Approved: March 30, 2009
Date

MINUTES OF THE HOUSE ELECTIONS COMMITTEE

The meeting was called to order by Chairman Steve Huebert at 3:30 p.m. on March 16, 2009, in Room 446-N of the Capitol.

All members were present except:
Representative Steve Brunk- excused
Representative Mike Peterson- excused

Committee staff present:
Ken Wilke, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Florence Deeter, Committee Assistant

Conferees appearing before the Committee:
Carol Willliams, Executive Director, Governmental Ethics Commission
Georgia Sandlin, President, Topeka League of Women Voters
Representative Tom Moxley, District 68
Representative Terrie Huntington, District 25
Representative Raj Goyle, District 87
Mike Kautsch, Professor of Law, Director, Media, Law and Policy, School of Law, University of Kansas and Member of the Board, Kansas Sunshine Coalition for Open Government

Others attending:
See attached list.

Hearing On: **SB 117 - Sub for S 117 – Campaign finance; corrupt political advertising; website, e-mail; other internet communication.**

Ken Wilke, Office of the Revisor of Statutes, explained the content of **Sub for S 117**, saying that the bill includes the addition of telephone solicitation advocating the election or defeat of an identified candidate and the inclusion of wording to identify who paid for or sponsored the message. He said the same information must be given when a website, e-mail or other internet communication is used. Mr. Wilke indicated that failure to comply with these procedures could result in a class C misdemeanor. He said a second amendment to the bill requires record-keeping of payments for one year.

Carol Williams, Executive Director, Governmental Ethics Commission, said the Commission holds the position that internet communications and websites advocating for candidates for a state or local office position should be required to use the disclaimer "paid for" or "sponsored by" in all communications. Ms. Williams recommended the committee pass **Substitute for SB 117** favorably (Attachment 1).

Upon request from the Chairman, Ms. Williams will provide the instructional information given to state and local candidates in relation to the term "paid for" and its usage in internet communications.

Georgia Sandlin, President, Topeka League of Women Voters, addressed the committee, stating that the League supports open and representative government; principles espoused in that arena are applicable in political campaigning as well. Ms. Sandlin said the proposed amendment in **Sub for SB 117** will help to strengthen the present campaign finance act and recommends it be passed favorably (Attachment 2).

Written testimony in support of the bill was distributed by:
Doug Anstaett, Executive Director, Kansas Press Association(Attachment 3).
Kent Cornish, President/Executive Director, Kansas Association of Broadcasters (Attachment 4).
Ciara Torres-Spellislcy, Brennan Center for Justice (Attachment 5).

The hearing on **Sub for S 117** was closed.

Discussion On: Campaign Finance Issues

Minutes of the House Elections Committee at 3:30 p.m. on March 16, 2009, in Room 446-N of the Capitol.

Ken Wilke discussed with committee members the pertinent facets in the proposed balloon amendment to **Sub for S 117** (Attachment 6). He said the term "electioneering communications" has been added to include broadcast by any means to 500 or more persons; for clarification, the balloon explains clearly what is not included in "electioneering communications." Mr. Wilke noted that New Section Two identifies persons who spend or contract $500 or more per year for any electioneering communication; those persons are required to submit a campaign finance report to the Governmental Ethics Commission.

Representative Terrie Huntington, District 25, addressed the committee with concerns about mailings advocating for or against candidates described as Third Party Advocacy (Attachment 7). She indicated that a number of groups and persons associated with Third Party Advocacy are mailing issue advertisements, rather than advocating for candidates. Representative Huntington said the proposed amendment would modify the law by providing information to the public as to where campaign monies originate and where those dollars are spent. She provided a list of frequently asked questions on page three of her testimony and recommended the committee consider the amendment favorable for passage.

Representative Tom Moxley, District 68, spoke to the committee emphasizing the need for transparency among those persons and groups operating as Third Party Advocacy (Attachment 8). He said the purpose of this amendment is to provide the voting public with the knowledge of who the donors are. Representative Moxley urged members to include the amendment in the bill.

Representative Raj Goyle, District 87, spoke in support of the balloon amendment to **Sub for S 117**, stating that it will strengthen the election process in Kansas and provide greater transparency to the public (Attachment 9). He indicated this proposal allows third party groups to function as before; the additional requirement would be to submit filing at least four campaign reports every two years, which is the same as political candidates must do. Representative Goyle recommended adopting the balloon amendment to **Sub for S 117**.

Carol Williams indicated the Governmental Ethics Commission advocates closing a loophole which allows sponsors of "issue ads" to conceal the amounts of money spent on election campaigns (Attachment 10). The requirement of disclosure regarding receipts and expenses will allow voters to be informed about candidates seeking election.

Mike Kautsch, Professor of Law, Director, Media, Law and Policy Program, University of Kansas School of Law and member of the board, Kansas Sunshine Coalition for Open Government, speaking personally as a proponent of the amendment, said the amendment is in harmony with the Kansas Legislature regarding campaign finance disclosure, openness and accountability (Attachment 11). He quoted a phrase from the Kansas Open Meetings Act, "A representative government is dependent upon an informed electorate." He indicated the proposed amendment outlines reasonable terms for reporting contributions in support of "electioneering communications."

The Chairman opened the floor for additional comments. Representative Charlie Roth, District 71, spoke in support of the amendment and noted many other Representatives in attendance who supported the amendment.

The Chairman requested further information on rules and regulations surrounding the election process of candidates. Ms. Williams will provide additional information to the committee.

The Chairman distributed a document from Mike Tallman which was requested previously. He indicated it will be discussed at the next meeting (Attachment 12).

The Chairman closed the discussion on the topic of Campaign Finance.

The meeting was adjourned at 4:45 p.m. The next meeting is scheduled for March 18, 2009.

HOUSE ELECTIONS COMMITTEE

GUEST LIST

DATE: March 16, 2009

NAME	REPRESENTING
Jude Moler	KGEC
Carol Williams	KGEC
Georgia Sandlin	LWVK
JEFF GLENDENNING	KS CHAMBER
Derrick Bontus	AFP
Miranda Metcalf	Julie Menghini
Charlotte Esau	
Mark Tallman	KASB
Tom Moxley	68th Dist KS House
Barbara Craft	65th Dist. Rep.
[illegible]	83rd Dist
Willie Prescott	59th
Don Hineman	118th Dist.
Mike Kautsch	KS Sunshine Coal. for Open Gov't
Richard Gannon	KPA
Brad Bryant	Sec. of State
[illegible]	17th District
Patricia Kilpatrick	Target
Nathan Eberline	LKM

STATE OF KANSAS

Administration of
Campaign Finance,
Conflict of Interest
& Lobbying Laws

109 West 9th Street, Suite 504
Topeka, Kansas 66612
(785) 296-4219 (phone)
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GOVERNMENTAL ETHICS COMMISSION

www.kansas.gov/ethics

Testimony before House Committee on Elections
in Support of Substitute for Senate Bill 117
by Carol Williams, Executive Director
March 16, 2009

Senate Bill 117 amends K.S.A. 2008 Supp. 25-4156, which is a provision of the Campaign Finance Act. This bill is a recommendation made by the Governmental Ethics Commission in its 2008 Annual Report and Recommendations.

