

Approved: 2-23-93
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS.

The meeting was called to order by Chairperson Marvin Smith at 9:00 a.m. on February 19, 1993 in Room 521-S of the Capitol.

All members were present except: Representative Delbert Gross (Excused)
Representative Walker Hendrix
Representative Alex Scott (Excused)

Committee staff present: Carolyn Rampey, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Arden Ensley, Revisor of Statutes
Nancy Kippes, Committee Secretary

Conferees appearing before the committee:

Representative Elaine Wells
Merlin G. Wheeler, District Judge
Betty Musick, Cloud County Clerk
Larry Bergstrom
Henry Shockley
Kathryn Shockley
Representative Laura McClure
Joe de la Torre, Secretary of State's Office

Others attending: See attached list

Hearing on:

HB 2321 - elections; costs of contest of election paid by state.

Representative Elaine Wells testified in favor of HB 2321, stating this bill establishes the means to receiving state help in payment of expenses of determining who the winner is in a close election (Attachment 1).

Judge Merlin G. Wheeler appeared before the committee with information concerning HB 2321 (Attachment 2). Judge Wheeler presided in both election contest cases in the state of Kansas in 1991 and 1992. He commented that the person with the adequate wealth has the upper hand in an election contest case, because in many cases the ability to win the contest case, particularly when you have large numbers of absentee ballot problems or write-in problems, is really dependent upon the ability of the person to bring the appropriate party into court to testify in regard to a particular ballot.

Judge Wheeler provided testimony in same attachment regarding HB 2322, stating the stickers are always potential problems. He did suggest amending the bill to allow assistance of disabled voters who cannot write-in.

Betty Musick, Cloud County Clerk, provided testimony in support of HB 2321 and particularly in regard to how much time is required in a contest of an election (Attachment 3).

Written testimony in support of HB 2321 from Dale Sprague, who was not in attendance, was handed out (Attachment 4).

Larry Bergstrom appeared in support of HB 2321, telling of his experience with an election contest in which he and his opponent spent considerable money (Attachment 5).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS, Room 521-S Statehouse, at 9:00 a.m. on February 19, 1993.

Henry Shockley testified in support of HB 2321 and related his experience in an election contest in which he and his opponent were neither one responsible for (Attachment 6).

Kathryn Shockley appeared in support of HB 2321 and commented on her concerns as an educator to the fact that candidates must shoulder the cost of an election contest and urged some provision be made to allow claims from the candidates involved (Attachment 7).

HB 2322 - elections; requiring names of write-in candidates to be handwritten.

Representative Elaine Wells gave testimony in support of HB 2322, noting this bill says write-in votes must be in the persons handwriting (Attachment 8).

Handouts from Dale Sprague in support of HB 2322, who was not in attendance, were distributed (Attachment 9).

Representative Laura McClure testified in support of HB 2322, reading from a letter submitted to her from a Lincoln County Commissioner regarding problems with the peel-off name stickers used in the last election (Attachment 10). She continued with her testimony (Attachment 11), suggesting amendments to add "hand printed" and reading that a write-in vote not handwritten or hand printed shall not invalidate the vote for any other office on the ballot.

Betty Musick, Cloud County Clerk, testified in support of HB 2322 and elaborated on problems they had during the last election with stickers (Attachment 12).

Larry Bergstrom appeared in support of HB 2322, stating this bill would rectify situations with sticker votes which have created opportunities of fraud and error and much confusion as to their use (Attachment 13).

Joe de la Torre, Secretary of State's Office, spoke in support of HB 2322, advising that each election cycle the Office of Secretary of State is inundated with questions from candidates as well as county election officers about the stickers (Attachment 14).

Henry Shockley testified in opposition to HB 2322, stating rather than eliminating stickers there should be provisions made for proper placement of stickers and space available for them (Attachment 15).

Kathryn Shockley gave testimony in opposition to HB 2322 and suggested instead, standardization in print size and type size (Attachment 16).

Action on:

HB 2050 - governmental ethics; conflicts of interest of local governmental officers and employees.

A balloon on HB 2050 with amendments requested was handed out (Attachment 17). This bill would bring into conformity local law with state law. It defines local official as an officer or employee and government entity as a business.

Representative Benlon moved that HB 2050 be amended with the balloon. Representative Cox seconded. Motion carried.

Representative Macy moved amendment of page 1, line 19 to read "participated directly and substantially". Representative Bowden seconded.

Representative Macy made a substitute motion to amend the same line to read "personally and substantially". Representative Hochhauser seconded. Motion carried.

Representative Cox moved to pass HB 2050 out of committee as amended. Representative Gilbert seconded. After some discussion, Representative Dawson moved to table HB 2050. Representative Haulmark seconded. Motion carried.

Representative Dawson moved approval of the minutes for February 17, 1993 and February 18, 1993, as submitted. Representative O'Connor seconded. Motion carried.

The meeting was adjourned at 10:30 a.m. The next meeting is scheduled for February 23, 1993.

GUEST LIST

COMMITTEE: House Govt. & Administration

DATE: 2-19-93

[illegible]

ELAINE L. WELLS
REPRESENTATIVE, FIFTY-NINTH DISTRICT
OSAGE AND NORTH LYON COUNTIES
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TOPEKA
HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIR: GOVERNMENT ORGANIZATION
AND ELECTIONS
MEMBER: PUBLIC HEALTH AND WELFARE
JUDICIARY

TESTIMONY ON H.B. 2321

TO THE

HOUSE GOVERNMENT ORGANIZATION AND ELECTIONS COMMITTEE

Thank you, Mr. Chairman for the hearing on this bill, and for the opportunity for myself and others here today to testify on this proposed change in the statutes.

Two years ago after undergoing a close election, a costly court contest, and finally a special legislative committee to determine the outcome of my election, I along with others involved in the lengthy experinece realized the complexity of our election process.

Due to my intense interest in our election laws after that election and with serving on the Elections Committee for the last two years, I became involved in the only election contest in the state after this last election. My objective was to study and ascertain the needed changes in the statutes. Judge Wheeler is here to testify on both this bill and H.B. 2321. He was the judge in my election contest and was the judge in this contest. He is quickly becoming the only judge in the state who specializes in such matters.

H.B. 2321 is one of the needed changes, we should consider in our election statutes.

The reason we have laws that relate to election contests is to assure that the election process is done correctly and to find out who the real winner is. Like the hearings we hold here in the capitol to study the laws and determine what is right or wrong, an election contest is carried out to find out what was done right or wrong. But an election contest is held in a court of law at the expense of the candidates or the parties involved.

This last November in Cloud County another election contest occurred in the Sheriff's race because the vote was close, so close, it was actually a tie. And after another costly and lengthy lawsuit a winner was declared. Both candidates approached me to persue the possibility of having the state help to pay for the expenses of determining who the winner is in a close election. H.B. 2321 establishes the means to accomplish that request.

2-19-93
House Govt. Org. & Elections
Attachment 1

In order to assure that we do not see a flurry of election contest filings after an election, the language in this bill was written to merely direct the legislature to review a claim to the state to ascertain if the state should pay for the contest. The words in lines 26 through 31 state, "if the committee determines that the party or parties were not personally responsible for any of the acts constituting the grounds for or outcome of the contest as prescribed by K.S.A. 25-1436, and amendments thereto, the committee shall recommend that all costs including reasonable attorney fees incurred in such contest proceeding be paid by the state." This means that it will up to the special claims committee to determine if the costs are to be paid.

The Sec. of State indicated in his letter following the Performance Audit Report by the Post Audit Committee that our elections in Kansas are fair, and accurately reflect the wishes of Kansas voters. In a very close election, that is accomplished only through a thorough study of the ballots, in a court of law. If we truly want to reflect the wishes of the voters, we will enact legislation to help finance that objective.

Again, thank you. I would be happy to respond to questions.

