

Approved: 4-6-93
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Chairman Lana Oleen at 11:05 a.m. on February 24, 1993 in Room 254-E of the Capitol.

All members were present except:
Sen. Hensley was excused

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes

Conferees appearing before the committee:
Janet Chubb, Executive Director, Kansas Racing Commission
Jim Conant, Admin. Officer, ABC
See attached list

Others attending: See attached list

Sen. Oleen introduced Janet Chubb who presented amendments to the Racing Act relating to hiring of substitute stewards and racing judges and administrative (clean-up) language. Sen. Jones made a motion the committee sponsor it as a bill, and it was seconded by Sen. Vidricksen; the motion passed. Sen. Oleen stated the committee will discuss this matter after it has been printed, as it may involve two bills rather than one.

Sen. Oleen introduced Jim Conant, who proposed amendments to the drug tax collection statute (Attachment 2). Sen. Tillotson made a motion the committee introduce it as a bill, and it was seconded by Sen. Rameriz; the motion passed.

The chairman announced the committee will hear testimony on HCR 5006 and asked Mary Galligan to briefly explain the Resolution. The following appeared before the committee as proponents:

David Plinsky, (Attachment 3);
Ralph Snyder, (Attachment 4);
Darrell Bencker, (Attachment 5);

Sen. Oleen stated she wanted to give equal time to the opponents and introduced David Collins who gave testimony (Attachment 6) opposing the Resolution.

Sen. Oleen introduced Donald DeBarge, who did not submit written testimony, but stated the Marine Corps League supports HCR 5006. She also introduced M/Sgt. Michael Hager who testified as a proponent (Attachment 7). David Orr appeared as an opponent of HCR 5006 (Attachment 8).

The following also appeared and presented testimony as proponents:

Tom Dobelbower, (Attachment 9);
Craig Miller, (Attachment 10);
Clarence Malone, (Attachment 11)

Judy Schrock did not testify but submitted written testimony (Attachment 12).

Sen. Oleen asked the committee for action on the Confirmation of Col. Edward Sykes, who appeared before the committee February 23. Sen. Praeger made a motion the committee recommend Col. Sykes for confirmation, and it was seconded by Sen. Parkinson; the motion passed.

Sen. Oleen announced a hearing on SB 284 tomorrow and the committee will spend the remainder of time taking actions on bills previously heard.

Meeting adjourned at 12:00.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: Feb 24, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Joan Cole	1001 S Cedar	Ottawa Univ.
Laris L. Sillis	1001 S. Cedar	Ottawa University
David R. Collins	2709 Westlake Rd Lawrence	
DAVID D. PLINSKY	JUDICIAL CENTER (AG)	ATTORNEY GENERAL'S OFFICE
Betsy Martin	1001 S. Cedar Ottawa KS	Ottawa University
Jim E. Eiler	1001 S. CEDAR OTTAWA KS	Ottawa University
Heather Fleer	1001 Burroughs #16 OTTAWA, KS	OTTAWA UNIVERSITY
FRED Shields	1001 S. Cedar Ottawa KS	KS Ottawa University
Walter D. Dink	1001 S. CEDAR, BOX 926, OTTAWA KS	OTTAWA UNIVERSITY
Patrick M ^c Corkle		OTTAWA UNIVERSITY
Ida Walker	1001 S CEDAR, 1076	OTTAWA UNIV-STU
Gmy Breashears	1001 S. Cedar,	Ottawa University
Spence Koch	1001 S. Cedar	Ottawa University
Jonina Salmeri	Ottawa University	Ottawa KS
Beggy Miller	628 Forest	Popoh GVB
Tom DOBELBOWER	1819 VILLAGE DR	Boy Scouts of America
Ralph Snyder	6946 SW Montana	American Legion
Craig Miller	628 Forest	Washburn Student Association
Janet A. Chubb	3400 Van Buren	KRC
David J. Orr	5991 SW 22nd Park	ACLU
Laurence Malone	3434 SW WESTOVER RD	KQC - VA HOSP. PATIENTS
Don DeBARGE	701 SW PRAIRIE CT	MARINE CORPS HQ
Mike Chapman	1520 SW INDIAN HILLS ROAD	KS ARMY NTL GUARD
Craig M. Hooper	1520 S.W. Indian Hills Road	
Lowell Sheets	7325 SW 21 ST	Farmer

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: _____

[illegible]

Attach. 1
SB 41

STATEMENT
OF THE
KANSAS RACING COMMISSION

Before the Senate Committee on
Federal and State Affairs
The Honorable Lana Oleen, Chairperson
February 24, 1993

Madam Chairperson and members of the committee:

I am Janet Chubb. I have appeared before the committee in the past as assistant attorney general assigned to the Kansas Racing Commission. I was recently appointed the commission's executive director. Thank you for allowing me to present to you today amendments specifically requested by the commission.

