

Approved Feb. 15, 2000
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Emert at 10:05 a.m. on February 11, 2000 in Room 313-S of the Capitol.

All members were present except: Senator Donovan (excused)

Committee staff present:

Gordon Self, Revisor
Mary Blair, Secretary

Conferees appearing before the committee:

Paul Degener
Bill McPheeters
Larry Fischer
Ken McNeill, ABATE
Ron Henneberg, ABATE

Others attending: see attached list

The minutes of the February 10th meeting were approved on a motion by Senator Oleen, seconded by Senator Vratil. Carried.

SB 416—regulating traffic; concerning the use of safety belts

The following conferees testified in opposition to **SB 416**:

Conferee Degener stated that he felt this bill was reflective of the government “overstepping it’s authority in attempting to control every aspect of the lives of a free people.” He further stated that he felt the bill was driven by the government’s threat to withhold federal funds, a practice he considers amounts to “blackmail”. (attachment 1)

Conferee McPheeters discussed the following ramifications of enacting this bill which could “facilitate profiling, increase selective enforcement, and erode individual freedom for a \$150,000 Federal grant.” He stated, “as legislators you must be our primary defense against those who would incrementally, but relentlessly limit our individual freedoms” and he requested Committee not support this legislation. (attachment 2)

Conferee Fischer presented several philosophical quotes regarding the role of government in the lives of citizens. He argued for a people’s right to freedom of choice and discussed the negative consequences of enacting this bill. He offered an option to enacting this legislation, that of government funding for educational notices “extolling the benefits” of seat belt usage. (attachment 3)

Conferee MacNeill, presented a brief history of the current seat belt law, the events leading up to it’s enactment and the results. He stated that every year the “federal bureaucracies and safety Nazi’s add more and more restrictions to save us from ourselves” with laws that seem innocuous at first but become a springboard to further restrictions. He requested the Committee vote no on this bill. (attachment 4)

Conferee Henneberg briefly discussed the right to freedom of choice apart from government intrusion and expressed his opposition to this bill. (attachment 5)

Written testimony opposing this bill was submitted by Shirley Gillette, Moundrige, KS. (attachment 6)

The meeting adjourned at 10:42 a.m. The next scheduled meeting is February 15.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 11, 2008

NAME	REPRESENTING
Jeff Bottenberg	State Farm
Dick Bauman	KDOT
RON HENNEBERG	CITIZEN
Paul Degener	Citizen
KEN MERRILL	ABATE OF KS INC.
Julie Sergeant	KDHE
MARK ENGHOLM	KHP
Jean Barbic	KADC
Chau William	Governor's Office
Lynne Tyson	Senator Tyson
Kelly Tracy	Ko. Public Health Assn.
Wassie Thornburg	KDOT
Bill McPheeters	Citizen
Larry Fischer	Citizen
Paul Davis	KBA
Scott Brunner	DOB
David Pflum	Citizen
John DiAlora	Sen. Pugh
W. H. Hutton	WR

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb. 11, 2000

NAME	REPRESENTING
Bill Henry	Ks Ct Reporters Assn
Tom Whitaker	Ks Motor Carriers Assn
Carolyn Middelberg	Ks St. Ns. Assn
Susan Richard	KCDAA

W. Paul Degener
518 NW 56th St.
Topeka, KS 66617
(785) 246-0215

February 10, 2000

SUBJECT: Opposition to SB No. 416, Seat Belts

Chairperson
Committee for the Judiciary
RM 123-S
Capitol
300 SW 10th St.
Topeka, KS 66612

Mister Chairman and members of the committee.

I am not here to discuss the merits of wearing seat belts or not wearing seat belts. I am of the conviction that the greatest safety feature you can put in an automobile is the nut behind the wheel.

I am in opposition to this bill because I feel that government is overstepping it's authority by attempting to control every aspect of the lives of a free people. I personally feel that the citizens of this country should be able to decide whether we even want seat belts in our cars. Our government, at all levels is becoming too intrusive and oppressive.