FIFTH JUDICIAL DISTRICT COURT STATE OF KANSAS

**Merlin G. Wheeler
District Judge**

**Lyon County Courthouse
402 Commercial
Emporia, KS 66801
316) 342-4950, Ext. 296
316) 342-8005 Fax**

MEMO

Date: February 18, 1992
To: House Committee on Governmental Organization and Elections
From: Merlin G. Wheeler, District Judge
Re: House Bill Nos. 2320, 2321, 2322

Members of the Committee:

Following the 1990 and 1992 general elections in Kansas, several election contest cases were filed with the District Courts of Kansas. Of the numerous cases filed, two proceeded to trial. One of these was the race for the position of Representative for the 59th Representative District comprised of portions of Lyon and Osage Counties in 1990; the other was for the position of Sheriff of Cloud County in 1992. The author of this memorandum had the opportunity to serve as the presiding judge in both cases. While these cases involve significantly different races, common questions repeatedly arose. This memorandum will attempt to discuss some of those in the context of the three bills you are presently considering.

HOUSE BILL 2321

This bill amends the provisions of K.S.A. 25-1452 by adding a provision under which the cost of an election contest case, including reasonable attorney's fees, may be paid by the state of Kansas. It would be inappropriate for me, as a District Judge, to comment on the Legislative policy decision called for by this proposed amendment. I do believe, however, that it is appropriate to describe

for you what is involved in an election contest case in order to assist you in making the policy decision.

Even though the two election contest cases over which I presided involved significantly different offices, both cases involved multiple days of actual trial time. This was preceded by countless hours of effort on the part of counsel for both contestant and contestee in preparing for the hearing. Although I have never seen the fee request made of the litigants by their attorneys, from the amount of time with me in Court, I can only imagine that the total fees generated in these two cases would have been in the high five digit range. From this estimate, I think you can readily see that no person seeking an elected office, other than a person of independent wealth, is likely to be able to be financially secure enough to pursue an election contest case from either the perspective of the Contestant or the Contestee.

My further experience is that no matter how definitive our election statutes are that regulate the conduct of elections, issues are going to arise which have to be decided. The citizenry of this state is deserving of being served by properly elected officers and often times the only way of resolving conflicting issues that arise under our statutes is by binding Court decisions. This necessarily requires that election contest cases be filed. To insure that the objectives of proper interpretation of our statutes as well as proper representation of the citizenry can be met requires that adequate resources are available to election litigants.

Undoubtedly there is a possibility for abuse of a system which would provide for payment of costs of the election contest but so long as the legislation would permit qualified persons to evaluate the validity of claims made in contest cases, I would suggest to you that the potential for abuse could be far outweighed by the benefits of providing a method to see that valid election contest cases are resolved.

HOUSE BILL 2320

This proposed legislation amends provisions of Kansas Statutes which deal with the handling of absentee ballots. In each of the two election contest cases over which I have presided, absentee ballots have been a focal point of the litigation. This legislation is designed in part to avoid some of the problems that have been demonstrated by these two most recent cases.

Although I have seen numerous problems with absentee ballots, these problems seem to generally fall into two broad categories. They are:

1) voter compliance with absentee ballot instructions and; 2) the handling of absentee ballots by election officers in cases where the ballots are void, challenged or objected to. With regard to the first category, experience has demonstrated to me again that voters quite regularly either forget or for some other reason fail to execute the affidavits contained on the transmittal envelope used to return the absentee ballot. Election officers quite often overlook this requirement because they know the individual who returned the ballot to their office or for some other reason. Current law seems to indicate that if the person can later identify the ballot and indicate it was properly cast, the ballot may be counted. However, if that person cannot be located, or in the absence of an election contest case in which the person is given an opportunity to testify, the ballot may or may not be counted depending upon the peculiarities of the handling of the ballots by the election officer. I believe there is a considerable lack of uniformity in the manner in which these absentee ballot returns are handled. This lack of uniformity may have the ultimate effect of increasing the number of election contests because of the uncertainty of the balloting process.

These problems may be best addressed in two ways. First of all, a standard should be adopted which regulates the handling of improperly executed absentee ballots and the accompanying affidavit. Without suggesting to you what that standard should be, it would appear that this legislation meets this need because it provides that no ballot should be counted unless it has been marked and transmitted in accordance with law except under the most unusual circumstances. This is certainly one of the alternatives that would be available to the Legislature and provides an additional benefit of eliminating the possibility that an election contest could be decided simply upon the question of whether or not litigants could obtain the in-court testimony of absentee voters who have failed to comply with the instructions for voting.

This legislation also contains a requirement with regard to the handling of void, challenged or objected to absentee ballots which mandates that the ballot be retained with the transmittal envelope in the event the ballot is found to be improperly cast, by reason of defect in the manner of transmittal or affidavit of compliance. This avoids a problem of having the ballot improperly counted because it was co-mingled with other ballots validly cast by other non-absentee voters. This was a significant problem in the Cloud County election contest

case and resulted in the potential of electors being required to publicly disclose their vote in order for the Court to make a proper determination. The amendment found in this particular bill will assist in avoiding that problem.

HOUSE BILL 2322

Current statutes use terms such as "insert" and "affix" in describing the manner in which write-in votes are cast. An Attorney General's opinion has concluded that this will allow the use of pre-printed, self-adhesive stickers or labels containing the name of a write-in candidate to be used in the place of the handwriting of the voter. The use of such labels has resulted in a myriad of problems. Among these are the size and placement of the labels on the ballot as well as the fact that labels in one case have been found in the voting booth which was obviously an improper location. Although stickers are much easier to read than incomplete or inaccurate names and illegible handwriting, there are undoubtedly a multitude of problems involved when they are permitted.

Again, it is not my position to suggest a particular remedy to the Legislature but to merely note that the number of cases involving such stickers or labels is such that the issue should be addressed by the Legislature. House Bill 2322 addresses the same by prohibiting the use of such labels and directing that write-in ballots be cast in the handwriting of the elector. We can still not avoid problems such as inaccurate or misspelled names or illegible handwriting, but the solution suggested by this bill is certainly one of the more realistic options available to the Legislature.

The second problem incident not only to write-in ballots but as well to a number of other types of ballot problems is the determination of voter intent. Much of the case law in Kansas as well as the statutory rules regarding elections require that the intent of the voter be given paramount importance as long as that intent can be ascertained from the ballot. The problem here is not in ascertaining the intent but in the standard which should be used by the Court in doing so. There is one extremely old Supreme Court case which indicates that courts are to use the "beyond a reasonable doubt" test which is utilized in criminal cases for determining guilt. On the other end of the spectrum is the "preponderance of evidence test" typically used in civil cases in Kansas. The "preponderance of evidence test" is much less restrictive than the "beyond a reasonable doubt" test. Compounding this problem is the fact that in some types of cases in Kansas we

use a standard of proof called the "clear and convincing test" which is something of a middle ground between the other two standards noted. I found in the Cloud County case that the "preponderance of evidence" test should apply. However, that decision was not appealed and there has been no recent binding Appellate Court case which decides this issue. It has therefore been left in part with the Legislature to address if so desired.

I would comment here that if either of the two restrictive standards of "clear and convincing" or "beyond a reasonable doubt" were to be applied, many of the ballots ruled on in either of the election contest cases would never have been allowed to be counted. It has long been the rule of law that no voter should be disenfranchised unless absolutely necessary and consequently, the Legislature should be aware that the use of the more restrictive two standards would undoubtedly result in a judicial determination that the intent of the ballot cannot be determined under those standards.

The Legislature is free to adopt any of the standards of proof I have noted. This particular legislation suggests the use of the "preponderance of evidence" test which simply requires a finding by a trial court that the asserted position is more probably true than not true. Use of this test will undoubtedly result in more ballots being counted simply because any other standard of proof would be difficult to ascertain in the absence of direct testimony of the voters which is literally impossible.

No matter which standard of proof is adopted by the Legislature, I would urge the Legislature to adopt a standard so this question may be resolved for the benefit of future election cases.

Respectfully Submitted,
Merlin G. Wheeler

Betty L. Musick

Cloud County Clerk
Courthouse
811 Washington
Concordia, Kansas 66901
(913) 243-8110

TESTIMONY ON HB 2321

Chairman Smith, Members of the Committee:

Thank you for the opportunity to testify on House Bill 2321.

