

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE.

The meeting was called to order by Chairperson Representative Don Myers at 3:30 p.m. on March 10, 2003 in Room 521-S of the Capitol.

All members were present.

Committee staff present: Ken Wilke, Revisor  
Dennis Hodgins, Research  
Kathie Sparks, Research  
Shirley Weideman, Secretary

Conferees appearing before the committee: Brad Bryant, Deputy Assistant Secretary of State

Others attending: See attached list.

Chairman Myers opened the hearing on **SB 95 - Elections; names of political parties.**

Chairman Myers asked Revisor of Statutes Ken Wilke to explain **SB 95**. He said that the first part of the bill deals with the names of political parties. The Secretary of State will have the right to determine if a name is too lengthy or if the name is too confusing to the voters. Ken also explained that the bill's second part would repeal K.S.A. 25-116, 25-117, and 25-304 as well as K.S.A. 2002 Supp. 25-301a. He said that K.S.A. 25-116 bars political parties such as the Communist party or any other organization which directly or indirectly advocates the overthrow of the government (national or state) by force or violence, and also prohibits such a party or organization from placing names of it's candidates on the ballot in any election in the state. Ken indicated that K.S.A. 25-117 requires that the officers of a newly organized political party must file an affidavit in the state assuring that it is not affiliated with the Communist party or any other government or organization that advocates, teaches, justifies, aides or abets the overthrow by force or violence or by any unlawful means, of the government of the United States or this state.

Brad Bryant, Deputy Assistant Secretary of State, appeared before the committee as a proponent of **SB 95**. He said the first part of the bill removes unnecessary restrictions on the number of words in the names of the parties. Mr. Bryant indicated that the Secretary of State could make a determination whether the name of the party is too lengthy or similar to that of an existing party. As the law states now, the name of the party can only have 2 words and one of those words is "party". Mr. Bryant told the committee that the second part of the bill repeals the unconstitutional laws banning seditious political parties. He said that the U.S. Supreme Court ruled in a 1974 case, *Communist Party of Indiana vs. Whitcomb*, that states may not require parties to file affidavits affirming that they do not advocate overthrow of the local, state or national government. (Attachment 1) Mr. Bryant answered questions the committee asked about whether groups or organizations that have a history of violence could be required to sign an affidavit, if the A.C.L.U. would pursue a case against the state if this bill passed, and how many signatures are needed on a petition in order to form a new party.

Chairman Myers closed the hearing on **SB 95**.

Chair Myers opened the hearing on **SB 102 - Elections; counting of ballots.**

The Deputy Assistant Secretary of State, Brad Bryant, appeared before the committee as a proponent of **SB 102**. He said that this bill has two concepts. The first is to close a loophole in existing law that could allow a voter to cast two ballots—one before the election and one on election day, and have them both count. If a voter requests an advance ballot by mail, receives it and then goes to the election office and claims that it was lost, requests another advanced ballot and votes twice, one of those is voided. If, the voter instead takes the second advanced ballot to the polls on election day and surrenders it there, his vote at the polls is counted and well as the vote on the first advanced ballot that he received. Mr. Bryant's suggestion to close this loophole is to have both the replaced advanced ballot and the vote at the polling place upon surrender of the advanced ballot, be provisional ballots. In the final tally only one of the votes would be counted. The second concept of the bill is to require the counting of partial provisional ballots if a voter casts a ballot in the wrong precinct, as long as it is in the same county. He said that this bill would require the canvassers to count those races on the provisional ballot that are common to both precincts in

CONTINUATION SHEET

MINUTES OF THE HOUSE ETHICS AND ELECTIONS COMMITTEE at on March 10, 2003 in Room 521-S of the Capitol.

question—the precinct where the voter resides and the precinct where the provisional ballot was cast in error. Mr. Bryant indicated that this would provide consistency of ballot counting procedures among the counties in Kansas. Also, he brought the committee's attention to the amendments added by the Senate: 1) on page 3, lines 7 & 8, replacing "at" with "*intended for*" and 2) on page 2, line 21, striking out "regular" and replacing with "*provisional*" ballot. (Attachment 2)

