STATE OF KANSAS

Administration of
Campaign Finance,
Conflict of Interest
& Lobbying Laws

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Opponent Testimony – HB 2391
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House Committee on Elections

HB 2391 is brazen legislation designed to undermine ongoing investigations, obliterate the Campaign Finance Act, eliminate any ability of a state law enforcement agency to investigate violations, and retaliate against the Commission for a major investigation.

This shameless bill should be met with unflinching opposition.

This testimony will explore all the proposed changes in this bill. This document is long, but the changes are many, substantial, and absurd. I have attempted to be concise.

I. Undermining Ongoing Investigations; Making Investigated Violations Legal

LEGALIZES COORDINATION WITH PACS

HB 2391 functionally legalizes coordination with PACs.[1] Cooperation with PACs is a major component of a currently ongoing investigation. HB 2391 as drafted would legalize the conduct currently under investigation.

Currently, someone who makes decisions on behalf of a campaign cannot also coordinate with a PAC that is expending supposedly "independent" expenditures to benefit the campaign. This should be obvious: an expenditure is not independent unless it is actually done without cooperation of a candidate or their agent.

However, HB 2391 would define "agent" so narrowly that unless the decisionmaker has a power of attorney (which never happens in reality) or is the candidate or treasurer themselves, this scenario becomes legal. There is no reason to prohibit cooperation or coordination with this definition. Cooperation and coordination become functionally legal in HB 2391 as long as it occurs through someone who does not have a formal power of attorney with the campaign.

[1] Page 4, line 40 through page 5, line 2 (redefining "agent" to incredibly narrow definition). Also page 1, lines 28-30.

LEGALIZES CONTRIBUTIONS IN THE NAME OF ANOTHER

HB 2391 legalizes contributions in the name of another if done to exceed contribution limits.[2] A vast majority of "in the name of another" style violations occur because people are intending to exceed contribution limits; this bill makes that conduct legal. Contributions in the name of another to exceed contribution limits is a major component of a currently ongoing investigation. HB 2391 as drafted would legalize the conduct currently under investigation.

An entity cannot give the maximum to a candidate and then route money through other entities to exceed that contribution limit. To my knowledge, there are no jurisdictions anywhere in the United States that would allow this scenario. There is absolutely no reason to have contribution limits on the books – a cornerstone of any campaign finance law – if HB 2391 were to pass. A wealthy donor could give the maximum to a campaign and then route money through innumerable shell corporations, business associates, family members, PACs, or dark money groups and this conduct would be legal. The goal of the bill is rather obvious when it also amends the statute prohibiting excessive contribution limits to indicate that excessive contributions are not a violation when passed through other groups, unless somehow it could be proved that they were intending to conceal the original donor identity.

It is worth mentioning as well that even the comparably rare scenario of a contribution in the name of another where the donor is intending to conceal the original source – a scenario that would theoretically remain illegal in this bill – would be impossible to prove because of other changes in HB 2391. Intent to conceal the source of funds would be unproveable without a subpoena or a cooperating witness, both of which are eliminated in HB 2391.

LEGALIZES PASSING CANDIDATE FUNDS THROUGH OTHER GROUPS FOR OTHER CANDIDATES

HB 2391 legalizes candidates passing funds through other groups to in turn give to other candidates.[3] Candidates passing funds through other groups to give to other candidates is a component of a currently ongoing investigation. HB 2391 as drafted would legalize the conduct currently under investigation.

A candidate cannot give funds to another group with instructions or earmarking that the funds are to be used for a specific candidate. A campaign fund can only be used for specific purposes, and benefiting a different candidate is not one of those purposes. Without this limitation, a candidate who received contributions to benefit their campaign could use their funds for any other candidates they like, provided that they pass them through a separate entity.

The only prohibition in HB 2391 is that this earmarking cannot be contractually restricted. There is no realistic scenario where a candidate would create a contract in this manner, so this language is entirely meaningless.

[2] Page 16, lines 23-29 (contributions in the name of another are only violations if an intent can be proven to conceal the original source of the contributions, rather than to exceed contribution limits). Also page 23, lines 14-17 (legalizing excessive campaign contributions if passed through other entities).
[3] Page 18, lines 30-42.