Those of you who have not had the experience of participating in a contest of an election may not realize how much time is required for such a proceeding. During the recent contest in Cloud County, 5 days were necessary for the inspection and recanvassing of the ballots with at least one day of preparation time. My constant presence was required during all that time. The trial itself took 3 days. Again my presence was necessary, since I was called upon many times to clarify various points in addition to my initial testimony for each participant.

In a small office like mine, each employee has a full schedule of essential duties. There is no one to take up the slack of two weeks' absence of the County Clerk. Getting immediately necessary work done required hours of evening and

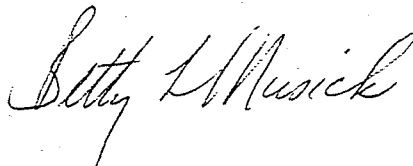
2-19-93

House Govt. Org. & Election
Attachment 3

weekend work. Even now in mid-February, I am still trying to catch up on tasks that are necessary but not time-specific.

If this bill includes county clerks in the definition of "parties," and if the county clerk's time and material costs are included, then I can most assuredly support this bill and ask that the committee consider it favorably.

Respectfully submitted,

A handwritten signature in cursive script, reading "Betty L. Musick". The signature is written in dark ink and is positioned above the printed name.

Betty L. Musick

Cloud County Clerk

HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

Friday, February 19, 1993

H.B. 2321

Dale M. Sprague
Attorney

I write in support of H.B. 2321. I represented Sheriff Larry Bergstrom in the Cloud County Sheriff Election Contest last December. Sheriff Bergstrom has fully paid all attorney fees and expenses incurred in the lawsuit. I support H.B. 2321 for the following reasons:

1. Kansas Government has the Constitutional Obligation and Authority to Conduct Correct Elections. Once ballots are cast in an election, the candidates must rely upon the election results as counted by the government. The costs of proving election voting results to be in error are extremely high due to attorney fees and expenses in conducting substantial, complex litigation. The costs of errors should be on the entity causing the error.

2. H.B. 2321 Does Not Mandate Payment. The Claims Committee retains sufficient discretion whether or not to recommend payment. The party (or parties) must affirmatively show that erroneous elections were not of his, her or their doing. Further, the Bill only requires the Committee to "consider" the Claim.

House Governmental Organization
and Election Committee
Friday, February 19, 1993
H.B. 2321

3. Amount of Payment. The term "reasonable attorney fees" is applied almost daily by Courts and rules in many cases. Adequate and substantial standards and guidelines now exist to determine these amounts, and, in any event, the final determination is left to the Committee.

4. H.B. 2321 Does Not Promote Litigation. Any attorney is ill-advised to file an Election Contest lawsuit without assurance of payment by his or her client. It does not make financial sense for the attorney to rely upon the potential payment mechanism in H.B. 2321. H.B. 2321 is designed to provide relief only to the candidate, not to the candidate's attorney.

Dale M. Sprague
Attorney at Law
P.O. Box 119
McPherson, KS 67460
(316) 241-7112

Thank you, Mr. Chairman, for the opportunity to testify on HB2321.

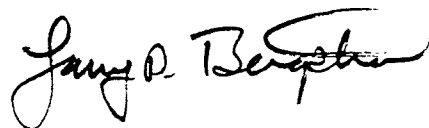
This legislation proposal is relating to elections; concerning costs of contests of elections; amending K.S.A. 25-1452 and repealing the existing section.

HB2321 allows parties of any election contest to file claims with the joint committee on special claims against the state who can prove problems through no fault of their own have been created by the need for clarification and specification of any of the acts constituting the grounds for or outcome of the contest.

As in evidence of contests where fraud and error, illegal votes received, or legal votes rejected as such has been found in sticker votes cast for write-in candidates. Undue time and expense of contested elections have been involved to determine the actual winner. The process of canvasses, recount, inspectors, court and attorney fees result in expenses rendering no recourse for winners who must defend themselves because of the problems created as a result of sticker votes used by the contestee.

In future elections candidates should not have to bear the burden of paying costly legal fees for contest proceeding. In my case I have spent the equivalent of 1 years salary to defend my election race. I am certain that no politician would be satisfied with the decision of a coin toss

Again, thank you, and I respectfully urge the committee to recommend favorable passage for HB2321



2-19-93
House Gov't Org. & Elections
Attachment 5

TO: Committee
Government Organization and Elections

FROM: Henry E. Shockley
Route 2 Box 124
Concordia, Kansas 66901
Cloud County

RE: House Bill 2321
DATE: February 19, 1993

TESTIMONY ON HB2321

Mr. Chairman,

In support of HB2321, I would like to offer the following testimony.

I am Hank Shockley and I was a candidate for the office of Cloud County Sheriff, in the November 3rd, 1992, election. And, due to the unique circumstances that occurred in our election, I offer the following testimony in support of the proposed changes included in HB2321.

After the canvass of our election, it was determined that I, and my opponent, had each received half of the votes. We had tied. And, according to law, the tie was settled by lot. A coin was flipped and I won the toss. Shortly, thereafter, I was issued a certificate of election.

My opponent then requested a recount, which is exactly what I would have done had the coin toss gone the other way. The recount, however, was in my favor and the numbers showed that I had also won the election by four votes.

Then, my opponent contested the election, in court. And, as it turned out, he was justified in doing so, because after a three day trial, he was declared the Sheriff of Cloud County.

What I want to address, here, is the position that I was placed in, due to the above circumstances.

When I was served the Notice of Contest, as in most civil cases, I had twenty days in which to answer. And it was then, when I realized the true meaning of 'Public Servant'. First of all, my opponent was contesting the election, and the results thereof, for which I was not responsible. Nonetheless, I found myself being dragged into court as a contestee. And, I had two options:

2-19-93

House Gov't Org. & Elections
Attachment 6

I could either, destroy the Certificate of Election and ignore the will of twenty-six hundred voters, by refusing to take office. Or, I could hire legal counsel and defend myself, for having won the election in the first place. In other words, I had no choice. And for everyone, myself, my opponent, and the people of Cloud County, it was a lengthy and expensive experience.

The process of deciding the Sheriff's race resulted in court costs and legal fees that snow-balled into the thousands of dollars. For example, my legal fees, that included witness fees, mileage, etc., were over \$15,000. And, if the costs of campaigning were to be included, my total expenditures for seeking office, in a small county with a population under 12,000 surmounted \$19,000. That in itself, will defeat our electoral process. No one will run for public office, knowing they could incur those kind of expenses.

In closing, I would like to point out that K.S.A. 25-1452, in essence, allows the following: In the interest of justice the clerk of the district court, may upon voucher, file with the State for reimbursement any costs incurred in an election contest.

I understand that to mean the following:

The law lends support to the party, namely the county election officer, whose responsibility it is, to insure that an election is conducted properly and that an election does not end up contested in court. But, it lends no support to those seeking office, who are dragged into court and who had no control, over how the election was conducted.

Elections resulting in court contests are rare. But, they do occur, and the impact they have on the public's trust in government to be fair and honest, is enduring.

In the interest of justice, I ask the committee to recommend passage for HB2321. Thank you.

To: Committee - Government Organization & Elections

From: Kathryn Shockley
Route 2, Box 124, Concordia, KS (Cloud County)

Re: **House Bill 2321**

Date: February 19, 1993

The contested election for Cloud County Sheriff has created a financial burden for us. Campaign expenses stretched our budget, although contributions helped out. However, people have not offered to contribute for the court contest.

In fact, voters have been astonished that Hank's costs were not paid for the state or county. I cannot foresee any objections to HB2321 from the voters of Cloud County regardless for whom they may have voted. Countless individuals have reiterated that certainly Hank should not have to bear this expense.

But my husband's testimony touched on that. What his testimony did not cover are concerns with which I, as an educator, have heard from students, parents, and others. Some of these comments:

"Well, that just shows how unjust the government is..."

