

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on February 14, 2006 in Room 231-N of the Capitol.

All members were present except:

Senator Anthony Hensley- excused
Senator Dennis Wilson- excused
Senator Kay O'Connor - excused

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Senator Francisco
Senator Betts
Professor Steve McAllister
Shelby Smith

Others attending:

See attached list.

The Chairman noted that committee minutes for January 24, 25, 26, 31; February 1, 2, 7, and 8 were on the bench for the committee members to review.

Chairman requested a bill introduction concerning sales tax measure for improvement in Saline County.

Chairman Brungardt made the motion that the request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

Senator Francisco appeared before the committee to request a bill introduction. The bill would amend language to add humiliate, harass or degrade the child or to in KSA 21-3503, 21-3504, 21-3517, 21-3518 and 60-3102, 2005 supp. 21-3516.

Senator Vratil made the motion that the request should be introduced as a committee bill. Senator Gilstrap seconded the motion. The motion carried.

Senator Betts appeared before the committee to request a bill introduction concerning labor and employment relating to employers' health care costs; establishing the fair share health care fund.

Senator Gilstrap made the motion that the request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

SB 421 - Unlawful picketing or protest march at funeral or memorial service

Professor Stephen McAllister, appeared before the committee to provide constitutional advice regarding **SB 421**. (Attachment 1) Mr. McAllister stated that he was appearing in a personal capacity and not on behalf of University of Kansas nor its School of Law, or as an advocate for or against the bill. Several questions were addressed:

I. The First Amendment Preliminary Questions

Does the Kansas Funeral Picketing Act Regulate "Speech"? Not every action taken by a person is expressive nor counts as "speech" for constitutional purposes. Picketing is speech, though not all "protested activities" are necessarily speech. The courts have been less protective of targeted or focused picketing-at least where the aim is a private residence-than of other forms of speech. KSA 21-4015 almost certainly regulates "speech"; it is at least in part regulating a less favored form of speech, one that the Supreme Court has in at least one case permitted government to ban with respect to the targeted picketing of individual

CONTINUATION SHEET

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residence.

Does the Kansas Funeral Picketing Act Regulate on the Basis of Content? It does not appear to regulate on the basis of content or viewpoint, as it applies to all “picketing” and “directed protest march[es]”, irrespective of the subject matter the protesters are addressing.

II. Time, Place and Manner Regulation

Creates three categories of “forum” for purposes of establishing standards by which to measure the constitutionality of government regulation of speech in each type of forum. A critical step in the First Amendment analysis of the Kansas Funeral Picketing Act is to determine the nature of the “forum” being regulated:

- Traditional Public Forum - typical examples are town squares, and public parks, streets and sidewalks.
- Limited Public Forum - typical examples are schools or colleges, government has opened or designated for such purposes of public forum.
- Nonpublic Forum - is one that has not by tradition or by designation been open for public communication. Government has the most leeway in the regulation of a nonpublic forum, with restriction generally upheld if they are “reasonable” in light of the purpose of the forum is constitutional as long the government is not targeting a particular point of view. Case law has included churches and cemeteries as nonpublic forum.

III. Summary of the Bill

An argument certainly can be made that focused or targeted picketing of a nonpublic forum such as a cemetery, church, or mortuary is subject to greater restriction or regulation than picketing of a public forum, such as a park or town square, and such picketing can be banned on the premises of such nonpublic fora.

Restricting such activities when they take place on a traditional public forum – such as a public sidewalk– adjacent to or near the nonpublic forum is whether it is constitutional. Arguably, the proposed amendment to the Kansas funeral Picketing Act satisfies those requirement as follows:

1. By serving a significant government interest (preserving and protecting the sanctity and dignity of religious or non-religious memorial and funeral services, as well as protecting the privacy of family and friends of the deceased during a time of mourning and distress.
2. Being narrowly tailored by limiting targeted picketing only for a relatively brief time period and only to a certain distance from the entrance to a church, cemetery or mortuary;
3. Leaving open ample alternative channels of communication (targeted picketing can take place at any other times and even during a funeral at a distance of 300 feet).

Of the two aspects of the proposed restrictions - the time period and the distance requirement - the time period does not in and of itself appear to be as much potential constitutional concern as the distance requirement, and a 300 foot zone is far more likely to cover traditional public fora such as public sidewalks and streets. It is clear that some type of buffer zone around entrances to nonpublic fora will be permitted, and as previously covered the proposed amendment to the Kansas statute arguably satisfies the three constitutional requirements that courts will apply.

Several suggestions were discussed and the bill will be worked later in the week. Chairman Brungardt thanked Mr. McAllister for his review of the bill.

SB 533 - Separation of powers, study of

Chairman Brungardt opened the hearing on **SB 533**.

Shelby Smith, appeared before the committee in support of the bill. (Attachment 2) The bill’s final report would benefit the current office holders while serving as a guiding orientation for newly elected public servants and a constitutional reference document for students of government and political science in Kansas.

Chairman Brungardt closed the hearing on **SB 533**.

The meeting was adjourned at 11:28 am. The next scheduled meeting is February 15, 2006.