LEGALIZES LEGISLATORS RUNNING PACS

HB 2391 legalizes legislators establishing PACs as long as they are not the chairperson or treasurer.[4] Legislators establishing PACs is a component of a currently ongoing investigation into campaign finance violations. HB 2391 as drafted would legalize the conduct currently under investigation.

The campaign finance act currently prohibits legislators from "establishing" a PAC, intending to prohibit federal-style leadership PACs. This prohibition is already rather weak, and HB 2391 manages to weaken it further by specifically permitting "participating in the activities" of a political committee, which appears to conflict with the prohibition against establishing a PAC.

PREVENTS ENFORCEMENT OF VIOLATIONS UNDER INVESTIGATION VIA STATUTE OF LIMITATIONS

HB 2391 includes a provision creating an exceptionally short two-year statute of limitations for campaign finance violations.[5] Severe violations currently under investigation predate a two-year time period. HB 2391 as drafted would prevent enforcement of these possible violations.

Additionally, the Commission currently is engaged in a multi-agency investigation where violations handled by other agencies have longer statutes of limitations. This short window would necessarily force the Commission to either file a complaint and potentially impede other agencies' investigations or choose to not seek enforcement of violations in the matter.

The Ethics Commission has an incredibly small staff with only a part-time investigator and a very small budget. Complex investigations require a great deal of time and effort. Additionally, it is not uncommon for violations to be revealed to the Ethics Commission after the next election cycle. Even the federal campaign finance statute of limitations is five years, and the FEC is substantially more equipped to investigate matters than the KGEC.

A two-year statute of limitations would require, at a minimum, two full-time investigators and a different office where they could have a desk. The Legislature previously denied a budget request to shift a contracted investigator to part-time, a minimal shift that the agency eventually was able to accomplish through internal budget efficiencies. Without these investigators, it is difficult to imagine how any complex campaign finance investigation could result in enforcement, especially with the other impediments to investigations that are in HB 2391.

LIMITS FINES IN SITUATIONS WITH MANY VIOLATIONS

HB 2391 would substantially limit fines by setting a ceiling for any one matter of twice what any one violation could receive.[6] If one matter includes 25 violations, the maximum fine would be $10,000. It is my experience that the public perception of the Commission is that the fine authority is too low to adequately deter violations; in one fairly recent instance a person financially benefited over twenty

[4] Page 16, lines 11-16.
[5] Page 1, 21-23.
[6] Page 23, lines 25-29.

times the amount that could be assessed by the Commission. This provision is likely included to decrease the possible exposure for people currently under investigation.

II. Undermining the Ability of the Ethics Commission to Investigate Violations

ELIMINATES COMMISSION'S INVESTIGATORY SUBPOENA POWER

HB 2391 eliminates the Commission's investigatory subpoena capability.[7] Without an investigatory subpoena, most serious violations of the Kansas Campaign Finance Act would be unprovable and thereby unenforceable. There are many reasons to reject this language.

1. *The Commission's subpoena power is entirely dependent on judicial oversight.*

The Commission has no ability to enforce its own subpoenas. If a subpoena is provided to a witness, and they do not respond, the Commission must file an action in district court to enforce the subpoena. At that stage, the court is not obligated to enforce the subpoena, and may quash the subpoena in whole or in part. The process already includes extensive independent oversight.

2. *HB 2391 requires proving probable cause without an ability to find evidence*

The bill requires that subpoenas can only be granted if a complaint is already on file and the Commission has found probable cause. Probable cause requires evidence of a violation. Evidence is only obtainable in some instances, particular in serious and complex violations of campaign finance law, via subpoena. HB 2391 intentionally places the cart before the horse and requires a complainant show probable cause without providing any means to obtain that proof. The current law requires a lower threshold of reasonable suspicion, which means the Commission cannot engage in fishing expeditions but can investigate matters where a violation is likely.

Additionally, many violations require bank records of a campaign account as part of the investigation. If the Commission is unable to access bank records through investigatory subpoenas, these violations would go unchecked.