The Commission believes internet communications and websites which expressly advocate the election or defeat of a clearly identified candidate for state or local office should be required to display the "paid for or sponsored by" disclaimer on the communication. Since K.S.A. 25-4156 was enacted before the widespread use of political internet communications, this statute does not address websites and e-mail communications which expressly advocate. The Commission was asked in an advisory opinion request in 2004 whether a website required a "paid for by" disclaimer. In Advisory Opinion 2004-02, the Commission opined "information posted on a website has been brought to the public's attention and therefore, has been published. Consequently, a website requires a 'paid for by' disclaimer if the site expressly advocates the nomination, election, or defeat of a clearly identified candidate for state or local office".

In Advisory Opinion 2007-11, the Commission once again stated the same analysis used for communications written on paper and distributed by hand or through the postal service should be used for internet communications to determine whether they constitute political advertising subject to the disclosure requirements of K.S.A. 2008 Supp. 25-4156. The Commission opined "... an email or internet communication expressly advocating the nomination, election or defeat of a clearly identified candidate for a state or local office may be published political advertising depending on its breadth of distribution. If the email or other Internet communication is distributed so that it is brought to the public's

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attention, it will require a 'paid for' or 'sponsored by' disclosure statement".

On July 24, 2008, K.A.R. 19-20-4 was amended to include Internet communication in the definition of "brochure, flier, or other political fact sheet". This regulation now clarifies which electronic communications are included as political advertising requiring an attribution statement.

Substitute for SB 117 would amend K.S.A. 2008 Supp. 25-4156 by inserting new language to subsection (b)(1)(D). This new language would require a website, an e-mail communication disseminated to more than 25 individuals, or other type of internet communication that expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office to be followed by an attribution statement.

Technical clean-up language can be found on lines 39-40 on page 1 and lines 1-4 on page 2 of the bill. This same language is found in K.S.A. 25-4156a. Since K.S.A. 25-4156a is the same as K.S.A. 25-4156, with the exception of this provision, this technical correction will allow the repeal of K.S.A. 25-4156a which has been confusing to candidates and treasurers.

The Commission takes no position on the language amended to the bill on the floor of the Senate found on page 2 on lines 24-32.

In the interest of an informed electorate, as well as for the benefit of those seeking office, K.S.A. 25-4156 should be amended to clearly state that Internet communications which expressly advocate the election or defeat of a candidate for state or local office include an attribution statement.

This bill passed the Senate on a vote of 40 to 0. The Commission urges you to pass of Substitute for SB 117 out of committee favorably.

League of Women Voters® of Kansas

March 16, 2009

The Honorable Steve Huebert, Chair
House Elections Committee
The Kansas House of Representatives

Chairman Huebert and Members of the Committee:

Thank you for allowing me the opportunity to speak for the League of Women Voters of Kansas in support of the balloon amendment regarding electioneering communication. From its beginnings in 1920 the League has spoken out for an open and representative government, and in 1973 we voted to apply those same principles to political campaigns. We contend that democratic elections work most effectively when candidates are held accountable to maintain clear, accurate, and transparent reports available for public scrutiny.

The provisions in the amendment requiring identification of those persons or entities spending in excess of $500 on any electioneering communication for any candidate or issue will ensure that important information about funding sources and possible agendas reaches voters, thus enabling them to make more informed decisions at the polls. For particular commendation we cite the provision regarding the prompt filing of contribution reports eleven days preceding the election.

League believes full and timely disclosure of all campaign contributions and expenditures is critical to preserving the honesty, integrity, and credibility of democratic elections. We assert such disclosure can help to combat undue influence in the election process. We also stress the importance of one central office (such as the ethics commission, Secretary of State, or county election office) to coordinate and report financial transactions for each candidate, party or other committee.

League of Women Voters urges the committee to support this amendment. It will strengthen the present campaign finance act.

Diane Kuhn, President

Diane Kuhn

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Phone: 785-234-5152
E-mail: lwvk@sbcglobal.net

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Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

March 16, 2009

To: Sen. Steve Huebert, chairman, and members of the House Elections Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: Campaign finance legislation

Mr. Chairman and members of the Committee:

I am Doug Anstaett, executive director of the Kansas Press Association. Thank you for the opportunity to discuss our association's support of the proposed balloon amendment on campaign finance.

As we understand the amendment, the intent of the legislation is to increase transparency in the way we finance various electioneering communications.

Since the public needs to a variety of information to formulate its opinions on the issues, the identity of those who contribute to organizations that seek to influence public policy should be a matter of public record. This legislation would not ban such electioneering; it would require that certain expenditure levels would trigger a reporting mechanism that would allow voters to make informed decisions.

The Kansas Press Association supports legislation to accomplish that end.

Thank you.

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House Elections Committee

March 16, 2009

Written Support of the Proposed Balloon Amendment to Sub. SB 117

The Kansas Association of Broadcasters, an association of nearly 290 radio and television stations, has long been a proponent of open government, open records, and general transparency. We believe the proposed balloon amendment to Substitute for Senate Bill 117 creates more openness in our election process by requiring that third party organizations who sponsor political ads comply with current disclosure requirements.

This is good policy for all Kansas citizens in order for them to make intelligent, informed decisions about the direction of their government and the people they elect.

Kent Cornish
President/Executive Director
Kansas Association of Broadcasters
785-235-1307

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BRENNAN
CENTER
FOR JUSTICE

Testimony of

Ciara Torres-Spelliscy
Counsel, Brennan Center for Justice at NYU School of Law

Kansas House Elections Committee

March 16, 2009

Brennan Center for Justice
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The Brennan Center for Justice thanks the Committee and Chairman Steve Huebert for convening this hearing. The Brennan Center is a nonpartisan think tank and legal advocacy organization that focuses on democracy and justice. Our remarks focus briefly on some of the constitutional issues related to regulation of electioneering communications. For a more detailed analysis, we refer you to our 200-page treatise, *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws,* which you may download at http://www.brennancenter.org/content/resource/writing_reform_2008/. For specific questions, please feel free to contact Ciara Torres-Spelliscy at 212-998-6025 or ciara.torres-spelliscy@nyu.edu.

Background: A History of Abuse

In the 1990s, there was no way to regulate the explosion of election-related communications by individuals and groups that did not coordinate their activities with federal candidate campaigns that did not use certain "magic words," such as "vote for" or "vote against" a candidate. Communications during elections that plainly supported or opposed candidates but avoided certain magic words often were paid for by groups that were generally prohibited from making expenditures to influence federal campaigns, such as corporations and unions. These "sham issue" ads were widely understood to be campaign advertising that exploited a legal fiction to evade disclosure and laws regarding limits on corporate and union spending. To close this loophole, Congress enacted the Bipartisan Campaign Reform Act of 2002 ("BCRA"—often referred to as "McCain-Feingold").