"You never can beat the system..."

"I've just had it with voting if that's what happens when you win..."

These are just examples of the many negative comments that have bothered me, as it's my charge as a teacher to promote civic responsibility; however, it has been difficult at best to be positive and defend government on this issue. I've simply told students that's the law and that perhaps no one ever thought contested elections would be so expensive.

I trust that government does care and works for us. I urge you to pass HB2321 and to make some provisions in it that would allow claims from those involved in 1992 election contests.

Thank you for the opportunity to make these comments.

2-19-93
House Gov't Org + Elec.
Attachment 7

STATE OF KANSAS

ELAINE L. WELLS
REPRESENTATIVE, FIFTY-NINTH DISTRICT
OSAGE AND NORTH LYON COUNTIES
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HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE-CHAIR: GOVERNMENT ORGANIZATION
AND ELECTIONS
MEMBER: PUBLIC HEALTH AND WELFARE
JUDICIARY

TESTIMONY ON H.B. 2322

TO THE

HOUSE GOVERNMENT ORGANAZATION AND ELECTIONS COMMITTEE

Thank you Mr. Chairman for the hearing on this bill.

This request from Rep. Freeborn and myself for changes in our statutes relating to write-in ballots was a result of the election contest held in Cloud county this last election. I attended the final day of the lawsuit and witnessed the problems that exist when a write-in candidate uses self-adhesive stickers on the ballots.

You will hear from the other conferees in more detail what those problems were.

To preface their comments, H.B. 2322 first of all requires that a write-in vote has to be made in the handwriting of the voter. This in essence outlaws the use of stickers. After the bill was written, it was brought to my attention that we need to add, "or the handwriting of the person with the affidavit of assistance".

The second significant change occurs on page 11 which clarifies what can be accepted for a write-in vote. This language is the same as the Colorado statute. It also states that the intent of the voter is to be determined upon the basis of a preponderance of evidence presented. This is the least amount of evidence required in a court of law.

The final change is that a write-in vote for any candidate shall not be counted unless it is in the handwriting of the voter. This makes it clear to the election board what they are to do on write-in votes. We should also consider, as an after thought, that if the vote does not count, the remainder of the ballot is not voided.

The use of stickers complicated the election process in Cloud County as it did in other elections last year. With this legislation we are not outlawing write-in votes as does the state of Hawaii, we are merely requiring that they be as they are stated, a "write-in" vote.

Again, thank you, and I will try to answer any of your questions.

2-19-93
House Gov't Org + Elections
Attachment 8

HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

Friday, February 19, 1993

H.B. 2322

Dale M. Sprague
Attorney

I write in support of H.B. 2322. I represented Sheriff Larry Bergstrom in the Cloud County Sheriff Election Contest last December. Stickers for write-in candidates should not be an allowed voting device for the following reasons, all based upon sworn testimony and evidence introduced at the time of trial. Where appropriate, each point below references specific contested ballots which were used in evidence before the Court.

1. Current Kansas statutes do not address the use of stickers in paper ballot elections, only an Attorney General Opinion. Stickers for write-in candidates are not permitted in Kansas elections where electronic or mechanical counting methods are used. In these counties, voters must handwrite the name of write-in candidates. A 1992 U.S. Supreme Court case from Hawaii affirms State authority to restrict voting methods. A 1985 A.G. opinion permits the use of stickers but places some restrictions on their use by voters. The restrictions imposed are wholly inadequate and only promote litigation.

2-19-93
House Gov't Org. & Elections
Attachment 9

House Governmental Organization
and Elections Committee
Friday, February 19, 1993
H.B. 2322

2. Stickers have no legal standards to prevent ballot alterations when affixed by voters. In Bergstrom-Shockley, all stickers covered ballot printed language, lines and/or voting boxes unless the sticker was affixed completely outside all voting spaces. As in contested Ballots 58, 104 and 306, stickers covered voting boxes for Bergstrom which had been marked for Bergstrom and which could not be detected without the use of a flashlight. These ballots resulted in no vote for either candidate whereas the voter may have intended a vote for one or the other. Obvious misinterpretations of voters' intentions were made by counting boards and even those involved in the Court Election Contest.

3. Stickers were found throughout Cloud County in the voting booths. Testimony from Election Judges and pollworkers resulted in a stipulation to the Court that stickers were found in voting booths throughout Cloud County. Kansas law forbids the existence of election materials within 250 feet of a polling place. It is impossible for pollworkers to police voting booths all the time all day. Further, the presence of stickers in a voting booth could have easily been misinterpreted by a voter to have constituted official election ballot materials to be affixed to the ballot even though a vote was not being cast for the write-in candidate

House Governmental Organization
and Elections Committee
Friday, February 19, 1993
H.B. 2322

Shockley.

4. Stickers facilitate potential voting fraud. There was no evidence of any voting fraud in Cloud County elections. However, if a person handling original ballots wanted, he or she could affix a sticker over a vote cast for another candidate and thereby alter a ballot in favor of his or her favorite candidate. There is no way to know who, when or how a sticker is affixed to a ballot. A handwritten write-in at least can be verified by comparison, if necessary, to a handwriting exemplar of the voter.

5. Stickers promote Election Contest litigation. In a close election contest where a write-in candidate wins and uses stickers, I would not hesitate as an attorney to represent the loser. Stickers under current Kansas law have no guidelines of any consequence and therefore make excellent "fodder" for legal arguments. Uncertain law is the stuff lawsuits are made of!

Dale M. Sprague
Attorney at Law
P.O. Box 119
McPherson, KS 67460
(316) 241-7112

February 15, 1993

To Representative Laura McClure:

I support your proposed legislation HB 2190 which states that a write-in vote shall be handwritten or hand printed thus outlawing the use of name stickers as a substitute for a handwritten write-in vote.

As a Lincoln County Commissioner during the November 1992 General Election I experienced first-hand while canvassing the votes what a peel-off name sticker does to a ballot. The general public in Lincoln County did not understand how to use this "revolutionary new idea".

As a result some voters placed the whole sticker on the ballot which covered up the County Offices above and below the position they were "writing in", or realizing it wouldn't fit, made it fit somewhere on the ballot and drew in the boxes. The copies of the ballots you received clearly show the quandary some of the voters found themselves facing.

Our County Clerk anticipated a problem with the peel-off name sticker. He contacted the Secretary of State and the Attorney General Offices before the election to get advice and instruction for his Counting Boards. No consistent answers were available from either agency.

The responsibility placed on the local Counting Boards was frustrating and many voided the whole ballot. It was more luck than sense that none of the affected offices were close enough for a recount.

I have worked on many election boards in all capacities from Supervising Judge to Counting Board and I have seen what the average voter can do to a ballot with a pencil. We do not need a name sticker to add to their confusion. Let's get back to the basics. A simple pencil can handle voter intent.

Thank You,

Charlene A. Jones

Charlene A. Jones
Lincoln County

2-19-93
Deane Gout Org & Elec.
Attachment 10

STATE OF KANSAS

Official General Ballot

COUNTY and TOWNSHIP OFFICES

COUNTY OF LINCOLN — NOVEMBER 3, 1992

LINCOLN PRECINCT II

Notice

If you tear, deface or make a mistake and wrongfully mark any ballot, you must return it to the election board and receive a new ballot or set of ballots.

COUNTY and TOWNSHIP OFFICES

To vote for a person, make a cross or check mark in the square to the left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space, and mark a cross or check mark in the square to the left.

For COUNTY CLERK Vote for One

☒ VICTOR SUELTER, Lincoln Dem.

☐ DORIS LARSEN WHITE, Lincoln Rep.

☐ WRITE IN BALLOT

For
Vote

RETAIN
DONNA WEST

for

Lincoln County Treasurer

Remove to place on Ballot

For REGISTER OF DEEDS Vote for One

☒ DELWIN J. RATHBUN, Lincoln Dem.

☐

For COUNTY ATTORNEY Vote for One

☒ SUSAN MARSHALL, Lincoln Rep.