Mr. Bryant recommends an **amendment to SB 102** in Section 2( c ) on page 2, striking out on lines 22-24: "if the voter first returns the advance voting ballot to a judge or clerk at the precinct polling place. The judge or clerk shall void such advance voting ballot". Section 2 ( c ) would read "*A voter who has received an advance voting ballot may vote a provisional ballot on election day at the precinct polling place where the voter resides. If the voter returns the advance voting ballot to a judge or clerk at the precinct polling place, the judge or clerk shall void such advance voting ballot. Any such provisional ballot, shall be counted only if the county board of canvassers determines that the provisional ballot was properly cast and the voter has not otherwise voted at such election.*" (Attachment 3)

Chair Myers closed the hearing on **SB 102**.

Chairman Myers said the committee will work **SB 102**.

Representative Yonally moved that SB 102 be amended in Section 2 ( c ) to "A voter who has received an advance voting ballot may vote a provisional ballot on election day at the precinct polling place where the voter resides. If the voter returns the advance voting ballot to a judge or clerk at the precinct polling place, the judge or clerk shall void such advance voting ballot. Any such provisional ballot shall be counted only if the county board of canvassers determines that the provisional ballot was properly cast and the voter has not otherwise voted at such election." Representative Sharp seconded the motion and the motion passed.

Representative Sawyer moved that SB 102 as amended be favorably moved from committee. The motion was seconded by Representative Miller. Motion passed.

The meeting was adjourned at 4:40 p.m. The next scheduled meeting is March 12 at 3:30 p.m.



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Secretary of State



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## STATE OF KANSAS

### House Committee on Ethics and Elections

#### Testimony on SB 95

Brad Bryant, Deputy Assistant Secretary of State  
Elections and Legislative Matters

March 10, 2003

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 95. This bill was proposed by the Secretary of State as a bill dealing with political parties. The bill has two main provisions: (1) it removes unnecessary restrictions on the number of words in the names of parties, and (2) it repeals unconstitutional laws banning seditious political parties.

1. Sections 1 and 2 of the bill deal with the removal of the two-word limit on the names of political parties. Section 1 amends K.S.A. 25-302a to allow the Secretary of State, as the officer with whom party recognition petitions are filed, to make a determination that the name of the party proposed by the petitioners is not unreasonably lengthy or similar to that of an existing recognized party.

Section 2 amends K.S.A. 25-304 to delete language that limits parties' names to two words. This arises from a 2002 court case, *Natural Law Party of Kansas and Nancy Brune vs. Thornburgh*, filed by the Natural Law Party and the American Civil Liberties Union against the Secretary of State. Secretary of State Thornburgh entered into a consent agreement that requires him to propose legislation to make the necessary amendments to the law. The court also issued a temporary injunction prohibiting the Secretary of State from enforcing the existing law.

Our research indicates two reasons for the existing statutory two-word limit on party names: (1) it preserves space on the ballot, and (2) it prevents fusion of parties, such as Democratic-Republican, that might confuse voters.

The Natural Law Party has sought but failed to receive official recognition in Kansas in the past, and party officials have signaled their intention to petition again as the Natural Law Party pending passage of this legislation.

2. Section 3 of the bill contains repealers for K.S.A. 25-116 and 25-117. These statutes (1) ban parties that advocate treasonous activity or overthrow of the government of the United States or Kansas, and (2) require newly organized parties to file a sworn affidavit that they do not engage in these activities. The U.S. Supreme Court ruled similar statutes unconstitutional in a 1974 case, *Communist Party of Indiana vs. Whitcomb*. The Court ruled in *Whitcomb* that states may not require parties to file affidavits that they do not advocate overthrow of the local, state or national government.

We have attached a copy of K.S.A. 25-116 and 25-117 for your information.

We recommend the committee report Senate Bill 95 favorably for passage to repeal unconstitutional laws and to avoid further litigation.

Thank you for your consideration.



**Research and Practice Aids:**

Judges ← 3.

C.J.S. Judges §§ 12 to 14.