Federal Regulation of Electioneering Communications

BCRA regulates "electioneering communications," which it defines as targeted broadcast advertisements referring to a federal candidate and run in the period immediately before an election. 2 U.S.C. § 441b.

BCRA bans corporations from paying for "electioneering communications" from their corporate treasuries. The Court has since upheld regulation of electioneering communications.[1] In a decision in 2007, the Supreme Court upheld the limits as to a narrower range of communications, limiting the federal corporate treasury ban to those electioneering communications that include express advocacy or its functional equivalent.[2]

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[1] *McConnell v. FEC*, 540 U.S. 93, 229-30 (2003).

[2] *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) ("*WRTL II*"). The Federal Election Commission ("FEC") approved a new rule carving out an exemption from BCRA's restriction on corporate and union electioneering communications, based on the *WRTL II* decision. See 11 C.F.R. § 114.15.

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Paralleling federal law, states may require disclosure of who pays for electioneering communications.[3] This disclosure requirement was upheld in *McConnell* in an 8-to-1 portion of the opinion, in which the Court found that disclosure was justified by "the important state interests that prompted the *Buckley* Court to uphold FECA's disclosure requirements—providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions."[4]

Disclosure of Electioneering Communications in Kansas Is Constitutional

Eight of nine Justices in *McConnell* upheld BCRA's disclosure of electioneering communications. This bill is modeled on BCRA and would require disclosure of electioneering communications in Kansas. Like federal law, this bill defines electioneering as a communication that mentions a candidate and is targeted to his or her electorate directly before a Kansas election. The dollar thresholds are in some cases lower than in the federal system, but this is sensible and appropriate since races in Kansas are smaller and less costly than races for Congress or the Presidency.

The Amendment offered to SB 117 is far more modest in scope than BCRA because it merely requires basic disclosure of who paid for electioneering communications and does not include limits on spending. As the Supreme Court has stated, the State of Kansas clearly has an interest in informing the electorate about "where political campaign money comes from and how it is spent…".[5]

The proposed legislation does not restrict any person or entity from paying for electioneering communication Because it merely concerns disclosure, the Supreme Court's decision in *Wisconsin Right to Life II*, 127 S. Ct. 2652 (2007) ("*WRTL II*"), has no relevance to this bill. *WRTL II* did not consider, let alone invalidate, the application of disclosure requirements to electioneering communications. Instead, as eight Justices of the Supreme Court plainly held in *McConnell*, electioneering communication "disclosure requirements are constitutional because they d[o] not prevent anyone from speaking."[6]

The Court's decision in *WRTL II* does not support an argument that the constitutionality of the disclosure requirements depends on the use of "express advocacy" or its "functional equivalent." Not only was this disclosure requirement for electioneering communications upheld in *McConnell*, and neither challenged nor addressed in *WRTL II*, but also the Supreme Court and lower federal courts have spoken approvingly of disclosure of other kinds of political speech.

For instance, in cases involving ballot measures, the Supreme Court has noted the "prophylactic effect of requiring that the source of communication be disclosed." *First Nat'l Bank of Boston v. Bellotti,* 435 U.S. 765, 792 n.32 (1978) ("Identification of the source of advertising may be required as a means of disclosure, so that people will be able to evaluate the arguments to which

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[3] BCRA requires all individuals and entities spending more than $10,000 on electioneering communications to file reports naming every funder, donor, or shareholder that contributes $1,000 or more "during the period beginning on the first day of the preceding calendar year and ending on the disclosure date." In addition, once the threshold of $10,000 is reached, each expenditure of $200 or more must be disclosed within 24 hours. Contracts to make such expenditures also must be disclosed. 2 U.S.C. § 434(f)(2), (5) (BCRA § 201).

[4] *McConnell*, 540 U.S. at 196. There is an as-applied challenge to BCRA's disclosure requirements pending before the Supreme Court. The case is *Citizens United v. FEC*, 530 F.Supp.2d 274 (D.D.C. 2008); *cert. granted* (U.S. Nov. 14, 2008) (No. 08-205).

[5] *Buckley v. Valeo*, 424 U.S. 1, 66 (1976) (internal quotation omitted).

[6] *McConnell*, 540 U.S. at 201 (internal citations omitted).

they are being subjected."). Even as it has invalidated limits on contributions to or expenditures by groups financing such measures, the Court has recognized the importance of the state's "informational interest." *See Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290, 298 (1981) ("[T]here is no risk that the ... voters will be in doubt as to the identity of those whose money supports or opposes a given ballot measure since contributors must make their identities known.").

Similarly, in the context of lobbying, the Court has permitted mandatory disclosure of "direct communications with members of Congress on pending or proposed federal legislation" and efforts related to "an artificially stimulated letter campaign" to influence legislators. *United States v. Harriss*, 347 U.S. 612 (1954) (considering the Federal Regulation of Lobbying Act and upholding a narrowed application of the Act). The Court held that there was a state interest in allowing legislators to evaluate lobbying pressures by providing at least some "information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose." *Id.* at 625.

This broad First Amendment support for disclosure reinforces the constitutionality of disclosure requirements imposed on those who pay for electioneering communications, even when those communications do not include express advocacy but are more generally treated as "grassroots lobbying" or "issue advocacy." Certainly in the days just before an election, there is a strong public interest in making public who is paying for broadcast advertisements that name a candidate and seek to influence the public on issues relating to the candidate—even if they do not expressly advocate the candidate's election or defeat. The public interest is arguably heightened when the entity paying for the advertisement is otherwise forbidden from funding campaign-related activity (such as corporations).

The proposed bill therefore includes a wider range of disclosure requirements and would inform the electorate of activities by groups seeking to influence the outcome of elections in the state of Kansas. We urge its prompt passage.

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[As Amended by Senate Committee of the Whole]

Session of 2009

Substitute for SENATE BILL No. 117

By Committee on Ethics and Elections

2-12

AN ACT concerning campaign finance; dealing with the crime of corrupt political advertising; amending K.S.A. 2008 Supp. 25-4156 and repealing the existing section; also repealing K.S.A. 2008 Supp. 25-4156a.

dealing with electioneering communications;

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

Section 1. K.S.A. 2008 Supp. 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 political advertising 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 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 sponsoring the same or the name of the individual who is responsible therefor;

(B) broadcasting or causing to be broadcast by any radio or television station any paid matter 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 a statement 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 individual who is responsible therefor; ~~or~~

(C) telephoning or causing to be contacted by any telephonic means including, but not limited to, any device using a voice over internet protocol or wireless telephone, any paid matter which expressly advocates the nomination, election or defeat of a clearly identified candidate for a state or local office, unless such matter is preceded by a statement 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 individual who is responsible therefor; or

~~(C)~~ *(D)* publishing or causing to be published any brochure, flier or other political fact sheet, *website, e-mail or other type of internet communication* 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 a statement which states: "Paid for" or "Sponsored by" 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)~~ *(D)* 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 *or any internet communication disseminated to less than 25 individuals.*

(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.

