditures created opportunities for the evasion of the Act's permissible contribution limits, reporting and disclosure requirements, and voluntary spending limits attached to public funding. In particular, independent issue advertising is completely exempt from limits on contributions and expenditures, as well as reporting and disclosure requirements. This exemption allows political parties to collect "soft money" contributions to be used for independent expenditures that benefit their candidates. Campaign reform efforts since *Buckley* have generally focused on closing these loopholes or strengthening campaign finance regulation in other ways. In addressing the constitutionality of these reform efforts, subsequent decisions have clarified and extended the principles articulated in *Buckley*.

a. Contribution Limits

Although *Buckley* held that the contribution limits in question were constitutional, a number of issues have subsequently arisen concerning the scope of permissible contribution limits. These issues include how low limits on contributions may be, whether contributions for issue advocacy may be limited, and how broadly the concept of coordinated expenditures can be defined.

The Limits of Contribution Limits: *Buckley* involved limits of $1,000 per candidate for individuals and $5,000 for groups, but gave no indication of the extent to which lower contribution limits were permissible. *Buckley* reasoned that large contributions created a danger of the actuality or appearance of quid pro quo corruption, and that the principal communicative function of contributions was a symbolic one that was not significantly enhanced by contributions above that amount. This reasoning implies that contribution limits below a certain point would be unconstitutional because there is no danger of quid pro quo corruption and the lower limits significantly impair the symbolic value of contributions. *See Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995), *cert. denied sub nom.* Nixon v. Carver, 518 U.S. 1033 (1996) (invalidating contribution limits of $100 and $300 to candidates for certain state offices); *Russell v. Burris*, 146 F.3d 563 (8th Cir. 1998) *petition for cert. filed* 67 U.S.L.W. 3177 (sept. 2, 1998) (same). Likewise, in *Vannatta v. Keisling*, 151 F.3d 1215 (9th Cir. 1998), the court invalidated a ban on out-of-state contributions. On the other hand, a statute prohibiting gubernatorial slates from accepting outside contributions during the 28 days preceding an election was upheld in *Gable v. Patton*, 142 F.3d 940 (6th Cir. 1998), although the court invalidated a similar prohibition on candidates' contributing to their own campaigns.

Contributions for Issue Advocacy: FECA only applied to contributions to candidates and political committees, which the Court in *Buckley* construed narrowly to apply only to groups whose primary purpose was the election or defeat of a candidate for public office. Although *Buckley* thus did not address the constitutionality of limits on issue advocacy, its reasoning implies that contributions respecting issue advocacy may not be limited. This implication was confirmed in *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290 (1981), which invalidated a municipal ordinance (adopted by referendum) limiting contributions respecting ballot initiatives. The Court distinguished *Buckley* on the ground that there was no danger of quid pro quo corruption from contributions to ballot initiatives, because such contributions do not directly benefit any candidate for public office who might reciprocate with special favors. The Court also reasoned that limitations

regarding ballot initiatives represent a greater restriction on speech than limits on contributions to candidates because ballot initiatives are focused as to message. For the same reasons, contributions to issue-oriented Political Action Committees (PACs) probably may not be restricted. *Buckley* narrowly construed the term "political committee" in FECA to include only committees controlled by a candidate or whose primary purpose is to secure the election or defeat of a candidate. Thus, it is generally assumed that limits on contributions to political committees may not be extended to PACs that do not have as a primary purpose the election or defeat of a particular candidate or candidates. On the other hand, the Court upheld limits on contributions to a PAC that supported multiple candidates in *California Medical Association v. FEC*, 453 U.S. 182 (1981).

This is one component of the "soft money" problem. While contributions to particular candidates can be limited, contributions to PACs and political parties for use in independent expenditures, issue advertising, and "party building" activities are exempt from these limits. (The freedom of such organizations from limits on expenditures, see below, is the other component.)

Expanding the Concept of Contributions: *Buckley* indicated that contributions could be defined, as under FECA, to include expenditures made on behalf of a candidate if they were under the control of or coordinated with the candidate or the candidate's campaign committee. In an effort to address the problem of soft money, the Federal Election Commission issued an interpretive ruling under which all expenditures by political parties were conclusively presumed to be coordinated with their political candidates. In *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996), a state party ran campaign advertisements attacking the likely opposition candidate before their own nominating convention, and the FEC charged that these were coordinated expenditures in violation of FECA. The Court, without a majority opinion, held that the FEC could not proceed against the party. The plurality invalidated the FEC's conclusive presumption of coordination, which it regarded as plainly contrary to the actual facts of the case, but two concurring opinions would have decided the case on broader grounds. *See* below (discussing possibility that *Buckley* might be overturned or narrowed). *Colorado Republican Federal Campaign Committee* suggests that any effort to significantly expand the concept of coordinated expenditures so as to broaden the scope of permissible campaign contribution limits to encompass some independent expenditures would be unsuccessful.

b. Expenditure Limits

Buckley effectively precludes the imposition of limits on independent expenditures. As proponents of campaign finance reform have sought a means to address the problem of independent expenditures without running afoul of *Buckley*, a variety of issues have emerged. These issues include whether narrow limits on independent expenditures from particular sources are permissible, the use of voluntary expenditure limits for candidates, the constitutionality of alternative regulatory regimes, and whether *Buckley* may be successfully challenged.

Sources of Independent Expenditures: While *Buckley* invalidated limits on independent expenditures as applied to individuals and political parties, it did not address the question whether contributions from certain sources might present distinctive problems that would enable limitations on expenditures from these sources to survive strict scrutiny. With the proliferation of PACs in the

wake of *Buckley*, for example, the Federal Election Campaign Fund Act made it a crime for an independent PAC to make independent expenditures on behalf of a candidate for federal office who had accepted public funding. In *FEC v. National Conservative Political Action Committee*, 470 U.S. 480 (1985), the Court relied on *Buckley* to invalidate this provision.

The regulation of contributions and expenditures by corporations and labor unions has also been an issue, because the legal advantages conferred on such organizations enables them to accumulate massive "war chests" whose use for political purposes may not be approved by all shareholders or members. As a general matter, it appears that corporations and unions may be required to finance political expenditures from voluntary contributions to segregated funds. *See Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990). This requirement, however, may not be applied to voluntary political associations that are incorporated but do not engage in business activities, have no shareholders or others with a claim on assets or earnings, and that are not a conduit for a business corporation or a union. *See FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (distinguished in *Austin* on these grounds); *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994), *cert. denied sub nom. Holahan v. Day*, 513 U.S. 1127 (1995) (ban on corporate expenditures invalid as applied to nonprofit political corporation). In addition, corporations and unions may not be completely barred from spending on ballot initiatives. *See First National Bank v. Belotti*, 435 U.S. 765 (1978).

Voluntary Candidate Expenditure Limits: *Buckley* suggested that FECA's limits on total campaign expenditures by candidates receiving public funding were permissible because candidates voluntarily accepted them as a condition of receiving public funding. This analysis was confirmed in *Republican National Committee v. FEC*, 445 U.S. 995 (1980) (summarily affirming lower court decisions at 616 F.2d 1 (2d Cir. 1980) and 487 F. Supp. 280 (S.D.N.Y. 1980)(three judge panel)). Thus, states may limit total campaign expenditures as a condition of public funding, but any such limits must be voluntarily accepted. *Compare Rosenstiel v. Rodriguez*, 101 F.3d 1544 (8th Cir. 1996) (upholding voluntary scheme), *cert. denied* 117 S. Ct. 1820 (1997), *with Russell v. Burris*, *supra* (invalidating mandatory public funding scheme with total expenditure limitations). Thus, for example, in *Shrink Missouri Government PAC v. Maupin*, 71 F.3d 1422 (8th Cir. 1995), *cert. denied sub nom Nixon v. Shrink Missouri Government PAC*, 518 U.S. 1033 (1996), the court invalidated as unduly coercive a system of "voluntary" spending limits under which candidates were required to file an affidavit indicating whether they would comply with voluntary spending limits. Candidates who did not so pledge were subject to restrictions on contributions from corporations, unions, PACs, and political parties and also subject to reporting requirements for expenditures above the limits. Candidates who pledged to comply were freed from such restrictions, but subject to penalties for exceeding the limits.

Even voluntary candidate spending limits do not apply to independent expenditures, however, since independent expenditures are not made, requested or coordinated by the candidate or his or her political committee. *See National Conservative Political Action Committee*, *supra* (invalidating limits on independent expenditures made by PACs on behalf of candidates receiving public funding). This is the other component of the "soft money" problem -- although contributions to a candidate may be limited under *Buckley* and the candidate may accept spending limits as a condition of receiving public funding, independent expenditures are not subject to either limitation,

and can easily be used to evade these limits. One creative response to this problem was invalidated in *Day v. Holahan*, *supra*. Minnesota's campaign finance reform law provided that the public funding amounts and spending limits for a candidate would be increased when independent expenditures were made opposing his or her election or on behalf of his or her major party opponent. The United States Court of Appeals for the Eighth Circuit held that "the knowledge that a candidate who one does not want to be elected will have her spending limits increased and will receive a public subsidy equal to one half of the amount of the independent expenditure, as a direct result of that independent expenditure, chills the free exercise of that protected speech." 34 F.3d. at 1360. The court went on to conclude that the statute was not narrowly tailored to meet a compelling government interest.

Challenging *Buckley*: Efforts to limit campaign spending and/or independent expenditures notwithstanding *Buckley* have met with no success. *See, e.g., National Conservative Political Action Committee*, *supra* (invalidating cap on independent PAC expenditures on behalf of candidates receiving public funding); *Kruse v. City of Cincinnati*, 142 F.3d 907 (6th Cir. 1998), *petition for cert. filed*, 67 U.S.L.W. 3187 (Sept. 16, 1998) (invalidating cap on total campaign expenditures for city council races); *New Hampshire Right to Life Political Action Committee v. Gardner*, 99 F.3d 8 (1st Cir. 1996) (invalidating $1000 cap on independent expenditures). Some proponents of campaign finance reform have suggested that the time is right for the Supreme Court to reconsider *Buckley*, and a petition for writ of certiorari that challenges *Buckley* indirectly and directly has been filed in the *Kruse* case.

The indirect challenge to *Buckley* proceeds by advancing compelling governmental interests that were either not considered or not yet factually supported in *Buckley*. *Buckley* itself addressed only two interests: preventing quid pro quo corruption (which is a compelling interest, but with respect to which limits on candidate spending and independent expenditures are not narrowly tailored), and "leveling the playing field" (which is not a legitimate purpose under the First Amendment). In *Kruse*, the City argues that new facts justify a different conclusion as to the problem of corruption, and also advances two new governmental interests in support of capping candidate expenditures: freeing city council members from the burden of fundraising so that they can concentrate on their official duties, and preventing candidates with large sums of money from blocking other candidates from television advertising. These arguments were rejected by the court of appeals and the City has renewed them in its cert. petition.

The City in *Kruse* also challenges *Buckley* directly, arguing in the alternative that if limits on candidate expenditures are precluded by *Buckley*, the Court should "revisit" the decision in light of new facts and circumstances. There is, however, little indication that the Supreme Court is prepared to do so. In its most recent decision on campaign finance regulation, *Colorado Republican Federal Campaign Committee v. FEC*, *supra*, the Court invalidated an FEC interpretation that presumed party expenditures were "coordinated" with a candidate and therefore could be treated as contributions. The plurality opinion (written by Justice Breyer and joined by Justices O'Connor and Souter) held fast to *Buckley's* distinction between contributions and expenditures. Justice Kennedy, joined by Chief Justice Rehnquist and Justice Scalia filed a concurring opinion arguing that any restriction on expenditures by political parties -- even those coordinated with a candidate -- is unconstitutional. Justice Thomas, also joined by Chief Justice Rehnquist and Justice Scalia, wrote

a separate concurring opinion arguing that contribution limits are unconstitutional and that this aspect of *Buckley* should be overruled. Only the two dissenting Justices, Stevens and Ginsburg, would have upheld the FEC's interpretation, indicating some willingness to relax *Buckley*. The case certainly does not reflect any dissatisfaction with *Buckley's* invalidation of spending limits and, if anything, would tend to suggest the Court is prepared to broaden *Buckley*, rather than restrict it.

c. Reporting and Disclosure Requirements

Buckley indicates that the scope of permissible reporting and disclosure requirements is somewhat broader than permissible limits on contributions and expenditures because reporting and disclosure requirements are less restrictive of speech than spending limits. In particular, reporting and disclosure requirements may be imposed on independent expenditures (i.e., those that are not coordinated with a candidate) that "expressly advocate" the election or defeat of a "clearly identified candidate." The Court, however, also indicated that reporting and disclosure requirements could not be applied to "issue advocacy" and was especially concerned that express advocacy be clearly defined using a bright-line test to avoid vagueness and overbreadth problems. In addition, requirements that political groups disclose their contributors may have an unconstitutional chilling effect on associational rights. Insofar as direct limits on independent expenditures are generally unconstitutional, campaign finance reform efforts often focus on strengthening reporting and disclosure requirements. These efforts have raised issues involving the imposition of new and more stringent requirements and the use of broader definitions of express advocacy. Some cases have also found the application of requirements that political groups disclose their contributors to be unconstitutional as applied to particular groups.

New and More Stringent Requirements: Lower courts have generally indicated that new and more stringent reporting and disclosure requirements are permissible, if properly constructed. One fairly common requirement is that political advertisements expressly advocating the election or defeat of a clearly identified candidate must disclose the identity of the advertisement's sponsor. The Supreme Court invalidated a broad prohibition against anonymous political pamphlets in *McIntyre v. Ohio Election Commission*, 514 U.S. 334 (1995), indicating that compelled self-identification is more intrusive than mandatory reporting (as in *Buckley*). Nonetheless, lower courts have distinguished *McIntyre* and upheld more narrowly tailored requirements that apply only to express advocacy of the election or defeat of a clearly identified candidate. *See Kentucky Right to Life, Inc. v. Terry*, 108 F.2d 637 (6th Cir.), *cert. denied*, 118 S. Ct. 162 (1997) (disclosure requirement for advertisements containing express advocacy); *Vermont Right to Life Committee v. Sorrell*, ___ F. Supp. 2d ___, 1998 WL 601346 (D. Vt. Sept. 9, 1998) (upholding disclosure requirement as narrowly construed to apply only to express advocacy); *see also FEC v. Survival Education Fund, Inc.*, 65 F.3d 285 (2d Cir. 1995) (upholding disclosure requirement for solicitations of contributions for express advocacy but indicating that disclosure requirement for advertisements may be unconstitutional after *McIntyre*).

Another way of strengthening reporting and disclosure requirements is to lower the size of contributions that trigger the obligation of an individual or political committee to report contributions and expenditures. Lowering the amount that triggers reporting and disclosure would not present the same issues that lowering limits on contributions. Thus, the court in *Vote Choice,*

Inc. v. DiStefano, 4 F.3d 26 (1st Cir. 1993), held that "first dollar" reporting requirements (i.e., all contributions of one dollar or more) were not per se invalid under the First Amendment, even though the governmental interest in informing the public through disclosure of contributors grew "somewhat attenuated" as the amount of contributions decreased, because there was still a compelling governmental interest in informing the voters of the identity of contributors. The particular statute in question, however, was unconstitutional because it applied only to PACs, and thus imposed a special burden on associational rights. Under *Vote Choice*, a more broadly applicable first dollar reporting requirement might be constitutionally valid.

Defining Express Advocacy: To avoid constitutional difficulties, *Buckley* imposed a narrowing construction on FECA's reporting and disclosure requirements that prevented their application to contributions and expenditures for issue advocacy.[4] First, reporting and disclosure requirements for political committees could only be applied to committees whose primary purpose was the election or defeat of a candidate or candidates. Second, individuals and groups could be required to report their own expenditures only if the expenditures were for "express advocacy" of the election or defeat of a "clearly identified candidate." These narrowing constructions are generally thought to reflect constitutional requirements. *See, e.g., North Carolina Right to Life, Inc. v. Bartlett*, 3 F. Supp. 2d 675 (E.D. N. Car. 1998) (invalidating registration requirement for individuals and groups engaged in issue advocacy); *Virginia Society for Human Life, Inc. v. Caldwell*, 500 S.E. 2d 814 (Va. 1998) (construing state disclosure requirements narrowly to prevent application to groups engaged in issue advocacy); *see also FEC v. Christian Action Network*, 110 F.3d 1049 (4th Cir. 1997) (holding that FEC prosecution for failure to disclose expenditures for advertisement "implicitly" advocating defeat of President Clinton in 1992 campaign was so clearly outside scope of FECA as to justify award of attorney fees under the Equal Access to Justice Act).

The express advocacy test permits the circumvention of reporting and disclosure requirements through carefully worded independent expenditures. For example, the advertisement that was exempt from reporting and disclosure requirements in *Christian Action Network, supra*, was run just before the 1992 presidential elections and included the following text:

> Bill Clinton's vision for America includes job quotas for homosexuals, giving homosexuals special civil rights, allowing homosexuals in the armed forces. Al Gore supports homosexual couples' adopting children and becoming foster parents. Is this your vision for a better America? For more information on traditional family values, contact the Christian Action Network.

110 F.3d at 1050. Such cleverly worded advertisements do not expressly advocate the election or defeat of a candidate, but in context the message is fairly clear. Thus, many campaign reform proposals center around redefining express advocacy so that reporting and disclosure requirements apply to this kind of advertisement.

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[4]Note that because coordinated expenditures are, in effect, contributions, reporting and disclosure requirements may apply to coordinated expenditures even if they only engage in issue advocacy.

The extent to which the concept of express advocacy may be redefined remains unclear, however. In *Buckley*, the Court emphasized the need for a bright-line test, and rejected any approach that would require a subjective evaluation of the message conveyed by an advertisement. In a footnote, the Court gave examples of words and phrases that would constitute express advocacy. In construing the scope of the Federal Election Commission's authority under FECA, lower courts have divided over whether it extends only to expenditures using *Buckley's* "magic words." *Compare Christian Action Network*, *supra* (implying that magic words are required) *and Faucher v. Federal Election Commission*, 928 F.2d 468 (1st Cir. 1991) (same), *with Federal Election Commission v. Furgatch*, 807 F.2d 857 (9th Cir. 1987) (permitting prosecution for advertisements that did not contain magic words). These cases, however, only address *Buckley's* interpretation of FECA, and do not necessarily imply that the magic words are constitutionally required. Thus, campaign finance reform statutes probably do not have to limit reporting and disclosure requirements to advertisements that use the magic words, provided that the requirements do not apply to issue advocacy and incorporate a bright-line test that avoids unclear and subjective judgments.

One proposal that might satisfy these requirements was incorporated into the McCain-Feingold Campaign Finance Reform Bill, which defined express advocacy to include (1) the use of the magic words; (2) the use of a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of a clearly identified candidate; (3) paid advertisements that expressly refer to one or more clearly identified candidates within 60 days of an election; or (4) any communication that expresses unmistakable and unambiguous support for or opposition to one or more clearly identified candidates when taken as a whole and with limited reference to external events, such as proximity to an election. While some components of this definition may be problematic, it represents a potentially constitutional redefinition of express advocacy.

Disclosure of Contributors: Although *Buckley* rejected a facial challenge to FECA's requirement that political committees (narrowly defined to include only groups whose principal purpose is the election or defeat of a candidate) disclose their contributors, the Court recognized that such requirements may have a chilling effect on associational rights. Thus, such requirements may not be applied if disclosure would subject contributors to significant retaliation, but the burden is on the group in question to produce evidence that there is a realistic fear of retaliation. For cases finding a realistic fear of retaliation, see *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87 (1982); *FEC v. Hall-Tyner Election Campaign Committee*, 678 F.2d 416 (2d Cir. 1982).

d. Soft Money

As suggested by the foregoing discussion, soft money is not so much a distinct problem as a manifestation of the gaps in campaign finance regulation under FECA and the *Buckley* framework. In its narrowest sense, soft money refers to contributions and expenditures that are exempt from FECA's contribution and voluntary expenditure limits and reporting and disclosure requirements. In particular, soft money includes contributions to political parties and PACs to be used for expenditures that are not coordinated with a candidate's campaign and do not expressly advocate the election or defeat of a clearly identified candidate. The term is thus generally used in connection with federal campaign finance regulation, and soft money reform proposals are generally designed

to bring soft money under the voluntary spending limits attached to public financing and/or to extend reporting and disclosure requirements to soft money. To the extent that state campaign finance regulation mirrors federal law, soft money could present a problem for states as well, however. Such proposals would be subject to the constitutional framework articulated in *Buckley* and its progeny, and the extent to which efforts to regulate soft money are constitutional remains unclear.