I suspect that the introduction of this bill is being driven by the federal money machine. In my opinion, our tax dollars are being taken from us by Washington, who subsequently comes back to the states waving our money under our noses and telling us we can have our money back, but you can only have it under certain mandated conditions. If the introduction of this bill is being driven by money, it is just another case of the federal government blackmailing us with our own money.

This government excess will continue until the people and the state governments bring it to a stop, and we have the tool to do it if we only had the courage to use it. It is called the United States Constitution.

Whether I wear a seat belt or not should be my decision, not a mandate by the government.

I would like to leave you with the following quote:

"He that gives up liberty for the promise of security will get neither."

Benjamin Franklin

Thank you for the opportunity to testify before this committee.

W. Paul Degener
2-11-00
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**TESTIMONY BEFORE THE SENATE
JUDICIARY COMMITTEE
ON SB 416
FEBRUARY 11, 2000**

By Bill McPheeters
Paola, Kansas

Chairman Emert and committee members, thank you for allowing me the privilege of appearing before you to oppose the changes to current safety belt legislation described in SB 416. It has been noted that return of tax money from the Federal government depends upon you yielding to Federal pressure to pass this legislation. In addition, I realize that increasing the department's budgets is one of the primary requirements for those who work for government. Nevertheless, this law should be opposed as it will increase governmental intrusion into our daily lives and erode our personal liberties without sufficient benefit to society.

Under normal circumstances, a law enforcement officer may not be able to determine whether a driver or passenger is wearing a seat belt, therefore sufficient justification always exists for the officer to stop any vehicle. Consequently, any traffic stop consciously or subconsciously engaging in age, sex, economic, or racial profiling by law enforcement officers can be defended on the claim that the officer thought that one of the occupants of the vehicle was not wearing a safety belt, and had to stop them to investigate. If the officer's inspection is unsuccessful and no seatbelt or other infraction is uncovered, there would be an appropriate apology and perhaps a suggestion to influence the citizen's behavior.

Additionally, because an officer can not determine whether or not all of the occupants of all vehicles that he observes are wearing their safety belts, selective enforcement would necessarily be practiced. Those with a high profile vehicles who are slowly and safely driving through the neighborhood would be much more likely to be apprehended than others who were driving on the Interstate at 70 miles per hour in less visible vehicles.

Sufficient legislation regarding safety belts already exists. The benefit of wearing them is well known to all. Common sense tells you that this bill is unlikely to significantly effect the number of people who do not choose to or forget to fasten their seat belt. You are responsible for determining whether or not the benefits of legislation outweigh its cost. In this instance, it does not.

As our legislators, you must be our primary defense against those who would incrementally, but relentlessly limit our individual freedoms. Further, I trust that you will not support legislation which could facilitate profiling, increase selective enforcement, and erode individual freedom for a \$150,000 Federal grant.

*Sn Judd
2-11-00
att 2*

before the Senate Judiciary Committee

February 11, 2000

Subject: S416—Primary Seat Belt Law

Presenter: Larry Fischer, D.V.M., an interested citizen

Philosophy:

The worse the state, the more laws it has.--Tacitus, Roman historian as quoted in *National Geographic*, Aug. 1997, pg. 64.

If life, liberty and property existing under the banner of virtuous liberty are the icons of our people, it follows that a central government "cannot keep the states united in their constitutional and Federal bonds by force. Force may, indeed, hold the parts together, but such union would be the bond between master and slave--a union of exaction on one side and of unqualified obedience on the other." *A Treasury of the World's Great Speeches*, Simon and Schuster, 1965, "John C. Calhoun Champions States' Rights," pg. 355.

... "[W]ords--the counters of wise men, the money of fools--that it is by the dexterous cutting and shuffling of this pack, that is derived one half of the chicanery and much more than one half of the profits of the most lucrative profession in the world--and, sir, by this dexterous exchanging and substituting of words, we shall not be the first nation in the world that has been cajoled.. out of our rights and liberties..."-- *A Treasury of the World's Great Speeches*, Simon and Schuster, 1965, "John Randolph of Roanoke Lays The Ground For Disunion," pg. 334-338.