☐

For SHERIFF Vote for One

☒ A. DON PANZER, Lincoln Dem.

☐ ANNE M. BRANDA, Lincoln Rep.

☐

STATE OF KANSAS

Official General Ballot

COUNTY and TOWNSHIP OFFICES

COUNTY OF LINCOLN — NOVEMBER 3, 1992

LINCOLN PRECINCT II

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For COUNTY CLERK
Vote for One

☒ VICTOR SUELTER, Lincoln Dem.

☐ DORIS LARSEN WHITE, Lincoln Rep.

☐

For COUNTY TREASURER
Vote for One

☐ JOYCE WALKER, Lincoln Rep.

☐

For REGISTER OF DEEDS
Vote for One

☐ DELWIN J. RATHBUN, Lincoln Dem.

☐

For COUNTY ATTORNEY
Vote for One

☒ SUSAN MARSHALL, Lincoln Rep.

☐

For SHERIFF
Vote for One

☒ A. DON PANZER, Lincoln Dem.

☐ ANNE M. BRANDA, Lincoln Rep.

☐

WRITE IN

BALLOT

RETAIN

DONNA WEST

for

Lincoln County Treasurer

Remove to place on Ballot

STATE OF KANSAS

Official General Ballot

COUNTY and TOWNSHIP OFFICES

COUNTY OF LINCOLN — NOVEMBER 3, 1992

LINCOLN PRECINCT II

6

Notice

If you tear, deface or make a mistake and wrongfully mark any ballot, you must return it to the election board and receive a new ballot or set of ballots.

COUNTY and TOWNSHIP OFFICES

To vote for a person, make a cross or check mark in the square to the left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space, and mark a cross or check mark in the square to the left.

For COUNTY COMMISSIONER—2nd DISTRICT Vote for One

☐ ALFRED WAYNE WALLACE, Barnard Rep.

☐

For COUNTY CLERK Vote for One

☒ VICTOR SUELTER, Lincoln Dem.

☐ DORIS LARSEN WHITE, Lincoln Rep.

☐

For COUNTY TREASURER Vote for One

☐ JOYCE WALKER, Lincoln Rep.

☒

WRITE IN

BALLOT

For
Vote

RETAIN

DONNA WEST

for

Lincoln County Treasurer

Remove to place on Ballot

For COUNTY ATTORNEY Vote for One

☒ SUSAN MARSHALL, Lincoln Rep.

☐

For SHERIFF Vote for One

☐ A. DON PANZER, Lincoln Dem.

☒ ANNE M. BRANDA, Lincoln Rep.

☐

STATE OF KANSAS

LAURA L. McCLURE

REPRESENTATIVE, 119TH DISTRICT
202 SOUTH 4TH
OSBORNE, KS 67473
(913) 346-2715
STATE CAPITOL
ROOM 278-W
TOPEKA, KS 66612-1504
(913) 296-7680



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: AGRICULTURE
TRANSPORTATION
ENERGY AND NATURAL RESOURCES

February 19, 1993

Governmental Organization and Elections
Concerning HB 2322

Page 1, lines 28 and 29

"Names of candidates for which a write-in is cast shall be in the handwriting of the voter."

This would prohibit anyone needing assistance due to a physical handicap or someone who is blind from voting.

To correct this problem the language could be changed to read, "A write in vote shall be handwritten or hand printed."

Page 11, line 35 section (e) currently reads, "A write-in vote for any candidate shall not be counted unless the name of the candidate is in the handwriting of the voter and appears on the line provided for such purpose."

I'd like to suggest an amendment to this language.

"A write-in vote for any candidate shall not be counted unless the name of the candidate is handwritten or hand printed and appears on the line designated therefor. A write-in vote for any one office which is not handwritten or hand printed shall not invalidate the vote for any other office on such ballot."

This would take care of the handicapped voting problem and allow the rest of the ballot to be counted if a sticker was used.

Thank You,

A handwritten signature in cursive script that reads "Laura McClure". The signature is written in dark ink and is positioned below the "Thank You," text.

2-19-93
House Gov't Org & Elections
Attachment 11

9

Betty L. Musick

Cloud County Clerk
Courthouse
811 Washington
Concordia, Kansas 66901
(913) 243-8110

TESTIMONY OF HB 2322

Chairman Smith, Members of the Committee:

Thank you for the opportunity to testify before you on
House Bill 2322.

This bill contains clarifying language that has long
been needed. Language that defines precisely what a "write-
in" vote is, i.e., a name placed on the ballot by the voter
in the voter's own handwriting (or in the handwriting of an
assistant if the voter is disabled) and placed on the line
provided for that purpose.

In our recent General Election - at which stickers were
used - the only guide the election board workers had for
counting was the statutory instruction to attempt to
determine the "intent of the voter." Obviously that
determination could - and did - vary with whatever person
happened to be looking at the ballot. In the end the judge
(during the contest of election trial) ruled that almost

2-19-93
House Gov't Org & Elections
Attachment 12

any placement of the sticker counted as a vote for that candidate as long as it was not totally in a section reserved for another race. Stickers that partially obscured the heading of the Township Trustee section, for example, were counted. Stickers that were in the blank space of the ballot far below the printed material were counted. But had the voter intended to vote for that candidate and misplaced the sticker unintentionally? Or was the voter trying to make some kind of a statement with his placement of the sticker? Or is it possible that someone other than the voter placed the sticker? The judge thought not in this case, but the possibility must be considered.

In his comments, Judge Wheeler noted that, in his opinion, if a voter wishes to vote for a candidate whose name is not on the ballot, it seems the least the voter could do is to learn how to write the name. I agree.

There are just too many problems stemming from the use of stickers to continue to allow the use. Problems that appeared in the recent Cloud County election included the size of the stickers in relationship to the space available

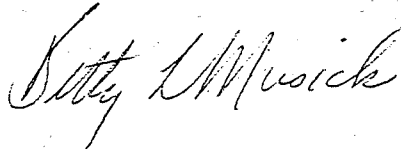
for a write-in vote; improper placement of the sticker; voters leaving stickers in the election booth (which can certainly be considered electioneering); disposal of the paper on which the sticker is pasted (it could be considered that even the sight of numbers of sticker backings on the floor under the booths could be considered as electioneering if it tended to influence the voter); the possibility that stickers could come off ballots if they were not firmly affixed (thus generating charges of improprieties against the election boards if numbers did not correspond to what candidates thought there should be); and of course the possibility that stickers might be used to conceal a vote for another candidate.

Up to this point election officials have not seen any proven attempt to effect election fraud via the use of stickers. The problems that have so far arisen are primarily logistical and judgemental. Nevertheless, the possibility of fraud is there. And as an election official, I can see no reason to allow a situation that can lead so easily to illegal actions when the remedy is simple and readily available.

Members of the committee, you hold that remedy in your hands. I ask that you recommend favorable passage for House Bill 2322.

Thank you.

Respectfully submitted,

A handwritten signature in cursive script that reads "Betty L. Musick". The signature is written in dark ink and is positioned above the printed name and title.

Betty L. Musick
Cloud County Clerk

Thank you, Mr. Chairman, for the opportunity to testify on HB2322.

This legislation proposal is a result of the need to clarify the statutes relating to elections and specifically concerning write-in ballots.

Under current law, the words "insert" are used to indicate when and where a voter may "insert" the name of any person not printed on the ballot for whom the voter desires to vote for in an office. "How" a voter may specifically "insert" such name has created problems of undue time and expense in contested elections.

HB2322 rectifies this situation by requiring names of candidates for which a write-in vote is cast shall be in the handwriting of the voter with instructions on the ballot (as examples starting on page 4 line 29) that a cross or check mark in the square to the LEFT not Right to signify the particular candidate be placed. Indications of "Vote for One" (examples starting on page 5 line 11) also would remind the voter to place the cross or check mark in the square either beside the printed name on the ballot or write-in on the blank line in their own handwriting a name they desire. Page 11 line 35 "a write-in vote for any candidate shall not be counted unless the name of the candidate is in the handwriting of the voter and appears on the line provided for such purpose," also reenforces it's meaning.