[(d) (1) Whenever any vendor or other person provides any of the services defined in subsection (b), such vendor or other person shall keep and maintain a record showing the name and address of the person who purchased or requested such services and the amount paid for such services. The records required by this subsection shall be kept for a period of one year after the date upon which payment was received for such services.

[(2) Failure to keep and maintain the records required by this subsection is a class C misdemeanor.]

Insert New Sec. 2 (attached) after line 32.

3 Sec. 2. K.S.A. 2008 Supp. 25-4156 and 25-4156a are hereby repealed.

4 Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

New Sec. 2. (a) Any person who spends or contracts to spend an amount of $500 or more per calendar year for any electioneering communication shall submit a campaign finance report prescribed and provided by the governmental ethics commission for each electioneering communication, which shall include:
(1) The name of the clearly identified candidate mentioned in the electioneering communication.
(2) The name, street address, city, state and zip code of each individual or other entity that contributes more than $50 per year to such person for an electioneering communication. In addition, the report shall list the occupation of any individual who contributed $150 or more.
(3) The name, street address, city, state and zip code of the vendor to whom a payment of more than $50 for such electioneering communication is made or contracted to be made.
(4) The amount spent on or contracted to be spent on such electioneering communication. If the person making the electioneering communication is an individual, such reports shall also include the occupation ~~and employer~~ of such individual. Reports required by this section shall be in addition to any other reports required by law.
(b) (1) (A) For an electioneering communication concerning a candidate for state office, the report required by subsection (a) shall be filed only with the secretary of state.
(B) For an electioneering communication concerning a candidate for local office, the report required by subsection (a) 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.
(2) Except as required by paragraph (3), each report required by subsection (a) shall be filed in time to be received in the offices required in accordance with the times set forth in K.S.A. 25-4148 and amendments thereto.
(3) For any electioneering communication occurring during the 11 days preceding the election, the report required by subsection (a) shall be filed on or before the close of the second business day following the day in which such funds are spent or contracted to be spent for such electioneering communication.
(c) For the purposes of this section:
(1) ''Electioneering communication'' means any communication that reaches ~~300~~ *500* or more persons broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that:
(A) Unambiguously refers to any clearly identified candidate;
(B) is broadcast, printed, mailed, delivered or distributed within 30 days before a primary election or 60 days before a general election;
(C) is broadcast to, printed in a newspaper distributed to, mailed to, delivered by hand to, or otherwise distributed to an audience that includes members of the electorate for such public office.
(2) ''Electioneering communication'' does not include:
(A) Any news articles, editorial endorsements, opinion or commentary writings, or letters to the editor printed in a newspaper, magazine or other periodical not owned or controlled by a candidate or political party;
(B) any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate or political party;
(C) any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families;

(D) any communication that refers to any candidate only as part of the popular name of a bill or statute;
(E) any communication made solely to promote a candidate debate or forum that is made by or on behalf of the person sponsoring such debate or forum; or
(F) any communication made as part of a nonpartisan activity designed to encourage individuals to vote or register to vote.
(d) Any federally registered PAC that pays for electioneering communications in Kansas, which has reported all of its contributions and expenditures including all of its federal and nonfederal funds to the Federal Elections Commission in compliance with the Federal Elections Campaign Act (FECA) shall not be subject the disclosures to the State of Kansas under section (a) of this Act, but shall be subject to all other disclosures under this Act.
(e) Severability. If any clause, sentence, subdivision, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.
(f) The provisions of this section shall be part of and supplemental to the campaign finance act.

STATE OF KANSAS

TERRIE W. HUNTINGTON
REPRESENTATIVE, 25TH DISTRICT
6264 GLENFIELD
FAIRWAY, KANSAS 66205
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIR: HIGHER EDUCATION
MEMBER: EDUCATION BUDGET
SELECT COMMITTEE
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ON PENSIONS,
INVESTMENTS &
BENEFITS

March 16, 2009

Testimony in Support of Amending SB 117
Campaign Finance Reform
Representative Terrie Huntington

Federal Campaign Reform Challenges States to Clean Up Election Laws

In 2001 the Reform Institute was founded in response to corrupt fundraising activities in the McCain 2000 presidential campaign. The Advisory Board included notable Congressmen and Senators—Lindsey Graham, David Boren, Bob Kerry and Amo Houghton, as well as the former CEO of Charles Schwab Investments, to name a few.

Congress passed the Bipartisan Campaign Reform Act of 2002, and attention was then drawn to the state level—how could they break down the barriers to democracy and make the political process more open?

Statewide Political Races Grow Increasingly More Contentious

In Kansas, by 2003, it was becoming apparent that many organizations were influencing election outcomes, advocating for or against candidates through political mailings—circumventing the intent of Kansas campaign finance laws by not including the words Vote For, but instead painting a candidate in a negative light by name calling, negative cartoon pictures, etc. These types of mailings, known as Third Party Advocacy, are playing more important roles in the success or failure of candidates, but those who mail this type of flyer aren't required, as you and I, to note who contributes to their organization for the purpose of campaigning for or against us. Kansas law is being skirted by a few well-funded groups.

Efforts in Kansas to Reform Campaign Laws

A bipartisan group of House and Senate members began meeting in 2004 with the Ethics Commission to learn more about campaign reform. There were several measures needed to address reforms:

1. Sponsors of issues ads must file reports 30 days before a primary and 60 days before a general.

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TOPEKA, KANSAS 66612
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House Elections
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2. A state & local campaign must file within 48 hours upon receiving a contribution of $300 or more in the last 11 days of the election.
3. PACs and party committees must include which candidates are benefited.
4. Recorded phone bank campaign messages—robo calls—must identify who paid for the call.
5. PACs must report expenditures during last 11 days for expenditures $300 or more within 48 hours of spending.

All but one of these measures has passed the House and Senate and been signed into law by the Governor. That one item allows groups to not use "Express Advocacy" terminology to advocate for or against a candidate. Instead of stating: Vote for.....; Support the democrat/republican nominee.....;Vote against.....;Mr. Smith is the one; Bob Jones in '98; they are mailing issue ads.

For example, postcards are mailed by *Anti Tax, Anti Nuke Citizens Group* comparing Bob Jones to a pig, inferring he supports earmarks or tax increases. Or, Bob Jones is depicted as "supporting nuclear power, having received campaign contributions from nuclear power companies, and has consented to store spent radioactive rods on his farm." Sending these cards, which may not be factual, may sway an election against Mr. Jones. And the *Citizens Group* does not have to report who contributes to the mailing.

A change in the reporting law will not alter the ability of a group to send negative issue adds advocating for or against a candidate, but it will let the voters know who is contributing to the organization mailing the card so that they, the voters, might make an informed voting decision.

This is not the first attempt to modify campaign law. In Feb.29, 2008, the full House debated the Dillmore amendment. HB 2083 was introduced in the Elections and Gov. Organizations in 2007, but was not brought to the floor.