The first amendments may be classified as "clean-up" language for the racing act. They are:

K.S.A. 74-8801. During a regular commission meeting held December 18, 1992, the commission requested an amendment that would terminate its jurisdiction over non-parimutuel horse racing.

K.S.A. 74-8818(a). At the December 18, 1992 meeting, the commission requested language which would permit the hiring of substitute stewards and racing judges who may relieve the regularly appointed stewards and racing judges in the event of illness, vacation or emergency. At present our general counsel, who has had some experience this year with employment law and this issue, is working on proposed language for this section if it would prove helpful to your office.

K.S.A. 74-8818(c). At the December 18, 1992 meeting, the commission authorized an amendment to this section which would waive the examination for stewards and racing judges if the applicant had passed a similar test in another state and could show proof of the fact.

New sections. At the December 18, 1992 meeting, the commission agreed that new sections should be added to provide for licensing of photo finish, video replay, video reception and transmission services and similar services as defined by the commission, similar to the licensing required of concessionaire and totalisator providers.

K.S.A. 1992 Supp. 74-8838. At the December 18, 1992 meeting, the commission agreed this provision should be modified to make the county fair horse racing benefit fund available to a horsemen's nonprofit organization intending to operate Eureka Downs. Compare K.S.A. 1992 Supp. 74-8814 and 74-8838.

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The last amendment would affect the Kansas wage law. Since it cannot properly be classified as "clean-up" language, we believe the committee may want to address it as a separate bill. However, the commission is amenable to either treatment. That amendment involves:

Parimutuel tellers, shortages in cash boxes and deduct from wages. At a regular commission meeting on January 8, 1993, the commission requested that legislation be introduced stating a narrow exception in the wage law that would make parimutuel tellers responsible for shortages in their cash boxes. The commission requested staff coordinate legislative efforts with the Kansas Department of Human Resources to ensure the issue is handled properly. The commission is attempting to assist with the situation described in the attached initial order concerning one racetrack's alleged violation of the Kansas wage payment law.

The matters addressed in this letter have all been subject of public discussion by the commission on two or three separate occasions and are the only ones it endorses to date. Staff is specifically authorized to pursue these amendments of the racing act and the Kansas wage and payment law in concert with the department of human resources. We would be happy to assist with clarification and with specific language if it would be helpful.

Thank you for your attention to the commission's request. I am happy to address any questions.

CHUBB/MISC/93JAC1-dpb

TO: Janet A. Chubb
FROM: Deborah D. Cox *DXC*
DATE: February 18, 1993
RE: K.S.A. 74-8818(a)

Pursuant to your request regarding modification of the language of K.S.A. 74-8818(a), I met with Gail Smith and we propose the following change would be more workable in light of the newly adopted fluctuating work week policy that will apply to our racing judges and stewards:

74-8818(a). The commission shall appoint individuals to be stewards or racing judges. Only three such individuals shall serve at each race meeting held pursuant to this act. One shall be designated as chief steward or chief racing judge and the other two as associate stewards or associate racing judges. ...(the wording of the rest of the statute will remain the same).

The above wording would allow the commission to appoint more than three individuals to serve as stewards or racing judges, however, only three such individuals would be present at each race meeting. This wording would allow the commission more flexibility in its appointment of such positions. In fact, at some time in the future, the commission may desire to create an intermittent position that would be available if one of our judges or stewards became ill, would take vacation leave or simply accumulate the maximum number of hours allowed under the fluctuating work week policy.

Please advise if I can be of any further assistance on the wording or implementation of this statute.

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STATE OF KANSAS

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BEFORE THE SECRETARY OF HUMAN RESOURCES

James M. Gay, Carlene Hoskins)
and Wilfred Stuhlsatz,)
Claimant,)
vs.)
Wichita Greyhound Park, Inc.)
and/or Wichita Greyhound)
Charities, Inc.,)
Respondent.)