**CASE ANNOTATIONS**

1. L. 1935, ch. 147, did not create vacancy in supreme court. Glenn v. Ryan, 144 K. 363, 364, 58 P.2d 1077.

**25-112.**

**History:** L. 1915, ch. 207, § 3; R.S. 1923, 25-112; Repealed, L. 1968, ch. 406, § 145; April 30.

**25-113. Votes for persons who are justices of the supreme court or judges of district courts.** (a) All ballots or votes cast at any election for any person holding the office of judge of the district court, or of justice of the supreme court, except as hereinafter provided, shall be deemed and held to be void, and shall not be counted by the judges and clerks at any election, nor by any canvassing board, nor shall any record of the same be made by any canvassing board, nor any certificate of election issued thereon.

(b) Ballots or votes may be cast for persons holding the office of judge of the district court for reelection to such office, or on the question of retention of any such judge in office, or for election to the office of senator or representative in the United States congress.

(c) Ballots or votes may be cast for justices of the supreme court on the question of retention of any such justice in office as provided by article 3, section 5 of the constitution of Kansas.

**History:** L. 1883, ch. 108, § 1; L. 1909, ch. 137, § 1; R.S. 1923, 25-113; L. 1968, ch. 406, § 63; L. 1974, ch. 137, § 16; L. 1977, ch. 130, § 2; July 1.

**Attorney General's Opinions:**

Certain limitations on compensation of justices and judges; prohibition on holding other offices. 92-85.

**25-114.**

**History:** L. 1883, ch. 108, § 2; R.S. 1923, 25-114; Repealed, L. 1974, ch. 157, § 27; July 1.

**25-115.**

**History:** R.S. 1923, 25-115; Repealed, L. 1977, ch. 131, § 1; July 1.

**25-116. Certain political parties barred.**

No political party

(a) which is directly or indirectly affiliated by any means whatsoever with the Communist party of the United States, the Communist international, or any other foreign agency, political party, organization or government; or

(b) which either directly or indirectly advocates, teaches, justifies, aids or abets the overthrow by force or violence, or by any unlawful means, of the government of the United States or this state; or

(c) which directly or indirectly carries on, advocates, teaches, justifies, aids or abets a program of sabotage, force and violence, sedition or treason against the government of the United States or this state, shall be recognized, or qualified to participate, or permitted to have the names of its candidates printed on the ballot, in any election in this state.

**History:** L. 1941, ch. 231, § 1; June 30.

**Research and Practice Aids:**

Elections ← 121(1).

C.J.S. Elections § 83 et seq.

**25-117. Same; affidavit of newly organized party; filing.** No newly organized political party shall be recognized or qualified to participate or permitted to have the names of its candidates printed on the ballot in any election in this state until it has filed an affidavit, by the officers of the party in the state, under oath that

(a) it is not directly or indirectly affiliated by any means whatsoever with the Communist party of the United States, the Communist international, or any other foreign agency, political party, organization or government; or

(b) that it does not either directly or indirectly advocate, teach, justify, aid or abet the overthrow by force or violence, or by any unlawful means, of the government of the United States or this state; or

(c) it does not directly or indirectly carry on, advocate, teach, justify, aid or abet a program of sabotage, force and violence, sedition or treason against the government of the United States or this state.

The affidavit herein provided for shall be filed with the secretary of state and he shall make such investigation as he may deem necessary to determine the character and nature of the political doctrines of such proposed new party, and if he finds that such proposed new party advocates doctrines or has affiliations which are in violation of the provisions of this act, he shall not permit such party to participate in the election.

**History:** L. 1941, ch. 231, § 2; June 30.

**Cross References to Related Sections:**

Formation of new political parties, see 25-302a.

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STATE OF KANSAS  
House Committee on Ethics and Elections

Testimony on SB 102

Brad Bryant, Deputy Assistant Secretary of State  
Elections and Legislative Matters

March 10, 2003

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 102. This bill was proposed by the Secretary of State as a ballot bill. It contains two concepts.

1. Sections 1 and 2 close a loophole in existing law that could allow a voter to cast two ballots, one before the election and one on election day, and have them both count. We have received no reports of this happening, but it is a possibility.