3. Summary of the Constitutional Limits of Campaign Finance Regulation

Given the nature of constitutional decisionmaking, it is difficult to articulate precisely the constitutional rules governing campaign finance regulation. The principles involved are to some degree open ended and the cases are highly fact specific. Thus, the case law is subject to varying interpretations. Moreover, because lower court decisions are not binding on courts from other jurisdictions, not all courts would follow all of the decisions discussed above. With these caveats in mind, I offer the following summary of the constitutional parameters of campaign finance regulation:

- The state may limit contributions to candidates and their campaign committees, provided that the limits are not set too low.

- The state may not limit "independent" expenditures, including expenditures that expressly advocate the election or defeat of a clearly identified candidate.

- The state may apply contribution limits to expenditures that are coordinated with, requested by, or under the control of candidates or their campaign committees.

- The state may not limit contributions to groups engaging in issue advocacy or supporting or opposing ballot initiatives.

- The state may require corporations and labor unions (except voluntary political associations not engaged in business activities, without shareholders or others with a claim on assets or earnings, and not serving as a conduit for a business corporation or a union) to make political expenditures from a segregated political fund containing only voluntary contributions.

- The state may set voluntary spending limits for candidates, including limits attached to receipt of public funding, but nominally voluntary schemes may be invalid if they are coercive.

- The state may require political groups whose primary purpose is the election or defeat of a candidate or candidates to disclose their contributors unless the groups produce evidence of a reasonable fear of retaliation as a result of disclosure.

- The state may require reporting and disclosure of independent expenditures that expressly advocate the election or defeat of a clearly identified candidate, provided that express advocacy is defined through an objective bright line test and does not include "issue advocacy."

Senate Bill No. 432 and House Bill No. 2662 (1998 Session)
Supplemental Written Testimony of Richard E. Levy
Submitted to the Special Committee on Local Government, November 4, 1998

Introduction:

At the close of my October 14, 1998 testimony before the Special Committee on Local Government on "The Constitutional Parameters of Campaign Finance Reform," I was asked to comment on the constitutionality of House Bill No. 2662 and Senate Bill No. 432. Both of these bills were introduced in the 1998 Session of Kansas Legislature. House Bill No. 2662 was adopted and is now the law of the State of Kansas. Senate Bill No. 432 was originally proposed by the Governor, and did not pass.

I have had an opportunity to review these pieces of legislation, and have some observations concerning potential constitutional issues raised by each of them. I will begin with the House Bill because it passed. I will not give full citations to cases that were cited in my earlier written testimony.

House Bill No. 2662:

This statute addresses several interrelated topics concerning governmental ethics, and includes some provisions on campaign finance reform. Many of the changes made by this provision are relatively minor editorial and technical corrections that do not raise significant issues. Some of the provisions of this statute, however, are potentially problematic.

1. Contribution Limits:

House Bill No. 2662 expands the definition of contribution in K.S.A. 25-4143(e)(1) in a manner that, when read in conjunction with the contribution limits included in K.S.A. 25-4153, raises serious constitutional problems. Under *Buckley v. Valeo*, contributions to political candidates can be limited in the interest of preventing "quid pro quo" corruption. Expenditures that are requested or controlled by, or coordinated with, a candidate or a candidate committee may be treated as contributions. But the definition of contribution cannot include independent expenditures. *See Colorado Republic Federal Finance Committee v. FEC.*

The expanded definition of contribution in K.S.A. 25-4143(e)(1), as amended, includes two provisions that are not limited to coordinated expenditures:

a. Subparagraph (A) includes as contributions "[a]ny advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value given to a candidate, candidate committee, party committee, or political committee for the express purpose of nominating, electing, or defeating a clearly identified candidate for a state or local office."

Because party committees and political committees are not necessarily controlled by a candidate under the definitions in K.S.A. 25-4143(i) and (k) (as amended), expenditures made by such committees will not necessarily be "coordinated" with a candidate, even if the committee expressly advocates the nomination, election, or defeat of a clearly identified candidate.

b. Subparagraph (B) includes as contributions "[a]ny advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value made to expressly advocate the nomination, election, or defeat of a clearly identified candidate for a state or local office." These expenditures are also not necessarily coordinated with a candidate.

The expanded definition of contributions would not be problematic if only reporting and disclosure requirements were involved, because reporting and disclosure requirements may be applied to independent expenditures for express advocacy. However, the contribution limits K.S.A. 25-4153(a) apply not only to candidates for local or state office and their committees, but also "to all party committees and political committees" without regard to whether such committees are controlled by a candidate or otherwise coordinate their expenditures with a candidate. Insofar as the contribution limits appear to apply to political and party committees making only independent expenditures that are not coordinated with a candidate (K.S.A. 25-4143(e)(1)(A)), or to individuals making independent expenditures that are not coordinated with a candidate (K.S.A. 25-4143(e)(1)(B)), they would appear to run afoul of *Buckley* and its progeny. *See FEC v. National Conservative Political Action Committee* (invalidating contribution limits on political action committees).

2. Reporting and Disclosure Requirements:

House Bill No. 2662 also makes some changes concerning reporting and disclosure requirements. Under *Buckley* and its progeny, reporting and disclosure requirements may be imposed on (1) candidates and candidate committees, (2) committees whose primary purpose is express advocacy of the nomination, election or defeat of a candidate or candidates, and (3) individuals whose expenditures involve express advocacy of the nomination, election or defeat of a clearly identified candidate, including independent expenditures not controlled by or otherwise coordinated with a candidate. The reporting and disclosure requirements of House Bill No. 2662 raise several potential issues.

First, while requirements that party and political committees report their contributors are generally constitutional, they may be invalid as applied to particular groups if the group establishes a reasonable fear of retaliation against its contributors.

Second, the new definition of expenditures in K.S.A. 25-4143(g) may not be sufficiently clear to satisfy the requirements of *Buckley*. The definition of expenditures incorporates the concept of express advocacy as outlined in *Buckley*, and the related definition of express advocacy in K.S.A. 25-4143(h) uses the sort of "magic words" offered as examples of express advocacy in *Buckley*. These new definitions bring the language of the statute closer into line with *Buckley* and thus are clearly an

improvement over the previous language, which was probably too broad and vague to pass muster (at least in the absence of a drastic narrowing construction). There is, however, a potential problem because the definition of express advocacy incorporates but is "not limited" to the magic words. This makes sense, since the statute would otherwise be easily evaded. Because there is no further definition of express advocacy, however, the statute leaves unclear when communications that do not use the magic words will be considered express advocacy.

The potential difficulties with this situation are illustrated by the recent Governmental Ethics Opinion, No. 1998-22 (September 23, 1998), which involves an advertisement that mentions two candidates by name, compares one favorably to the other, and refers indirectly to the election campaigns, but does not use any of the magic words. The Commission indicated that the advertisement will be "viewed as a whole" to determine whether it "leads an ordinary person to believe that he or she is being urged to vote for or against a particular candidate for office." Applying this standard, the commission concluded that the advertisement constituted express advocacy. This is certainly a defensible position as a matter of statutory construction and constitutional limits. But *Buckley* requires that the statutory definition of express advocacy to use an objective, "bright-line" test that cannot be extended to encompass issue advocacy. The statute certainly does not contain such a definition -- whether or not the advertisement constituted express advocacy was not clear until the Ethics Commission had ruled. And the Ethics Commission's construction arguably does little to clarify the statute. A court, if confronted with a challenge to the express advocacy provision, might provide a narrowing construction, as did the *Buckley* Court with respect to the Federal Election Campaign Act. But this is not certain, especially if the court involved is a federal court being asked to construe state law. In the end, it would be a good idea to supplement the definition in some way so as to avoid these problems.

Third, among the disclosure requirements in House Bill No. 2662 is an expanded requirement that political materials identify themselves as advertisements and include the identity of the group or individual providing the advertisement. K.S.A. 25-4156(b)(1), as amended, now requires such disclosure not only on newspaper or magazine advertisements (Subparagraph (A)) and radio or television advertisements (Subparagraph (B)), but also on brochures, fliers, or other political fact sheets that involve express advocacy (Subparagraph (C)). This new requirement, however, does not apply to individuals making aggregate expenditures of less than $2500 in a year. As I indicated in my previous testimony, the constitutionality of such "self-identification" requirements is not entirely clear. In *McIntyre v. Ohio Election Commission*, the Supreme Court indicated that compelled self-identification is more burdensome than reporting requirements, and invalidated a ban on anonymous political pamphlets. Some lower courts, however, have distinguished *McIntyre* and upheld self-identification requirements as applied to paid political advertisements involving express advocacy. While the weight of authority seems to tilt in favor of self-identification requirements as applied to express advocacy, the extension of the requirement to pamphlets may make this statute more similar to the one in *McIntyre* and there is, in any event, no controlling authority on the issue.

Senate Bill No. 432

This Bill was introduced by the Governor in the 1998 session and was not adopted. The Bill contains expanded reporting and disclosure requirements that are applied to a broader definition of express advocacy. The issues raised by the Bill generally fall into three categories.

1. Definition of Expenditures:

As noted above, under *Buckley* reporting and disclosure requirements may be applied to independent expenditures involving express advocacy, provided express advocacy is defined using an objective, bright-line test that does not reach pure issue advocacy. Senate Bill No. 432 would define expenditures to include "[a]ny purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made for the purpose of influencing or attempting to influence the nomination, election or defeat of any individual to state or local office or providing information which has the effect of influencing or attempting to influence the nomination, election or defeat of any individual to state or local office." Proposed 25-4150(b)(2)(A)(i). Similar language is also used to limit exceptions to this provision. Standing alone, the language "for the purpose of influencing or attempting to influence" and having "the effect of influencing or attempting to influence" would probably violate *Buckley*, because these phrases are both vague and broad enough to encompass issue advocacy. In particular, *Buckley* explicitly indicated that the subjective purpose of expenditures could not be used as the touchstone for express advocacy.

However, the concept of expenditure is limited by two other provisions of the Bill. First, reporting and disclosure requirements are applied to persons, who are defined as those making contributions or expenditures above specified amounts within the time period beginning 60 days prior to a primary and ending on the day of the next general election. *See* proposed K.S.A. 25-4150(b)(1). Second, the phrase "influencing or attempting to influence" is limited to communications that (1) contain "words of express advocacy"; (2) contain "the name or a picture of a candidate"; or (3) in which "the identity of a candidate is apparent by unambiguous reference." Proposed K.S.A. 25-4150(b)(3). These additional limitations avoid the most obvious problems under *Buckley*, but the Bill as a whole would extend reporting and disclosure requirements beyond the traditional "magic words" of express advocacy. Essentially, it defines "express advocacy" as any advertisement that identifies a candidate during the period preceding an election. This approach is similar to the one proposed in the McCain-Feingold Bill that was introduced in Congress last year. As I indicated in my previous written testimony, such an approach might satisfy the *Buckley* requirements. It is a bright line test and does not turn on the intent of the person making the expenditure. Thus, for example, under this definition there could be no doubt that the advertisement at issue in Governmental Ethics Opinion No. 1998-22 was express advocacy because it named two candidates and was run during the campaign season. In addition, any clear reference to an identifiable candidate during campaign season arguably must be construed as an effort to help or hinder his or her chances of election. Put differently, it is hard to see how pure issue advocacy would ever require the identification of particular candidates during the campaign season. However, I am not aware of any case directly addressing this sort of definition of express advocacy, and there is certainly no definitive ruling on the question.

Prior Statement of Intended Expenditures:

Although the particular issue has not, to my knowledge, been raised previously, the Bill's requirement that any person must file a statement at least seven days before making an expenditure, *see* proposed K.S.A. 25-4150(c), might present some problems. This requirement would apply to "persons," defined in proposed K.S.A. 4150(b)(1) as individuals making contributions or expenditures of $1000 or more for candidates for local office or $2500 or more for candidates for state office. Thus, if an individual wanted to make a contribution or expenditure that would place his or her total contributions at or above either of these amounts, he or she would have to file a statement and wait for at least seven days before making the contribution or expenditure. The imposition of such a waiting requirement might be seen as an impermissible burden. More significantly, perhaps, the individual who does not decide to make such a contribution or expenditure until the last week of a campaign would effectively be precluded from doing so. Since there is no case law on this issue, it is difficult to predict how a court would rule, but I think there is a good chance that the provision would be struck down, at least as applied to effectively prohibit individuals from deciding to make last-minute independent expenditures.

3. Threshold for Reporting Requirements:

As proposed under Senate Bill No. 432, K.S.A. 25-4150(d) would require "every person" who makes contributions or expenditures to file statements as required by K.S.A. 25-4148. As noted above, under proposed 25-4150(b)(1) "person" is defined in terms of those who make contributions or expenditures above certain threshold amounts: $1000 for local and $2500 for state office. Thus, the provision would seem to raise the threshold from the $100 threshold requirement under current law, to $1000 and $2500 for local or state office, respectively. Notwithstanding the definition of person, however, there may be some ambiguity because proposed K.S.A. 25-4150(d) would apply to "[e]very person . . . who makes contributions or expenditures." The phrase, "who makes contributions or expenditures" is redundant if the term "person" is already limited by the definition in proposed K.S.A. 25-4150(b)(1), and the phrase might therefore be read as intended to make the threshold amounts in the definition section inapplicable to the reporting requirements. If so, the Bill would require reports for every contribution, however small, which might be seen as an excessive burden as imposed on individuals, although there is also some support for the idea that candidates and their committees can be required to disclose all contributions, however small. *See Vote Choice, Inc. v. DiStefano*. In any event, this ambiguity should be clarified if some version of the Bill is adopted in the future.

Conclusion

I hope that these comments on House Bill No. 2662 and Senate Bill No. 462 are helpful to the Committee. Given the time constraints involved, I did not do any comprehensive research on the specific questions raised by the statutes, and I may have missed some potential issues or problems. In any event, since this is an area of the law that is not entirely clear, none of my comments should be taken as definitive and other observers may legitimately disagree with my assessments. If there are any questions or if I can be of any further assistance to the Committee, please do not hesitate to ask.

SOFT MONEY CONTRIBUTIONS AND INDEPENDENT EXPENDITURES IN KANSAS ELECTIONS

CONCLUSIONS AND RECOMMENDATIONS

The Committee makes no recommendations concerning independent expenditures because of pending litigation on this issue (*Kansans For Life, Inc. v. Diane Gaede, et al.* (98-4192, RDR)). The Committee thinks that the influence of soft money is not a significant issue in Kansas elections and makes no recommendation at this time.

BACKGROUND

The study was requested by the Kansas Governmental Ethics Commission based upon its belief that more disclosure should be made by those individuals who make expenditures that directly or indirectly influence the nomination or election of a candidate for state or local office. In addition, the Commission recommends studying the aspects and impact of soft money on Kansas elections.

The following is a brief description of terms and statutes that apply to soft money contributions and independent expenditures.

Soft Money Contributions

Soft money includes moneys contributed to, and expended by, political parties from unions, individuals, corporations, and trade associations that are exempt from the Federal Election Campaign Act's (FECA) contribution and expenditure limits and reporting and disclosure requirements. Soft money contributions were originally intended to be used for such expenditures as party building activities that were not coordinated with a candidate's campaign and did not expressly advocate the election or defeat of a clearly identified candidate. This money generally is contributed to a national party committee and then, in return, given to a state party committee. Because the Federal Election Commission (FEC) did not define party building activities, this money found its way into advertisements for campaigns at the national level. A national party committee is required to disclose how much money it raised, but it does not have to report who and how much was contributed to the committee. Due to inadequate disclosure requirements, tracking soft money from the national party committee to the state party committee level is a difficult task.

Independent Expenditures

Independent expenditures are moneys spent on communications to the public that directly advocates the nomination, election or defeat of a clearly identified candidate. Often the communications contain the "magic" words such as: "vote for" or "vote against." The communications are made without the coordination or consultation with the candidate. Independent expenditures, similar to issue ads, are not subject to candidate contribution limits, but unlike issue ads, these expenditures are required to disclose how they spend their money. This form of advertising is often referred to as express advocacy. Independent expenditures are becoming more prevalent in state campaigns. K.S.A. 25-4150 requires any person who makes an independent expenditure in an amount of $100 or more to disclose the amount and source of that expenditure.

Issue Advocacy or Issue Advertising

Issue advocacy or issue advertising is communication for the purpose of addressing a particular policy or idea. These ads may address a candidate indirectly, but do not expressly advocate that candidate's nomination, election, or defeat. Traditionally, issue advertising has been done by

third parties and organizations other than political action committees (PACs).

Buckley v. Valeo 424 U.S. 1 (1976)

The United States Supreme Court in *Buckley v. Valeo* 424 U.S. 1 (1976) considered the constitutionality of FECA which, among other things, placed contribution and expenditure limits for candidates and individuals or political groups that supported candidates. FECA also imposed reporting and disclosure requirements on candidates, political committees, and individual contributors.

The central premise of *Buckley* is that campaign contributions and expenditures are themselves a form of political speech, which lies at the core of the protections of the First Amendment. The Court recognized that contributions could be limited to prevent government contentions of the appearance of "*quid pro quo*" corruption. The *Buckley* decision tried to clearly distinguish a "bright-line" test between "issue advocacy" and "express advocacy" advertisements so that advertising solely engaged in issue advocacy would not be subject to reporting and disclosure requirements. The Court ruled that any limitation of independent expenditures uncoordinated with a candidate is a violation of First Amendment rights. This case allowed unlimited spending independent of the candidate.

COMMITTEE ACTIVITIES

A one-day meeting was held in October where eight conferees testified on the topic. A second meeting day was held in November to discuss the constitutional interpretation of Substitute for H. B. 2662 (H.B. 2662) and S.B. 432. H.B. 2662 was enacted into law during the 1998 Session. The Committee heard from three University of Kansas professors: two from the Department of Political Science and one from the School of Law, the Kansas Governmental Ethics Commission, Kansans For Life, the Christian Coalition, the *Kansas Lawyer*, and the Kansas Alliance for Campaign Finance Reform.

The two professors from the Department of Political Science explained the concepts of soft money and independent expenditures as they applied to federal and state campaigns. Both professors favored the idea of strengthening reporting and disclosure laws; however, they cautioned the Legislature that these laws would have to be carefully crafted to avoid being declared unconstitutional. They testified that further reducing expenditure limits may be ruled unconstitutional because the courts could construe that as an infringement on free speech. They thought that Kansas elections are relatively free of, or clean, in respect to the inflow of soft money into campaigns because soft money is more of a federal issue rather than a state issue. They felt that the national trend of soft money expenditures in campaigns eventually will trickle down to the state level considering the high costs of campaigns.

They both agreed that special interest groups are spending more money to advocate the defeat or election of a candidate, and as a result, independent expenditures have become more prevalent in state elections. They thought that special interest groups can dictate the issues in a campaign, so that a campaign may become more special interest-controlled rather than candidate-controlled. As a result, candidates have to spend their time and money defending themselves against these independent advertisements and have less time to devote to the issues. They said that PACs have become vendors for special interest groups, because interest groups give large contributions to PACs who in turn make decisions where the money will be spent, with full knowledge of what the special interest groups want.

They reported that the influx of soft money and independent expenditures are a way to circumvent the limitations imposed by the state Campaign Finance Act.

The professor from the KU School of Law clarified the permissible parameters of campaign finance reform under the *Buckley v. Valeo* decision and subsequent U.S. Supreme Court and lower court decisions. He testified that restric-

tions and limitations on independent expenditures were ruled unconstitutional under the *Buckley* decision because the Court ruled that it was an infringement on free speech. He suggested that the Legislature should not place limits on independent expenditures, unless it can show a compelling interest for disclosure to prevent *quid pro quo* corruption or it should be prepared to challenge the *Buckley* decision to the U.S. Supreme Court. He stated that another problem arises in imposing disclosure requirements in some cases where, if the contributor was known, then some kind of retaliation may occur. The courts have ruled that disclosure requirements in these circumstances are unconstitutional.

He testified that the *Buckley* decision tried to clearly distinguish a "bright line" test between issue advocacy and express advocacy advertisements by stating that reporting and disclosure requirements could not be applied to groups solely engaged in issue advocacy, but groups that engaged in expressly advocating the nomination, election, or defeat of a clearly identified candidate, could be made subject to these requirements. He said the Court ruled that expenditure for express advocacy could be subject to disclosure requirements only if it included magic words such as "vote for" or "vote against." He stated that several lower court cases have relied on the Supreme Court's "bright line" test to determine the constitutionality of the imposition of reporting and disclosure requirements. The court decisions have varied as to agreement with the *Buckley* decision and there has been pressure exerted by some lower courts for the U.S. Supreme Court to reconsider its decision.