HB2322 rectifies the situation of sticker votes for which in it's self has created open opportunities of fraud and error in the polling place as well as enormous errors for election board officials trying to determine the intent of the voter. In my race there was numerous witnesses that reported finding stacks of stickers in the polling booths. This was confusing to voters, opening opportunities for pranksters and creating doubt when election board officials finding stickers affixed anywhere on the ballot and as well as finding stickers affixed on top of votes already cast for a person whose's name is already printed on the ballot.

The right and intent of the voter to cast one's vote should remain a simple and fair process. HB2322 does so. It helps those involved whose problems through no fault of their own have been created by the need for clarification and specification of HB2322.

Again, thank you, and I respectfully urge the committee to recommend favorable passage for HB2322.

James P. Bengtson

2-19-93
House Gov't Org & Elections
Attachment B

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

Testimony

By

Joe de la Torre

House Governmental Organization and Elections Committee
February 19, 1993

Mr. Chairman, members of the committee, thank you for the opportunity to testify in support of HB 2322.

Every election cycle, the Office of the Secretary of State is inundated with questions from candidates as well as county election officers about the legality of stickers or labels, containing the name of a candidate being used as a write-in method for voters to express their intent in voting for a such candidate.

For the past several years the Office of the Secretary of State has depended on the opinions and letters issued by the Office of the Attorney General to give guidance concerning the legality and appropriateness of prepared stickers or labels on ballots as a method for a write-in votes.

Currently no statute specifically prohibits the use of stickers or labels on paper ballots for this purpose.

The Office of the Secretary of State strongly supports HB 2322 as it clarifies the definition of a write-in vote as one that has been handwritten.

I will be glad to answer any questions you may have.

2-19-93
House Gov Org + Elections
Attachment 14



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

September 21, 1984

ATTORNEY GENERAL OPINION NO. 84- 99

The Honorable Jack H. Brier
Secretary of State
State Capitol, 2nd Floor
Topeka, Kansas 66612

Re: Elections -- Voting Procedure -- Write-In Candidates;
Use of Stickers Bearing Name of Candidate

Synopsis: Although two Kansas statutes contained in the chapter dealing with elections provide that electors wishing to vote for a write-in candidate shall "write" the vote in the provided space (K.S.A. 25-213, 25-2903), other statutes in the same chapter allow electors to "insert" (K.S.A. 25-612, 25-2021, 25-2116) or "affix" such votes. (K.S.A. 25-1330). No statute specifically prohibits the use of prepared stickers or labels which contain the name of a candidate who is conducting a write-in campaign. Where such a sticker or label is attached to a ballot in such a manner as to make the intent of the voter clear, a valid vote has been cast and the expression of the voter's will should be given effect. Cited herein: K.S.A. 25-213, 25-612, as amended by L. 1984, ch. 139, §2, 25-1330, 25-2021, 25-2116, 25-2903.

*

*

*

Dear Mr. Brier:

As Secretary of State for Kansas, you are the chief election officer of the state. In this capacity, you request our opinion on a question involving the use of labels or stickers in the general election. The stickers would contain the name of a candidate

who is running a write-in campaign and would be attached to the official ballot by those persons wishing to vote for such person. In the absence of any Kansas statutes or case law on this subject, you inquire whether the use of labels or stickers would be legal (i.e. could any votes cast using this procedure be included in the candidate's total).

Our research has revealed no less than five statutes which are contained in the chapter of the Kansas Statutes Annotated which deals with elections (Chapter 25) that speak to the casting of write-in votes. Two of the five, K.S.A. 25-213 and 25-2903, use only the word "write" in describing the manner by which a voter may indicate his or her choice of a candidate whose name is not printed on the ballot. The latter statute is contained in the article entitled "Voting Procedure," and states:

"Except as otherwise provided by law, if a voter desires to vote for a person whose name is not on the ballot, the voter shall write the name of such person in the blank space, if any is provided, under the appropriate title of the office. Failure to make a cross or check mark in the square to the right of such name shall not invalidate that portion of the ballot unless it is impossible to determine the voter's intention. If no blank space is provided for writing in the name of a person whose name is not on the ballot, voters may not vote for any person whose name is not on the ballot."

However, a third statute, K.S.A. 25-612, as amended by L. 1984, ch. 139, sec. 2, contained in the article entitled "Official Ballots," states in part as follows:

"Except for presidential candidates and governor and lieutenant governor, blank spaces shall be left at the end of the list of candidates for each different office equal to the number to be elected thereto, in which the voter may insert the name of any person not printed on the ballot for whom the voter desires to vote for such office." (Emphasis added.)

Other statutes which also employ the broader term "insert" include K.S.A. 25-2021 (school board elections) and K.S.A. 25-2116 (city elections). Even more latitude is provided by K.S.A. 25-1330, which concerns the casting of write-in votes using a voting machine. Therein, it is provided that write-in ballots shall be "deposited, written or affixed" by the elector. While it is not

clear that the use of the word "affix" was intended to specifically permit the use of labels or stickers, it is obvious that something besides the casting of a hand-written vote was at least contemplated, for otherwise the language would be surplusage, a result to be avoided if possible. American Fidelity Ins. Co. v. Employers Mutual Casualty Co., 3 Kan.App.2d 245 (1979), Appeal of Armed Forces Co-op Insuring Assn., 5 Kan.App.2d 787 (1981).

The question of whether write-in votes which employ the use of stickers or labels should be considered valid has arisen on numerous occasions in other states, with a number of appellate decisions rendered. Our research has indicated that in almost every case in which the use of labels or stickers was disallowed, the basis for the denial lay either in the failure of the voter to properly apply the label or sticker in accordance with a specific statute [Petition of Keogh-Dwyer, 211 A.2d 778 (N.J. 1965), In re Election of Supervisor in Springfield Twn., Mercer Cnty., 399 Pa. 37, 159 A.2d 901 (1960)], or because of a statutory prohibition against the use of such items. Bayne v. Board of Elections, 396 N.Y.S.2d 690, 58 A.D.2d 863 (1977). Only in a very few cases has the use of stickers or labels been prohibited as a matter of public policy, or their usage strictly controlled. McFarland v. Spengler, 248 Pac. 521 (Cal. 1926), State ex rel. v. District Court, 3rd Judicial District, 167 Mont. 477, 539 P.2d 1182 (1975).

In light of the number of decisions from other jurisdiction which reach the contrary result (i.e. the use of stickers or labels is permitted, absent some other fact which would call into question the intent of the voter), the preceeding line of cases would appear to clearly be the minority rule. In Devine v. Wonderlich, 268 N.W.2d 620 (Iowa 1978), the court construed the words "insert in writing" to allow the use of stickers for a write-in candidate, even where there was some deviation in the placement of the sticker. Id., at 626. In the case of Pace v. Hickey, 236 Ark. 792, 370 S.W.2d 66 (1963), the Arkansas Supreme Court reaffirmed an earlier holding which had allowed the use of stickers or rubber stamps as merely another means of allowing electors to express their will. Yet another decision, Kamins v. Board of Elections, 324 A.2d 187 (D.C.App. 1974), concluded that, in the absence of a statutory prohibition, the use of stickers should be permitted, even when the voting machines which were in use could not physically handle them, thus requiring manual counting. See also, Burns v. Rodman, 342 Mich. 410, 70 N.W.2d 793 (1955), In re Manchester Town Election, 115 Vt. 230, 55 A.2d 612 (1947).

