WRITTEN TESTIMONY OF KRISTIAN D. VAN METEREN

PROVIDED 3/11/25 TO THE

KANSAS SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

Chairman Thompson, Vice Chairman Blew, Ranking Member Faust-Goudeau, and Senators Clifford, Dietrich, Francisco, Gossage, Murphy, Starnes, Thomas, and Tyson.

Thank you for this opportunity to address a bill, HB 2206, which I understand is under consideration by your committee today.

As a former Executive Director and officer within the Kansas Republican Party; organizer, chairman, treasurer, or director of several political committees, issue organizations, and grassroots groups; a long-time political marketer and advisor; and, most importantly, as a Kansan who believes that maintaining transparency and integrity in government is fundamental to the health and wellbeing of our republic, I provide this testimony in opposition to HB 2206 in its current form.

The purported primary purpose of this bill, according to its proponents, is to rename the Kansas Governmental Ethics Commission (KGEC), changing it to the Kansas Public Disclosure Commission (KPDC). While that provision of the bill seems innocuous, it potentially signals an attempt to subtly shift the public's perception of the important role originally assigned to the KGEC by the people of Kansas, acting through their elected lawmakers when the Kansas Campaign Finance Act was passed in 1974.

That law has, for the past 50 years, assigned the KGEC not merely the hum-drum administrative task of disclosing to the public the receipts and expenditures made by candidates, parties, political committees, and lobbyists, but also to enforce ethical standards specifically designed to prevent corruption, politician-buying, and influence peddling. The KGEC has also been tasked with preventing the dilution of average Kansans' voices by those with the means to simply "drown out" such voices in our politics.

However, of greater concern are the provisions contained within HB 2206 that re-define:

a. political committees;
b. cooperation and consent (which is to say, "coordination"), and
c. what constitutes "giving in the name of another."

Regarding the re-definition of "political committees" (PACs) contained in HB 2206, the intention by proponents of this bill appears obvious. As others note, this bill's reliance on a formula (spending by an entity to expressly advocate divided by the total overall program spending by that entity) invites a shell game in which those who set up and operate PACs merely strategically move money from one entity they control to another to dilute the appearance of their express advocacy activities in relation to overall program spending. This is, to me, an obvious ploy to avoid being defined under the law as a political committee and, accordingly, being forced to disclose their activities to the voting public.

Related to the bill's redefinition of cooperation and consent (coordination), in today's political environment, many key strategic campaign decisions are made by political consultants, strategic advisors, legislative caucus staff, shared vendors, or other agents who act as intermediaries between large donors (often acting through PACs) and the candidates those large donors wish to support. Such

individuals are not covered by this proposed legislation and would have free rein to engage in coordination, effectively rendering meaningless Kansas's longstanding laws barring coordination and wiping out the entire concept of "independent expenditures."

Perhaps most troubling is HB 2206's re-definition of "giving in the name of another." The entire purpose of the KCFA is to provide the voting public with the information it needs to make enlightened decisions at the ballot box. A key component of making such decisions is knowing who, exactly, financially backs individual candidates and the party committees charged with electing them. HB 2206, as it is currently worded, effectively legalizes giving in the name of another, which will place our campaign finance laws out-of-step with similar federal laws and those in other states. Put more succinctly, it obliterates transparency and allows megadonors wishing to exercise an outsized influence over Kansas's political and policy-making environment to mask their activities by directing funds through other entities to the benefit of their favored candidates.

[Testimony outlining the dangers of HB 2206, provided on 2/6/25 by the Kansas Governmental Ethics Commission to the House Elections Committee is, in my opinion, spot-on and is attached below for your reference.]

Finally, taken in tandem with other purported ethics "reforms" passed in recent legislative sessions and being considered this year, I am gravely concerned that you and your colleagues are being stampeded into making sweeping, deleterious, and long-lasting changes to Kansas's political environment without the opportunity to thoughtfully consider the long-term implications of these measures.

Not only does it represent a shocking degree of *chutzpah* that these bills, like HB 2206, have been written or are being pushed by attorneys representing parties under investigation by the KGEC, but it is even more troubling that they are doing so <u>while investigations remain ongoing</u>**.**

In my view, these repeated proposals to rewrite Kansas's longstanding ethics laws are a transparent, self-serving effort to stall, block, or thwart the KGEC's investigation altogether or, at a minimum, weaken the penalties for violating existing laws. They are, effectively, reverse (and perverse) bills of attainder, custom-designed to get those currently under investigation off the hook and a transparent signaling of the proponents' intent to continue the behavior that subjected them to investigation by the KGEC.

At a bare minimum, given the existence of an ongoing investigation, my strong recommendation is to take a "go-slow-and-let-the-process-work" approach. There is no emergency here requiring immediate action on this or similar bills. There is no need and certainly no public call to rush through sweeping changes in longstanding Kansas ethics laws.

George Washington reportedly told Thomas Jefferson that the purpose of the U.S. Senate was to "cool" House legislation, as a saucer might be used to cool hot tea. I urge you, as Kansas Senators, to step back and allow the tea to cool before rushing to pass HB 2206. Be wary of those pushing "urgent" legislation that really isn't. If such reforms are found to be truly warranted, they will be just as warranted after the KGEC's investigation has concluded and any legal battles that result have had a chance to run their course.

I urge you to vote against HB 2206.

STATE OF KANSAS

Administration of
Campaign Finance,
Conflict of Interest
& Lobbying Laws

901 S. Kansas Avenue
Topeka, Kansas 66612
(785) 296-4219 (phone)
(785) 296-2548 (fax)

GOVERNMENTAL ETHICS COMMISSION

https://ethics.kansas.gov

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,

Kaitlyn R. Bull-Stewart
General Counsel, Kansas Governmental Ethics Commission