The law professor testified on the constitutionality of H.B. 2662 which was enacted by the 1998 Legislature and S.B. 432 which was proposed by the Governor but not enacted. He said that some provisions in H.B. 2662 were problematic because contribution limits that apply to individuals, political and party committees making only independent expenditures that are not coordinated with a candidate, are subjected to reporting and disclosure requirements under state laws. The *Buckley* decision and its progeny (*FEC v. National Conservative Political Action Committee*) ruled this type of regulation was unconstitutional. Also, he said that although the definition of "expenditure" in H.B. 2662 brings the language of the statute closer in line with the *Buckley* decision, the bill presents problems because the definition of express advocacy goes beyond the "magic" words by including language which states that express advocacy advertisements are not limited to the magic words. The professor said that, as a result, persons who advocate are unclear if their communications will be subject to the reporting and disclosure laws since they cannot be sure if the words they use may be interpreted as expressly advocating.

He questioned the expanded disclosure requirements in H.B. 2662 requiring all political materials in excess of a threshold amount to be identified as advertisements and include the identity of the group or individual providing the advertisement. These requirements of "self-identification" has been ruled by the Supreme Court (*McIntyre v. Ohio Election Commission*) to be more burdensome than reporting requirements and the Court has invalidated a ban on anonymous political pamphlets. Some lower courts, however, have upheld self-identification requirements as applied to paid political ads involving express advocacy.

The professor said that S.B. 432 would avoid most of the obvious problems under the *Buckley* decision because it establishes contribution and expenditure limitations within a specified time frame before an election. It also would require a communication that expressly advocates the nomination, election, or defeat of a clearly identified candidate (defined as "influencing or attempting to influence") be reported. He stated that it would be difficult to envision pure issue advocacy advertisement which identified a particular candidate during the campaign season. He felt that the bill was problematic because it would extend reporting and disclosure requirements beyond the traditional magic words of express advocacy, but does not stipulate what words constitute express advocacy. In addition, he thought that requiring a person to file a statement at least seven days prior to a contribution or an expenditure may be construed as an impermissible burden on that

person's right of free speech. The professor said that there is no case law on this issue and it is difficult to predict how the courts would rule, but he thinks there would be a good chance that the provision would be struck down.

A representative of the Kansas Governmental Ethics Commission felt that the problem of soft money was not germane to Kansas elections. She said the Commission had to interpret the new law (H.B. 2662) as it might apply to several public advertisements during the Kansas primary elections and determine if the advertisements met the express advocacy definition in the bill. She testified that in Opinion No. 98-22, the Commission opined that a political advertisement issued by Kansans For Life was subject to the reporting and disclosure requirements specified in the bill because it was "[a] communication which, when viewed as a whole, leads an ordinary person to believe that he or she is being urged to vote for or against a particular candidate for office," and therefore, is deemed to expressly advocate.

The professor from the KU School of Law stated that the statute which the Ethics Commission's opinion is based upon does not contain a "bright line" test for the definition of express advocacy as required by the *Buckley* decision and the Commission's ruling does little to clarify the statute. He testified that he is not certain how the court would rule on the Commission's interpretation, but he felt that it would be a good idea to supplement the definition in some way, so as to avoid potential constitutional problems.

Representatives from Kansans For Life, the Kansas Christian Coalition, and a publisher of the *Kansas Lawyer* felt that they should not be subjected to reporting and disclosure requirements for issue advocacy advertisements by their organizations. They stated that their advertisements were protected under the Constitution by the First Amendment and their organizations were protected by the right of association. The Kansans For Life have filed a lawsuit against the Kansas Governmental Ethics Commission based upon the Commission Opinion No. 98-22 (*Kansans For Life, Inc. v. Diane Gaede et al.*).

A representative for the Alliance for Campaign Finance Reform felt that an alternative to the influx of large amounts of independent and soft money into Kansas elections would be the implementation of public financing.

CONCLUSIONS AND RECOMMENDATIONS

The Committee does not make any recommendations concerning independent expenditures because of pending litigation on this issue (*Kansans For Life, Inc. v. Diane Gaede et al.* (98-4192, RDR)).

The Committee does not think that soft money has a significant impact on Kansas elections and therefore, makes no recommendations at this time.

The University of Kansas

School of Law

November 30, 1998

Dennis Hodgins
Legislative Research Department
State of Kansas
300 SW 10th Street, Room 545N
Topeka, Kansas 66612

Dear Dennis:

I recently received a letter from James R. Mason, III, who represents Kansans for Life in the litigation concerning the recent Governmental Ethics Commission Opinion regarding express advocacy. He called my attention to two cases, *Right to Life of Michigan v. Miller*, 1998 WL 743712 (W.D. Mich. Sept. 16, 1998) and *Planned Parenthood Affiliates of Michigan v. Miller*, 1998 WL 682940 (E.D. Mich. Sept. 21, 1998), in which federal district courts invalidated as overbroad an administrative rule adopting a definition of express advocacy that incorporated the use of a name or likeness of a candidate within a specified time period. The definition in these cases related to a ban on the use of general corporate funds for express advocacy expenditures, which were required to be made through a segregated political fund. The courts in these cases concluded that the "name or likeness" test would apply to many legitimate, nonadvocacy expenditures, such as nonpartisan fact sheets.

Although these are district court decisions with limited precedential weight, they nonetheless may be persuasive and indicate that any statute incorporating a name or likeness test would have to be carefully drafted to avoid problems. I continue to believe that a carefully drawn statute requiring disclosure of expenditures based on a name or likeness test can be constitutional. It might be advisable, however, to limit the test to prevent overbreadth, either by incorporating exceptions for uses that are purely informative (e.g., nonpartisan fact sheets) or adding a requirement that the use of a name or likeness, when viewed objectively, conveys a message of support or opposition. In any event, the "educational" purpose of a particular expenditure should not preclude the conclusion that it constitutes express advocacy. Most good advocacy is educational; we persuade in part by giving our audience information designed to convince them of our point of view. Moreover, as the Supreme Court made clear in *Buckley*, it is the message of an expenditure, viewed objectively, that determines whether it constitutes express advocacy. The key question for overbreadth purposes would be whether a particular definition of express advocacy reaches a substantial body of speech that is not express advocacy.

Please convey this information to the Special Committee on Local Government. I would be happy to provide the Committee whatever additional assistance I can.

Sincerely,

Richard E. Levy
Professor of Law

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RIGHT TO LIFE OF MICHIGAN, INC.,
Plaintiff,
v.
Candice MILLER, in her official capacity as the Michigan Secretary of State;
and Frank Kelly, in his official capacity as the Michigan Attorney General,
Defendants.

No. 1:98-CV-567.

United States District Court, W.D. Michigan.

Sept. 16, 1998.

Donald E. Duba, Flickinger & Plachta, PC, Grand Rapids, MI, Glenn M. Willard, Bopp, Coleson & Bostrom, Terre Haute, IN, for Right to Life of Michigan, Inc., pltf.

Gary P. Gordon, Asst. Atty. General, Katherine C. Galvin, Frank J. Kelley, Attorney General, Public Employment & Elections Division, Lansing, MI, for Candice Miller, in her official capacity as the Michigan Secretary of State, deft.

Gary P. Gordon, Asst. Atty. General, Katherine C. Galvin, (See above), for Frank Kelly, in his official capacity as the Michigan Attorney General, deft.

OPINION

BELL, J.

*1 In this action for declaratory and injunctive relief, Plaintiff Right to Life of Michigan, Inc. challenges the constitutionality of an administrative rule, Rule 169.39b, promulgated by the Michigan Secretary of State on July 27, 1998, pursuant to her authority to implement the Michigan Campaign Finance Act, M.C.L.A. § 169.215(1)(e); M.S.A. § 4.1703(15)(1)(e). The Rule took effect on August 12, 1998. Plaintiff contends the Rule is facially invalid because it is overbroad and violates the First Amendment. Plaintiff seeks to have the rule declared unconstitutional and to have its enforcement enjoined.

On August 27, 1998, this Court granted Plaintiff's motion to consolidate the hearing on Plaintiff's motion for preliminary injunction with the trial on the merits of its verified complaint. A hearing on the merits was held on September 10, 1998.

I.

Rule 169.39b prohibits corporations, domestic dependent sovereigns, joint stock companies, and labor unions, [FN1] from using general treasury funds to pay for communications, made within 45 days prior to an election, that contain the name or likeness of a candidate. [FN2] The rule is subject to specific exceptions that are not at issue here. [FN3] Violators of the rule are subject to civil and criminal penalties. See M.C.L.A. §§ 169.215(8) & 169.254(4).

Plaintiff contends that the Rule is constitutionally overbroad because it impermissibly regulates "issue advocacy," that is, advocacy on politically or socially relevant issues that are not associated with express advocacy in support of specific candidates or electoral outcomes.

According to Defendants Secretary of State Candice Miller and Attorney General Frank Kelly (hereinafter collectively referred to as the "State"), the Rule does not suffer from constitutional overbreadth because it is content neutral, and is narrowly tailored to serve a compelling state interest in the integrity of the electoral process.

The rule at issue in this case, Rule 169.39b, is an administrative rule promulgated by the Secretary of State pursuant to her authority to implement the Michigan Campaign Finance Act ("MCFA"). "Any judicial consideration of the constitutionality of campaign finance reform legislation must begin with and usually ends with the comprehensive decision in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)]." Kruse v. City of Cincinnati, 142 F.3d 907, 911 (6th Cir.1998). In Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), the Supreme Court addressed the constitutionality of contribution and expenditure limitations on individuals and groups under the Federal Election Campaign Act of 1971 ("FECA"). The Court observed that the Act's limitations operate in an area of the most fundamental First Amendment activities:

> Discussion 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."
*2 Id. at 14 (quoting Roth v. United States, 354 U.S. 476, 484, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957)).

Because of the vital importance in protecting such speech, the Buckley Court articulated what has come to be known as the "express advocacy" test. Limitations on expenditures are constitutionally permissible only for communications that "in express terms advocate the election or defeat of a clearly identified candidate for federal office." Id. at 44. Application of the expenditure limitations would be limited "to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.' " Id. at 44 n. 52. Issue advocacy cannot constitutionally be subject to the same spending limitations.

The Supreme Court recognized the possibility that issue advocacy might incidentally tend to influence the election or defeat of a candidate. "[T]he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions." Id. at 42.

> Public discussion of public issues which also are campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct. Discussions of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections.

Buckley, 424 U.S. at 42 n. 50 (quoting Buckley v. Valeo, 519 F.2d 821, 875 (D.C.Cir.1975)).

The Supreme Court reaffirmed the express advocacy requirement in Federal Election Commission v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 249, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986) ("MCFL "). "Buckley adopted the 'express advocacy' requirement to distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons." Id. at 249. A corporation's expenditure must constitute "express advocacy" in order to be subject to the restriction on independent spending contained in § 441b of FECA. Id. See also Maine Right to Life Committee, Inc. v. Federal Election Com'n, 914 F.Supp. 8, 12 (D.Me.) ("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."), aff'd, 98 F.3d 1 (1st Cir.1996), cert. denied, --- U.S. ----, 118 S.Ct. 52, 139 L.Ed.2d 17 (1997); Federal Election Com'n v. Christian Action Network, 894 F.Supp. 946, 953 (W.D.Va.1995) ("Without a frank admonition to take electoral action, even admittedly negative advertisements such as these, do not constitute "express advocacy" as that term is defined in Buckley and its progeny."), aff'd, 92 F.3d 1178 (4th Cir.1996).

*3 The State suggests that the Court should follow the Ninth Circuit and apply a more lenient interpretation of the "express advocacy" rule. In Federal Election Commission v. Furgatch, 807 F.2d 857 (9th Cir.1987), the Ninth Circuit did not reject Buckley's express advocacy requirement. The Ninth Circuit held, however, that to be subject to reporting requirements under FECA, "speech need not include any of the words listed in Buckley to be express advocacy under the Act." Id. at 864. Nevertheless, "it must, when read as a whole, and with limited reference to external events, be susceptible of no other reasonable interpretation than an exhortation to vote for or against a specific candidate." Id. at 864.

For purposes of this action, this Court need not determine whether "express advocacy" is to be measured strictly by the words used or by a more lenient contextual analysis as suggested in Furgatch. The language of Rule 169.39b does not even pass muster under Furgatch.

Through this Rule the State has chosen to subject soft money used to pay for issue advocacy advertisements to the disclosure requirements of the MCFA if the ads include the name or likeness of a specific candidate 45 days prior to an election. The Rule is based upon the assumption that when advertisements mention the name of a candidate, they are not issue ads but rather candidate ads. Rule 169 .39b, however, does not limit its application to those names or depictions of candidates which, read as a whole, are "susceptible of no other reasonable interpretation but as an exhortation to vote for a specific candidate." Rule 169.39b applies to all references to candidates, whether or not the reference can be construed as an exhortation to vote for or against the candidate. The Court cannot accept the State's assumption that any mention of a

candidate within 45 days of an election necessarily falls within the scope of express advocacy.

The Rule prohibits a corporation from naming a candidate within 45 days of an election without regard to the content in which the name is found. The Rule prohibits statements urging the election or defeat of a candidate. In addition to prohibiting express advocacy, the Rule prohibits issue advocacy and non- advocacy as well. The Rule prohibits a statement that Candidate X introduced or sponsored specific legislation; that Candidate Y voted against specific pending legislation; or that Candidate Z had a birthday, was in an accident, or died. Because such information does not fall within even the broadest definition of "express advocacy," the Rule is clearly overbroad. The Rule prohibits any mention of a candidate's position on issues, and prohibits any mention of a candidate's stance with respect a vote that is to be held within the 45-day period.

In this case the censorial effect of the Rule on issue advocacy is neither speculative nor insubstantial. Samples of Plaintiff's communications published within 45 days of elections reveal that a wide range of topics that have previously been discussed would be prohibited by Rule 169.39b, including articles that mention the sponsors, authors and supporters of specific pending bills, identification of those who testified at hearings, and interviews with candidates.

*4 In light of the guidance given in Buckley and its progeny, there can be no real dispute that Rule 169.39b is constitutionally overbroad. Rule 169.39b does not merely prohibit communications that expressly advocate the election or defeat of a clearly identified candidate. It prohibits any mention of the name of a candidate within 45 days of an election, regardless of the context in which that name is mentioned.

Notwithstanding the fact that the Rule clearly impacts protected issue advocacy, the State contends that any overbreadth is not sufficiently real or substantial to support facial invalidation, and that any overbreadth should be dealt with on a case-by-case basis.

In Broadrick v. Oklahoma, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973), the Supreme Court noted that facial overbreadth adjudication is "strong medicine," and should be employed "sparingly and only as a last resort." Id. at 613. A state should not be prohibited from enforcing a statute against conduct that is admittedly within its power to proscribe, particularly where conduct and not merely speech is involved, unless the overbreadth is not only real, but substantial as well. Id. at 615.

The State contends that the overbreadth doctrine should not be applied to Rule 169.39b because the rule is a content-neutral, noncensorial regulation of conduct which reaches a whole range of easily identifiable and constitutionally proscribable conduct and does not satisfy the rigorous substantial overbreadth requirement established by the United States Supreme Court. Rule 169.39b only covers a limited time period; it does not prohibit corporations from using general treasury funds for issue advocacy (as long as individual candidates are not named or pictured); and it does not prohibit a corporation from using a candidate's name or likeness within this critical pre-election period as long as such communications are funded through a separate segregated fund. According to the State, these narrowly tailored restrictions serve the compelling state interest of preserving the integrity of the electoral process.

The State correctly asserts that the Rule covers conduct that is within the State's power to proscribe. There is no question that the State can prohibit express advocacy by corporations. This is the subject of § 54 of the MCFA, and the constitutionality of this section has been established by the Supreme Court in Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990). To the extent the Rule legitimately prohibits express advocacy, the Rule is redundant of the statutory prescription against expenditures and is unnecessary. The purpose of the Rule is clearly to reach those areas that are not covered by the statute. In these areas the Rule reaches too far.

The State has come forward with no authority in support of its proposition that the limited time period justifies the restriction on issue advocacy. Moreover, while the time period is short, it could involve a critical time period for communications. If the legislature is in session and there is pending legislation, that is the time when an issue oriented organization's efforts to promote grassroots lobbying is most important. It is the Rule's impact on legitimate advocacy on pending legislation that the Court finds most disturbing. A 45-day blackout on using names would protect incumbents seeking re-election from grassroots lobbying efforts on pending

legislation, and incumbents would soon learn to schedule votes on controversial legislation during this time period and thus avoid unwanted publicity and attention.

*5 The State contends that the Rule permits issue advocacy, but merely restricts the use of candidates' names. The ban on the use of candidates' names is a heavy burden on highly protected First Amendment expression. Voters have an interest in knowing what legislators are associated with pending litigation, and an organization's ability to educate the public on pending legislation is unduly hampered if they are unable to name the legislators involved.

The State contends that the overbreadth of the Rule is not substantially burdensome because a corporation can still issue communications using a candidate's name or likeness through its segregated political fund. In Austin the Supreme Court noted that the segregated fund requirement burdens the exercise of expression. Under the MCFA the segregated fund must have a treasurer, must keep detailed accounts of contributions, must file a statement of organization, and may only solicit contributions from limited sources. M.C.L.A. §§ 169.221-.225. Austin, 494 U.S. at 658. "Although these requirements do not stifle corporate speech entirely, they do burden expressive activity. Thus, they must be justified by a compelling state interest." Id. (citations omitted).

Finally, the State contends that it has a compelling state interest in preventing corporations from unfairly using unregulated or soft money to pay for advertisements that are thinly disguised as issue ads but which are in fact and in effect express advocacy in support or opposition of candidates.

In Austin the Supreme Court upheld § 54(1) of the Michigan Campaign Finance Act which prohibits corporations from directly supporting candidates through general treasury fund expenditures. [FN4] While observing that the restriction burdens a corporation's First Amendment right to free speech and association, 494 U.S. at 658, the Supreme Court held that the burden was justified by a compelling state interest in ensuring that expenditures reflect actual public support for the political ideas espoused by corporations. Id. at 660. The Court noted that the unique state-conferred corporate structure that facilitates the amassing of large treasuries warrants the limit on independent expenditures. Id. "Corporate wealth can unfairly influence elections when it is deployed in the form of independent expenditures, just as it can when it assumes the guise of political contributions." Id.

The purpose of the Rule is to address the problem of unregulated expenditures by corporations for candidate communications that are made under the guise of issue advocacy but which in fact and in effect are express advocacy communications. Based upon the Supreme Court's recognition of the potential evils associated with the infusion of corporate funds into the election process, the State would have this Court ignore the express advocacy distinction set forth in Buckley and adopt instead a less stringent rule that would allow state regulation of all corporate speech in the 45 days prior to an election that names or depicts a candidate, regardless of the content of the message, on the basis that it might constitute indirect advocacy on behalf of or against a candidate.

*6 This Court is not convinced that Austin invites such a departure from Buckley. The mere fact that we are dealing with a corporation rather than an individual does not remove its speech from the ambit of the First Amendment. Austin, 494 U.S. at 657. Austin does not invite the Court to permit regulation of anything other than express advocacy by corporations. Austin only addressed § 54(1) of the MCFA which prohibited "expenditures," i.e., payments in assistance of or in opposition to the nomination or election of a candidate. M.C.L.A. § 169.206(1). Under Buckley, the expenditures referenced in § 54(1) must be read to apply only to express advocacy. Austin did not purport to undermine the express advocacy requirement of Buckley. While Austin found that the state had a compelling interest in restricting corporations from using their general treasury funds for express advocacy, the Court made no comment that could be construed as a retreat from the express advocacy rule.

Upon careful review of the issues presented by this case, this Court is convinced that Rule 169.39b is facially invalid on overbreadth grounds.

> The overbreadth doctrine provides an exception to the traditional rules of standing and allows parties not yet affected by a statute to bring actions under the First Amendment based on a belief that a certain statute is so broad as to 'chill' the exercise of free speech and expression." Leonardson v. City of E. Lansing, 896 F.2d 190, 195 (6th Cir.1990); Broadrick v. Oklahoma, 413 U.S. 601,

612, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). A statute is unconstitutional on its face on overbreadth grounds if there is "a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the court...." Members of City Council v. Taxpayers for Vincent, 466 U.S. 789, 801, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984)).
Dambrot v. Central Michigan University, 55 F.3d 1177, 1182 (6th Cir.1995).