3. *Eliminating investigative subpoenas prevents enforcement of matters where a party is unidentified*

When an investigation cannot identify a responsible party, no complaint can be filed. An investigatory subpoena allows the Commission to identify who the responsible party is in order to enforce the laws. For example, if a text message was sent that included express advocacy but did not include attribution, and the text was such that enforcement of the attribution was particularly important (for example, one might imagine a text that lies about an endorsement or claims to originate from a source that it does not), the only method to identify the responsible party is an investigatory subpoena. Without this ability, the law cannot be enforced.

4. *A possible outcome is the filing of more complaints rather than fewer*

[7] Page 19, line 18 through page 20, line 13.

Without an ability to reasonably investigate matters with subpoenas prior to filing a complaint, HB 2391 forces Commission staff to file complaints on matters where they otherwise would not. The Commission is exceptionally lenient and generally prioritizes education and prevention except in intentional or severe violations, but this bill may prohibit much of that traditional approach.

5. *Being able to request inquisitions is meaningless*

HB 2391 includes a provision that the Commission can request an inquisition from the attorney general or a district attorney. Any such inquisition would never occur. These offices do not have the time, personnel, or funding to handle low-level white-collar misdemeanors with an expansive process like an inquisition. This fact is borne out by experience. By law, the Commission refers violations to district attorneys and county prosecutors. I am unaware of the last time that one of these offices sought to prosecute an underlying violation, even when the Commission specifically recommended further prosecution and the underlying fine was inadequate to deter the violation.

Additionally, some campaign finance violations are not crimes at all, which would foreclose even this already-nonexistent option.

6. *HB 2391 prevents the Commission from using its subpoena power to assist candidates and committees*

On multiple occasions the Commission has assisted in cooperative audits with candidate campaigns and committees. At times, these audits requires bank records that a bank refuses to produce even to the account holder without legal process. Since the reporting issue is a violation of the campaign finance act, the Commission can issue a subpoena for the needed records to assist the candidate or committee. Assistive audits are an important piece of the Ethics Commission's ability to help reporting entities.

PROHIBITS WITNESS COOPERATION AGREEMENTS

HB 2391 would prohibit cooperation agreements with witnesses.[8] This is particularly appalling even in a bill that includes the extreme provisions that it does. What law enforcement entity is prohibited from this sort of agreement? Without the ability to engage in cooperation agreements with witnesses, the Commission would be the only law enforcement agency unable to seek witness cooperation by satisfying them that they would not be a target of subsequent enforcement.

There is absolutely no justification for this prohibition. This language is likely included in the bill because cooperating witnesses are a successful avenue for proving violations of the campaign finance act and this prohibition would impede ongoing investigations. HB 2391 lacks much of a mask for the bill's intended purpose, but what little mask exists is torn off on this prohibition.

CREATES PERVASIVE THREAT OF LARGE COSTS OF ANY INVESTIGATION

HB 2391 mandates that all "actions" (including but not limited to "investigative" actions, "enforcement" actions, and "applications to the commission") of the Commission or Commission staff are considered a

[8] Page 24, lines 6-9.

"claim" for the purposes of Kansas's anti-SLAPP law, the Public Speech Protection Act (PSPA).[9] This creates a constant overarching threat of significant costs to a small law enforcement agency for any action that the Commission takes.

The PSPA, as with any anti-SLAPP law, exists for a beneficial purpose: to ensure that people cannot abuse judicial process to silence critics. When the Commission investigates a matter, it is not abusing judicial process, it is not silencing people, and it is not targeting critics. Commission investigations have no overlap whatsoever with the goals of the PSPA. Applying the PSPA to all "actions" of the Commission serves no purpose at all under the PSPA other than expanding the anti-SLAPP law to create an ever-present pervasive threat of costs for the Commission.

If someone alleges a violation of the PSPA, they must first adequately allege that their First Amendment rights have been negatively affected. If they satisfy that burden, the Commission would have to show substantial competent evidence of their claim, and if they do not, the Court may be required to award attorney's fees. If any "action" by the Commission can trigger large costs unless substantial competent evidence can be provided, how could the Commission ever initiate an investigation? This absurd expansion of the anti-SLAPP law is specifically designed to smother any possible investigation before it begins by requiring a showing of evidence before evidence can be gathered.