Although, as previously noted, no Kansas cases have dealt with the issue of the use of labels or stickers, Kansas courts have

traditionally reached results in election cases which favor giving effect to the ascertainable intent of the voter, rather than a strict construction of election laws. In the early case of Clark v. Comm'rs of Montgomery County, 33 Kan. 202 (1885), Justice Johnston stated for the court:

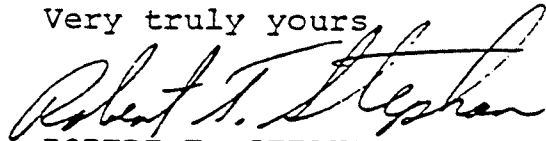
"The leading consideration, and the one on which the decision of the case must turn, is, what was the will of the electors casting these ballots? In determining the intention of voters, election boards as well as courts should be guided by the language of the ballots cast, interpreted in the light of the circumstances surrounding the election. If the terms used by the voter upon his ballot are so vague and uncertain as not to disclose his purpose, it should be rejected; but on the other hand, if the terms employed by him on his ballot, though not technically accurate, are such as to make known his will beyond a reasonable doubt, effect must be given to it."
202 Kan. at 204.

This emphasis on substance over form has been continuously present in Kansas decisions concerning challenges to elections. See, e.g., Wall v. Pierpoint, 119 Kan. 420 (1925), Johnson v. Russell, 160 Kan. 96 (1945), Kimsey v. Board of Education, 211 Kan. 618 (1973).

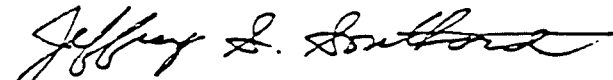
~~Based upon the above, it is our opinion that the use of labels or stickers by persons voting for write-in candidates should not invalidate either the person's vote in the particular race or the entire ballot which is cast. To be sure, the placement of a sticker or label must be close enough to the space designated for the write-in to show the elector's intention. If the sticker or label covers words on the ballot which are not material, is upside down, extends over the edge of the ballot, is too wide for the spot designated, or is out of alignment with the printed portion of the ballot, the intent of the voter should still prevail.~~ However, if the sticker is affixed next to the wrong office or is placed in such a way that it is not clear which office is being referred to, the intent of the voter is not clear and the sticker should not be given effect, although the entire ballot is not voided. (For cases discussing each of these deviations in placement, see Devine v. Wonderlich, *supra*, 268 N.W.2d at 626.) Given the multiplicity of ways in which a label or sticker could be affixed, the legislature may well wish to provide guidance to your office and county election officials through an enactment in this regard at the next session.

In conclusion, although two Kansas Statutes contained in the chapter dealing with elections provide that electors wishing to vote for a write-in candidate shall "write" the vote in the provided space (K.S.A. 25-213, 25-2903), other statutes in the same chapter allow electors to "insert" (K.S.A. 25-612, 25-2021, 25-2116) or "affix" such votes. (K.S.A. 25-1330). No statute specifically prohibits the use of prepared stickers or labels which contain the name of a candidate who is conducting a write-in campaign. ~~where such a sticker or label is attached to a ballot in such a manner as to make the intent of the voter clear, a valid vote has been cast and the expression of the voter's will should be given effect.~~

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw

TO: Committee
Government Organization and Elections

FROM: Henry E. Shockley
Route 2 Box 124
Concordia, Kansas 66901
Cloud County

RE: House Bill 2322
DATE: February 19, 1993

TESTIMONY ON HB2322

Mr. Chairman,

Of the persons testifying on HB2322, I and my wife are probably the most qualified to offer testimony. And, we are strongly opposed to any legislation that would limit the ability of the voters to cast a ballot, such as eliminating stickers, labels, stamps, etc., would do.

I say we are most qualified, because in the November 3rd, 1992, election I ran a write-in campaign for the office of Sheriff, in Cloud County, and my wife was my campaign manager. And, I used stickers to win the election.

However, the use of stickers was then, challenged in court, and resulted in my losing the election. But, in court, it was not a question of whether or not, stickers are or should be, a legal tool that voters may use to express their intent. They were challenged because of where, and in what manner they were placed upon the ballots.

Therefore, I agree that a problem exists. But, the answer to that problem is not to eliminate stickers, thus restricting the voter's will. The answer lies in adopting legislation that assists a voter in casting a ballot. Such, as standardizing ballots, or enacting laws that instruct election officers in the preparation of a ballot, in regards to size.

Arguments can be made that stickers jeopardize the integrity of ballots, and that they increase the possibility of election fraud because people leave them at the polling booths, etc. But, the truth is, eight years ago in Cloud County, a write-in Sheriff was elected, who used stickers. And, a Concordia City Commissioner, who used stickers was also elected, in 1985. And, until our 1992 election, there was never any question of integrity or fraud. Nor, during

the trial of the 1992 election contest was any evidence offered to substantiate those arguments.

In fact, a better argument supporting the use of stickers can be made. Stickers help the voter express their will by eliminating misspellings, and simply by virtue of being affixed to a ballot, they show intent.

I submit to you, that the lack of laws directing election officers in how to properly draft a ballot, poses a much greater threat of possible election fraud, than does the use of stickers. Humans, being what we are, have biases. And, if an election officer were prejudice toward a write-in candidate, and in the absense of any laws regulating them otherwise, may choose to increase or decrease the space provided for a sticker depending upon their will.

(see attached copies of 1985 ballot and 1992 ballot, both prepared by the same County Election Officer.)

Thus, is it really the use of a sticker, or a label, or a stamp that should be at issue? And, is eliminating the use going to enhance voter turn out, or facilitate the voter with poor handwriting, or help the voter with poor memory cast their ballot?

I urge you to consider the ramifications of HB2322. And, ask you to oppose its passage into law. Thank you.

WRITE-IN
Greg HATTAN ☒
For

City Commission

Greg Hattan is the experienced and responsible candidate that we need on the city commission. Greg is a dedicated and tireless worker for our community. He needs your vote-it CAN make the difference.

In the Tuesday, April 2, general election, the voters of Concordia will elect TWO city commissioners.

For COMMISSIONER

(Vote for One)

Ernest A. Girard, Concordia

☐

D.L. Dayton, Concordia

☐☐

* For COMMISSIONER, UNEXPIRED TERM

(Vote for One)

☐

* Greg Hattan is a candidate for the City Commission, Unexpired Term. Since the ballot is blank, the voter must write-in (or apply printed labels) the name of their candidate AND mark an X in the square.

For COMMISSIONER, UNEXPIRED TERM

(Vote for One)

Gregory L. Hattan

☒

YOUR SUPPORT FOR GREG HATTAN WILL BE APPRECIATED!

Pd. by Hattan for Commission, Raymond Willis, treasurer

STATE OF KANSAS
OFFICIAL GENERAL BALLOT
National and State Offices
County and Township Offices
County of Cloud
November 3, 1992

NOTICE

If you tear, deface or make a mistake and wrongfully mark any ballot,
you must return it to the election board and receive a new ballot or set of ballots.

National and State Offices

To vote for presidential electors for candidates for president and vice-president, make a cross or check mark in the square to the left of the names of the candidates. To vote for presidential electors to be selected by candidates for president and vice-president whose names are not printed on the ballot, write the persons' names in the appropriate blank spaces and make a cross or check mark in the square to the left of the names of the candidates.

**For PRESIDENTIAL ELECTORS FOR PRESIDENT
AND VICE-PRESIDENT**

Vote for One Pair

- ☐ Bush and Quayle, Republican
☐ Clinton and Gore, Democrat
☐ Marrou and Lord, Libertarian
☐ Perot and Stockdale, Independent Nominations
☐ _____ and _____

To vote for a person whose name is printed on the ballot, make a cross or check mark in the square to the left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and make a cross or check mark in the square to the left.