The Court is satisfied that Rule 169.39b is broad enough to chill the exercise of free speech and expression. Because the rule not only prohibits expenditures in support of or in opposition to a candidate, but also prohibits the use of corporate treasury funds for communications containing the name or likeness of a candidate, without regard to whether the communication can be understood as supporting or opposing the candidate, there is a realistic danger that the Rule will significantly compromise the First Amendment protections of not only Plaintiff, but many other organizations which seek to have a voice in political issue advocacy.

Accordingly, the Court declares that Rule 169.39b is unconstitutional on its face, and the Court enjoins the State from enforcing Rule 169.39b.

An order and declaratory judgment consistent with this opinion will be entered.

ORDER AND DECLARATORY JUDGMENT
In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that JUDGMENT is entered in favor of Plaintiff Right to Life Michigan in this action for declaratory and injunctive relief.

*7 IT IS FURTHER ORDERED that the Court DECLARES that Michigan Administrative Rule 169.39b is facially unconstitutional and the Secretary is ENJOINED from enforcing Rule 169.39b.

FN1. Hereinafter the Court will use the term "corporation[s]" to refer to all of these organizations collectively.

FN2. The first paragraph of Rule 169.39b states:
Except as otherwise provided in this rule, an expenditure for a communication that uses the name or likeness of 1 or more specific candidates is subject to the prohibition on contributions and expenditures in section 54 of the act if the communication is broadcast or distributed within 45 calendar days before the date of an election in which the candidate's name is eligible to appear on the ballot.
Section 54 of the Act, M.C.L.A. § 169.254, prohibits corporations from making expenditures in support of or in opposition to any candidate in elections for state office.

FN3. One exception is for qualified non-profit organizations. Plaintiff asserts that it does not qualify under this exception due to its business activities and the fact that its purposes are not limited to political goals.

FN4. Section 54(1) of the MCFA generally prohibits corporations from making expenditures in support of or in opposition to any candidate in elections for state office. Corporations are allowed, however, to expend funds "for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes." M.C.L.A. § 169.255(1).

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PLANNED PARENTHOOD AFFILIATES OF MICHIGAN, INC., a Michigan non-profit corporation, Plaintiff,
v.
Candice S. MILLER, Secretary of State of Michigan, Defendant.

No. 98-73301-DT.

United States District Court,
E.D. Michigan,
Southern Division.

Sept. 21, 1998.

Nonprofit corporation brought suit seeking declaration that Michigan campaign finance regulation violated the First Amendment. On motion for permanent injunction, the District Court, Hood, J., held that Michigan regulation prohibiting the use of a candidate's name or likeness in corporate communications forty-five days prior to an election, unless the corporation used separate segregated funds for such communications, was facially overbroad.

Motion granted.

CONSTITUTIONAL LAW ⚖90.1(1.2)
92k90.1(1.2)
Michigan regulation prohibiting the use of a candidate's name or likeness in corporate communications forty-five days prior to an election, unless the corporation used separate segregated funds for such communications, was facially overbroad; rule did not limit its reach to those expenditures that urged voters to vote for or against a specific candidate, but infringed on protected speech by prohibiting expenditures for issue advocacy. U.S.C.A. Const.Amend. 1; M.C.L.A. § 169.215(1)(e); Mich.Admin. Code r. 169.39(b).

ELECTIONS ⚖317.2
144k317.2
Michigan regulation prohibiting the use of a candidate's name or likeness in corporate communications forty-five days prior to an election, unless the corporation used separate segregated funds for such communications, was facially overbroad; rule did not limit its reach to those expenditures that urged voters to vote for or against a specific candidate, but infringed on protected speech by prohibiting expenditures for issue advocacy. U.S.C.A. Const.Amend. 1; M.C.L.A. § 169.215(1)(e); Mich.Admin. Code r. 169.39(b).

Robert A. Sedler, Detroit, MI, Michael J. Steinberg, Detroit, MI, Mark Granzotto, Detroit, MI, for Plaintiff.

Gary P. Gordon, Katherine C. Galvin, Assistant Attorneys General, Lansing, MI, for Defendant.

MEMORANDUM ORDER AND OPINION

HOOD, District Judge.

I. INTRODUCTION

*1 Plaintiff Planned Parenthood Affiliates of Michigan (hereinafter "PPAM") brought this Motion for Preliminary Injunction and Immediate Hearing seeking injunctive relief in connection with its Complaint for a Declaratory Judgment that Rule 169.39(b) of the Michigan Administrative Code is unconstitutional on its face. Rule 169.39(b) was promulgated by Defendant Candice Miller, Michigan Secretary of State, pursuant to her authority to implement the Michigan Campaign Finance Act. The Rule prohibits the use of a candidate's name or likeness in communications made by a corporation forty-five days prior to an election, unless the corporation uses separate segregated funds for such communications. PPAM asserts that if Rule 169.39(b) is enforced, its constitutional rights under the First Amendment will be violated.

II. BACKGROUND

PPAM is a not-for-profit corporation organized under Michigan law exclusively for charitable, religious, educational, and scientific purposes. PPAM qualifies as a tax-exempt organization under § 501(c)(3) of the United States Internal Revenue Code, which is subject to the provisions of M.C.L. 169.254. M.C.L. 169.254 prohibits corporations from making contributions or expenditures in political campaigns. Consistent with 26 U.S.C. §§ 501(h) and 4911, which permits public charities to carry on certain grass roots lobbying activities, PPAM communicates frequently with the public to urge them to contact legislators to support or oppose legislation of interest to PPAM. Often this grass roots lobbying is carried on forty-five days before an election, and some of the legislators whose votes or positions are reported upon or whom the public is urged to contact, may at that time be candidates for public office. The Plaintiff brings a facial challenge

to the rule, alleging that it is unconstitutionally overbroad under the First Amendment. The Plaintiff asserts it will refrain from making expenditures for such communications because the threatened enforcement of the rule, and as a result will suffer irreparable injury to its First Amendment rights. The Plaintiff seeks injunction and declaratory relief in order to make the necessary plans regarding any expenditures for communications on issues relating to reproductive health services during the fall 1998 session of the Michigan Legislature. If this court does not enter a permanent or preliminary injunction enjoining the enforcement of Rule 169.396, the Plaintiff will refrain from making any such expenditures.

Defendant Michigan Secretary of State promulgated Rule 169.39(b) pursuant to her authority to implement and enforce the Michigan Campaign Finance Act (MCFA). M.C.L. 169.215(1)(e); M.S.A. 4.1703(15)(1)(e). Rule 169.39(b) requires corporations [FN1] use a separate segregated fund, not the general treasury fund, for communications that use the name or likeness of a candidate made forty-five days prior to an election.

Rule 169.39(b) provides in part:

> Except as otherwise provided in this rule, an expenditure for a communication that uses the name or likeness of 1 or more specific candidates is subject to the prohibition on contributions and expenditures in Section 54 of the Act, if the communication is broadcast or distributed within 45 calendar days before the date of an election in which the candidate's name is eligible to appear on the ballot.

*2 Section 54 of the Act, M.C.L. § 169.254 prohibits corporations from making expenditures to support or defeat any candidate for election to state office. Rule 169.39(b) excepts certain non profit organizations. However, Plaintiff does not meet the qualifications for a non profit organization under the Act. Rule 169.39(b) went into effect August 12, 1998, and will become enforceable on September 19, 1998, forty-five days prior to the 1998 general election. [FN2]

III. STANDARD OF REVIEW

Plaintiff requests a preliminary injunction pursuant to Federal Rules of Civil Procedure 65. The Sixth Circuit has identified four criteria for evaluating a motion for a preliminary injunction:

1) whether the moving party has shown a strong or substantial likelihood of success on the merits;
2) whether the moving party has demonstrated that irreparable harm would result if injunctive relief is denied;
3) whether the issuance of the preliminary injunction would cause substantial harm to others; and
4) whether the public interest is served by the issuance of injunctive relief.

Superior Consulting Co., Inc. v. Walling, 851 F.Supp. 839, 846 (E.D.Mich.1994); Parker v. United States Dep't of Agriculture, 879 F.2d 1362, 1367 (6th Cir.1989); In re DeLorean Motor Co., 755 F.2d 1223, 1228 (6th Cir.1985). The four factors are not prerequisites, but rather, they must be balanced. Superior Consulting, 851 F.Supp. at 847; In re Eagle-Picher Industries, Inc., 963 F.2d 855 (6th Cir.1992). The parties agreed to consolidate the hearing into a Motion for Permanent Injunction under Fed.R.Civ.P. 65(a)(2), and for the Court to consider the merits of the case. The same factors are to be applied to motions for permanent injunctions. McDonald & Company Securities, Inc., v. Bayer, 910 F.Supp. 348 (N.D.Ohio 1995); Fed.R.Civ.P. 65(a)(2).

IV. ANALYSIS

The Plaintiff's sole argument alleges that Rule 169.39(b) violates the First Amendment, on its face, because a state cannot prohibit or regulate expenditures for communications that merely use the name or likeness of a specific candidate within forty-five days before the election. PPAM claims that it has a protected First Amendment right to use the name or likeness of a specific candidate in their issue advocacy communications any time before the election. PPAM concedes that the state can prohibit or regulate communications made by a corporation or labor union that constitute express advocacy. Express advocacy is an expenditure that by its terms urges the voter to vote for or against a specific candidate.

M.C.L. 169.254 as noted above, prohibits corporations, including not for profit corporations like Planned Parenthood Affiliates from contributing to or making expenditures for political campaigns, except ballot questions. A violation of this section is punishable as a felony or by a fine. Rule 169.39(b) is intended to implement M.C.L. 169.206(2)(b) which provides that an "expenditure" under M.C.L. 169.254 does not include "an expenditure for

communication on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear reference."

*3 The Plaintiff asserts that Rule 169.39(b) violates the First Amendment because it is overbroad and impermissibly reaches protected speech in the form of issue advocacy. Issue advocacy expenditures include those expenditures made for or against issues of public importance, rather than for the defeat or election of a clearly identified candidate.

The Plaintiff cites Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) for the proposition that it is unconstitutional to impose limitations on the amount of money a candidate can spend in support of his own campaign. In Buckley, the Supreme Court found unconstitutional the provisions of the Federal Election Campaign Act of 1971, 18 U.S.C. §§ 608 et seq., that limited the amount of money that an individual could spend on his own campaign and the amount of money that an individual could spend independently in support of a candidate. The Buckley Court adopted the express advocacy requirement in order to avoid problems of overbreadth, and stated the purpose of the requirement was to "distinguish discussion of issues and candidates from the more pointed exhortations to vote for particular candidates." Massachusetts Citizens, 479 U.S. at 249, 107 S.Ct. 616.

The Plaintiff argues that the holding in Buckley applies with full force to efforts to limit independent political expenditures by corporations. Federal Election Commission v. Massachusetts Citizens for Life, 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986). The Supreme Court in Massachusetts Citizens applied the "express advocacy" requirement of Buckley to the provisions of the Federal Election Campaign Act, 2 U.S.C. § 441(b), which prohibits corporations from expending from their general funds on behalf of political candidates. The Court held that an expenditure must constitute express advocacy before it is subject to the prohibition of § 441(b). Noting that the express advocacy requirement of Buckley avoided the problem of overbreadth and distinguished between "pointed exhortations" to vote for certain candidates and "discussion of issues," the Court reasoned that a "similar construction of the more intrusive provision that directly regulates independent spending." was required. Massachusetts Citizens, 479 U.S. at 249, 107 S.Ct. 616.

Buckley and Massachusetts Citizens when read together establish a bright line between express advocacy and issue advocacy. The government can regulate express advocacy but issue advocacy cannot be prohibited or regulated. [FN3]

The Plaintiff also cites West Virginians for Life v. Smith, 960 F.Supp. 1036 (S.D.W.Va.1996), where the court held unconstitutional a law that provided that " a person, association, organization, corporation or other legal entity who publishes, distributes or disseminates any scorecard, voter guide or other written analysis of a candidate's position or votes on specific issues within sixty days of an election is presumed to be engaging in such activity for the purpose of advocating or opposing the nomination, election or defeat of any candidate." Id. at 1038. The Court held that the law was overbroad because the same requirements imposed on an organization engaging in issue advocacy were imposed on an organization engaging in express advocacy. Id. at 1039. The sixty day time frame set forth in the West Virginia law was also found to create an unconstitutional presumption that no matter the content, a communication analyzing a candidate's position published within sixty days of an election was express advocacy. Id. at 1040.

*4 In sum, the Plaintiff argues that the controlling authority requires this Court to find that Rule 169.39(b), on its face, violates the First Amendment. Rule 169.39(b) goes far beyond prohibiting expenditures for express advocacy, the rule prohibits corporate expenditures for a wide range of issue advocacy communications and chills constitutionally protected speech. The Plaintiff argues that it has met the criteria for granting injunction relief. According to the Plaintiff, Rule 169.39(b) violates the First Amendment on its face, and therefore the likelihood of prevailing on the merits is great. Plaintiff claims that this per se violation of the First Amendment if allowed to go on will cause irreparable injury to its First Amendment rights. The Supreme Court has held that minimal loss of First Amendment rights unquestionably constitutes irreparable injury. Elrod v. Burns, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976). As for the third and fourth elements for granting a preliminary injunction, the Plaintiff claims that no harm will befall Defendant if she is enjoined from enforcing the provisions, and it is in the public interest to prevent the violation of a constitutional right. G & V Lounge v. Michigan Liquor Control Commission, 23 F.3d 1071, 1076

(6th Cir.1994).

Defendant argues that this Court cannot issue a preliminary injunction where there exist complex issues of law, the resolution of which are not free from doubt. First National Bank & Trust v. Federal Reserve Bank, 495 F.Supp. 154, 157 (W.D.Mich.1980). The Defendant argues that the Plaintiff mischaracterizes the scope and impact of the challenged rule. The rule merely prohibits affected organizations from using general treasury funds to pay for communications with the name or likeness of a candidate for the limited time period of forty-five days prior to the election. The Plaintiff is free to make such communications during the forty-five day time period, but must do so using funds contributed to and maintained in a separate segregated fund.

The Defendant claims in a footnote to her brief that the forty-five day time period is tied to the absentee voting time period. Defendant claims this is the critical period with respect to public interest in protecting the electoral process from "distorting and corrosive influences." However, Defendant presents no evidence to support that this period is "critical" with respect to voters or that "critical" legislative events that are a focus of issue advocacy do not occur during that time period as well.

Defendant argues that the Supreme Court in Broadrick v. Oklahoma, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973) noted that the "application of the overbreadth doctrine ... is, manifestly, strong medicine," to be employed "sparingly and only as a last resort." The Supreme Court in Broadrick wrote:

> Additionally, overbreadth scrutiny has generally been somewhat less rigid in the context of statutes regulating conduct in the shadow of the First Amendment, but doing so in a neutral non-censorial manner.
>
> * * *
>
> *5 To put the matter another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statutes plainly legitimate sweep. (citations omitted)

Defendant argues that Rule 169.39(b) does not regulate pure speech but instead places careful limits on the source of expenditures by a corporation for a specific type of communication. The rule is content-neutral, and like the statute in Broadrick, Rule 169.39(b) seeks to regulate political activity in an even-handed and neutral manner. In Broadrick, a class action was brought on behalf of certain Oklahoma state employees seeking a declaration that a state statute regulating political activity by state employees was invalid. The Court held that the statute was not impermissibly vague and was not unconstitutional on its face, stating that such statutes have in the past been subject to less exacting overbreadth scrutiny. Id. at 616, 93 S.Ct. 2908.

Under Broadrick there must be a showing that the overbreadth is real and substantial when judged in light of the statute's legitimate sweep. Broadrick, 413 U.S. at 616, 93 S.Ct. 2908. The Defendant argues that the state has the authority to regulate campaign finance and to act to protect the election process. As such, the State of Michigan has a long standing public policy against allowing corporations to directly support candidates through expenditures from the general treasury fund. The espoused premise behind governmental regulation of corporate contributions in political campaigns is that corporations should not be able to use amassed corporate wealth to unfairly influence elections. Federal Election Commission v. National Right to Work Committee, 459 U.S. 197, 103 S.Ct. 552, 74 L.Ed.2d 364 (1982); Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990). In Austin the Court upheld a provision of the Michigan Campaign Finance Act which provides that corporations could make expenditures in support of a candidate from a separately segregated fund, created under § 54 of the Act. The Court reasoned that because corporations are able to amass great sums of money and enjoy special advantage conferred by state law, the state had a compelling interest in regulating "political speech" of corporations. Evaluated against this legitimate purpose, it is clear that any perceived overbreadth would not be sufficiently real or substantial to support facial invalidation. In light of Austin, Defendant suggests that Rule 169.39(b) may regulate corporate express advocacy by requiring it to be funded by a separate segregated funds.

The Defendant claims that because Rule 169.39(b) is content neutral and regulates conduct the potential impact of this rule on protected conduct must be dealt with on a case by case basis. New York v. Ferber, 458 U.S. 747, 773-74, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982). At the same time the rule does

not impede the Plaintiff's ability to advocate for the passage or defeat of certain legislation. The Defendant further claims that enjoining the enforcement of Rule 169.39(b) is contrary to public interest, as the rule seeks to minimize the "distorting influence" of unregulated corporate expenditures for express advocacy disguised as issue advocacy. This rule further limits the impact of these expenditures by "providing the public with access to greater information about the sponsorship of the communications."

***6** This Court must first determine whether the prohibition of Rule 169.39(b) burdens political speech and if so, whether such a burden is justified by a compelling state interest. Buckley, 424 U.S. at 44-4, 96 S.Ct. 612. The Defendant minimizes the impact of the legislation upon PPAM's First Amendment rights by emphasizing that the corporation remains free to establish a separate segregated fund, composed of contributions earmarked for that purpose. However, PPAM is not free to use its general funds for campaign advocacy purposes. While that is not an absolute restriction on speech it is a substantial one, because to speak

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the election process by corporations and labor unions. Federal Election Commission v. National Right to Work Committee, 459 U.S. 197, 103 S.Ct. 552, 74 L.Ed.2d 364 (1982). The regulation of corporate political activity has been concerned not only with the use of the corporate form per se, but also about the potential for the unfair deployment of wealth for political purposes. A group like PPAM does not pose such threat. The PPAM was formed to disseminate political ideas, not to amass capital. The resources it has available are not derived from its success in the marketplace, but from its popularity with the public. The rationale for the regulation is not compelling with respect to PPAM because individuals who contribute to PPAM are aware of its political purpose and goals, and contribute because they support those purposes and goals. A contributor may not be aware of exactly how his or her contribution will be used, however, with the contribution is an implied delegation of authority to use the funds in a manner that best achieves the goals of the organization. PPAM is not the type of corporation which poses the threat perceived by the Defendant. Therefore, the compelling state interest espoused by Defendant does not justify an

IT IS ORDERED that Plaintiff's Motion for Preliminary Injunction, considered by the Court as Motion for Permanent Injunction and Declaratory Judgment (Docket No. 2), is GRANTED.

IT IS FURTHER ORDERED that Defendant is permanently enjoined from enforcing Rule 169.39(b) because it is unconstitutionally overbroad.

FN1. Under the rule, corporations include: corporations, domestic dependent sovereigns, joint stock companies and labor unions.

FN2. Judge Robert Holmes Bell declared the Rule unconstitutional on September 16, 1998 in Right to Life of Michigan, Inc., v. Candice Miller, Case No. 1:98-CV-567, 1998 WL 743712, --- F.Supp.2d ---- (W.D.Mich.1998).

FN3. In Buckley, the Court went so far as to suggest language that would constitute express advocacy, such as the words, "vote for," "elect," "cast your vote for," "vote against," words that are clearly persuasions of election or defeat. Buckley, 424 U.S. at 44, n. 52, 96 S.Ct. 612. In Federal Election Commission v. Furgatch, 807 F.2d 857, 864 (9th Cir.1987), the 9th Circuit held that the words suggested in Buckley need not be used to constitute express advocacy, but that the language have no other interpretation "but as an exhortation to vote for a specific candidate." The Supreme Court rejected the use of the Buckley specific words and phrases in Massachusetts Citizens, 479 U.S. at 249, 107 S.Ct. 616, in favor of a contextual analysis of a "unambiguous message" or "essential nature" standard.

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substantial one, because to speak through a segregated fund PPAM must make very significant efforts to raise monies for each and every specific issue it desires to address to the public.