Transparency in campaigning is imperative. "Disclosure provides critical information about where campaign money comes from and where it goes." (The Reform Institute) One person, perhaps your neighbor who is angry about the fence you constructed between your homes, could give thousands of dollars to an organization who will campaign against you, but you'll never know the source unless we modify Kansas law.

Thank you for your consideration of this amendment to SB 117.

Representative Terrie Huntington
25th District

FREQUENTLY ASKED QUESTIONS ON CAMPAIGN FINANCE -- THIRD PARTY ADVOCACY

1. Do third party groups advocate only against Republicans, or are there groups that advocate against Democrats, also?

Issue ads now impact both Republicans as well as Democrats. Look at the Coal Issue during last year's election, for an example.

2. How does this impact churches and their members when a priest/minister advocates against a candidate?

This would only apply to a priest/minister who broadcasts by television or radio, or puts an ad in a newspaper, or mails or directly hand delivers to a personal residence information that refers to a clearly identified candidate. The priest is exempt from this bill because he is communicating with the membership of his church. See subsection c(2)(C) of campaign laws.

3. What about the National Rifle Association?

If the language for the PAC exemption stays in the amendment, this would exempt their PAC from reporting. If they used other NRA funds to do issue ads, they would be required to report.

4. What are the Freedom of Speech issues?

This does not inhibit free speech in any way. This amendment merely requires the person who speaks to disclose the money raised and spent on an issue ad when the amount is $500 or more.

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TOM MOXLEY
REPRESENTATIVE, 68TH DISTRICT

March 16, 2009
Testimony in reference to the Third Party Advocacy Amendment:

Chairman Heubert, Committee Members and Colleagues,

Are we driving a modern car with Model T rules? My colleagues and I will provide evidence that this is the case. The thesis behind this third party advocacy amendment is that **if the public knows the motive of the donors to these groups, it can better weigh the merits of the issue or campaign**. I call your attention to a nationally recognized grade card for Kansas Election Laws. Please see attached Exhibits A.

Let me begin by stating the obvious: at the very core of democracy lies the need for free and fair elections with an informed electorate. Failure of any of these: Free; Fair; or Informed will necessarily lead to a poor conclusion.

The problem we wish to address today is Third Party Advocacy. This is ripe for abuse because of the lack of transparency of who the donors are and this leaves the electorate unable to judge from what position the arguments are made.

Let me give you an example that happened last year during the Sunflower Coal plant debate. Thousands of dollars were spent in Kansas by a single advocacy group for postcards, etc. This big spending third party advocacy group was asking voters to contact their candidate and tell them "Call Joe Smith and thank him for keeping our air clean." or "Joe Smith stood up to big coal and helped keep Kansas clean". Interestingly, we believe that the main underwriter of this group was a major Natural Gas Producer who clearly would gain tremendous financial advantage if the coal plant were to be turned down. Do our citizens have the right to hear this Natural Gas producers side of the issue. Absolutely! Do our citizens **need to know who that advocate** is and perhaps consider the source of funding as to its biases? Absolutely!

As House members you and I are limited to a maximum $500 donation and from known donors if those donations are over $50. Political Action Committees have the same limitations and again from known donors. Third party advocacy groups have no limits as to the amount raised or dedicated to a campaign or issue promotion. But they can do just about anything to sway an election, or the legislature for that matter, so long as they don't use the specific words "vote for","vote against";"support" and like terms found in KS 25-4143(h).

The statute before you **would not change the message** of the cards or the spending **or limit the advocacy** groups in any way. What it would do is allow the public to see who is financing the campaign allowing for an informed electorate.

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We have reached a point in Kansas where huge sums of money are spent by these advocacy groups because they have so few limitations and virtually no transparency is required.

Given good information, a democracy can work. Transparency is a must. Please pass this amendment and send it to the House floor. You have it in your hands to make one of the most important decisions of your tenure in this institution. Now is the time and this is the place.

Respectfully,

Exhibit A

Grading State Disclosure 2008

Evaluating states' efforts to bring sunlight to political money

A Report by the California Voter Foundation,
with the Center for Governmental Studies
and the UCLA School of Law

A Publication of the Campaign Disclosure Project,
Supported by The Pew Charitable Trusts

www.campaigndisclosure.org

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THE CAMPAIGN DISCLOSURE PROJECT
www.campaigndisclosure.org

About the Campaign Disclosure Project

Project Description

The Campaign Disclosure Project is designed to bring greater transparency and accountability to the role of money in state and federal campaigns. For thirty years the states have experimented with campaign disclosure, creating fifty sets of laws, regulations and procedures to monitor and control the transfer of political money. Disclosure under these systems is more timely than ever; but campaign data are rarely provided in formats that allow for an understanding of broad national trends, or for following the transfer of political money among states and between state and federal campaigns. If voters are to take advantage of Madison's "popular information," timeliness must be combined with uniformity.

The Campaign Disclosure Project brings together the UCLA School of Law, the Center for Governmental Studies and the California Voter Foundation in a collaborative effort to achieve three goals:

1. Classify and evaluate the campaign disclosure laws of the 50 states.
2. Design and promote a set of uniform standards and model laws for state reporting and disclosure practices, based upon the findings of the evaluation above.
3. Encourage the adoption of these standards by grading the states according to their disclosure laws and practices and by promoting the findings through publications, conferences and websites.

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given election and navigation options have improved. The site includes menu options on the left side of each page and icons at the top of the homepage that link to the main areas of the site. The disclosure site provides users with a clear explanation of which records are available in the database, instructions for searching data, and a "Quick Statistics" function for comparing the totals raised and spent between candidates going back to 1993.