Given that any "action" by the Commission would risk judicial process by people weaponizing an anti-SLAPP law that was never intended for this purpose, the Commission would need to hire another attorney primarily to handle the research and pleadings for how often we would be in court. This burden could not be maintained with current staffing.

III. Provisions Fundamentally Damaging to Campaign Finance Law

CHANGES APPEAL STANDARD OF REVIEW TO DE NOVO

HB 2391 creates a de novo review for all appeals from Commission actions.[10] The Ethics Commission is currently subject to the Kansas Judicial Review Act (KJRA). The KJRA includes specific provisions for how appeals occur from agency actions and what standard to apply. A "de novo" review has a district court judge reconsider all evidence and proceedings rather than applying the standards outlined in the KJRA. No other state agency has this absurd and lengthy standard of review; in fact, the KJRA specifically spells out that it is the "exclusive means of judicial review of agency actions," so HB 2391 creates a significant conflict in the law. There is no basis for such a significant deviation other than to further slow down enforcement of violations and create substantially more difficulty for Commission actions.

RADICALLY CHANGES PAC REGISTRATION REQUIREMENTS, RESULTING IN FEW PAC REGISTRATIONS

HB 2391 includes vast changes to PAC registration requirements that would result in few PACs being required to register.[11]

[9] Page 1, lines 14-20.
[10] Page 25, lines 42-43.
[11] Page 7, line 35 through page 8, line 29.

Currently, a group of two or more people that has a major purpose to express advocate for candidates for office or make contributions to candidates for office must register as a PAC and report their contributions and expenditures.

HB 2391 would only require an entity to register as a PAC if both of the following are true:

- The group spends more than $2,500 on express advocacy during a calendar year ("express advocacy" is a specific term of art with a narrow meaning), and
- The group spends more than 50% of its total spending in a two-year period on reportable contributions or expenditures (or simply declares that their primary purpose is advocacy, which is unlikely).

When calculating the 50% threshold, contributions to an organization's adjacent 501(c)(4) organization or business account would not count. If a PAC approached the end of a two year cycle and wanted to avoid registration requirements, it would be rather simple to contribute an amount to the (c)(4) or business account that would reduce the organization's total spending below the 50% threshold. Additionally, issue advocacy would not be counted towards the 50%, so an organization could simply make an expenditure at the end of a two-year cycle to discuss some issue, even to benefit particular candidates (e.g., "Candidate voted to raise your taxes. Contact them to tell them your thoughts on that issue!"), and it would allow them to evade registration. Any slightly savvy PAC would be able to engage in this or similar behavior to avoid registration requirements.

Requiring both that an organization make expenditures of $2,500 on express advocacy and creating a percentage threshold test means that organizations that are set up specifically to make contributions to candidates would be exempt from registration. Many current PACs are set up for precisely this purpose.

Additionally, calculating a percentage threshold after a two year period means that there is little transparency benefit to Kansans – only years after the election cycle would there be any transparency of contributors and expenditures rather than contemporaneously with the election. Not disclosing 2020 election items until 2022 significantly decreases the value of that information for Kansans.

Furthermore, the two-year window for calculating total spending in conjunction with the incredibly short two-year statute of limitations means that a PAC that engaged in clearly illegal conduct that is discovered on a report would be immune from any sort of enforcement action.

A 50% threshold also creates a campaign finance law where any group with multiple aims would not be required to register, even if they do engage in a large amount of advocacy or contributions. Expending $5,000,000 on campaigns and campaign advocacy is not disclosed to the public as long as the group expends $5,000,000.01 on issue advocacy, (c)(4) contributions, passing money back and forth with the business that operates the PAC, or any number of other entities that are not considered under this bill.

This Committee should be concerned about this bill's direct attack on PAC transparency. It would result in substantially more dark money and fewer groups disclosing their contributors and expenditures. This cannot possibly be an ideal outcome for Kansans.

Adding an exception for married couples and setting a lower limit at $500 of contributions or expenditures would be appropriate. The language in HB 2391 is not.