Rule 169.39(b) is overbroad in its prohibitions. The rule prohibits expenditures made from the general fund that use the name or likeliness of a candidate within forty five days of an election. This rule does not limit its reach to those expenditures that urge voters to vote for or against a specific candidate, or "attack ads" which attack a candidate by name without specifically urging the voter to vote for or against the candidate. The Rule as drafted infringes on protected speech by prohibiting expenditures for issue advocacy. Interpreting the language of the statute, it is easy to envision that protected speech, in the form of issue advocacy, would be stifled by a fear of violating this rule, and the possible ramifications of such a violation. Similar to the law at issue in West Virginia for Life, supra, this rule imposes the same restrictions on an organization engaging in issue advocacy as it does on those engaging in express advocacy. Id. at 1039.

The Defendant has expressed a desire to protect the integrity of the electoral process with the implementation of Rule 169.39(b). The Defendant argues that it has a compelling interest in protecting against the real or perceived corrupting influence on the election process by corporations and labor unions. Federal Election Commission v. National Right to Work Committee, 459 U.S. 197, 103 S.Ct. 552, 74 L.Ed.2d 364 (1982). The regulation of corporate political activity has been concerned not only with the use of the corporate form per se, but also about the potential for the unfair deployment of wealth for political purposes. A group like PPAM does not pose such threat. The PPAM was formed to disseminate political ideas, not to amass capital. The resources it has available are not derived from its success in the marketplace, but from its popularity with the public. The rationale for the regulation is not compelling with respect to PPAM because individuals who contribute to PPAM are aware of its political purpose and goals, and contribute because they support those purposes and goals. A contributor may not be aware of exactly how his or her contribution will be used, however, with the contribution is an implied delegation of authority to use the funds in a manner that best achieves the goals of the organization. PPAM is not the type of corporation which poses the threat perceived by the Defendant. Therefore, the compelling state interest espoused by Defendant does not justify an infringement on PPAM's First Amendment rights. To the contrary, Rule 169.39(b) directly infringes o the right of PPAM to engage in issue advocacy for periods the legislature is in session directly prior to an election, often a critical period for voting on important and pending legislation of our day. The rule also reaches non advocacy and speech which is merely informational in nature.

*7 Having reviewed the arguments of the parties this Court is satisfied that Rule 169.39(b) is overbroad and will chill the exercise of constitutionally protected "issue advocacy." There is no support for further intrusion on issue advocacy by the enforcement of this Rule. The Defendant has not shown that the prohibition of the use of corporate treasury funds containing the name or likeness of a candidate, forty-five days before the election is as compelling an interest that it overcomes the potential for the Rule to compromise constitutionally protected speech which cannot be interpreted as supporting or opposing the election of a specific candidate. Massachusetts Citizens, 479 U.S. at 249, 107 S.Ct. 616.

Balancing the factors to be considered in a Motion for Permanent Injunction, the Court finds in favor of the Plaintiff. The Court having ruled on the merits in favor of the Plaintiff and finding that enforcing Rule 169.39(b) would chill and irreparably harm Plaintiff's First Amendment rights, a permanent injunction should issue against Defendant prohibiting the enforcement of Rule 169.39(b).

CONCLUSION

The Court finds that Rule 169.39b is unconstitutionally overbroad and infringes on the Plaintiff's First Amendment rights. Plaintiff's request for a Permanent Injunction and Declaratory Judgment is granted.

Accordingly,

1-35

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 1998

SENATE BILL No. 432

By Committee on Elections and Local Government

1-14

AN ACT concerning elections; relating to campaign finance; requiring the filing and disclosure of certain information; amending K.S.A. 25-4150 and K.S.A. 1997 Supp. ***[25-4148,]*** 25-4152 ***and 25-4157a*** and repealing the existing sections.

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

~~See. 1.~~ ***Section 1.*** K.S.A. 25-4150 is hereby amended to read as follows: 25-4150. *(a) Except as specifically provided by this section, the words and phrases used in this section shall have the same meaning ascribed thereto by K.S.A. 25-4143, and amendments thereto.*

(b) When used in this section:

(1) "Person" means a person other than a candidate, candidate committee, party committee or political committee who makes contributions or expenditures in an aggregate amount of ~~*$2500 or more*~~ ***$1000 or more for a candidate for a local office or $2500 or more for a candidate for a state office*** *within the time period beginning 60 days prior to a primary election and ending on the day of the general election following such primary election.*

~~*(2) "Expenditure" means: (A) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made for the purpose of directly or indirectly influencing the nomination or election of any individual to state or local office or providing information which has the effect of directly or indirectly influencing the nomination or election of any individual to state or local office;*~~

(2) (A) "Expenditure" means: (i) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made for the purpose of influencing or attempting to influence the nomination, election or defeat of any individual to state or local office or providing information which has the effect of influencing or attempting to influence the nomination, election or defeat of any individual to state or local office;

~~*(B)*~~ ***(ii)*** *any contract to make an expenditure;*

1-36

~~(C)~~ ***(iii)*** *a transfer of funds between any two or more candidate committees, party committees or political committees;*

~~(D)~~ ***(iv)*** *payment of a candidate's filing fees.*

~~(2)~~ ***(B)*** *"Expenditure" does not include:*

~~(A)~~ ***(i)*** *The value of volunteer services provided without compensation;*

~~(B)~~ ***(ii)*** *costs to a volunteer incidental to the rendering of volunteer services not exceeding a fair market value of $50 during an allocable election period as provided in K.S.A. 25-4149 and amendments thereto;*

~~(C)~~ ***(iii)*** *payment by a candidate or candidate's spouse for personal meals, lodging and travel by personal automobile of the candidate or candidate's spouse while campaigning or payment of such costs by the treasurer of a candidate or candidate committee;*

~~(D)~~ ***(iv)*** *the value of goods donated to events such as testimonial events, bake sales, garage sales and auctions by any person not exceeding fair market value of $50 per event;* ~~or~~

~~(E)~~ ***(v)*** *any communication by an incumbent elected state or local officer with one or more individuals unless* ~~the primary purpose thereof is to directly or indirectly influence the nomination or election of a candidate~~ ***for the purpose of influencing or attempting to influence the nomination, election or defeat of any individual to state or local office*** *or providing information which has the effect of* ~~directly or indirectly~~ *influencing* ***or attempting to influence*** *the nomination* ~~or election~~***, election or defeat*** *of any individual to state or local office.;*

(vi) any communication by an incumbent elected state or local officer with one or more individuals unless the primary purpose thereof is influencing or attempting to influence the nomination, election or defeat of a candidate or providing information which has the effect of directly or indirectly influencing the nomination, election or defeat of any individual to state or local office;

(vii) costs associated with any news story, commentary or editorial distributed in the ordinary course of business by a broadcasting station, newspaper, other periodical publication or by internet communication;

(viii) costs associated with nonpartisan activities designed to encourage individuals to register to vote or to vote; or

(ix) costs associated with internal organizational communications of business, labor, professional or other associations.

(3) "Influencing or attempting to influence" means any communication containing express words of advocacy of nomination, election or defeat of a candidate, or any communication containing the name or picture of a candidate, or any communication containing the name or picture of a candidate, or any communication where

the identity of a candidate is apparent by unambiguous reference.

(c) At least seven days prior to making an expenditure, any person shall make and file a statement prescribed by this section. Such statement shall be filed in the office of the secretary of state. If the expenditure is to support or oppose any candidate for local office, such statement shall be filed in the office of the county clerk of the county in which ***the name of*** *such person is on the ballot. Every statement shall include:*

(1) The name and address of the person;

(2) the name and address of the chairperson of the organization, if the person is not an individual;

(3) the name and address of affiliated or connected organizations; and

(4) the full name of any organization with which the person is connected or affiliated or, name or description sufficiently describing the affiliation or, if the person is not connected or affiliated with any one organization, the trade, profession or primary interest of contributors of the person.

(d) Every person, other than a candidate or a candidate committee, party committee or political committee, who makes contributions or expenditures, other than by contribution to a candidate or a candidate committee, party committee or political committee~~, in an aggregate amount of $100 or more within a calendar year~~ shall make statements containing the information required by K.S.A. 25-4148, and amendments thereto, and file them in the office or offices required so that each such statement is in such office or offices on the day specified in K.S.A. 25-4148, and amendments thereto. If such contributions or expenditures are made to support or oppose a candidate for state office, other than that of an officer elected on a state-wide basis such statement shall be filed in both the office of the secretary of state and in the office of the county election officer of the county in which the candidate is a resident. If such contributions or expenditures are made to support or oppose a candidate for statewide office such statement shall be filed only in the office of the secretary of state. If such contributions or expenditures are made to support or oppose a candidate for local office such statement shall be filed in the office of the county election officer of the county in which the candidate is a resident. Reports made under this section need not be cumulative.

(e) Any person required to file a report pursuant to this section shall maintain, in such person's own records, the name and address of any person, including an individual, who has made one or more contributions to such person, together with the amount and date of such contributions, regardless of whether such information is required to be reported.

(f) Any change in information previously reported pursuant to this section shall be reported on a supplemental statement of intent and filed

1-38

not later than 10 days following the change.

(g) If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or application and to this end the provisions of this section are severable.

Sec. 2. K.S.A. 1997 Supp. 25-4152 is hereby amended to read as follows: 25-4152. (a) The commission shall send a notice by registered or certified mail to any person failing to file any report or statement required by K.S.A. 25-4144, 25-4145 ~~or~~, 25-4148 ~~*or 25-4150*~~***[, 25-4150 or section 5]***, and amendments thereto, and to the candidate appointing any treasurer failing to file any such report, within the time period prescribed therefor. The notice shall state that the required report or statement has not been filed with either the office of secretary of state or county election officer or both. The person failing to file any report or statement, and the candidate appointing any such person, shall be responsible for the filing of such report or statement. The notice *also* shall ~~also~~ state that such person shall have 15 days from the date such notice is deposited in the mail to comply with the registration and reporting requirements before a civil penalty shall be imposed for each day that the required documents remain unfiled. If such person fails to comply within the prescribed period, such person shall pay to the state a civil penalty of $10 per day for each day that such report or statement remains unfiled, except that no such civil penalty shall exceed $300. The commission may waive, for good cause, payment of any civil penalty imposed by this section.

(b) Civil penalties provided for by this section shall be paid to the state treasurer, who shall deposit the same in the state treasury to the credit of the Kansas commission on governmental standards and conduct fee fund.

(c) If a person fails to pay a civil penalty provided for by this section, it shall be the duty of the attorney general or county or district attorney to bring an action to recover such civil penalty in the district court of the county in which such person resides.

Sec. 3. K.S.A. 1997 Supp. 25-4157a is hereby amended to read as follows: 25-4157a. (a) No moneys received by any candidate or candidate committee of any candidate as a contribution under this act shall be used or be made available for the personal use of the candidate and no such moneys shall be used by such candidate or the candidate committee of such candidate except for:

(1) Legitimate campaign purposes; ~~for~~;

(2) expenses of holding political office ~~or for~~;

(3) contributions to the party committees of the political party of which such candidate is a member;

1-39

(4) any membership dues paid to a community service or civic organization in the name of the candidate or candidate committee of such candidate;

(5) donations to a community service or civic organization which donations are made in the name of the candidate or candidate committee of such candidate; or

(6) expenses incurred in the purchase of tickets to meals and special events sponsored by any organization the major purpose of which is to promote or facilitate the social, business, commercial or economic well being of the local community.

For the purpose of this subsection, expenditures for "personal use" shall include expenditures to defray normal living expenses for the candidate or the candidate's family and expenditures for the personal benefit of the candidate having no direct connection with or effect upon the campaign of the candidate or the holding of public office.

(b) No candidate or candidate committee shall accept from any other candidate or candidate committee for any candidate for local, state or national office, any moneys received by such candidate or candidate committee as a campaign contribution. The provisions of this subsection shall not be construed to prohibit a candidate or candidate committee from accepting moneys from another candidate or candidate committee if such moneys constitute a reimbursement for one candidate's proportional share of the cost of any campaign activity participated in by both candidates involved. Such reimbursement shall not exceed an amount equal to the proportional share of the cost directly benefiting and attributable to the personal campaign of the candidate making such reimbursement.

(c) At the time of the termination of any campaign and prior to the filing of a termination report in accordance with K.S.A. 25-4157, and amendments thereto, all residual funds ~~not~~ ***otherwise*** *not* ***obligated for the payment of expenses incurred in such campaign or the holding of office shall be contributed to a charitable organization, as defined by the laws of the state, contributed to a party committee or returned as a refund in whole or in part to any contributor or contributors from whom received or paid into the general fund of the state.***

[Sec. 4. K.S.A. 1997 Supp. 25-4148 is hereby amended to read as follows: 25-4148. (a) Every treasurer shall file a report prescribed by this section. Reports filed by treasurers for candidates for state office, other than officers elected on a state-wide basis, shall be filed in both the office of the secretary of state and in the office of the county election officer of the county in which the can-

1-40

didate is a resident. Reports filed by treasurers for candidates for state-wide office shall be filed only with the secretary of state. Reports filed by treasurers for candidates for local office shall be filed in the office of the county election officer of the county in which the name of the candidate is on the ballot. Except as otherwise provided by subsection (h), all such reports shall be filed in time to be received in the offices required on or before each of the following days:

[(1) The eighth day preceding the primary election, which report shall be for the period beginning on January 1 of the election year for the office the candidate is seeking and ending 12 days before the primary election, inclusive;

[(2) the eighth day preceding a general election, which report shall be for the period beginning 11 days before the primary election and ending 12 days before the general election, inclusive;

[(3) January 10 of the year after an election year, which report shall be for the period beginning 11 days before the general election and ending on December 31, inclusive;

[(4) for any calendar year when no election is held, a report shall be filed on the next January 10 for the preceding calendar year;

[(5) a treasurer shall file only the annual report required by subsection (4) for those years when the candidate is not participating in a primary or general election;

[(6) June 10 of each year, the aggregate amount of all contributions received by a committee and required to be reported pursuant to section 5, and amendments thereto.

[(b) Each report required by this section shall state:

[(1) Cash on hand on the first day of the reporting period;

[(2) the name and address of each person who has made one or more contributions in an aggregate amount or value in excess of $50 during the election period together with the amount and date of such contributions, including the name and address of every lender, guarantor and endorser when a contribution is in the form of an advance or loan;

[(3) the aggregate amount of all proceeds from bona fide sales of political materials such as, but not limited to, political campaign pins, buttons, badges, flags, emblems, hats, banners and literature;

[(4) the aggregate amount of contributions for which the name and address of the contributor is not known;

[(5) each contribution, rebate, refund or other receipt not otherwise listed;

[(6) the total of all receipts;

1-41

[(7) the name and address of each person to whom expenditures have been made in an aggregate amount or value in excess of $50, with the amount, date, and purpose of each and the names and addresses of all persons to whom any loan or advance has been made;. When an expenditure is made by payment to an advertising agency, public relations firm or political consultants for disbursement to vendors, the report of such expenditure shall show in detail the name of each such vendor and the amount, date and purpose of the payments to each;

[(8) the name and address of each person from whom an in-kind contribution was received or who has paid for personal services provided without charge to or for any candidate, candidate committee, party committee or political committee, if the contribution is in excess of $50 and is not otherwise reported under subsection (b)(7), and the amount, date and purpose of the contribution;

[(9) the aggregate of all expenditures not otherwise reported under this section; and

[(10) the total of expenditures.

[(c) Treasurers of candidates and of candidate committees shall be required to itemize, as provided in subsection (b)(2), only the purchase of tickets or admissions to testimonial events by a person who purchases such tickets or admissions in an aggregate amount or value in excess of $50 per event, or who purchases such a ticket or admission at a cost exceeding $25 per ticket or admission. All other purchases of tickets or admissions to testimonial events shall be reported in an aggregate amount and shall not be subject to the limitations specified in K.S.A. 25-4154, and amendments thereto.

[(d) If a contribution or other receipt from a political committee is required to be reported under subsection (b), the report shall include the full name of the organization with which the political committee is connected or affiliated or, name or description sufficiently describing the affiliation or, if the committee is not connected or affiliated with any one organization, the trade, profession or primary interest of contributors of the political committee.

[(e) The commission may require any treasurer to file an amended report for any period for which the original report filed by such treasurer contains material errors or omissions, and notice of the errors or omissions shall be part of the public record. The amended report shall be filed within 30 days after notice by the commission.

[(f) The commission may require any treasurer to file a report for any period for which the required report is not on file, and notice of the failure to file shall be part of the public record. Such report

shall be filed within five days after notice by the commission.

[(g) For the purpose of any report required to be filed pursuant to subsection (a) by the treasurer of any candidate seeking nomination by convention or caucus or by the treasurer of the candidate's committee or by the treasurer of any party committee or political committee of which the primary purpose is supporting or opposing the nomination of any such candidate, the date of the convention or caucus shall be considered the date of the primary election.

[(h) If a report is sent by certified or registered mail on or before the day it is due, the mailing shall constitute receipt by that office.

[New Sec. 5. (a) When used in this section:

[(1) "Committee" means (A) the committee established by a state committee of any political party and designated as a recognized political committee for the senate or house of representatives; or (B) a political committee established by members of either house of the legislature belonging to the same political party and designated as a political committee for the member of such party in such house.

[(2) "Final action" means the last vote on a legislative matter by the members of each chamber of the legislature.

[(3) "Legislative matter" means any bill, resolution, appointment or other issue or proposal pending before the legislature, committee or subcommittee thereof.

[(b) The treasurer of any committee receiving contributions from persons seeking to influence action on a legislative matter during the time period specified by K.S.A. 25-4143, and amendments thereto, shall file a report in the office of the secretary of state prior to the time of final action on such legislative matter. Such report shall contain the information required by K.S.A.25-4148, and amendments thereto.]

Sec. ~~3~~ *4 [6].* K.S.A. 25-4150 and K.S.A. 1997 Supp. *[25-4148,]* 25-4152 *and 25-4157a* are hereby repealed.

Sec. ~~4~~ *5 [7].* This act shall take effect and be in force from and after its publication in the statute book.