Wage Claim #'s 292-452
292-440
292-446

INITIAL ORDER

Comes now on this 29th day of October, 1992 the above captioned wage claims for administrative hearing before Tim Triggs, the duly appointed representative of the Secretary of Human Resources. The Claimants filed this matter alleging their former employer illegally recovered wages in violation of the Kansas Wage Payment Law.

APPEARANCES

Claimants, James M. Gay, Carlene Hoskins and Wilfred Stuhlsatz, appeared in person. Claimant Gay also appeared through Michael Corrigan, Attorney at Law.

Respondent, Wichita Greyhound Park, Inc. and/or Wichita Greyhound Charities, Inc., appears through Arthur S. Chalmers, Attorney at Law.

SYLLABUS

1. EMPLOYEE/EMPLOYER - definition employee. K.S.A. 44-313(b) describes an employee as any person allowed or permitted to work by an employer.

2. WITHHOLDING OF EARNED WAGES - K.S.A. 44-319 addresses withholding of an employees wages providing for authorized deductions identifies deductions that are not authorized pursuant to K.S.A. 44-319(a)(3), K.A.R. 49-20-1(a)(2)A.

3. PAYMENT OF EARNED WAGES - An employer may not do indirectly or by obvious circumvention what is prohibited by statute.

4. PAYMENT OF EARNED WAGES - Diversion. Statute prohibiting employers from withholding or diverting from wages payable any sums other than those specifically authorized by statute prohibits employer from requiring employees to reimburse employer from wages for shortages on same day subsequent to payday.

5. PAYMENT OF EARNED WAGES UPON TERMINATION - K.S.A. 44-315(a) requires an employer to pay all earned wages to a terminated employee by the next regular payday upon which he or she would have been paid if still employed.

6. WAIVERS PROHIBITED - K.S.A. 44-321 states that no provisions or any right created under this act may in any way be contravened, set aside or waived.

7. PENALTY FOR WILLFUL NONPAYMENT - K.S.A. 44-315(b) requires an employer to pay his employees all earned wages after termination and subjects any such nonpayment of a penalty of one percent (1%) per day, up to double the amount, where the act of nonpayment is willful.

8. "WILLFUL ACT" DEFINED - A "willful act" is one done with design, intent or purpose on the part of the employer to do wrong

or cause injury to the employee.

FINDINGS OF FACT

1. Wichita Greyhound Park, Inc. contracted with Wichita Greyhound Charities, Inc. to operate this greyhound racing facility in Sedgwick County, Kansas.

2. The Respondent is a corporation engaged in the operation of handling mutual wagering on greyhound races.

3. Claimants Gay, Hoskins and Stuhlsatz were all employed with the Respondent as mutuel clerks. Claimant Gay was employed from September 1989 through April 1992, Claimant Hoskins was employed from July 1989 through March 1992 and Claimant Stuhlsatz was employed from September 1989 through February 1992.

4. A mutuel clerk's duties include operations at United tote terminals for the issuance of wagers and the payment of winning tickets. Mutual clerks handle large numbers of cash transactions in the course of a normal shift. The Respondent maintains a computer record of every transaction made on each terminal.

5. The Respondent had a policy wherein employees were held personally liable for shortages that occur on their terminals. The Claimants shortages occurred due to errors in math and incorrect entries. The Claimants were asked to reimburse the Respondent for all shortages. Failure to pay for shortages would result in being laid off and or termination. A mutuel clerk was not scheduled to continue work unless their shortages were paid or an agreement was completed wherein payments were to be made until the shortage debt was satisfied.

6. The Claimants were aware of company policy regarding shortages and the repercussions for failure to repay.

7. The Respondent issued payroll checks to the Claimants for all earned wages. Wages were never directly withheld by the Respondent from payroll checks issued to the Claimants.

8. Respondent submitted a record (Exhibit D) of the amounts each Claimant reimbursed the Respondent for shortages. These shortages occurred during a three (3) year beginning in 1989. The amount of shortages were:

James Gay	-	\$1,498.83
Carlene Hoskins	-	\$1,783.60
Wilfred Stuhlsatz	-	\$ 835.80

9. Respondent became aware of our the Kansas Department of Human Resources ruling against The Woodlands (Driver vs. The Woodlands #591-232) approximately in December, 1991. The Respondent implemented a new policy in January 1992 wherein mutuel tellers were no longer responsible to pay for their shortages.