"All bad precedents spring from good beginnings, but when the administration is in the hands of wicked or ignorant men, these precedents, at first just, are transformed from proper and deserving objects to such as are not so."--*A Treasury of The World's Great Speeches*. Simon and Schuster, 1965, "Julius Caesar Objects to Illegal Execution," pg. 41.

" 'The authority of a Saxon monarch was not more considerable. The Saxons submitted not to the arbitrary rule of princes. They administered an oath to their sovereigns, which bound them to acknowledge the laws, and to defend the rights of the church and people; and if they forgot this obligation, they forfeited their office'. In both countries, a price was affixed on kings, a fine expiated their murder, as well as that of the meanest citizen; and the smallest violation of ancient usage, or the least step towards tyranny, was always dangerous, and often fatal to them." 'Stuart on the Constitution of England,' as quoted in "An Essay on the Trial By Jury" By Lysander Spooner - 1852 ,Chapter III, p. 189-40.

"It (the State) has taken on a vast mass of new duties and responsibilities; it has spread out its powers until they penetrate to every act of the citizen, however secret; it has begun to throw around its operations the high dignity and impeccability of a State religion; its agents become a separate and superior caste, with authority to bind and loose, and their thumbs in every pot. But it still remains, as it was in the beginning, the common enemy of all well-disposed, industrious and decent men."--Henry L. Mencken, 1926, As quoted in *Our Enemy, The State* by Albert Noek

"..Marxists cloak this notion of a controlling society in vague descriptions of society's responsibility to 'regulate' man. In reality, this 'regulation' involves exposing individuals to the proper stimuli to elicit the proper behavior. 'A mature socialist society cannot develop harmoniously unless all spheres of social life are based on principles of oriented development and scientific regulation'."-- Quoting Bueva in *Understanding the Times* by David Noebel

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Introduction

Do seat belts save lives? Most of the time they do. But I have a fundamental question: Is it the business of the State to force people to be safe? In questions of personal choice, is it within the power of another person to force someone to do as the former thinks? I contend that if the answer to the last question is no, then the answer to the former is also, no.

It is my information that the state has no responsibility to protect citizens from criminal acts. Here is the reason:

"There is no constitutional right to be protected by the state against being murdered by criminal or madmen. It is monstrous if the state fails to protect its residents against such predators but it does not violate the due process clause of the Fourteenth Amendment, or, we suppose, any other provision of the Constitution. The Constitution is a charter of negative liberties: it tells the state to let people alone; it does not require the federal government or the state to provide services, even so elementary a service as maintaining law and order."— (Bowers v. DeVito, U.S. Court of Appeals, Seventh Circuit, 686F.2d616 {1982}).

This makes sense. Why? Because if the state failed, it would be negligent. In sum, methods, choices, and actions concerning life and living must be left to decisions made by citizens. Legitimately, the state can only react if those decisions create victims. To do otherwise is called "totalitarian."—(Totalitarian: the political concept that the citizen should be totally subject to an absolute state authority. Source: *Webster's 9th New Collegiate Dictionary*).

Discussion

I would imagine the ultimate reason such issues are brought forth is the "money trail." I do not know if there are federal monies waiting for compliant states but I would not be surprised. If there is, we need to stop following carrots by creating sticks. There are fundamental arguments against such action. I will mention two, which are constantly at odds with the legislative process—liberty and equality.

It is commonly understood that liberty and equality are at separate ends of the political spectrum. As one increases the other declines. The question of seat belts is an issue that will decide which is more important.

It is my observation that most wars are fought over the concept of freedom. Few emotions can elicit such a response. Indeed, America's cry during the Revolutionary War was Patrick Henry's "give me liberty, or give me death." Equality, on the other hand, is the handmaiden of the socialist. Socialism has not worked anywhere in the world that I am aware.

Governor Graves in the January 16th edition of *The Topeka Capital Journal* stated, "...I ought to wear a seat belt because I owe it to my daughter to come home safe every night." Very commendable, and by making a personal decision to do right, his family will probably be rewarded. But in the same article the Governor stated this was of such importance that he was willing to compromise his belief that this was not an area of state concern. In short, he felt so strongly about safety he would ask for such a law.