1-43

S 0425 Bill by Health Care Reform Legislative Oversight Comm
Hospitals' rural health networks and critical access hospitals. Effective date: 7/1/98.
01/13/98 Senate—Introduced—SJ 846
01/14/98 Senate—Referred to Public Health & Welfare—SJ 849
01/22/98 Senate—CR: Be passed as am. by Public Health & Welfare—SJ 870
01/28/98 Senate—COW: CR be adptd; be passed as am.—SJ 885
01/29/98 Senate—FA: Passed as am.; Yeas 40 Nays 0—SJ 889
01/30/98 House—Received and introduced—HJ 1131
02/02/98 House—Referred to Health and Human Services—HJ 1134
03/18/98 House—CR: Be passed & placed on consent calendar by Health and Human Services—HJ 1510
03/23/98 House—FA: Passed; Yeas 121 Nays 0—HJ 1551
03/27/98 Senate—Enrolled and presented to gov.—SJ 1334
04/02/98 —Approved by gov.—SJ 1417

S 0426 Bill by Financial Institutions & Insurance
Elimination of salary cap on certain insurance department actuaries. Effective date: Statute Bk.
01/13/98 Senate—Introduced—SJ 846
01/14/98 Senate—Referred to Ways and Means—SJ 849
03/05/98 Senate—CR: Be passed by Ways and Means—SJ 1057
03/19/98 Senate—COW: Be am.; be passed as am.—SJ 1179; EFA: Passed as am.; Yeas 39 Nays 0—SJ 1183
03/20/98 House—Received and introduced—HJ 1543
03/23/98 House—Referred to Appropriations—HJ 1550
03/31/98 House—CR: Be passed as am. by Appropriations—HJ 1695
05/03/98 House—Stricken from calendar—HJ 2317
05/26/98 Senate—Rejected by House

S 0427 Bill by Energy & Natural Resources
Fee for disposal of solid waste at landfills; amount; exemptions. Effective date: 1/01/99.
01/14/98 Senate—Introduced—SJ 848
01/15/98 Senate—Referred to Energy & Natural Resources—SJ 856
05/26/98 Senate—Died in committee

S 0428 Bill by Legislative Post Audit Committee
Kansas whistleblower act; state employee communications with auditors, violations and remedies. Effective date: 4/9/98.
01/14/98 Senate—Introduced—SJ 848
01/15/98 Senate—Referred to Federal & State Affairs—SJ 856
02/09/98 Senate—CR: Be passed as am. by Federal & State Affairs—SJ 947
02/16/98 Senate—COW: CR be adptd; be further am.; be passed as am.—SJ 980
02/17/98 Senate—FA: Passed as am.; Yeas 40 Nays 0—SJ 985
02/18/98 House—Received and introduced—HJ 1293
02/19/98 House—Referred to Federal and State Affairs—HJ 1300
03/18/98 House—CR: Be passed & placed on consent calendar by Federal and State Affairs—HJ 1510
03/23/98 House—FA: Passed; Yeas 121 Nays 0—HJ 1551
03/27/98 Senate—Enrolled and presented to gov.—SJ 1334
04/02/98 —Approved by gov.—SJ 1417

S 0429 Bill by Oleen, Goodwin
Membership of Kansas sentencing commission. Effective date: 7/1/98.
01/14/98 Senate—Introduced—SJ 848
01/15/98 Senate—Referred to Judiciary—SJ 856
02/04/98 Senate—CR: Be passed & placed on consent calendar by Judiciary—SJ 918
02/05/98 Senate—Withdrawn from consent calendar; placed on general orders—SJ 936
02/11/98 Senate—COW: Be passed—SJ 961
02/12/98 Senate—FA: Passed; Yeas 40 Nays 0—SJ 969
02/13/98 House—Received and introduced—HJ 1242
02/16/98 House—Referred to Judiciary—HJ 1264
03/06/98 House—CR: Be passed & placed on consent calendar by Judiciary—HJ 1411

03/11/98 House—FA: Passed; Yeas 121 Nays 0—HJ 1436
03/13/98 Senate—Enrolled and presented to gov.—SJ 1142
03/18/98 —Approved by gov.—SJ 1165

S 0430 Bill by Elections & Local Government
Campaign finance; expenditures of PACs and political committees; disclosure requirements. Effective date: Statute Bk.
01/14/98 Senate—Introduced—SJ 848
01/15/98 Senate—Referred to Elections & Local Government—SJ 856
02/11/98 Senate—CR: Be passed as am. by Elections & Local Government—S 958
02/26/98 Senate—COW: CR be adptd; be further am.; be passed as am.—SJ 103
02/27/98 Senate—FA: Passed as am.; Yeas 39 Nays 0—SJ 1038
03/03/98 House—Received and introduced—HJ 1392
03/04/98 House—Referred to Governmental Organization and Elections—HJ 139
05/26/98 Senate—Died in House committee

S 0431 Bill by Elections & Local Government
State officers and employees; gifts, loans or other special services. Effectiv date: Statute Bk.
01/14/98 Senate—Introduced—SJ 848
01/15/98 Senate—Referred to Elections & Local Government—SJ 856
05/26/98 Senate—Died in committee

S 0432 Bill by Elections & Local Government
Campaign finance; independent expenditures. Effective date: Statute Bk.
01/14/98 Senate—Introduced—SJ 848
01/15/98 Senate—Referred to Elections & Local Government—SJ 856
02/26/98 Senate—Withdrawn from Elections & Local Government—SJ 1034; Referred to Ways and Means—SJ 1034
02/27/98 Senate—Withdrawn from Ways and Means—SJ 1038; Rereferred to Elections & Local Government—SJ 1038
03/06/98 Senate—CR: Be passed as am. by Elections & Local Government—S 1062
03/17/98 Senate—COW: CR be adptd; be further am.; be passed as am.—S 1156; EFA: Passed as am.; Yeas 24 Nays 16—SJ 1161
03/18/98 House—Received and introduced—HJ 1507
03/19/98 House—Referred to Governmental Organization and Elections—HJ 152
05/26/98 Senate—Died in House committee

S 0433 Bill by Assessment & Taxation
Budget approval required when based on increased property tax. Effectiv date: Statute Bk.
01/14/98 Senate—Introduced—SJ 848
01/15/98 Senate—Referred to Assessment & Taxation—SJ 856
02/24/98 Senate—Withdrawn from Assessment & Taxation—SJ 1009; Referred to Ways and Means—SJ 1009
02/25/98 Senate—Withdrawn from Ways and Means—SJ 1020; Rereferred to Assessment & Taxation—SJ 1020
05/26/98 Senate—Died in committee

S 0434 Bill by Public Health & Welfare
Health care data governing board; data collection on certain health studies Effective date: Ks register.
01/14/98 Senate—Introduced—SJ 849
01/15/98 Senate—Referred to Public Health & Welfare—SJ 856
02/18/98 Senate—CR: Be passed as am. by Public Health & Welfare—SJ 994
02/24/98 Senate—COW: CR be adptd; be passed as am.—SJ 1018
02/25/98 Senate—FA: Passed as am.; Yeas 40 Nays 0—SJ 1021
02/25/98 House—Received and introduced—HJ 1358
02/26/98 House—Referred to Health and Human Services—HJ 1363
05/26/98 Senate—Died in House committee

S 0435 Bill by Goodwin, Oleen
Sentencing when new felony committed while on release; bail bondsmen contributions to child's misconduct; carjackings and drive by shootings, increasing criminal penalties. Effective date: Statute Bk.

CHAPTER 117

Substitute for HOUSE BILL No. 2662
(Amended by Chapter 168)

AN ACT concerning governmental ethics and elections; amending K.S.A. 25-4119a, 25-4119e, 25-4147, 25-4150, 25-4156, 25-4169a, 25-4173, 25-4175, 25-4180, 46-246a, 46-253, 46-280, 46-288, 75-4302a and 75-4303a and K.S.A. 1997 Supp. 25-4119f, 25-4143, 25-4145, 25-4146, 25-4148, 25-4152, 25-4157a, 25-4181, 25-4186, 46-237 and 46-265 and repealing the existing sections.

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

Section 1. K.S.A. 25-4119a is hereby amended to read as follows: 25-4119a. (a) There is hereby created the Kansas commission on governmental standards and conduct.

(b) On July 1, 1998, the Kansas commission on governmental standards and conduct is hereby redesignated as the governmental ethics commission. On and after July 1, 1998, whenever the Kansas commission on governmental standards and conduct, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the governmental ethics commission. Nothing in this act shall be construed as abolishing and reestablishing the Kansas commission on governmental standards and conduct. The commission shall consist of nine members of whom two shall be appointed by the governor, one by the president of the senate, one by the speaker of the house of representatives, one by the minority leader of the house of representatives, one by the minority leader of the senate, one by the chief justice of the supreme court, one by the attorney general and one by the secretary of state. ~~The terms of such members shall be as follows: The member appointed by the governor serving on the effective date of this act and the members appointed by the speaker of the house of representatives and the president of the senate shall serve until January 31, 1991, the additional member appointed by the governor and the members appointed by the attorney general and the secretary of state shall serve until January 31, 1992, the members appointed by the minority leader of the house of representatives and by the minority leader of the senate shall serve until January 31, 1993, and the member appointed by the chief justice of the supreme court shall serve until January 31, 1994.~~ *Nothing in this act shall be construed as affecting the terms of members serving on July 1, 1998.* Not more than five members of the commission shall be members of the same political party and the two members appointed by the governor shall not be members of the same political party.

~~(b)~~ *(c)* The terms of all subsequently appointed members shall be two years commencing on February 1 of the appropriate years. Vacancies occurring on the commission shall be filled for the unexpired term by the same appointing officer as made the original appointment. Members shall serve until their successors are appointed and qualified. The governor shall designate one of the members appointed by the governor to be the chairperson of the commission. A majority vote of five members of the commission shall be required for any action of the commission. The commission may adopt rules to govern its proceedings and may provide for such officers other than the chairperson as it may determine. The commission shall meet at least once each quarter, and also shall meet on call of its chairperson or any four members of the commission. Members of the commission attending meetings of such commission, or attending a subcommittee meeting thereof authorized by such commission, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in subsections (a) to (d), inclusive, of K.S.A. 75-3223, and amendments thereto. The commission shall appoint an executive director who shall be in the unclassified service and receive compensation fixed by the commission, in accordance with appropriation acts of the legisla-

ture, subject to approval by the governor. The commission may employ such other staff and attorneys as it determines, within amou[illegible] appropriated to the commission, all of whom shall be in the unclass[illegible]rvice and shall receive compensation fixed by the commission and not subject to approval by the governor.

~~(c)~~ *(d)* The commission may adopt rules and regulations for the administration of the campaign finance act. Subject to K.S.A. 25-4178, *and amendments thereto*, rules and regulations adopted by the commission created prior to this act shall continue in force and effect and shall be deemed to be the rules and regulations of the commission created by this section of this enactment, until revised, amended, repealed or nullified pursuant to law. All rules and regulations of the commission shall be subject to the provisions of article 4 of chapter 77 of Kansas Statutes Annotated. The commission shall continue to administer all of the acts administered by the commission to which it is successor.

~~(d)~~ *(e)* The commission may provide copies of opinions, informational materials compiled and published by the commission and public records filed in the office of the commission to persons requesting the same and may adopt rules and regulations fixing reasonable fees therefor. All fees collected by the commission under the provisions of this subsection shall be paid to the state treasurer who shall deposit the same in the state treasury to the credit of the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund.

~~(e)~~ *(f)* The commission shall submit an annual report and recommendations in relation to all acts administered by the commission to the governor and to the legislative coordinating council on or before December 1 of each year. The legislative coordinating council shall transmit such report and recommendations to the legislature.

~~(f)~~ *(g)* Whenever the ~~public disclosure commission~~ *Kansas commission on governmental standards and conduct*, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the ~~Kansas commission on~~ governmental ~~standards and conduct created by this section~~ *ethics commission*.

Sec. 2. K.S.A. 25-4119e is hereby amended to read as follows: 25-4119e. *(a)* There is hereby established in the state treasury the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund. All moneys credited to such fund shall be used for the operations of the commission in the performance of powers, duties and functions prescribed by law. All expenditures from such fund shall be made in accordance with the provisions of appropriation acts and upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the commission or the chairperson's designee.

(b) The director of accounts and reports is hereby directed to transfer all moneys in the Kansas commission on governmental standards and conduct fee fund to the governmental ethics commission fee fund established pursuant to subsection (a). All liabilities of the Kansas commission on governmental standards and conduct fee fund existing prior to July 1, 1998, are hereby imposed on the governmental ethics commission fee fund established pursuant to subsection (a). The Kansas commission on governmental standards and conduct fee fund is hereby abolished.

Sec. 3. K.S.A. 1997 Supp. 25-4119f is hereby amended to read as follows: 25-4119f. (a) In addition to any other fee required by law, every person becoming a candidate for the following offices shall pay a fee at the time of filing for such office in the amount prescribed by this section:

(1)	Governor and lieutenant governor	$400;
(2)	state offices elected by statewide election, other than the governor and lieutenant governor	$400;
(3)	state senator, state representative, state board of education, district attorney, board of public utilities of the city of Kansas City and elected county offices and	$30;
(4)	members of boards of education of unified school districts having 35,000 or more pupils regularly enrolled in the preceding school year, members of governing bodies of cities of the first class and judges of the district court in judicial districts in which judges are elected	$30.

(b) The secretary of state shall remit all fees received by that office to the state treasurer. County election officers receiving fees in accordance with this section shall remit such fees to the county treasurer of the county who shall quarterly remit the same to the state treasurer. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund.

Sec. 4. K.S.A. 1997 Supp. 25-4143 is hereby amended to read as follows: 25-4143. As used in the campaign finance act, unless the context otherwise requires:

(a) "Candidate" means an individual who: (1) Appoints a treasurer or a candidate committee~~,~~;

(2) makes a public announcement of intention to seek nomination or election to state or local office~~,~~;

(3) makes any expenditure or accepts any contribution for ~~the purpose of influencing~~ such person's nomination or election to any state or local office~~,~~; or

(4) files a declaration or petition to become a candidate for state or local office.

(b) "Candidate committee" means a committee appointed by a candidate to receive contributions and make expenditures for the candidate.

(c) "Clearly identified candidate" means a candidate who has been identified by the:

(1) Use of the name of the candidate;

(2) use of a photograph or drawing of the candidate; or

(3) unambiguous reference to the candidate whether or not the name, photograph or drawing of such candidate is used.

~~(c)~~ *(d)* "Commission" means the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct created by K.S.A. 25-4119a and amendments thereto~~.

~~(d)~~ *(e)* (1) "Contribution" means:

(A) Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value given to a candidate, candidate committee, party committee or political committee for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office.

~~(A)~~ *(B)* Any advance, conveyance, deposit, distribution, gift, loan or payment of money or any other thing of value made ~~for the purpose of influencing the nomination or election of any individual to~~ *to expressly advocate the nomination, election or defeat of a clearly identified candidate for a* state or local office;

~~(B)~~ *(C)* a transfer of funds between any two or more candidate committees, party committees or political committees;

~~(C)~~ *(D)* the payment, by any person other than a candidate, candidate committee, party committee or political committee, of compensation to an individual for the personal services rendered without charge to or for a candidate's campaign or to or for any such committee;

~~(D)~~ *(E)* the purchase of tickets or admissions to, or advertisements in journals or programs for, testimonial events;

~~(E)~~ *(F)* a mailing of materials designed to ~~influence the nomination or election of a~~ *expressly advocate the nomination, election or defeat of a clearly identified* candidate, which is made and paid for by a party committee with the consent of such candidate.

(2) "Contribution" does not include:

(A) The value of volunteer services provided without compensation;

(B) costs to a volunteer related to the rendering of volunteer services not exceeding a fair market value of $50 during an allocable election period as provided in K.S.A. 25-4149, and amendments thereto;

(C) payment by a candidate or candidate's spouse for personal meals, lodging and travel by personal automobile of the candidate or candidate's spouse while campaigning;

(D) the value of goods donated to events such as testimonial events, bake sales, garage sales and auctions by any person not exceeding a fair market value of $50 per event.

~~(e)~~ *(f)* "Election" means:

(1) A primary or general election for state or local office; and

(2) a convention or caucus of a political party held to nominate a candidate for state or local office.

~~(f)~~ *(g)* (1) "Expenditure" means:

(A) Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made by a candidate, candidate committee, party committee or political committee for the express purpose of nominating, electing or defeating a clearly identified candidate for a state or local office.

~~(A)~~ *(B)* Any purchase, payment, distribution, loan, advance, deposit or gift of money or any other thing of value made ~~for the purpose of influencing the nomination or election of any individual to~~ *to expressly advocate the nomination, election or defeat of a clearly identified candidate for a* state or local office;

~~(B)~~ *(C)* any contract to make an expenditure;

~~(C)~~ *(D)* a transfer of funds between any two or more candidate committees, party committees or political committees; *or*

~~(D)~~ *(E)* payment of a candidate's filing fees.

(2) "Expenditure" does not include:

(A) The value of volunteer services provided without compensation;

(B) costs to a volunteer incidental to the rendering of volunteer services not exceeding a fair market value of $50 during an allocable election period as provided in K.S.A. 25-4149, and amendments thereto;

(C) payment by a candidate or candidate's spouse for personal meals, lodging and travel by personal automobile of the candidate or candidate's spouse while campaigning or payment of such costs by the treasurer of a candidate or candidate committee;

(D) the value of goods donated to events such as testimonial events, bake sales, garage sales and auctions by any person not exceeding fair market value of $50 per event; or

(E) any communication by an incumbent elected state or local officer with one or more individuals unless the primary purpose thereof is to ~~influence the nomination or election of a~~ *expressly advocate the nomination, election or defeat of a clearly identified* candidate.

(h) "Expressly advocate the nomination, election or defeat of a clearly identified candidate" means any communication which uses phrases including, but not limited to:

(A) "Vote for the secretary of state";

(B) "re-elect your senator";

(C) "support the democratic nominee";

(D) "cast your ballot for the republican challenger for governor";

(E) "Smith for senate";

(F) "Bob Jones in '98";

(G) "vote against Old Hickory";

(H) "defeat" accompanied by a picture of one or more candidates; or

(I) "Smith's the one."

~~(g)~~ *(i)* "Party committee" means:

(1) The state committee of a political party regulated b[illegible]le 3 of chapter 25 of the Kansas Statutes Annotated~~, or~~;

(2) the county central committee or the state committee of a political party regulated under article 38 of chapter 25 of the Kansas Statutes Annotated ~~or~~;

(3) the bona fide national organization or committee of those political parties regulated by the Kansas Statutes Annotated~~, or~~;

(4) not more than one political committee established by the state committee of any such political party and designated as a recognized political committee for the senate ~~or~~; *or*

(5) not more than one political committee established by the state committee of any such political party and designated as a recognized political committee for the house of representatives.

~~(h)~~ *(j)* "Person" means any individual, committee, corporation, partnership, trust, organization or association.

~~(i) "Political committee" means any combination of two or more individuals or any person other than an individual, a major purpose of which is to support or oppose any candidate for state or local office, but not including any candidate committee or party committee.~~

(k) "Political committee" means any combination of two or more individuals or any person other than an individual, a major purpose of which is to expressly advocate the nomination, election or defeat of a clearly identified candidate for state or local office or make contributions to or expenditures for the nomination, election or defeat of a clearly identified candidate for state or local office.

~~(j)~~ *(l)* "Receipt" means a contribution or any other money or thing of value, but not including volunteer services provided without compensation, received by a treasurer in the treasurer's official capacity.

~~(k)~~ *(m)* "State office" means any state office as defined in K.S.A. 25-2505, and amendments thereto.

~~(l)~~ *(n)* "Testimonial event" means an event held for the benefit of an individual who is a candidate to raise ~~funds~~ *contributions* for such candidate's campaign. Testimonial events include but are not limited to dinners, luncheons, rallies, barbecues and picnics.

~~(m)~~ *(o)* "Treasurer" means a treasurer of a candidate or of a candidate committee, a party committee or a political committee appointed under the campaign finance act or a treasurer of a combination of individuals or a person other than an individual which is subject to paragraph (2) of subsection (a) of K.S.A. 25-4172, and amendments thereto.

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

Sec. 5. K.S.A. 1997 Supp. 25-4145 is hereby amended to read as follows: 25-4145. (a) Each party committee and each political committee which anticipates receiving contributions or making expenditures shall appoint a chairperson and a treasurer. The chairperson of each party committee and each political committee which ~~supports or opposes~~ *anticipates receiving contributions or making expenditures for* a candidate for state office shall make a statement of organization and file it with the secretary of state not later than 10 days after establishment of such committee. The chairperson of each political committee~~,~~ ~~the major purpose of~~ which ~~is to support or oppose~~ *anticipates receiving contributions or making expenditures for* any candidate for local office, shall make a statement of organization and file it with the county election officer not later than 10 days after establishment of such committee.

(b) Every statement of organization shall include:

(1) The name and address of the committee. *The name of the committee shall reflect the full name of the organization with which the committee is connected or affiliated or sufficiently describe such affiliation. If the political committee is not connected or affiliated with any one organization, the name shall reflect the trade, profession or primary interest of the committee as reflected by the statement of purpose of such organization*;

(2) the names and addresses of the chairperson and treasurer of the committee;

(3) the names and addresses of affiliated or connected organizations; and

(4) in the case of a political committee, the full name of the organization with which the committee is connected or affiliated or, name or description sufficiently describing the affiliation or, if the committee is not connected or affiliated with any one organization, the trade, profession or primary interest of ~~contributors of~~ the political committee *as reflected by the statement of purpose of such organization*.

(c) Any change in information previously reported in a statement of organization shall be reported on a supplemental statement of organization and filed not later than 10 days following the change.

(d) (1) Each political committee which anticipates receiving contributions shall register annually with the commission on or before July 1 of each year. Each political committee registration shall be in the form and contain such information as may be required by the commission.

(2) Each registration by a political committee anticipating the receipt of $2,501 or more in any calendar year shall be accompanied by an annual registration fee of $200.

(3) Each registration by a political committee anticipating the receipt of more than $500 but less than $2,501 in any calendar year shall be accompanied by an annual registration fee of $30.

(4) Each registration by a political committee anticipating the receipt

of $500 or less in any calendar year shall be accompanied by an annual registration fee of $15.

(5) Any political committee which is currently registered under subsection (d)(3) or (d)(4) and which receives contributions in excess of $2,500 for a calendar year, shall file, within three days of the date when contributions exceed such amount, an amended registration form which shall be accompanied by an additional fee for such year equal to the difference between $200 and the amount of the fee that accompanied the current registration.

(6) Any political committee which is currently registered under subsection (d)(4) and which receives contributions in excess of $500 but which are less than $2,501, shall file, within three days of the date when contributions exceed $500, an amended registration form which shall be accompanied by an additional fee of $15 for such year.