CONCLUSIONS OF LAW/MEMORANDUM/ORDER

The Secretary of the Department of Human Resources or his authorized representative is empowered by K.S.A. 44-322a to investigate claims for unpaid wages filed with the department. Such investigation will review the parties involved and the subject matter to determine proper jurisdiction and/or whether a dispute as to wages actually exists. If the matter cannot be resolved between the parties, it may be set for administrative hearing to weigh the evidence and provide an answer to the dispute.

[1] The administrative hearing provides the parties an opportunity to present their case. The parties may appear, give testimony, and provide evidence pertinent to their respective position on the dispute. The Claimant has the initial burden of proof to show that an employment agreement existed, that a particular wage agreement had been consummated, and that wages earned under that agreement had not been paid, [K.A.R. 49-21-3(c)(1)].

There is no dispute that the Claimants were employees of the Respondent, having been employed as mutual clerks at the Wichita, Kansas facility.

[2] K.S.A. 44-319 addresses the diverting of an employees earned wages:

(a) No employer may withhold, deduct or divert any portion of an employee's wages unless: (1) The employer is required or empowered to do so by state or federal law; (2) the deductions are for medical, surgical or hospital care or service, without financial benefit to the employer, and are openly, clearly and in due course recorded in the employer's books; or (3) the employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee.

In addition to K.S.A. 44-319, K.A.R. 49-30-1(a)2 states:

"(a) Authorized deductions, "accruing to the benefit of the employee," as used in K.S.A. 44-319(a)(3), shall mean deductions from an employee's pay for which the employer has received a signed authorization from the employee for lawful deductions that do not in any way waive, set aside or contravene any rights created in K.S.A. 44-313 et seq., as amended."

The following deductions shall not be considered authorized deductions "accruing to the benefit of the employee" within the meaning of K.S.A. 44-319(a)(3):

"(A) Deductions made for cash and inventory shortages; breakage; returned checks or bad credit card sales; losses to employers resulting from burglaries, robberies, or alleged negligent acts.

(B) Deductions made for uniforms, special tools or special equipment which are not necessary to their performance of the assigned duties and are customarily supplied by the employer;

(C) Any other deductions not set out by K.S.A. 44-313 et seq. or permitted by these rules and regulations."

The issue for determination in the instant case is whether the Respondent violated the Kansas Wage Payment Act (K.S.A. 44-313 et seq.). The Presiding Officer notes that several statements which were used in a previous order (Driver vs. Woodlands #591-232) have also been made part of this order. The circumstances in those cases and the applicable laws were clearly similar to those found in this case before us. With implementation of its terminal shortage policy the facts are clear in that each Claimant made payments to the Respondent for alleged cash shortages at their terminal while in the employ of Respondent. The Claimants paid for their shortages after being issued their payroll checks. The Claimants would cash their paychecks at the track and then return money to the Respondent for their shortages. The amount of money reimbursed to the Respondent as stipulated by all parties was: Claimant Gay \$1,498.83, Claimant Hoskins \$1,783.60 and Claimant Stuhlsatz \$835.80.

The Respondent is engaged in the operation of a greyhound racing facility located in Wichita, Kansas. The Respondent employs several hundred mutuel clerks who are assigned to work a terminal at which they handle cash transactions throughout their work day. In the course of a work day a mutuel clerk is involved in many cash transactions resulting in large amounts of money passing through their cash drawers. The Respondent created an oral policy wherein the mutuel clerks are held personally liable for shortages which occurred on their terminal. The Claimants were aware of this policy which required them to reimburse the Respondent for shortages.

The Respondent believes it was to the Claimants benefit to pay the shortages as it allowed them to maintain employment. The Respondent also believes it's policy regarding shortages is not in violation of K.S.A. 44-319 or any other statute because the monies received from the Claimants for shortages were voluntarily paid by the Claimants and no wages were withheld, deducted or diverted from their payroll checks.

[3.4.] The Respondent requests the definition of divert be reviewed as well as the legislative intent of K.S.A. 44-319. As noted in the Respondent's brief, Websters Collegiate Dictionary defines "divert" as "to turn aside: DEVIATE". It also provides that divert means "to turn from one course or use to another" DEFLECT, DISTRACT". Black's Law Dictionary (5th Edition) defines divert as "to turn aside, to turn out of the way; to alter the course of things".

The Respondent believes no diversion occurred, citing that the Claimants maintained their own option in reference to whether or not the shortages would be repaid.

Further noting, the Respondent believes the work "divert" should be given its normal and ordinary interpretation. Further stating that "the statute (K.S.A. 44-319) should not be construed to say more than it says. No rule or regulation has construed the work "divert" so broadly as to make it applicable".