The famous writer Russell Kirk in his work, *The Conservative Mind*, illuminates this form of thinking:

"The legislator or the moralist never really try to obtain the happiness of each individual: they simply endeavor to persuade or compel men to accept their particular view of life. The positivists' [those who use the legislative process to create laws regardless of the agreement with tradition or a fundamental base] aspiration to complete a design for making men happy, and—still more presumptuous—to arrange that each man's happiness shall count for as much as another's, is their crowning absurdity."— Pg. 313.

Kirk continues:

"Humanity is only 'I' writ large, and love for Humanity generally means zeal for MY notions as to what men should be and how they should live'.... Purported affection for the amorphous mass of mankind is in fact usually the inordinate expansion of ego, the sham of a man who is determined to melt everything established in society and to imprint his own seal upon the dripping red wax of a new world."—quoting Stephens in *Liberty, Equality, Fraternity*, Pg. 314

These are humbling concepts to hear, but, in the light of these words, S416 is blatantly against the freedom to choose. If the same mentality is applied to many recreational activities, the anti-liberty aspects become visible. For instance, if the state is to determine all actions, golfers should be required to wear

helmets because of the possibility of a ball hitting them in the head; mountain climbers should not attempt the steeper ascents because they exceed some arbitrary gradient and might fall; sky diving would, of course, be eliminated because chutes might not open; bicyclists should have to stop riding on streets because they are slow moving and in harms way; bunji jumping would be an absurdity. The list could go on and on. Gradual usurpation of liberty is always a danger where laws are concerned—the old camel nose under the tent scenario.

The brutal truth is that life is dangerous. As adults we accept those dangers and protect ourselves and our families. We measure our actions based upon our perception and measurement of those threats. To mandate otherwise is to tell the people they know not how to make decisions, and the legislative process becomes paternalistic and totalitarian. This was not the design.

Besides the anti-liberty concepts contained in this bill, there is the possibility of traffic stops for mundane reasons. If S416 becomes law, will not every traffic officer be obligated to stop all violators? Or will it become a matter of the officer's judgement. If the latter, again the decision is being misplaced and is arbitrary.

Certainly the enforcement of such a law could be a revenue generator for government. However, most would agree that is not a legitimate function of government.

Some may argue the law could be used as probable cause to stop those who appear to be of nefarious character. This is true, but who is to determine who is nefarious and upon what criteria. The end does not justify the means.

Conclusion

Solutions? If seat belt usage is of such importance, could the Kansas legislature fund public service advertisements extolling the benefits of seat belts? Is not education superior to legislation. This is a non-coercive viable option which has the potential to create the best form of society based on “self” government.

As citizens themselves, legislators must always reflect on unintended consequences of their actions; they must constantly remind themselves that every law reduces liberty; and they must measure their “affection for the proliferating variety and mystery of human existence, as opposed to the narrowing uniformity, egalitarianism, and utilitarian aims—(Kirk)” of certain types of laws. The Creator Himself left us with free moral choice as to how we shall live. Shall the legislature do more? I urge you to not bring this bill out of committee.

Respectfully submitted,



Larry Fischer, D.V.M.
2101 SW 10th Street
Topeka, Kansas 66604
785-235-9123



TESTIMONY IN OPPOSITION TO SB 416

MR CHAIRMAN, MEMBER OF THE COMMITTEE

My name is Ken McNeill, I am a lobbyist for ABATE of Kansas. I am here to testify against SB 416. You already have written testimony of why I personally am opposed to seat belts being a primary offense. I am here today to represent the members of ABATE of Kansas and our position on this issue.

In 1987 give or take a year the Kansas legislature passed a bill to make seat belts mandatory but a secondary offense. They did this not because they wished to but for the same reason that motorcycle helmet laws were so popular in the early 90's. It was because of coercion and black mail by the Federal Government. Kansas stood to lose around 10 million dollars a year in Federal Health and Highway funds.

This bill was killed over and over by both Houses of the Legislature right up till the end of the session when they surrendered to intense lobbying by a number of Federal agencies including NHTSA and the Federal Highway Administration. The same people who were here asking you to make it a primary offense.