A person could request an advance ballot by mail, then go to the election office during the advance voting period and tell the election officer the ballot was lost, not received or destroyed. The law in K.S.A. 25-1122f allows the person to vote a replacement advance ballot in the election office. If the mailed ballot is subsequently returned by the voter, the election officer voids it.

Acting under a different provision in the law, K.S.A. 25-2908(c), the voter could then go to the precinct on election day, surrender the mailed advance ballot, and vote a regular ballot. Under current law neither the replacement advance ballot nor the ballot at the polling place is required to be a provisional ballot, so they would be commingled with other ballots and irretrievable. The voter's actions are prosecutable but not preventable under current law.

SB 102 seeks to close this loophole by requiring that any such replacement advance ballots cast in the election office and the ballots cast at the polling place upon surrendering the mailed advance ballot be provisional. Provisional ballots are not counted on election night, so the situation can be researched after the election and only one ballot counted in the final tally.

2. Section 3 of the bill requires the counting of partial provisional ballots if a voter casts a ballot in the wrong precinct as long as it is in the same county. This may occur through poll worker error or voter error, but the result is the same. Because of existing laws and recent court decisions requiring canvassers to interpret voter intent and count ballots whenever a vote is cast in a race in which the voter is entitled to vote, we recommend the amendment to K.S.A. 25-3002

contained in SB 102. This section would require the canvassers to count those races on the provisional ballot that are common to both precincts in question—the precinct where the voter resides and the precinct where the provisional ballot was cast in error.

Adoption of this provision in SB 102 would promote consistency of ballot counting procedures among the counties in Kansas and allow votes to be counted for candidates or issues for which the voter is entitled to vote.

#### **Senate Amendment to Section 3 of SB 102**

The Senate Committee on Elections and Local Government amended Section 3 of SB 102 on page 3, lines 7 and 8 by replacing the word “at” with the words “intended for.” The committee anticipated possible confusion with the original language of the bill in cases where more than one precinct vote at the same polling place. In such cases, a voter entering the polling place is directed to the election board representing the precinct in which the voter is registered to vote. In that situation, the voter is not physically at the precinct; rather, the voter is requesting a ballot that is intended for the precinct where the voter is eligible to vote. The Secretary of State considers this a friendly amendment.

#### **Proposed Amendment to Section 2 of SB 102**

After the original language of SB 102 was drafted, further discussions with county election officers, who will oversee the implementation of the bill’s provisions, have indicated possible confusion resulting from lines 20 – 24 on page 2. Without further amendment, the bill appears to prohibit a voter who does not surrender his/her mailed advance ballot to the precinct poll worker from voting a provisional ballot. That is not the intent of the bill. The intent is that any voter who has already been mailed an advance ballot who decides to vote at the poll on election day to be allowed a provisional ballot, regardless of whether the voter returns the mailed advance ballot or not. Because the ballot is provisional, it is not counted unless it is determined that the voter did not vote a second ballot.

We have submitted draft language for this proposed amendment.

We recommend the committee amend SB 102 as proposed and report the bill favorably for passage. Thank you for your consideration.





## STATE OF KANSAS

### Proposed Amendment to SB 102

We propose an amendment to Section 2 of SB 102 on page 2, lines 20 through 24. This amendment is proposed to clarify the intent of the bill.

#### Current language of SB 102

(c) A voter who has received an advance voting ballot may vote a ~~regular~~ *provisional* ballot on election day at the precinct polling place where the voter resides if the voter first returns the advance voting ballot to a judge or clerk at the precinct polling place. The judge or clerk shall void such advance voting ballot.

#### Proposed amendment to SB 102

(c) A voter who has received an advance voting ballot may vote a ~~regular~~ *provisional* ballot on election day at the precinct polling place where the voter resides. If the voter returns the advance voting ballot to a judge or clerk at the precinct polling place, the judge or clerk shall void such advance voting ballot. Any such provisional ballot shall be counted only if the county board of canvassers determines that the provisional ballot was properly cast and the voter has not otherwise voted at such election. ~~if the voter first returns the advance voting ballot to a judge or clerk at the precinct polling place. The judge or clerk shall void such advance voting ballot.~~