STATE OF KANSAS

Administration of
Campaign Finance,
Conflict of Interest
& Lobbying Laws

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GOVERNMENTAL ETHICS COMMISSION

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February 6, 2025

House Committee on Elections
RE: Neutral Testimony regarding House Bill 2206

Chairman Proctor and members of the committee:

The Kansas Governmental Ethics Commission works to foster public trust and confidence in state government decision-making through education, administration, and enforcement of the Campaign Finance Act and State Governmental Ethics Laws. The disclosure of campaign finance data and ensuring the transparency of such data is integral to the Commission's purpose.

HB 2206 overhauls portions of the Kansas Campaign Finance Act in ways that significantly diminish transparency. By far, the most concerning impacts from HB 2206 stem from its definition of "cooperation or consent," its definition of "political committee," and its changes to the prohibition on giving contributions in the name of another. I will address each concern in kind.

Definition of "cooperation or consent."

HB 2206 only considers an expenditure to be coordinated if it was requested or recommended by the candidate or the spender. This fails to address situations where candidates or spenders work through agents, where candidates and spenders may share vendors, when the candidate directly participates in the expenditure, or where the candidate has given nonpublic information to the spender. Although not addressing a prohibition for shared vendors, the bill oddly contains an exemption for shared vendors.

HB 2206 creates confusion when read with K.S.A. 25-4148c, the definition of independent expenditures, and creates loopholes in the law that do not currently exist. This legislation's attempt to regulate coordinated expenditures does not account for agents of the candidates, candidate committees, or party committees; however, K.S.A. 25-4148c mentions agents when defining independent expenditures.

The text of HB 2206 stands to legalize coordination other than a very rare form of coordination which occurs at the specific request of the regulated entity. This practically legalizes unchecked coordinated expenditures.

Definition of "political committee."

As written, HB 2206 has a loophole designed to allow entities to easily game whether they are a political committee under the KCFA. An entity could give money on the last day of the calendar year to an affiliated entity to artificially inflate the entity's expenditures to avoid the over 50% threshold for express advocacy expenditures. HB 2206 defines "total program spending" to specifically include funds or grants shuffled between affiliated groups. The inclusion of transactions with affiliated groups allows for entities to completely game the PAC definition to where they would never have to register because they could always shuffle around funds to avoid the over 50% threshold.

For example, Entity A spends $10,000.00 on express advocacy in 2025, but their total spending on December 1, 2025, is only $19,000.00. To take itself out of the definition of a political committee, Entity A grants $2,000.00 to Entity B (an affiliated organization) to increase Entity A's total program spending to $21,000.00. Put differently, an entity with various affiliated groups or subsidiaries can pass the funds in one hand to another hand to avoid the disclosure requirements, while still being able to influence elections in Kansas.

An additional concern is that the new definition requires a political committee to reach a threshold of $5,000.00 in expenditures and contributions made before it even considers whether to register as a political committee. This is higher than the current registration thresholds and would result in approximately 100 groups no longer registering as political committees. That is 100 groups who no longer must disclose their campaign related spending habits to Kansans.

This is almost entirely unenforceable for two reasons: (1) because the Commission would never be able to determine until after a calendar year whether an entity should register as a PAC and (2) because the Commission has no means to dispute an entity's attestation regarding its spending. HB 2206 considers an entire calendar year when determining if an entity is a PAC. Therefore, it is impossible to determine if an entity should be registered as a PAC until after the calendar year—months after the election, denying Kansas voters the very information that the Commission is tasked with providing to them.

Moreover, the Commission has no means to challenge an entity at their word regarding the total program spending because financial records of organizations are rarely made public, and the Commission cannot do the fact finding necessary to even issue a subpoena if it cannot view an entity's financial records.

The combination of HB 2206's $5,000.00 threshold, its definition of "total program spending," and its inherent unenforceability turns the campaign finance arena into a free for all for political committees with no guardrails for enforcement.

Changes to the Prohibition on Giving in the Name of Another.

There are two policy rationales underlying the prohibition on giving in the name of another: (1) if money is allowed to freely flow through intermediaries, then contribution limits are meaningless and (2) if money is allowed to flow freely without disclosing the true source, then transparency

suffers. If entities, such as potential foreign nationals, pass money through intermediaries, then contribution limits are meaningless, and the public is left unable to determine the true source of campaign contributions.

The bill just declares that agreements to give in the name of another are null and void, but that does nothing to prohibit the conduct underlying the agreement. Instead, HB 2206 just declares that the conduct is not giving in the name of another even if there is an agreement. A close inspection of the proposed text reveals that HB 2206 simply asserts the legality of giving in the name of another. In other words, giving in the name of another is *never* illegal under HB 2206. This is the equivalent to rewriting the Chapter 46 gift prohibitions to state that gifts that are otherwise impermissible, such as a bribe, are now legal by simply declaring that a bribe is not occurring as a matter of law.

As the Ohio Secretary of State mentioned Tuesday when presenting to this Committee, there are sophisticated entities who use "complex transactions that create a nefarious money trail" so that they can exploit campaign finance laws. The public is not equipped with the tools to be able to wade through complex transactions to find the true source of campaign contributions. Prohibiting giving in the name of another is a critical prohibition under the act to ensure that the rest of the campaign finance laws can be enforced.

Further, HB 2206 declares that a contribution is only given in the name of another if the purpose of the contribution is to conceal the original source; however, the other policy underlying K.S.A. 25-4154(a) is to prohibit entities from routing funds through straw donors to exceed contribution limits. Passing funds through intermediary entities to exceed contribution limits is completely legal under this bill. This would be a major blow to transparency in Kansas.

Other Provisions.

The Commission has some concern regarding changing its name to the "Kansas Public Disclosure Commission" because it is potentially misleading. The Commission also enforces Chapter 46, which is the State Governmental Ethics Law, and the name change does not reflect this portion of the agency's jurisdiction.

Finally, raising anonymous contributions from $10 to $50 in K.S.A. 25-4154 raises some concerns. Anonymous contributions are supposed to be de-minimis and it is unclear as to why an increase is appropriate because anonymous contributions can be an avenue for impermissible giving.

The Commission remains devoted to transparency and ensuring that it fulfills its obligations to Kansans. I am appreciative of the committee's consideration of my neutral testimony that considers the implication of this potential policy change.

Respectfully,

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