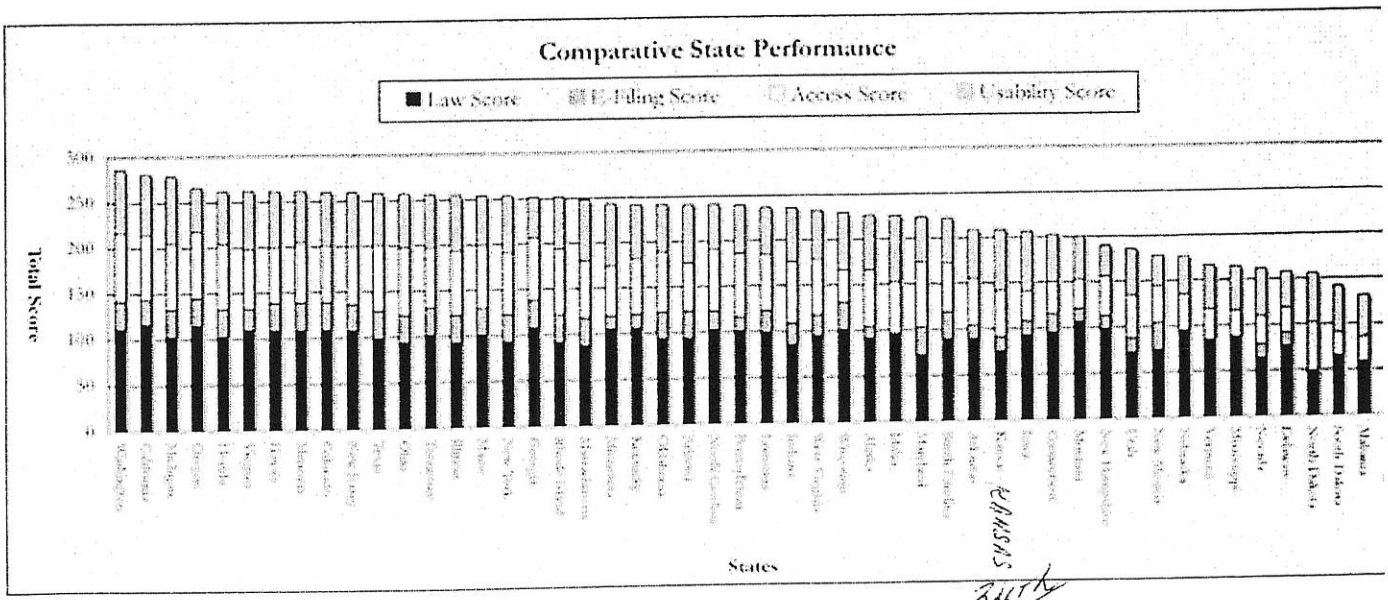
Grading State Disclosure
2008
Evaluating states' efforts to bring sunlight to political money

Five-Year Grade Comparison Chart

Year	State	Total	Law	E-File	Access	Usability
2008	Kansas	D+	D-	F	D+	B+
2007	Kansas	D	D-	F	D+	B
2005	Kansas	F	D	F	F	C
2004	Kansas	F	D	F	F	D
2003	Kansas	F	D-	F	D-	F

Grading State Disclosure
2008
Evaluating states' efforts to bring sunlight to political money

Comparative State Performance Bar Chart



34th

Back to U.S. Map Showing State Grades
Next to Campaign Disclosure Stat

Grading State Disclosure 2008

Evaluating states' efforts to bring sunlight to political money

Kansas

Grade	Rank
D+	34

Subcategories	Grade	Rank
Campaign Disclosure Law	D-	42
Electronic Filing Program	F	31
Disclosure Content Accessibility	D+	34
Online Contextual & Technical Usability	B+	5

Grading Process ▪ Subcategory Weighting ▪ Methodology ▪ Glossary

The State of Disclosure in Kansas

Kansas earned a B+ in the Online Contextual and Technical Usability category and shares with Iowa the distinction of being the most improved state in this area since 2003. Along with improvements in the usability category, Kansas raised its overall grade from a D to a D+ with the creation of a voluntary electronic filing program in 2008.

Kansas's campaign finance law earned a D- and ranked 42nd in 2008, but the passage of Senate Bill 196 in 2008 created a stronger law than the current grade reflects (2008 law grades are calculated based on laws passed as of December 31, 2007). The new law requires the disclosure of late contributions and independent expenditures of $300 or more and increases the level of detail disclosed about campaign contributors of $150 or more to include the industry in which they are employed (occupation disclosure is currently required, though employer data is not). Enforcement provisions of the law remain weak as reviews or audits of disclosure reports are not required. In 2007, legislation was passed that allowed the Secretary of State's office to develop a voluntary electronic filing program. The new system came online in 2008, and moved Kansas up ten places in the electronic filing rankings.

Kansas earned a D+ again in the Disclosure Content Accessibility category in 2008, though the state dropped six places in the rankings as other states improved. The public has online access to scanned copies of paper reports, as well as itemized contributions that have been data-entered by Governmental Ethics Commission staff. Electronic reports are filed with the Secretary of State's office and are now available on both that agency's site in an HTML format, and as PDF files on the Government Ethics Commission's site, though this development came after the close of the 2008 assessment period. The disclosure site features a contributions database that is searchable by donor name, transaction date, and amount but search results cannot be sorted online or downloaded from the site. The lack of an online, searchable database of campaign expenditures remains the primary weakness of the site.

The Governmental Ethics Commission's web site was redesigned since the 2007 assessment, which helped the state improve from a B to a B+ in the usability category in 2008. Usability testers reported the new site was easier to understand and rated their overall experiences on the site more favorably than testers did in 2007. The new site features a better organized page for accessing reports for a

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RAJ GOYLE
87TH DISTRICT

TESTIMONY IN SUPPORT OF BALLOON AMENDMENT TO SB 117
HOUSE ELECTIONS COMMITTEE
MARCH 16, 2009

Dear Chairman Huebert, Vice Chair Schwab, Ranking Member Sawyer, and Committee Members:

Thank you for allowing me to testify in support of the balloon amendment to SB 117, a measure that will significantly strengthen the election process in Kansas, add greater transparency to our campaigns, and empower voters to make more informed choices.

As you know, current law requires all political candidates and political entities such as PACs to file at least four campaign finance reports every two-year campaign cycle. This minimal reporting requirement makes perfect sense—the public deserves to know who funds our campaigns and how we spend our money. Yet, a glaring exception exists in current law. Third party groups that are actively involved in our campaigns face no such requirement to disclose their activity. This creates a veil of secrecy that hinders the openness and transparency the citizens of Kansas deserve.

This proposed balloon amendment (similar to the Goyle Amendment on HB 2193 adopted by the full House on February 18, 2009) is simple, easy to implement and enjoys significant bipartisan support. It merely requires that any person or political organization involved in a political campaign to follow the same rules of campaign finance reporting that we follow. The definition of involvement in a political campaign is well-tested by other states and in the courts.

Two important points must be emphasized in response to the arguments often advanced by the opponents of this proposal.

First, this bill does nothing to limit political debate or speech. Opponents of this measure misleadingly argue that disclosure requirements equate to limitations on political activity. This is simply not true. Under this proposal, third party groups can operate in *exactly* the same manner as they have before and engage in as much political activity as they would like. They simply would have to file at least four campaign reports every two year—just like we candidates do.

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Campaign finance reports allow citizens to know the source of information and make informed decisions. Additionally, disclosure helps reduce negative and potentially unwarranted attacks because the person or group must take greater responsibility for campaign activity.

Second, disclosure requirements are constitutional. The Supreme Court, in *McConnell v. FEC,* 540 U.S. 93, 201 (2003), ruled "disclosure requirements are constitutional because they do not prevent anyone from speaking." This aspect of ruling was hardly controversial and was decided by a resounding 8-1 margin.

Opponents of this measure argue that the Supreme Court's recent ruling in *FEC v. Wisconsin Right to Life* (WRTL II)(2007) supports their argument. This is false. The Court did *not* make any decisions regarding disclosure requirements. Rather, the Court discussed the importance of protecting political speech in the context of the Bipartisan Campaign Reform Act of 2002 (commonly known as McCain-Feingold). *WRTL II* does mean that courts will be suspicious of state regulation of the right of third party groups to advertise during campaigns. That, however, has nothing to do with the proposal before you. This measure simply says that third party groups who engage in political activity must disclose their donors and their expenditures. In fact a long line of Court cases dating back to the 1970s has upheld this principle.

