



## GOVERNMENTAL ETHICS COMMISSION

<https://ethics.kansas.gov>

Proponent Testimony for HB 2166  
Thursday, February 2, 2023  
House Committee on Elections

Thank you for the opportunity to provide testimony in favor of HB 2166.

This legislation does not arise from a recommendation by the Governmental Ethics Commission and does not impact a statute under KGEC jurisdiction. However, the underlying statute serves parallel purposes to the Campaign Finance Act. HB 2166 updates “paid for” requirements for elections that are not subject to the Campaign Finance Act, local ballot issue advocacy, and constitutional ballot advocacy, to be identical to requirements for state office.

“Paid for” attribution is crucial for voters to be able to contextualize a communication. A voter might reasonably interpret the same message differently if it originates from a candidate’s campaign as opposed to an interest group outside of Kansas. In many respects, this is the section of the Campaign Finance Act that affects the most voters. While not everyone looks through campaign finance reports, nearly everyone seems to get mailers of one kind or another. In this regard, these disclaimers are an important cornerstone of the Campaign Finance Act.

K.S.A. 25-4156 contains paid-for disclaimer requirements when a communication expressly advocates for or against a candidate under the Campaign Finance Act. The Act includes candidates for statewide office to first class cities and a few smaller elections such as the Wichita School Board. For other elections such as second-class cities, a separate statute exists: K.S.A. 25-2407.

Currently, K.S.A. 25-2407 only requires “paid for” disclaimers on paid advocacy in newspapers, magazines, on the radio, or on TV. Unlike the state election parallel, there are no requirements for “paid for” disclaimers in these elections for fliers, text messages, electronic communication, robocalls, etc. Similarly, advocacy regarding constitutional amendments or local election questions only requires paid for attribution if the item is a paid newspaper, magazine, radio, or TV ad, or if the communication is a brochure or flier. HB 2166 effectively resolves this issue by unifying the language in K.S.A. 25-2407 with K.S.A. 25-4156.

HB 2166 is an important update to a statute that has not been amended since 2007 while the nature of political communication has evolved. Thank you for the opportunity to provide comment.

### **STATUTORY DIFFERENCE**

A careful reader might note that K.S.A. 25-4156 (the Campaign Finance Act “paid for” requirement) does not make specific mention of text messages while HB 2166 does. The Ethics Commission has previously held that K.S.A. 25-4156’s language does encompass text messages already, but since K.S.A. 25-2407 is not enforced by the Commission directly, clarity in statutory drafting led us to recommend inclusion of text messages in HB 2166.

### **SUGGESTED AMENDMENT**

I would recommend a fairly technical amendment to strike the language on page 3, line 41, through page 4, line 9. The statute already defines “express advocacy” by reference to the Campaign Finance Act, and including a separate writing of the definition could create a conflict. This conflict would be particularly difficult to resolve if the definition for “express advocacy” is updated in the Campaign Finance Act such as in 2023 HB 2206.