(e) All such fees received by or for the commission shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund.

Sec. 6. K.S.A. 1997 Supp. 25-4146 is hereby amended to read as follows: 25-4146. (a) A candidate may remove any treasurer or chairperson that such candidate has appointed, and a party committee or political committee may remove its chairperson or treasurer. A candidate shall remove any treasurer, that such candidate has appointed, against whom a civil penalty has been imposed pursuant to K.S.A. 25-4152, and amendments thereto. In case of a vacancy in the position of treasurer of a candidate before all of the obligations of the treasurer have been performed, such candidate shall be such candidate's own treasurer from the date of such vacancy until such time as the candidate appoints a successor and reports the name and address of the treasurer to the secretary of state if the candidate is a candidate for state office or to the county election officer if the candidate is a candidate for local office. In case of a vacancy in the position of treasurer of a candidate committee, the candidate shall be treasurer from the date of vacancy or removal, until such time as the candidate appoints a successor and reports the name and address of the treasurer to the secretary of state if the candidate is a candidate for state office or to the county election officer if the candidate is a candidate for local office. In case of a vacancy in the position of treasurer of a party committee or political committee, such committee chairperson shall be treasurer from the date of vacancy or removal until such time as the committee appoints a successor and reports the name and address of the treasurer: *(1)* To the secretary of state if such committee is a party committee or a political committee ~~the major purpose of which is to support or oppose~~ *receiving contributions or making expenditures for* a candidate

for state office ~~or~~; *or (2)* to the county election officer if such committee is *a party committee or* a political committee ~~the major purpose of which is to support or oppose~~ *receiving contributions or making expenditures for* a candidate for local office. An individual who vacates the position of treasurer by reason of removal or resignation shall substantiate the accuracy of such person's records to the succeeding treasurer. No resignation of a treasurer shall be effective until a written statement of resignation of such treasurer has been filed with the secretary of state if the treasurer is that of a candidate or committee involving a candidate for state office or with the county election officer if the treasurer is that of a candidate or committee involving a candidate for local office. No removal of a treasurer of a candidate or candidate committee shall be effective until a written statement of such removal from the candidate has been filed with: *(1)* The secretary of state if the candidate is a candidate for state office ~~or~~ ; *or (2)* with the county election officer if the candidate is a candidate for local office. No removal of a treasurer of a party committee or political committee shall be effective until a written statement of such removal from the party committee or political committee has been filed with: *(1)* The secretary of state if such committee is a party committee or a political committee ~~the major purpose of which is to support or oppose~~ *receiving contributions or making expenditures for* a candidate for state office ~~or~~; *or (2)* with the county election officer if such committee is *a party committee or* a political committee ~~the major purpose of which is to support or oppose~~ *receiving contributions or making expenditures for* a candidate for local office. The succeeding treasurer shall not be held responsible for the accuracy of the predecessor treasurer's records.

(b) No contribution or other receipt shall be received or expenditure made, by or on behalf of a candidate, pair of candidates or candidate committee, except receipt or payment of a filing fee:

(1) Until such candidate appoints a treasurer and makes the report required by K.S.A. 25-4144, and amendments thereto; and

(2) unless by or through such treasurer.

(c) No contribution or other receipt shall be received or expenditure made by or on behalf of a party committee or political committee:

(1) Until *the chairperson and treasurer of such committee are appointed;*

(2) the chairperson of the party committee or a political committee has filed a statement of organization required by K.S.A. 25-4145 and amendments thereto; and

~~(2)~~ *(3)* unless by or through the treasurer of such committee.

Sec. 7. K.S.A. 25-4147 is hereby amended to read as follows: 25-4147. (a) Every treasurer shall keep detailed accounts of all contributions and other receipts received and all expenditures made by or on behalf of the treasurer's candidate or committee.

(b) Accounts of any treasurer may be inspected under conditions determined by the commission, and shall be preserved for a period to be designated by the commission.

(c) An individual may serve as treasurer for a candidate, candidate committee, party committee or political committee or of any two or more such committees or candidates.

(d) Every person who receives a contribution for a candidate, candidate committee, party committee or political committee more than five days prior to the ending date of any period for which a report is required by K.S.A. 25-4148, and amendments thereto ~~shall~~, on demand of the treasurer, or in any event on or before the ending date of the reporting period, *shall* remit the same and render to the treasurer an account thereof, including the amount, the name and address of the person, if known, making the contribution and the date received.

(e) No contribution or other receipt received by a candidate, candidate committee, party committee or political committee shall be commingled with personal funds of the candidate or the treasurer or other officers or members of such committee.

(f) No candidate, candidate committee, party committee or political committee shall receive any contribution or other receipt from a political committee unless accompanied by the full name of the organization with which the political committee is connected or affiliated or, name or description sufficiently describing the affiliation or, if the political committee is not connected or affiliated with any one organization, the trade, profession or primary interest of ~~contributors of~~ the political committee *as reflected by the statement of purpose of such organization*.

Sec. 8. K.S.A. 1997 Supp. 25-4148 is hereby amended to read as follows: 25-4148. (a) Every treasurer shall file a report prescribed by this section. Reports filed by treasurers for candidates for state office, other than officers elected on a state-wide basis, shall be filed in both the office of the secretary of state and in the office of the county election officer of the county in which the candidate is a resident. Reports filed by treasurers for candidates for state-wide office shall be filed only with the secretary of state. Reports filed by treasurers for candidates for local office shall be filed in the office of the county election officer of the county in which the *name of the* candidate is on the ballot. Except as otherwise provided by subsection (h), all such reports shall be filed in time to be received in the offices required on or before each of the following days:

(1) The eighth day preceding the primary election, which report shall be for the period beginning on January 1 of the election year for the office the candidate is seeking and ending 12 days before the primary election, inclusive;

(2) the eighth day preceding a general election, which report shall be

for the period beginning 11 days before the primary election and ending 12 days before the general election, inclusive;

(3) January 10 of the year after an election year, which report shall be for the period beginning 11 days before the general election and ending on December 31, inclusive;

(4) for any calendar year when no election is held, a report shall be filed on the next January 10 for the preceding calendar year;

(5) a treasurer shall file only the annual report required by subsection (4) for those years when the candidate is not participating in a primary or general election.

(b) Each report required by this section shall state:

(1) Cash on hand on the first day of the reporting period;

(2) the name and address of each person who has made one or more contributions in an aggregate amount or value in excess of $50 during the election period together with the amount and date of such contributions, including the name and address of every lender, guarantor and endorser when a contribution is in the form of an advance or loan;

(3) the aggregate amount of all proceeds from bona fide sales of political materials such as, but not limited to, political campaign pins, buttons, badges, flags, emblems, hats, banners and literature;

(4) the aggregate amount of contributions for which the name and address of the contributor is not known;

(5) each contribution, rebate, refund or other receipt not otherwise listed;

(6) the total of all receipts;

(7) the name and address of each person to whom expenditures have been made in an aggregate amount or value in excess of $50, with the amount, date, and purpose of each ~~and~~; the names and addresses of all persons to whom any loan or advance has been made; when an expenditure is made by payment to an advertising agency, public relations firm or political consultants for disbursement to vendors, the report of such expenditure shall show in detail the name of each such vendor and the amount, date and purpose of the payments to each;

(8) the name and address of each person from whom an in-kind contribution was received or who has paid for personal services provided without charge to or for any candidate, candidate committee, party committee or political committee, if the contribution is in excess of $50 and is not otherwise reported under subsection (b)(7), and the amount, date and purpose of the contribution;

(9) the aggregate of all expenditures not otherwise reported under this section; and

(10) the total of expenditures.

(c) Treasurers of candidates and of candidate committees shall be required to itemize, as provided in subsection (b)(2), only the purchase of tickets or admissions to testimonial events by a person who purchases

such tickets or admissions in an aggregate amount or value in excess of $50 per event, or who purchases such a ticket or admission at a cost exceeding $25 per ticket or admission. All other purchases of tickets or admissions to testimonial events shall be reported in an aggregate amount and shall not be subject to the limitations specified in K.S.A. 25-4154, and amendments thereto.

(d) If a contribution or other receipt from a political committee is required to be reported under subsection (b), the report shall include the full name of the organization with which the political committee is connected or affiliated or, name or description sufficiently describing the affiliation or, if the committee is not connected or affiliated with any one organization, the trade, profession or primary interest ~~of contributors~~ of the political committee *as reflected by the statement of purpose of such organization*.

(e) The commission may require any treasurer to file an amended report for any period for which the original report filed by such treasurer contains material errors or omissions, and notice of the errors or omissions shall be part of the public record. The amended report shall be filed within 30 days after notice by the commission.

(f) The commission may require any treasurer to file a report for any period for which the required report is not on file, and notice of the failure to file shall be part of the public record. Such report shall be filed within five days after notice by the commission.

(g) For the purpose of any report required to be filed pursuant to subsection (a) by the treasurer of any candidate seeking nomination by convention or caucus or by the treasurer of the candidate's committee or by the treasurer of any party committee or political committee ~~of which the primary purpose is supporting or opposing the nomination of any such candidate~~, the date of the convention or caucus shall be considered the date of the primary election.

(h) If a report is sent by certified or registered mail on or before the day it is due, the mailing shall constitute receipt by that office.

Sec. 9. K.S.A. 25-4150 is hereby amended to read as follows: 25-4150. Every person, other than a candidate or a candidate committee, party committee or political committee, who makes contributions or expenditures, other than by contribution to a candidate or a candidate committee, party committee or political committee, in an aggregate amount of $100 or more within a calendar year shall make statements containing the information required by K.S.A. 25-4148, and amendments thereto, ~~and file them~~. *Such statements shall be filed* in the office or offices required so that each such statement is in such office or offices on the day specified in K.S.A. 25-4148, and amendments thereto. If such contributions *are received* or expenditures are made to ~~support or oppose~~ *expressly advocate the nomination, election or defeat of a clearly identified*

~~a~~ candidate for state office, other than that of an officer elected on a statewide basis such statement shall be filed in both the office of the secretary of state and in the office of the county election officer of the county in which the candidate is a resident. If such contributions *are received* or expenditures are made to ~~support or oppose~~ ~~a~~ *expressly advocate the nomination, election or defeat of a clearly identified* candidate for statewide office such statement shall be filed only in the office of the secretary of state. If such contributions or expenditures are made to ~~support or oppose~~ ~~a~~ *expressly advocate the nomination, election or defeat of a clearly identified* candidate for local office such statement shall be filed in the office of the county election officer of the county in which *the name of* the candidate is ~~a resident~~ *on the ballot*. Reports made under this section need not be cumulative.

Sec. 10. K.S.A. 1997 Supp. 25-4152 is hereby amended to read as follows: 25-4152. (a) The commission shall send a notice by registered or certified mail to any person failing to file any report or statement required by K.S.A. 25-4144, 25-4145 or 25-4148, and amendments thereto, and to the candidate appointing any treasurer failing to file any such report, within the time period prescribed therefor. The notice shall state that the required report or statement has not been filed with either the office of secretary of state or county election officer or both. The person failing to file any report or statement, and the candidate appointing any such person, shall be responsible for the filing of such report or statement. The notice ~~shall~~ also *shall* state that such person shall have 15 days from the date such notice is deposited in the mail to comply with the registration and reporting requirements before a civil penalty shall be imposed for each day that the required documents remain unfiled. If such person fails to comply within the prescribed period, such person shall pay to the state a civil penalty of $10 per day for each day that such report or statement remains unfiled, except that no such civil penalty shall exceed $300. The commission may waive, for good cause, payment of any civil penalty imposed by this section.

(b) Civil penalties provided for by this section shall be paid to the state treasurer, who shall deposit the same in the state treasury to the credit of the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund.

(c) If a person fails to pay a civil penalty provided for by this section, it shall be the duty of the attorney general or county or district attorney to bring an action to recover such civil penalty in the district court of the county in which such person resides.

Sec. 11. K.S.A. 25-4156 is hereby amended to read as follows: 25-4156. (a) (1) Whenever any person sells space in any newspaper, magazine or other periodical to a candidate or to a candidate committee, party committee or political committee, the charge made for the use of such

space shall not exceed the charges made for comparable use of such space for other purposes.

(2) Intentionally charging an excessive amount for politi[illegible]ertising is a class A misdemeanor.

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

(A) Publishing or causing to be published in a newspaper or other periodical any paid matter which ~~is designed or tends to aid, injure or defeat any candidate for nomination or election to~~ *expressly advocates the nomination, election or defeat of a clearly identified candidate for* a state or local office, unless such matter is followed by the word "advertisement" or the abbreviation "adv." in a separate line together with the name of the chairperson *or treasurer* of the political or other organization ~~inserting~~ *sponsoring* the same or the name of the ~~person~~ *individual* who is responsible therefor; ~~or~~

(B) broadcasting or causing to be broadcast by any radio or television station any paid matter which ~~is designed or tends to aid, injure or defeat any candidate for nomination or election to~~ *expressly advocates the nomination, election or defeat of a clearly identified candidate for* a state or local office, unless such matter is followed by a statement ~~that the preceding was an advertisement together with~~ *which states: "Paid for" or "Sponsored by" followed by the name of the sponsoring organization and* the name of the chairperson *or treasurer* of the political or other organization sponsoring the same or the name of the ~~person~~ *individual* who is responsible therefor~~.~~; *or*

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

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

(2) Corrupt political advertising of a state or local office is a class C misdemeanor.

(c) If any provision of this section or application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this section which can be given effect without the invalid application or provision, and to this end the provisions of this section are declared to be severable.

Sec. 12. K.S.A. 1997 Supp. 25-4157a is hereby amended to read as follows: 25-4157a. (a) No moneys received by any candidate or candidate committee of any candidate as a contribution under this act shall be used or be made available for the personal use of the candidate and no

such moneys shall be used by such candidate or the candidate committee of such candidate except for:

(1) Legitimate campaign purposes; ~~for~~;

(2) expenses of holding political office ~~or for~~;

(3) contributions to the party committees of the political party of which such candidate is a member;

(4) any membership dues or donations paid to a community service or civic organization in the name of the candidate or candidate committee of any candidate;

(5) expenses incurred in the purchase of tickets to meals and special events sponsored by any organization the major purpose of which is to promote or facilitate the social, business, commercial or economic well being of the local community; or

(6) expenses incurred in the purchase and mailing of greeting cards to voters and constituents.

For the purpose of this subsection, expenditures for "personal use" shall include expenditures to defray normal living expenses for the candidate or the candidate's family and expenditures for the personal benefit of the candidate having no direct connection with or effect upon the campaign of the candidate or the holding of public office.

(b) No moneys received by any candidate or candidate committee of any candidate as a contribution shall be used to pay interest or any other finance charges upon moneys loaned to the campaign by such candidate or the spouse of such candidate.

~~(b)~~ *(c)* No candidate or candidate committee shall accept from any other candidate or candidate committee for any candidate for local, state or national office, any moneys received by such candidate or candidate committee as a campaign contribution. The provisions of this subsection shall not be construed to prohibit a candidate or candidate committee from accepting moneys from another candidate or candidate committee if such moneys constitute a reimbursement for one candidate's proportional share of the cost of any campaign activity participated in by both candidates involved. Such reimbursement shall not exceed an amount equal to the proportional share of the cost directly benefiting and attributable to the personal campaign of the candidate making such reimbursement.

~~(c)~~ *(d)* At the time of the termination of any campaign and prior to the filing of a termination report in accordance with K.S.A. 25-4157, and amendments thereto, all residual funds ~~not~~ otherwise *not* obligated for the payment of expenses incurred in such campaign or the holding of office shall be contributed to a charitable organization, as defined by the laws of the state, contributed to a party committee or returned as a refund in whole or in part to any contributor or contributors from whom received or paid into the general fund of the state.

Sec. 13. K.S.A. 25-4169a is hereby amended to read as follows: 25-4169a. (a) No officer or employee of the state of Kansas [illegible]ounty, any unified school district having 35,000 or more pupils re[illegible]y enrolled, any city of the first class or the board of public utilities of the city of Kansas City, Kansas, shall use or authorize the use of public funds or public vehicles, machinery, equipment or supplies of any such governmental agency or the time of any officer or employee of any such governmental agency, for which the officer or employee is compensated by such governmental agency, ~~for the purpose of influencing the nomination or election of any~~ *to expressly advocate the nomination, election or defeat of a clearly identified* candidate to state office or local office. The provisions of this section prohibiting the use of time of any officer or employee for such purposes shall not apply to an incumbent officer campaigning for nomination or reelection to a succeeding term to such office or to members of the personal staff of any elected officer.

(b) Any person violating the provisions of this section shall be guilty of a class C misdemeanor.

Sec. 14. K.S.A. 25-4173 is hereby amended to read as follows: 25-4173. Every candidate for state or local office who intends to expend or have expended on such person's behalf an aggregate amount or value of less than $500, exclusive of such candidate's filing fee, and who intends to receive or have received on such person's behalf contributions in an aggregate amount or value of less than $500 in each *of* the primary and the general ~~election~~ *elections* shall file, not later than the ninth day preceding the primary election, an affidavit of such intent with the secretary of state for state offices ~~and~~ *In the case of a candidate for a local office, such affidavit also shall be filed with* the county election officer of the county ~~of residence~~ *in which the name* of the candidate ~~for local offices~~ *is on the ballot*. No report required by K.S.A. 25-4148, and amendments thereto, shall be required to be filed by or for such candidate.

Sec. 15. K.S.A. 25-4175 is hereby amended to read as follows: 25-4175. For any calendar year during which a party or political committee intends to expend an aggregate amount or value of less than $500 and intends to receive contributions in an aggregate amount or value of less than $500 and during which such party or political committee intends to receive no contributions in excess of $50 from any one contributor, the treasurer of such party or political committee shall file an affidavit of such intent with the secretary of state if such committee is a party committee or a political committee which ~~supports or opposes a~~ *expressly advocates the nomination, election or defeat of a clearly identified* candidate for state office and with the county election officer if the committee is a political committee which ~~supports or opposes a~~ *expressly advocates the nomination, election or defeat of a clearly identified* candidate for local office. Such treasurer shall not be required to file the reports required by K.S.A

25-4148, and amendments thereto for the year for which such affidavit is filed. Such affidavit may be filed at any time not later than the ninth day preceding the primary election.

Sec. 16. K.S.A. 25-4180 is hereby amended to read as follows: 25-4180. (a) Every person who engages in any activity promoting or opposing the adoption or repeal of any provision of the Kansas constitution and who accepts moneys or property for the purpose of engaging in such activity shall make an annual report to the secretary of state of individual contributions or contributions in kind in an aggregate amount or value in excess of $50 received during the preceding calendar year for such purposes. The report shall show the name and address of each contributor for the activity and the amount or value of the individual contribution made, together with a total value of all contributions received, and ~~shall~~ also *shall* account for expenditures in an aggregate amount or value in excess of $50 from such contributions by showing the amount or value expended to each payee and the purpose of each such expenditure, together with a total value of all expenditures made. The annual report shall be filed on or before February 15 of each year for the preceding calendar year.

In addition to the annual report, a person engaging in an activity promoting the adoption or repeal of a provision of the Kansas constitution who accepts any contributed moneys for such activity shall make a preliminary report to the secretary of state 15 days prior to each election at which a proposed constitutional amendment is submitted. Such report shall show the name and address of each individual contributor, together with the amount contributed or contributed in kind in an aggregate amount or value in excess of $50, and the expenditures in an aggregate amount or value in excess of $50 from such contributions by showing the amount paid to each payee and the purpose of the expenditure. A supplemental report in the same format as the preliminary report shall be filed with the secretary of state within 15 days after any election on a constitutional proposition where contributed funds are received and expended in opposing or promoting such proposition.

Any person who engages in any activity promoting or opposing the adoption or repeal of any provision of the Kansas constitution shall be considered engaged in such activity upon the date the concurrent resolution passes the Kansas house of representatives and senate in its final form. Upon such date, if the person has funds in the constitutional amendment campaign treasury, such person shall be required to report such funds as provided by this section.

~~The word "person" as used herein means an individual, corporation, partnership, association, organization or other legal entity.~~

(b) (1) The commission shall send a notice by registered or certified mail to any person failing to file any report required by subsection (a)

1-61

within the time period prescribed therefor. The notice shall state that the required report has not been filed with the office of the secretary of state. The notice shall also state that such person shall have 10 days from the date such notice is deposited in the mail to comply with the reporting requirements before a civil penalty shall be imposed for each day that the required documents remain unfiled. If such person fails to comply within the prescribed period, such person shall pay to the state a civil penalty of $10 per day for each day that such report remains unfiled, except that no such civil penalty shall exceed $300. The commission may waive, for good cause, payment of any civil penalty imposed by this section.