Lastly, it is important to note that **17 states have already implemented laws similar to this proposal**, including our neighboring state of Colorado.

I urge the Legislature to move our campaign finance laws toward openness, transparency, and voter empowerment by adopting this balloon amendment to SB 117.

Rep. Raj Goyle

STATE OF KANSAS

Administration of
Campaign Finance,
Conflict of Interest
& Lobbying Laws

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GOVERNMENTAL ETHICS COMMISSION

www.kansas.gov/ethics

Written Testimony before House Elections Concerning Campaign Issue Ads
by Carol Williams, Executive Director

. The mission of the Kansas Governmental Ethics Commission is to provide the public with timely and accurate campaign finance information for knowledgeable participation in government and the electoral process. In fulfilling its mission, the Commission believes the state has a compelling interest in providing voters information about electioneering communications or issue ads so voters can be fully informed as to the source of support or opposition to candidates for state or local office and to identify those persons attempting to influence the outcome of elections in Kansas. The Commission believes the citizens of Kansas have a right to know the source of funding and the amount expended by any individual, committee, corporation, organization or association that expends money on any issue ad (electioneering communication) that clearly identifies a candidate.

The Commission would like to see a loophole closed which currently allows sponsors of so-called "issue ads", appearing right before an election, to spend thousands of dollars attempting to influence voters while not disclosing who is paying for the ads or how much the sponsors are spending. The Commission recommended in its 2005 and 2006 Annual Report and Recommendations entities involved in "issue ads" or "electioneering communications" be required to disclose their receipts and expenditures.

An issue ad does not directly urge a voter to vote for or against a specific candidate. The ad usually discusses an issue and provides a candidate's support or opposition on that issue. The United States Supreme Court, in the case of *McConnel v. FEC,* 124 S.Ct.619 (2003), upheld the constitutionality of disclosure of issue ads made right before an election. There are currently15 states which require reporting of electioneering communications.

Proposed legislation would require any individual, committee, corporation, organization, association, or partnership that spends $500 or more per calendar year for any electioneering communication (issue ad) to file a report with the Secretary of State on the same date candidates, party committees, and political committees are required to file receipts and expenditures reports. Such report would include the name of the clearly identified candidate mentioned in the

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electioneering communication, the name and address of each individual or other entity that contributes above a set amount in a calendar year to such person for the communication, and the name and address of the vendor who is paid or contracted to be paid for such communication. Any electioneering communication that occurs during the eleven days preceding the primary or general election will be required to be reported within 24 hours of making or contracting to make an expenditure for such communication.

Electioneering communication would be defined in the Campaign Finance Act to mean any communication broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that unambiguously refers to any clearly identified candidate within 30 days before a primary election or 60 days before a general election to an audience that includes members of the electorate for such public office. An electioneering communication would not include any news article, editorial, or letter to the editor printed in a newspaper, magazine or other periodical or any editorial endorsement or opinion aired by a broadcast facility so long as the newspaper, broadcast facility, etc., is not owned or controlled by a candidate or political party. In addition, an electioneering communication would not include any communication by a person made in the regular course and scope of their business, by a membership organization solely to its members and their families, any communication made to promote a candidate debate or forum, any communication made as part of a nonpartisan activity to encourage individuals to vote or register to vote, or any communication that refers to any candidate only as part of the popular name of a bill or statute.

Requiring issue ad disclosures will help voters "Follow the money" in an ever-evolving campaign finance arena.

Elections Committee Hearing 3:30 p.m. March 16, 2009
Room 446-N

Statement regarding balloon amendment to SB 117 on disclosure of political activity of third party organizations

Mike Kautsch*

The balloon amendment to SB 117 is in harmony with the Kansas Legislature's previous enactments regarding campaign finance reporting, as administered by the Kansas Governmental Ethics Commission.

The amendment also is consistent with the Legislature's commitment generally to openness and accountability. Noteworthy manifestations of that commitment appear in the Kansas Open Meetings Act (KOMA) and the Kansas Open Records Act (KORA). KOMA, in K.S.A. 75-4317(a) recognizes "that a representative government is dependent upon an informed electorate" and provides for openness in the "conduct of governmental affairs and the transaction of governmental business." KORA, in K.S.A. 45-216(a), states that openness is the public policy of Kansas and that the policy "shall be liberally construed and applied."

The amendment sets reasonable requirements for reporting contributions that are made in support of ''electioneering communication.'' The amendment would open a window on an important aspect of election campaigns. Electioneering communications have been "colloquially known as sham 'issue ads.'"[1] The sponsors of such communications claim that they constitute advertising about a political issue, rather than about a specific candidate, and that they therefore are not subject to regulation. Yet, the communications are designed to attack or support a specific candidate.[2]

In the amendment, "electioneering communication" is defined as a message that makes unambiguous reference to "any clearly identified candidate" and that is generally distributed to the electorate within specified periods before primary and general elections. The amendment sets forth reasonable requirements for filing of disclosure reports about financial support for electioneering communication. The content of the reports is clearly specified, and the disclosure requirements are not intrusive and are limited to a call for essential information. The amendment includes appropriate exceptions for the news media and others.

The U.S. Supreme Court has pointed out the benefit of the kind of financial reporting requirement that the amendment prescribes. As the Supreme Court said in *McConnell v. Federal Election Com'n*, 540 U.S. 93, 196 (2003), disclosure of financial support for electioneering communication has the advantage of "providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce" substantive restrictions on electioneering.

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The constitutionality of financial reporting requirements is evident. As the Brennan Center for Justice has pointed out,[3] in the *McConnell* case, the Supreme Court "unambiguously established … that [financial] reporting requirements may be applied to electioneering communications." [4]

In my view, if enacted into law, the amendment to SB 117 would be a significant step toward increasing the public's understanding of government and the electoral process and would increase Kansas voters' confidence that their elected officials are accountable, not to special interests, but to the public.

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* *Professor of law and director of the Media, Law and Policy program at the University of Kansas School of Law. Former dean of the William Allen White School of Journalism and Mass Communications at the University of Kansas. Member of the board of the Kansas Sunshine Coalition for Open Government. This statement of personal opinion does not represent any official view or position of the University of Kansas, including the School of Law.*

[1] See Common Cause of Massachusetts, "Hidden Money: The Use of Electioneering Communications in Massachusetts," p. 3, July 2006, http://www.commoncause.org/atf/cf/%7B8A2D1D15-C65A-46D4-8CBB-2073440751B5%7D/Electioneering%20Communications%20Report.PW4.pdf

[2] The report cited in note 1, above, states on p. 6: "Recent elections have shown a proliferation of electioneering communications which, when unregulated, allow corporations and individuals to spend large undisclosed and unmonitored amounts of money on campaigns. This violates the intent of our campaign finance disclosure laws and has serious consequences for candidates targeted by unseen opponents."

