



GOVERNMENTAL ETHICS COMMISSION

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Proponent Testimony for HB 2206
Thursday, February 2, 2023
House Committee on Elections

Thank you for the opportunity to provide testimony in favor of HB 2206.

HB 2206 reduces a sizable loophole in the Campaign Finance Act that currently permits electoral communications to skirt disclosure requirements through careful wording by adopting a test for express advocacy that is employed at the federal level and elsewhere.

CURRENT LAW

The Campaign Finance Act only finds a communication contains express advocacy when one of nine specific phrases is used in conjunction with a clearly identified candidate for state or local office. This interpretation creates occasional absurdities in enforcement. For example, a communication that indicates "Smith for Senate" is express advocacy, but "Smith, Senate District 41" is not because the word "for" is omitted.

THE ROLE OF EXPRESS ADVOCACY

A communication that does not include express advocacy is not subject to the Campaign Finance Act – they are generally issue advertisements. A mailer that informs residents in a district that their representative or senator voted in a particular way on legislation is correctly not considered express advocacy, an interpretation that is unchanged by HB 2206. A communication that does have express advocacy triggers transparency requirements, including usually requiring a "paid for" disclaimer on the item.

"ONLY REASONABLE INTERPRETATION" TEST

The language in HB 2206 is directly from the federal analogue. If a mailer can only possibly be interpreted as encouraging a vote for or against a candidate for office, then the communication contains express advocacy even if they avoid using the specific phrases isolated in statute.

In my experience, the loophole addressed by HB 2206 is the issue that is complained about most by both the public and candidates. This bill would resolve the most significant issues that currently allow savvy political actors to proceed unimpeded by transparency requirements to the detriment of Kansans. Thank you for the opportunity to provide comment.