(2) Civil penalties provided for by this section shall be paid to the state treasurer, who shall deposit the same in the state treasury to the credit of the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund.

(3) If a person fails to pay a civil penalty provided for by this section, it shall be the duty of the attorney general or county or district attorney to bring an action to recover such civil penalty in the district court of the county in which such person resides.

(c) The intentional failure to file any report required by subsection (a) is a class A misdemeanor.

(d) This section shall be part of and supplemental to the campaign finance act.

Sec. 17. K.S.A. 1997 Supp. 25-4181 is hereby amended to read as follows: 25-4181. (a) The commission, in addition to any other penalty prescribed under the campaign finance act, may assess a civil fine, after proper notice and an opportunity to be heard, against any person for a violation of the campaign finance act in an amount not to exceed $5,000 for the first violation, $10,000 for the second violation and $15,000 for the third violation and for each subsequent violation. Whenever any civil fine or penalty is proposed to be assessed against the treasurer of any candidate who is not also the candidate, such notice shall be given to both the treasurer and the candidate prior to the assessment of such fine or penalty. All fines assessed and collected under this section shall be remitted promptly to the state treasurer. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it to the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund.

(b) No individual who has failed to pay any civil penalty or civil fine assessed, or failed to file any report required to be filed, under the campaign finance act, unless such penalty or fine has been waived or is under appeal, shall be eligible to become a candidate for state office or local office ~~under the laws of the state~~ until such penalty or fine has been paid

or ~~is on appeal or~~ such report has been filed or both such penalty or fine has been paid and such report filed.

Sec. 18. K.S.A. 1997 Supp. 25-4186 is hereby amended to read as follows: 25-4186. (a) Not later than 10 days after receiving any contribution or making any expenditure for a gubernatorial inauguration, the governor-elect shall appoint an inaugural treasurer. The name and address of such treasurer shall be reported to the secretary of state by the governor-elect not later than 10 days after the appointment.

(b) No person shall make any expenditure or make or receive any contribution or receipt, in kind or otherwise, for a gubernatorial inauguration except by or through the inaugural treasurer.

(c) The inaugural treasurer shall keep detailed accounts of all contributions and other receipts received, in kind or otherwise, and all expenditures made for a gubernatorial inauguration. Accounts of the treasurer may be inspected under conditions determined by the commission and shall be preserved for a period to be designated by the commission. Every person who receives a contribution or other receipt, in kind or otherwise, for an inaugural treasurer more than five days before the ending date of any period for which a report is required under this section ~~shall~~, on demand of the treasurer, or in any event on or before the ending date of the reporting period, *shall* remit the same and render to the treasurer an account thereof, including the name and address of the person, if known, making the contribution or other receipt and the date received. No contribution or other receipt received by the inaugural treasurer shall be commingled with personal funds of the governor-elect or inaugural treasurer.

(d) The inaugural treasurer shall file with the secretary of state a report on March 10 and July 10 following the inauguration. The report filed on March 10 shall be for the period ending on February 28 and the report filed on July 10 shall be for the period beginning on March 1 and ending on June 30. Each report shall contain the information required to be stated in a report pursuant to K.S.A. 25-4148 and 25-4148a, and amendments thereto, and a declaration as to the correctness of the report in the form prescribed by K.S.A. 25-4151, and amendments thereto. The July 10 report shall be a termination report which shall include full information as to the disposition of residual funds. If a report is sent by certified mail on or before the day it is due, the mailing shall constitute receipt by the secretary of state.

(e) The aggregate amount contributed, in kind or otherwise, by any person for a gubernatorial inauguration shall not exceed $2,000. No person shall make a contribution in the name of another person, and no person ~~shall~~ knowingly *shall* accept a contribution made by one person in the name of another. No person shall give or accept any contribution in excess of $10 unless the name and address of the contributor is made

1-63

known to the individual receiving the contribution. The aggregate of contributions for which the name and address of the contribu[illegible]not known shall not exceed 50% of the amount one person may con[illegible]e.

(f) No person shall copy any name of a contributor from any report filed under this section and use such name for any commercial purpose, and no person shall use any name for a commercial purpose with knowledge that such name was obtained solely by copying information relating to contributions contained in any report filed under this section.

(g) In addition to other reports required by this section, the inaugural treasurer shall report the amount and nature of debts and obligations owed for the gubernatorial inauguration, at times prescribed by the commission, continuing until such debts and obligations are fully paid or discharged.

(h) No moneys received by any inaugural treasurer shall be used or be made available for the personal use of the governor-elect or governor and no such moneys shall be used by such governor-elect or governor except for legitimate gubernatorial inauguration expenses.

For the purpose of this subsection, expenditures for "personal use" shall include expenditures to defray normal living expenses and expenditures for personal benefit having no direct connection with or effect upon the inauguration.

(i) Before the filing of a termination report in accordance with this section, all residual funds not otherwise obligated for the payment of expenses incurred for the gubernatorial inauguration shall be remitted to the state treasurer who shall deposit the entire amount in the state treasury and credit:

(1) To the inaugural expense fund created by K.S.A. 1997 Supp. 25-4187, *and amendments thereto*: (A) An amount equal to the amount certified to the director of accounts and reports by the adjutant general as the amount expended by the adjutant general for expenses incurred in connection with the gubernatorial inauguration; or (B) if the amount of residual funds is less than the amount certified, the entire amount of the deposit; and

(2) to the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund created by K.S.A. 25-4119e, and amendments thereto, any remaining balance.

(j) (1) The commission shall send a notice by registered or certified mail to any inaugural treasurer who fails to file any report required by this section within the time period prescribed therefor. The notice shall state that the required report has not been filed with the office of the secretary of state. The notice ~~shall~~ also *shall* state that the treasurer shall have 15 days from the date such notice is deposited in the mail to comply with the reporting requirements before a civil penalty shall be imposed for each day that the required documents remain unfiled. If the treasurer fails to comply within the prescribed period, the treasurer shall pay to

the state a civil penalty of $10 per day for each day that the report remains unfiled, except that no such civil penalty shall exceed $300. The commission may waive, for good cause, payment of any civil penalty imposed by this subsection.

(2) Civil penalties provided for by this subsection shall be paid to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund.

(3) If a person fails to pay a civil penalty provided for by this section, it shall be the duty of the attorney general to bring an action to recover such civil penalty in the district court of Shawnee county.

(k) Any violation of subsection (e), (f) or (h) or any intentional failure to file any report required by this section is a class A misdemeanor.

(l) Nothing in this section shall be construed to apply to expenditures of state moneys related to any inaugural activity.

(m) This section shall be part of and supplemental to the campaign finance act.

Sec. 19. K.S.A. 1997 Supp. 46-237 is hereby amended to read as follows: 46-237. (a) No state officer or employee, candidate for state office or state officer elect shall accept, or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of $40 or more in any calendar year from any one person known to have a special interest, under circumstances where such person knows or should know that a major purpose of the donor is to influence such person in the performance of their official duties or prospective official duties.

(b) No person with a special interest shall offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of $40 or more in any calendar year to any state officer or employee, candidate for state office or state officer elect with a major purpose of influencing such officer or employee, candidate for state office or state officer elect in the performance of official duties or prospective official duties.

(c) No person licensed, inspected or regulated by a state agency shall offer, pay, give or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of $40 or more in any calendar year to such agency or any state officer or employee, candidate for state office or state officer elect of that agency.

(d) Hospitality in the form of recreation, food and beverages ~~are~~ *is* presumed not to be given to influence a state officer or employee, candidate for state office or state officer elect in the performance of official duties or prospective official duties, except when a particular course of official action is to be followed as a condition thereon. For the purposes

of this subsection, the term recreation shall not include the providing or the payment of the cost of transportation or lodging.

(e) Except when a particular course of official action must be followed as a condition thereon, this section shall not apply to: (1) Any contribution reported in compliance with the campaign finance act; or (2) a commercially reasonable loan or other commercial transaction in the ordinary course of business.

(f) No state officer or employee shall accept any payment of honoraria for any speaking engagement except that a member of the state legislature or a part-time officer or employee of the executive branch of government shall be allowed to receive reimbursement in the preparation for and the making of a presentation at a speaking engagement in an amount fixed by the ~~Kansas~~ commission ~~on governmental standards and conduct~~ prior to the acceptance of the speaking engagement. Nothing in this section shall be construed to prohibit the reimbursement of state officers and employees for reasonable expenses incurred in attending seminars, conferences and other speaking engagements.

(g) The provisions of this section shall not be applicable to or prohibit the acceptance of gifts from governmental agencies of foreign nations except that any gift accepted from such foreign governmental agency, having an aggregate value of $100 or more, shall be accepted on behalf of the state of Kansas.

(h) No legislator shall solicit any contribution to be made to any organization for the purpose of paying for travel, subsistence and other expenses incurred by such legislator or other members of the legislature in attending and participating in meetings, programs and activities of such organization or those conducted or sponsored by such organization, but nothing in this act or the act of which this act is amendatory shall be construed to prohibit any legislator from accepting reimbursement for actual expenses for travel, subsistence, hospitality, entertainment and other expenses incurred in attending and participating in meetings, programs and activities sponsored by the government of any foreign nation, or any organization organized under the laws of such foreign nation or any international organization or any national, nonprofit, nonpartisan organization established for the purpose of serving, informing, educating and strengthening state legislatures in all states of the nation, when paid from funds of such organization and nothing shall be construed to limit or prohibit the expenditure of funds of and by any such organization for such purposes.

Sec. 20. K.S.A. 46-246a is hereby amended to read as follows: 46-246a. (a) From and after the effective date of this act, no state officer or employee shall advocate or cause the employment, appointment, promotion, transfer or advancement to any office or position of the state, of a member of such officer's or employee's household or a family member.

(b) No state officer or employee shall participate in an action relating to the employment or discipline of a member of the officer's or employee's household or a family member.

(c) The provisions of this section shall not apply to appointments of members of the governor's staff, nor ~~shall it apply~~ to any action involving the employment, appointment, promotion, transfer or advancement of any officer or employee occurring prior to the effective date of this act.

(d) The provisions of this section shall be subject to interpretation and enforcement by the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ in the manner provided by K.S.A. 46-253 through 46-263, and amendments thereto.

Sec. 21. K.S.A. 46-253 is hereby amended to read as follows: 46-253. "Commission" as used in K.S.A. 46-215 to 46-280, inclusive, ~~and any amendments thereto, and K.S.A.~~ 46-248a *and K.S.A. 1997 Supp. 46-237a, and amendments thereto,* means the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct created by K.S.A. 25-4119a, and amendments thereto~~. The commission may adopt rules and regulations for the administration of the provisions of K.S.A. 46-215 to 46-280, ~~and amendments thereto, and K.S.A.~~ 46-248a *and K.S.A. 1997 Supp. 46-237a*, and amendments thereto. Any ~~such~~ rules and regulations adopted by the Kansas ~~public disclosure~~ commission *on governmental standards and conduct* shall continue in force and effect and shall be deemed to be the rules and regulations of the commission ~~created by K.S.A. 25-4119a, and amendments thereto,~~ until revised, amended, repealed or nullified pursuant to law. All rules and regulations of the commission shall be subject to the provisions of article 4 of chapter 77 of Kansas Statutes Annotated.

Sec. 22. K.S.A. 1997 Supp. 46-265 is hereby amended to read as follows: 46-265. (a) Every lobbyist shall register with the secretary of state by completing and signing a registration form prescribed and provided by the commission. Such registration shall show the name and address of the lobbyist, the name and address of the person compensating the lobbyist for lobbying, the purpose of the employment and the method of determining and computing the compensation of the lobbyist. If the lobbyist is compensated or to be compensated for lobbying by more than one employer or is to be engaged in more than one employment, the relevant facts listed above shall be ~~separately~~ stated *separately* for each employer and each employment. Whenever any new lobbying employment or lobbying position is accepted by a lobbyist already registered as provided in this section, such lobbyist shall report the same on forms prescribed and provided by the commission before engaging in any lobbying activity related to such new employment or position, and such report shall be filed with the secretary of state. When a lobbyist is an employee of a lobbying group or firm which contracts to lobby and not an

owner or partner of such entity, the lobbyist shall report each client of the group, firm or entity whose interest the lobbyist represents. Whenever the lobbying of a lobbyist concerns a legislative matter, the secretary of state ~~shall~~ promptly *shall* transmit copies of each registration and each report filed under this act to the secretary of the senate and the chief clerk of the house of representatives.

(b) On or after October 1, in any year any person may register as a lobbyist under this section for the succeeding calendar year. Such registration shall expire annually on December 31, of the year for which the lobbyist is registered. In any calendar year, before engaging in lobbying, persons to whom this section applies shall register or renew their registration as provided in this section. Except for employees of lobbying groups or firms, every person registering or renewing registration who anticipates spending $1,000 or less for lobbying in such registration year on behalf of any one employer shall pay to the secretary of state a fee of $30 for lobbying for each such employer. Except for employees of lobbying groups or firms, every person registering or renewing registration who anticipates spending more than $1,000 for lobbying in such registration year on behalf of any one employer shall pay to the secretary of state a fee of $250 for lobbying for such employer. Any lobbyist who at the time of initial registration anticipated spending less than $1,000, on behalf of any one employer, but at a later date spends in excess of such amount, ~~shall~~, within three days of the date when expenditures exceed such amount, *shall* file an amended registration form which shall be accompanied by an additional fee of $220 for such year. Every person registering or renewing registration as a lobbyist who is an employee of a lobbying group or firm and not an owner or partner of such entity shall pay an annual fee of $300. The secretary of state shall remit all moneys received under this section to the state treasurer, and the state treasurer shall deposit the same in the state treasury to the credit of the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund.

(c) Any person who has registered as a lobbyist pursuant to this act may file, upon termination of such person's lobbying activities, a statement terminating such person's registration as a lobbyist. Such statement shall be on a form prescribed by the commission and shall state the name and address of the lobbyist, the name and address of the person compensating the lobbyist for lobbying and the date of the termination of the lobbyist's lobbying activities.

(d) No person who has failed or refused to pay any civil penalty imposed pursuant to K.S.A. 46-280, and amendments thereto, shall be authorized or permitted to register as a lobbyist in accordance with this section until such penalty has been paid in full.

Sec. 23. K.S.A. 46-280 is hereby amended to read as follows: 46-280.

(a) The commission shall send a notice by registered or certified mail to any person failing to register or to file any report or statement as required by K.S.A. 46-247, 46-265 or 46-268, and amendments thereto, within the time period prescribed therefor. The notice shall state that the required registration, report or statement had not been filed with the office of secretary of state. The notice ~~shall~~ also *shall* state that such person shall have five days from the date of receipt of such notice to comply with the registration and reporting requirements before a civil penalty shall be imposed for each day that the required documents remain unfiled. If such person fails to comply within such period, such person shall pay to the state a civil penalty of $10 per day for each day that such person remains unregistered or that such report or statement remains unfiled, except that no such civil penalty shall exceed $300. The commission may waive, for good cause, payment of any civil penalty imposed hereunder.

(b) Whenever the commission shall determine that any report filed by a lobbyist as required by K.S.A. 46-269, and amendments thereto, is incorrect, incomplete or fails to provide the information required by such section, the commission shall notify such lobbyist by registered or certified mail, specifying the deficiency. Such notice shall state that the lobbyist shall have 30 days from the date of the receipt of such notice to file an amended report correcting such deficiency before a civil penalty will be imposed and the registration of such lobbyist revoked and the badge be required to be returned to the office of the secretary of state. A copy of such notice shall be sent to the office of the secretary of state. If such lobbyist fails to file an amended report within the time specified, such lobbyist shall pay to the commission a civil penalty of $10 per day for each day that such person fails to file such report except that no such civil penalty shall exceed $300. On the 31st day following the receipt of such notice, the registration of any lobbyist failing to file such amended report shall be revoked.

(c) Civil penalties provided for by this section shall be paid to the state treasurer, who shall deposit the same in the state treasury to the credit of the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund.

(d) (1) Except as provided in subsection (2), if a person fails to pay a civil penalty provided for by this section, it shall be the duty of the attorney general or county or district attorney to bring an action to recover such civil penalty in the district court of the county in which such person resides.

(2) If a person required to file under subsection (f) of K.S.A. 46-247, and amendments thereto, fails to pay a civil penalty provided for by this section, it shall be the duty of the attorney general to bring an action to recover such civil penalty in the district court of Shawnee County, Kansas.

Sec. 24. K.S.A. 46-288 is hereby amended to read as follows: 46-288.

The commission, in addition to any other penalty prescribed under K.S.A. 46-215 through 46-286, and amendments thereto, may as[illegible] civil fine, after proper notice and an opportunity to be heard, aga[illegible]y person for a violation pursuant to K.S.A. 46-215 through 46-286, and amendments thereto, in an amount not to exceed $5,000 for the first violation, not to exceed $10,000 for the second violation and not to exceed $15,000 for the third violation and for each subsequent violation. All fines assessed and collected under this section shall be remitted promptly to the state treasurer. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit it to the ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ fee fund.

Sec. 25. K.S.A. 75-4302a is hereby amended to read as follows: 75-4302a. (a) The statement of substantial interests shall include all substantial interests of the individual making the statement.

(b) Statements of substantial interests shall be filed by the following individuals at the times specified:

(1) By a candidate for local office who becomes a candidate on or before the filing deadline for the office, not later than 10 days after the filing deadline, unless before that time the candidacy is officially declined or rejected.

(2) By a candidate for local office who becomes a candidate after the filing deadline for the office, within five days of becoming a candidate, unless within that period the candidacy is officially declined or rejected.

(3) By an individual appointed on or before April 30 of any year to fill a vacancy in an elective office of a governmental subdivision, between April 15 and April 30, inclusive, of that year.

(4) By an individual appointed after April 30 of any year to fill a vacancy in an elective office of a governmental subdivision, within 15 days after the appointment.

(5) By any individual holding an elective office of a governmental subdivision, between April 15 and April 30, inclusive, of any year if, during the preceding calendar year, any change occurred in the individual's substantial interests.

(c) The statement of substantial interests required to be filed pursuant to this section shall be filed in the office where declarations of candidacy for the local governmental office sought or held by the individual are required to be filed.

(d) The ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ shall adopt rules and regulations prescribing the form and the manner for filing the disclosures of substantial interests required by law. The commission shall provide samples of the form of the statement to each county election officer.

(e) If an individual or an individual's spouse holds the position of officer, director, associate, partner or proprietor in an organization ex-

empt from federal taxation of corporations under section 501(c)(3), (4), (6), (7), (8), (10) or (19) of chapter 26 of the United States code, the individual shall comply with all disclosure provisions of subsections (a), (b), (c) and (d) of this section notwithstanding the provisions of K.S.A. 75-4301, and amendments thereto, which provide that these individuals may not have a substantial interest in these corporations.

Sec. 26. K.S.A. 75-4303a is hereby amended to read as follows: 75-4303a. (a) The ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ shall render advisory opinions on the interpretation or application of K.S.A. 75-4301a, 75-4302a, 75-4303a, 75-4304, 75-4305 and 75-4306, and amendments thereto. The opinions shall be rendered after receipt of a written request therefor by a local governmental officer or employee or by any person who has filed as a candidate for local office. Any person who requests and receives an advisory opinion and who acts in accordance with its provisions shall be presumed to have complied with the provisions of the general conflict of interests law. A copy of any advisory opinion rendered by the commission shall be filed by ~~it~~ *the commission* in the office of the secretary of state, and any opinion so filed shall be open to public inspection. All requests for advisory opinions shall be directed to the secretary of state who shall notify the commission thereof.

(b) The ~~Kansas~~ *governmental ethics* commission ~~on governmental standards and conduct~~ shall administer K.S.A. 75-4301a, 75-4302a, 75-4303a, 75-4304, 75-4305 and 75-4306, and amendments thereto, and may adopt rules and regulations therefor.

Sec. 27. K.S.A. 25-4119a, 25-4119e, 25-4147, 25-4150, 25-4156, 25-4169a, 25-4173, 25-4175, 25-4180, 46-246a, 46-253, 46-280, 46-288, 75-4302a and 75-4303a and K.S.A. 1997 Supp. 25-4119f, 25-4143, 25-4145, 25-4146, 25-4148, 25-4152, 25-4157a, 25-4181, 25-4186, 46-237 and 46-265 are hereby repealed.

Sec. 28. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 17, 1998.

1-71