[3] The Brennan Center, at New York University School of Law, described financial reporting requirements related to electioneering communication in a 2008 publication, *Writing Reform: A Guide to Drafting State and Local Campaign Finance Laws*, by Deborah Goldberg, available at: http://www.brennancenter.org/content/resource/writing_reform_2008/

[4] In *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007), the Court overruled enforcement of a ban on corporate financing of electioneering communication. However, as observed by the Brennan Center, cited in note 3, above, the *Wisconsin* case did not involve a challenge to requirements that financing of electioneering communication be disclosed, and so the Court's approval of such reporting requirements in *McConnell* was not changed.

SCHOOL CONSTRUCTION/ DESTRUCTION SEMINAR

October 30, 2008

The Board's Role in Promoting the Bond Election: Do's and Don'ts

Donna L. Whiteman
Assistant Executive Director/Attorney

KANSAS ASSOCIATION OF SCHOOL BOARDS

THE BOARD'S ROLE IN PROMOTING THE BOND ELECTION DO'S AND DON'TS

Donna L. Whiteman
Assistant Executive Director/Legal Services, KASB

A. Inquiries about the legality of the brochure and the use of public funds to prepare and distribute information.

In Opinion No. 93-33, the Kansas Attorney General was asked questions about a school district's ability to provide information and/or advocate a position in an election to approve a local option budget. The Attorney General stated:

> The state board of education has consistently informed persons that a school district has the obligation to "educate" the electorate regarding issues to be voted on by the electors but may not "advocate" a position regarding that issue. See *Phillips v. Maurer*, 67 NY2d 672 (1986). Quoting *Kansas Bd. of Regents v. Pittsburg State Univ. Chap. of K-NEA*, 233 Kan. 801, 810 (1983).

B. Education v. Advocacy

1. Although Kansas courts have not expressly addressed the authority of a school district to participate in or undertake campaigns, the court has recognized a school district, as a public body, is under an obligation to educate the electorate regarding an issue subject to election.

2. *Kimsey v. Board of Education*, 211 Kan. 618, 624 (1973)—"There can be no quarrel with this general proposition--the elector is entitled to know what his money is going to be used for when he votes.... [W]e noted that this test is applied to all bond propositions, regardless of the authorizing statute or the type of issuing municipality."

3. *West v. Unified School District*, 204 Kan. 29 (1969)—Superintendent of the school district mailed printed brochures containing information about the contemplated building, its location, cost, floor plan, capacity, and the fact that grades 9 to 12 would attend; authority to do so not raised as an issue before the court.

4. "...It is our opinion that school districts have an obligation to <u>educate</u> the electorate regarding school district issues to be voted on by the electors. However, the school district <u>does not have the</u>

authority to advocate a position on issues to be voted on by electors of the school district. Officers and staff of the school district must maintain a semblance of neutrality. *Kansas Electric Power Co. v. City of Eureka*, 142 Kan. 117, 120 (1935).

C. Education v. Advocacy

1. Case law clearly supports the school board's role to educate the electorate.

2. *West v. Unified School District*, 204 Kan. 29 (1969) involved a challenge to the validity of a special bond election.

3. In that case, prior to the election brochures containing information about the contemplated building, its location, cost, floor plan, capacity and use were prepared and mailed by the superintendent of the school district to residents and electors of the district.

4. Additionally, news articles that explained the election and described the proposed building project appeared in local newspapers.

5. Although the court was not called upon to consider the legality of the mailing, in addressing the issue of the notice to voters the court stated:

> "These items of information, although clearly not a substitute for the official notice required by statute, may nevertheless be considered as supplemental thereto in determining whether the electorate was fully informed on the matter to be voted upon." 204 Kan. at 34.

D. Statute Governing Notice for Bond Election – K.S.A. 10-120a

K.S.A. 10-120a is the statute that governs notice which must be given to the electorate in a school bond election. This statute provides, in pertinent part: Whenever any municipality proposes to issue bonds and an election is required to be held prior to such issuance, the governing body of such municipality shall include in the notice of such election the following:

1. The total amount of the bonds to be issued;

2. The amount of such bonds which represent the actual cost of the project financed by the bonds to be issued;

3. The projected amount of interest to be paid until the bonds are retired. Such projected amount shall be determined by using the interest rate from most recent bond issuances for the financing of similar projects by similar municipalities;

4. The projected amount of all expenses incurred in such bond issuance including, but not limited to, attorney fees, underwriter fees and the cost of printing such bonds;

5. The projected amount of the annual payments for principle and interest on the bonds;

6. The projected annual rate of taxation and the source of taxation necessary to retire such bonds; and

7. Any other information deemed necessary by the governing body of the municipality to provide full disclosure relating to the proposed bond issue.

Both case law and the statute governing notice for bond elections suggest the board has an obligation to educate the electorate about a bond election. See *Attorney General's Opinion 2003-22: Notice Requirement for Special Bond Election*

E. Education Not Advocacy

1. In Attorney General Opinion 93-33, the A.G. went on to consider whether a school district could advocate for a particular position, using either public or privately donated funds, in an election and concluded a school district did not have the authority to expend funds on a campaign advocating a particular position in the election. The brochure clearly informs people about the vote and asks people to vote but not ask them to vote "yes" or "no." It educates them on the election and what will result if the propositions are passed, but does not cross the line into advocacy for a particular position.

2. The validity of this opinion may be questioned given the expanded authority granted to school boards in K.S.A. 72-8205(e). K.S.A. 72-8205(e) is the Kansas Home Rule Statute which states:

> "The board may transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop and operate local public schools."

F. Caution

1. Watch e-mails—Open records requests

2. Watch use of school district property and resources, i.e. stationary, copying, district equipment or supplies,

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3. Do not tell them how to vote

4. Avoid vote "yes" signs on school property

5. Focus on student and district needs

6. Do not spend school district funds to advocate

7. A community committee of patrons supporting the issue should spearhead the campaign and "vote yes" efforts including raising funds

8. Look to the Chamber of Commerce or other business and nonprofit groups to lead the campaign efforts.

G. The Role of Individual Board Members in a Board Election

1. K.S.A. 72-8205—when four board members have voted, the Board has acted.

2. Legally, the board has spoken by an affirmative vote of four board members.

3. *Kansas Electric Power Co. v. City of Eureka,* 142 Kan. 117, 120 (1935)—"Touching first upon the activities of the mayor and city commissioners in the preelection campaign, persons who happen to hold city offices in their private capacity as electors are as free as other people to advocate their opinions. But as public officials, they should maintain a reasonable semblance of neutrality."

4. Concerns outside of a legally called board of education meeting, board member has no greater rights than an ordinary citizen.

5. Outside of an official vote and board action, do not speak for the board.

6. Individual board members presentation at a Rotary or Civitan meeting should clearly emphasize their role is education and they are speaking as a citizen and not for the board.

7. "Lead, follow or get out of the way."