LOWERS PAC REGISTRATION FEES

Without any justification, HB 2391 lowers PAC registration fees.[12]

PAC Registration Fee	Current Law Fee	HB 2391 Fee
Receiving <$500	$25	$25
Receiving $501-$2500	$50	$50
Receiving $2501-$10,000	**$300**	**$100**
Receiving >$10,000 (added tier)	$300	$300

The impact of reducing these fees would have reduced PAC registration fees by 23% in FY 2021 and 32% in FY 2022. This is an attempt to defund the agency's fee fund which appears directly retaliatory against the agency for investigating important matters. If there were any such justification for adjustment of fees, they should be adjusted to ensure no impact to agency fee funds. These amounts are currently set such to provide services to those PACs and enforce the law, and reducing fees prevents the Commission's ability to provide such services.

COMMISSION UNABLE TO PROVIDE FINE REDUCTIONS IN EXCHANGE FOR TRAINING OR REPORTS

HB 2391 confusingly prohibits the Commission from allowing fine reductions in exchange for specific performance.[13] It is unclear why the Legislature would desire such a change, as it would necessarily increase civil fines. This prohibition would prevent all of the following:

- Most fine assessments are for failure to file a report and the report is still outstanding at the time of the hearing. The Commission's usual response is to assess a fine with a substantial reduction if the report at issue is filed and the reduced amount is paid within 30 days. This reduction would not be permissible.
- When someone has violated the law but the Commission would like to focus on prevention and education, as it usually does, the Commission would be unable to reduce fines in exchange for training. Most other areas of the law have significant focuses on training and other avenues to avoid fines; it's unclear why HB 2391 would prevent the Commission from providing these reductions.
- If an entity has received an overcontribution that they must return and they refuse to do so, this language can prevent the Commission from enforcing the law. If someone wants to give $100,000 to a county commission candidate, they could do so and the most the Commission could do in the usual course is issue a fine and declare that it must be returned. The Commission would lack reasonable enforcement ability.
- In one specific instance, attorneys for respondents suggested community service as an alternative to a fine. After discussion, the Commission agreed with this approach. Other than this instance in which community service was suggested by a respondent, to my knowledge the

[12] Page 7, line 35 through page 8, line 29
[13] Page 24, lines 3-5

Commission has never included community service in a fine order. However, this language would prevent many alternative approaches to avoiding fines.

In addition to all of the other issues at play, the consequence of this change would be to reduce civil fine payments. Being able to reduce fines if a reduction is paid within a shorter timeframe is often the best way to reach a quick and adequate resolution of an issue.

There are innumerable other scenarios that would be prohibited by this language, requiring the Commission to only provide fines. Without the ability to reduce fines in exchange for specific performance, the outcome is increased fines and fewer payments of those fines.

PUBLICIZING SOME PARTS OF COMMISSION INVESTIGATIONS

Another confusing aspect of HB 2391 is a section that applies confidentiality only to the Commission and staff,[14] which is already the state of the law. The only possible reason to include this in statute would be to make it more difficult to close judicial proceedings when we have to enforce an investigative item in district court. I cannot imagine that the Legislature is interested in publicizing investigations that are ongoing since one of the primary reasons to seek closure of those proceedings is to protect the privacy of the individuals under investigation or related to an investigation.

ALLOWS CANDIDATES TO GIVE THEIR CAMPAIGN FUNDS TO PACS

HB 2391 would permit candidates to give to PACs.[15] There is no possible justification for this practice. It would not be a legitimate campaign expenditure nor an officeholder expense to make contributions to a political committee. The only entities who would benefit from this change would be PACs, at the expense of contributors and Kansans more broadly.

PREVENTS COMMISSION FROM REDUCING OR WAIVING FINES

Yet another meritless provision of HB 2391 is the section that prevents the Commission from reducing, waiving, or modifying a fine.[16] The Commission has waived or reduced fines for various reasons. In one instance, years after the fine hearing, it was revealed to the Commission that the candidate's treasurer (who had also received a fine) was a minor at the time. After discussion, the Commission chose to waive that fine for the treasurer. The only possible outcome of this provision is increased fines and a decreased focus on education and prevention.

[14] Page 21, lines 20-22. Also page 23, lines 5-7.
[15] Page 18, lines 30-42.
[16] Page 24, lines 1-2.