For UNITED STATES SENATOR

Vote for One

- ☐ Christina Campbell-Cline, Wichita, Independent Nom.
☐ Bob Dole, Russell, Republican
☐ Mark B. Kirk, Wichita, Libertarian
☐ Gloria O'Dell, Silver Lake, Democrat
☐ _____

**For UNITED STATES REPRESENTATIVE
1ST DISTRICT**

Vote for One

- ☐ Steven A. Rosile, Wichita, Libertarian
☐ Pat Roberts, Dodge City, Republican
☐ Duane West, Garden City, Democrat
☐ _____

**For STATE SENATOR
21ST DISTRICT**

Vote for One

- ☐ D. Eric Stonecipher, Leonardville, Democrat
☐ Janice Hardenburger, Haddam, Republican
☐ _____

**For STATE REPRESENTATIVE
107TH DISTRICT**

Vote for One

- ☐ Joann Freeborn, Ames, Republican
☐ Kent Campbell, Miltonvale, Democrat
☐ _____

**For STATE BOARD OF EDUCATION
6TH DISTRICT**

Vote for One

- ☐ Bill Musick, Minneapolis, Republican
☐ Mary Nichols, Manhattan, Democrat
☐ _____

County and Township Offices

To vote for a person whose name is printed on the ballot, make a cross or check mark in the square to the left of the person's name. To vote for a person whose name is not printed on the ballot, write the person's name in the blank space and make a cross or check mark in the square to the left.

For COUNTY CLERK

Vote for One

- ☐ Betty L. Musick, Concordia, Republican
☐ JoDee LeDuc, Clyde, Democrat
☐ _____

For COUNTY TREASURER

Vote for One

- ☐ Alice M. Walker, Concordia, Democrat
☐ _____

For REGISTER OF DEEDS

Vote for One

- ☐ Lois Duewell, Concordia, Republican
☐ _____

For COUNTY ATTORNEY

Vote for One

- ☐ Robert A. Walsh, Concordia, Democrat
☐ _____

For SHERIFF

Vote for One

- ☐ Larry D. Bergstrom, Concordia, Republican
☐ _____

SAMPLE

To: Committee - Government Organization & Elections

From: Kathryn Shockley
Route 2, Box 124
Concordia, KS 66901
(Cloud County)

Re: House Bill 2322

Date: February 19, 1993

I'm Kathy Shockley, and as Hank mentioned, I was his campaign manager. I would also like to make a few brief comments concerning the use of stickers on ballots.

From the county clerk to the secretary of state's office, I simply could not get an answer on how much space would be left for the write-in. Repeated attempts at the county clerk's office to obtain this information were to no avail. I have never felt so frustrated in dealing with government. I was at a total loss to know what size stickers would fit the ballot; therefore, I ordered the smallest available. It was in court that the opposing attorney questioned sticker size and placement.

The problem: Ballot size and type size need to be standardized throughout the state. County election officials need some direction on this. If enough room is left on the ballot for people to even handwrite, then stickers will also work. Voting machines will not be an issue in the smaller counties.

I hope the state of Kansas will continue to allow voters to place stickers on paper ballots, as the use of stickers simply helps them exercise their right to vote.

2-19-93
House Gov't Org + Elections
Attachment 16

HOUSE BILL No. 2050

By Committee on Governmental Organization and Elections

1-15

8 AN ACT relating to governmental ethics; concerning conflicts of
9 interests of local governmental officers and employees; amending
10 K.S.A. 1992 Supp. 75-4304 and repealing the existing section.
11

75-4301a and
sections

Be it enacted by the Legislature of the State of Kansas:

13 Section 1. K.S.A. 1992 Supp. 75-4304 is hereby amended to read
14 as follows: 75-4304. (a) No local governmental officer or employee
15 shall, in the capacity of such an officer or employee, make or par-
16 ticipate in the making of a contract with any person or business by
17 which the officer or employee is employed or in whose business the
18 officer or employee has a substantial interest. *Whenever any indi-*
19 *vidual has, within the preceding two years participated as a local*
20 *government officer or employee in the making of any contract with*
21 *any person or business, such individual shall not accept employment*
22 *with or provide contractual services to such person or business for*
23 *one year following termination of employment as a local government*
24 *officer or employee.*

25 (b) No person or business shall enter into any contract where
26 any local governmental officer or employee, acting in that capacity,
27 is a signatory to or a participant in the making of the contract and
28 is employed by or has a substantial interest in the person or business.

29 (c) A local governmental officer or employee does not make or
30 participate in the making of a contract if the officer or employee
31 abstains from any action in regard to the contract.

32 (d) This section shall not apply to the following:

33 (1) Contracts let after competitive bidding has been advertised
34 for by published notice; and

35 (2) contracts for property or services for which the price or rate
36 is fixed by law.

37 (e) Any local governmental officer or employee who is convicted
38 of violating this section shall forfeit the office or employment.

Sec. 2. K.S.A. 1992 Supp.
75-4301a is hereby amended to
read as follows:

75-4301a. Governmental ethics appli-
cable to local governmental subdivisions; def-
initions. As used in K.S.A. 75-4302a, 75-4303a,
75-4304, 75-4305 and 75-4306, and amend-
ments thereto:

(a) "Substantial interest" means any of the
following: (1) If an individual or an individual's
spouse, either individually or collectively, has
owned within the preceding 12 months a legal
or equitable interest exceeding \$5,000 or 5%
of any business, whichever is less, the indi-
vidual has a substantial interest in that
business.

(2) If an individual or an individual's
spouse, either individually or collectively, has
received during the preceding calendar year
compensation which is or will be required to
be included as taxable income on federal in-
come tax returns of the individual and spouse
in an aggregate amount of \$2,000 from any
business or combination of businesses, the in-
dividual has a substantial interest in that busi-
ness or combination of businesses.

(3) If an individual or an individual's
spouse, either individually or collectively, has
received in the preceding 12 months, without
reasonable and valuable consideration, goods
or services having an aggregate value of \$500
or more from a business or combination of
businesses, the individual has a substantial in-
terest in that business or combination of
businesses.

(4) If an individual or an individual's spouse
holds the position of officer, director, associate,
partner or proprietor of any business, other
than an organization exempt from federal tax-
ation of corporations under section 501(c)(3),
(4), (6), (7), (8), (10) or (19) of chapter 26 of
the United States code, the individual has a
substantial interest in that business, irrespec-
tive of the amount of compensation received
by the individual or individual's spouse.

(5) If an individual or an individual's spouse
receives compensation which is a portion or
percentage of each separate fee or commission
paid to a business or combination of busi-
nesses, the individual has a substantial interest
in any client or customer who pays fees or
commissions to the business or combination of
businesses from which fees or commi

7-19-93
House Govt & Org + Elections
Attachment 17

individual or the individual's spouse, either individually or collectively, received an aggregate of \$2,000 or more in the preceding calendar year.

As used in this subsection, "client or customer" means a business or combination of businesses.

(b) "Business" means any corporation, association, partnership, proprietorship, trust, joint venture, and every other business interest, including ownership or use of land for income.

(c) "Local governmental employee" means any employee of any governmental subdivision or any of its agencies.

(d) "Local governmental officer" means any elected or appointed officer of any governmental subdivision or any of its agencies.

(e) "Candidate for local office" means any candidate for nomination or election to any elective office of a governmental subdivision.

(f) "Governmental subdivision" means any city, county, township, school district, drainage district or other governmental subdivision of the state having authority to receive or hold public moneys or funds.

(g) "Contracts" means agreements including but not limited to sales and conveyances of real and personal property and agreements for the performance of services.

(h) "Acts" means the exercise of power or authority or performance of any duty incident to public office or employment.

(i) "Compensation" means any money, thing of value or economic benefit conferred on, or received by, any person in return for services rendered, or to be rendered, by that person or another, but shall not mean nor include reimbursement of reasonable expenses if the reimbursement does not exceed the amount actually expended for the expenses and it is substantiated by an itemization of expenses.

(j) "Preceding calendar year" has its usual meaning, except that in the case of candidates and individuals newly appointed to office or employment, it means the 12 months immediately preceding a required filing date.

17-2
or a governmental agency unit, or a governmental subdivision

46-230. "Business" defined. "Business" means any corporation, association, partnership, proprietorship, trust, joint venture, or a governmental agency unit, or a governmental subdivision and every other business interest, including ownership or use of land for income.

History: L. 1974, ch. 353, § 16; L. 1982, ch. 218, § 1; July 1.

39 Sec. ~~2~~ K.S.A. 1992 Supp. 75-4304 is hereby repealed.

40 Sec. ~~3~~ This act shall take effect and be in force from and after

41 its publication in the statute book.

are
75-4301a and

3

4