It passed originally because the Feds claimed as usual that this was all they wanted and would want, it wasn't. The insurance companies made their usual claims that insurance rates would go down, they didn't. The safety groups made the claims about how many lives would be saved and at least they were more right this time than usual. The decrease in fatalities and injuries was impressive but not close to the numbers they predicted.

All of them claimed that people just needed a little incentive to buckle up and it was effective, the number of people who use seat belts has come close to doubling but this happened mostly because of the education and awareness of the benefits, not from the threat of punishment.

They now require cars to have airbags. My Mother is 73 years old, 5 Foot tall and weights maybe 85 lbs. She has to sit about 5 inches from the steering wheel to reach the pedals and is scared to death that some time someone is going to hit her car and set off that air bag and break all the bones in her fragile body. While she is qualified to have her airbag disconnected the regulations and expenses make it to difficult for her to do this.

Every year the Federal Bureaucracies and safety Nazi's add more and more restrictions to save us from ourselves. In 1994 I added together all the lives different safety groups said could be saved by this legislature by passing various driving laws and it added up to more people than had died from traffic accidents.

In 1992 while here testifying against a helmet law one of the opponents who was overweight himself told Andrea Ramsey one of the main proponents of the helmet law and also overweight told her and the committee that it would not be long before the government decided to protect her from risk of heart disease by controlling her diet and exercise.

Well, the same week the proponents of SB 416 were here testifying the front page of the Topeka Capitol Journal had an article about the Federal Health Department issuing it's new voluntary standards and recommendations for diet, weight and exercise. All of the legislation I have testified against here at the capital over the years all started this same way. When people did not jump to do whatever it was they wanted the next step was to pass legislation threatening to withhold the states money for one program or another if the states didn't make it a law.

Colorado is now discussing introduction of legislation to do just this now. There are groups in Washington lobbying the Feds to sue fast food companies to recoup funds lost because of heart disease. It is time for the states to draw the line and hold it.

For all of our sakes vote no on SB 416 and let us live our own lives. Thank you for your time.
I will stand for questions.

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Ron Henneberg
106 Jeanette
Belvue, Ks 66407

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Mr. Chairman, Members of the Committee

Some people would say that this is not a matter of personal freedom. I would suggest that it is. At what point does my liberty become the duty of the nation?

I spent two years sailing around the Pacific Ocean defending the liberty of a foreign country. I believed then, and I still believe, that I was fighting for freedom. My father sailed that same ocean 25 years before me defending that same freedom. I have friends that defended freedom in Kuwait, Kosovo, and many other unnamed points of the globe.

Fortunately, within our own borders, we defend our freedom with words, and with votes. I stand before you today armed only with my words, asking you to use your vote to defend the freedom so many have defended with bombs and guns.

In a government defined by it's constitution as "of the people, by the people, for the people", it makes little sense to take choice away from the people to please only that government.

I thank you for your time, and I stand for questions.

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Shirley Gillette

Mr. Chairman, members of the Committee.

I am Shirley Gillette. I live in Moundrige, KS. I am a veteran of the United states Air Force and am 42 years old.

I wish to testify against SB416. I was in the Air Force from 1974 till 1978 and was a Flight Line Crew Chief for KC-135's. On my say-so these planes and their flight crews flew or stayed grounded. Their lives depended on my judgement as to whether it was safe for them to fly or not.

I had 99 straight flights without problems till an electronic glitch caused a flight to return to base for repairs and even on that flight no one was endangered.

Less than 100 years ago I was not deemed responsible enough to own or run a business or own property without the supervision of a man.

I was not allowed to vote or hold office and now that I can serve our armed forces, vote, run for president, serve in the legislature, drive a car, ride a motorcycle and pay my share of taxes to support the government, that same government is going to tell me I am not intelligent enough or responsible enough to decide for myself if I should wear a seat belt?

I respectfully ask the Legislature to stay within it's constitutional duties of protecting me against attack by other people and a Federal Government intent on control and regulation of my personal life.

I ask you to vote no on SB 416 and to use your influence to persuade others to vote against this intrusive legislation.

Thank you for your time.

Shirley Gillette
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