DECREASES COMMISSION ABILITY TO SETTLE MATTERS

HB 2391 prevents the Commission from negotiating waivers of rights in consent orders and settlements.[17] The entire point of a settlement is to reach a final conclusion that is acceptable to all parties. If a Respondent is interested in seeking action against the Commission, they are not required to agree to the settlement terms. There is no reason to constrain the Commission in this way, and the only possible outcome of this limitation is more civil fine assessments.

ALLOWS USING CAMPAIGN FUNDS FOR SIGNIFICANTLY LARGER ITEMS

HB 2391 includes expansions in what campaign funds can be used for, and the poorly-worded language undermines any realistic enforcement of these limitations.[18] Overall, these changes are relatively minor unlike most of the rest of this bill, but highlighting the impact of weak drafting is important as well.

The first addition is to allow any "expenses, compensation or gifts" for any campaign volunteer. This is already the state of the law if such person is giving some sort of service for a campaign. This addition is worded poorly and would allow campaigns to use their campaign funds for vacations for friends or family members and other similar abuses of contributed funds as long as the recipient at some point was a volunteer with a campaign in the past. At that point there is not much reason to prohibit the personal use of campaign funds.

The second addition is to allow payment of any civil penalty assessed by the Commission. This is already the state of the law, though you can only use your campaign fund to pay for your own penalties. This language is also poorly worded and would allow one person to use their campaign fund to pay for another person or entity's penalties.

The third addition is payment of legal fees related to any matter under the Campaign Finance Act. If there is a substantial nexus to a campaign, again, this is already the state of the law, but the poorly-worded language here would potentially allow spending on legal fees if there was any tangential connection to a campaign.

The fourth addition is allowing for family caregiving services. This is probably a beneficial addition, but this change should be addressed as a standalone item. 2023 SB 223 had an effective and helpful hour-long hearing on just this provision on February 15 of this year and this is after having hearings and amendments last year on the same item.

[17] Page 1, lines 24-27.
[18] Page 17, line 24 through page 18, line 6.

IV. Provisions Targeting or Retaliating Against the Agency

CHANGES COMMISSIONER AND DIRECTOR REQUIREMENTS

HB 2391 undermines the perception of the Commission by eliminating partisan exclusions from service and applying limitations to the Director that would not apply to any other state employee.[19]

First, the bill would remove the requirement that no more than 5 members (of 9 total) can be members of one political party. This required balance is important for perception of governmental legitimacy; a Commission that can be significantly dominated by members of one party causes distrust in government broadly.

Second, the bill would apply Commissioner prohibitions to the Director. While the Director does not participate in any of that conduct, creating even more limitations that do not apply to any other state employee for an already underpaid position is worth noting.

Third, the bill would substantially reduce qualification restrictions to serve on the Commission. It is important to have strict requirements to serve on the Commission as the Commission makes important decisions regarding the application of the laws under its jurisdiction. HB 2391 would allow the following people to serve on the Commission:

- People who previously served as chair, vice chair, or treasurer of a political party committee,
- People who sought partisan office within the last five years,
- People who held elective office in the last three years,
- People who were cabinet secretaries in the last three years,
- People who were registered lobbyists in the last three years,
- People who made contracts with the state or provided contracted services to the state in the last three years,
- People who currently serve in political party positions such as state party committee members and precinct committeepeople as long as they are not the chair, vice chair, or treasurer of the party.

The Commission has been well-served by the restrictions on appointments. There is no reason to weaken these Commissioner requirements. These alterations can allow for partisanship and cronyism.

PREVENTS THE COMMISSION FROM RUNNING ITS OWN HEARINGS

Crucially important, HB 2391 allows anyone to move their hearing to the Office of Administrative Hearings rather than with the campaign finance experts at the Commission.[20] The Commission is given no ability to run any portion of these hearings. A primary reason to have Commissioners with strict qualification restrictions evaluate these hearings is to ensure that the hearings are conducted among

[19] Page 2, lines 17-20 (allowing more than 5 members of one party to serve on the Commission); page 2, lines 41-43 (applying Commissioner prohibitions to Director); page 3, line 30 through page 4, line 30 (reducing partisan qualification restrictions for serving on Commmission)

[20] Several locations, including page 21, lines 12-19; page 21, line 39 through page 22, line 1; page 22, lines 3-20, page 24, lines 28-31.

experts that the public correctly perceives as having no partisan influence. The Commission has dealt with campaign finance violations of many types for decades and there is no reason to remove their hearing authority. A primary reason to have a nonpartisan Commission who focuses on understanding and interpreting the Campaign Finance Act is for those same people to be responsible for enforcing the Act in hearings.

Removing Commission hearing authority will result in higher civil fines, as the Commission tends to be rather lenient. Additionally, the agency will be forced to incur a substantial cost for relying on OAH.

If someone believes their hearing was improper for any reason, they can already appeal under the Kansas Judicial Review Act. Creating a complicated three-tiered system as in HB 2391 would slow down enforcement and result in worse outcomes for respondents.

SHIFTS ALL CIVIL PENALTIES AND FINES TO THE STATE GENERAL FUND

In a move that can only be viewed as retaliatory, the bill also attempts to strike a blow against the agency's fee fund by shifting all civil penalty and fine collection to the state general fund.[21] In the context of the broader bill, it is abundantly clear that this alteration is a measure intended to attack the agency.

There is a reasonable discussion to be had about the proper location of civil fines, but civil penalties have no such basis to be moved to the state general fund. Penalties are assessed automatically by operation of law. The Commission can grant waivers for good cause shown and usually does so when asked. Essentially, this is a late fee for reports. Just like any other fee (PAC, lobbyist, and candidate registration fees), they are properly located in the fee fund.

V. Other Items Included in HB 2391 Worth Highlighting

REQUIRES APPLYING THE KANSAS ADMINISTRATIVE PROCEDURES ACT AND CIVIL PROCEDURE

HB 2391 requires the Commission utilize the Administrative Procedures Act (KAPA) and civil procedure rather than a slightly more relaxed approach.[22] The Commission already uses KAPA as persuasive authority and utilizes it by statute in specific instances such as a cease-and-desist order. There is not a reason to formalize these requirements in law.

CHANGING COOPERATION AND CONSENT PROHIBITIONS TO COORDINATION

While it likely doesn't matter much at all since HB 2391 functionally makes coordination legal elsewhere in this bill, the bill also changes "cooperation and consent" to "coordination."[23] Coordination is a more specific term than cooperation, and HB 2391 also removes "consent." This slightly weakens prohibitions

[21] Page 15, line 15 (shifting civil penalties to the state general fund); page 23, line 38 (shifting civil fines to the state general fund).
[22] Several locations, including page 1, lines 12-13, page 21, lines 10-21, and page 21, lines 31-33.
[23] Page 12, line 14; and page 14, line 6.

against campaigns cooperating or consenting to allegedly independent expenditures on their behalf. If consent were included in HB 2391, the change would be relatively mild, but a narrowing of the statute nonetheless.

REQUIRING REGULATIONS FOR RECUSAL OF COMMISSIONERS, DIRECTOR, AND STAFF

HB 2391 includes a direction to the Commission to adopt regulations for recusal. This is one of the few beneficial changes in the bill. A direction to the Commission is not necessary as the concept is supported by the Director, but this is generally a good idea.

ALLOWING A DISCLAIMER TO PREVENT VIOLATIONS OF SOLICITING LOBBYISTS DURING SESSION

HB 2391 includes language allowing campaign solicitation of lobbyists during session to occur as long as the candidate includes a disclaimer indicating that it is not intended for lobbyists or other prohibited people. There is a possible negative effect on public perception of lobbyist influence, but the effect is likely relatively minor and this provision would substantially ease compliance issues.

VI. Conclusion

HB 2391 is a shameless bill designed to undermine nearly every aspect of Kansas campaign finance law and the Governmental Ethics Commission. If this bill were to pass, transparency in the state would be nonexistent, campaign finance rules that apply everywhere else in the country would be openly flaunted in Kansas, the few remaining violations could never be investigated by the Commission, and if civil fines were to occur they would be higher because of restrictions in this bill. If there is anything salvageable from this bill, I encourage a collaborative discussion and a standalone bill rather than a 25-page barrage of absurd attacks. For your constituents, for Kansans, for democracy, I urge you in the strongest possible terms to vote against HB 2391.