This Presiding Officer could not disagree more with the Respondent's interpretation of the definition of "divert" and also their impression of the intent of the legislative body who created this statute. As the Respondent previously explained, the definition of divert clearly suggests to alter the course of things or to turn aside. This is exactly what the Respondent did when accepting the reimbursements of shortages from the Claimants. The Claimants were left with no alternative but to repay the shortages. Failure to do so would result in termination. The Claimants' wages were clearly diverted by this tactic implemented by the Respondent. The absolute value of wages received was altered by this method of recouping normal business losses.

The Presiding Officer also disagrees with the Respondent's impression of legislative intent. In my opinion, the word "divert" was added to K.S.A. 44-319 to prevent the type of recoupment method installed by the Respondent. Without the word "divert" included in this statute, this type of action possibly could be allowed. The word "divert" was not added to the statute to allow this type of

deduction as the Respondent suggests but conversely to prevent such an occurrence.

K.S.A. 44-319(a) states:

"No employer may withhold, deduct or divert any portion of an employee's wages unless: (1) The employer is required or empowered to do so by state or federal law; (2) the deductions are for medical, surgical, or hospital care or services, without financial benefit to the employer, and are openly, clearly and in due course recorded in the employer's books; or (3) the employer has a signed authorization by the employee for deductions for a lawful purpose accruing to the benefit of the employee."

For the purpose of the Kansas Wage Payment Act (K.S.A. 44-313 et seq.) the term "divert" means any indirect payment made by an employee to an employer to cover cash and inventory shortages; breakage; returned checks or alleged negligent acts [See K.A.R. 49-20-1(a)(2)].

K.S.A. 44-319 was enacted to prevent employers from depriving employees of their wages by either directly withholding or deducting amounts or indirectly withholding or deducting by diverting wages.

The testimony and evidence in the instant cases make it clear that the Claimants wages were "diverted". By the implementation of the terminal shortage policy, the Respondent is in violation of K.S.A. 44-319(a); both the language and spirit of the Law.

K.A.R. 49-20-1(a)(2) states:

The following deductions shall not be considered authorized deductions "accruing to the benefit of the employee" within the meaning of K.S.A. 44-319 (a)(3): (A)

Deductions made for cash and inventory shortages; breakage; returned checks or bad credit card sales; losses to employers resulting from burglaries, robberies, or alleged negligent acts. (B) deductions made for uniforms, special tools or special equipment which are not necessary to the performance of the assigned duties and are customarily supplied by the employer; (C) any other deduction not set out by K.S.A. 44-313 et seq. or permitted by these rules and regulations.

The purpose of Respondent's policy was to recover losses at the parimutuel terminals from the mutuel employees. The policy made no provision for the multiple factors not within the control of the Claimant.

Respondent argues that the policy benefits the Claimants because they can keep their jobs by paying shortages. Respondent's policy only attempts to make employees personally liable for shortages on their terminals. Such "free choice" repayment by the employees is not synonymous with a legal authorization to deduct, withhold or divert under the provisions of K.S.A. 44-319(a). Even if it were arguably a legal authorization, such could not be considered "accruing to the benefit of the employee" [K.A.R. 20-1(a)(2)]. To shift the risk of loss, and a normal cost of doing business, to the mutuel employees without any increase in compensation is unreasonable. The "Reasonableness" of Respondent's shortage policy is a factor to be considered in determining compliance with the wage payment law.

[4] As the Kansas Court of Appeals stated in Yuille v. Pester Marketing Inc., 9 Kan App.2d 464 (1984):

"The Court believes a further statement should be made relative to the circumstances presented her relative to the reasonableness of the employer's payment concept. Assuming, arguendo, that the deductions, through a more artfully crafted employment agreement were set out as conditions precedent, this Court believes these conditions of employment should be declared unreasonable and unenforceable as violation of the spirit and letter of the Kansas Wage and Hour law. The Kansas Supreme Court mentioned reasonableness as a consideration in construction of employment contracts in Sweet, [231 Kan. at 611]. The hospital's purpose for requiring an employee to give specific notice was related to the health and safety of its patients. This purpose was found reasonable.

"Pester claims that the policy behind the deductions from the manager's earnings for shortages and losses is to encourage strict compliance with the company operation and security policies. In reality, the facts demonstrated that the company operation and security policies. In reality, the facts demonstrate that the true effect of Pester's policy is to shift the part of its risks of doing business to the pocketbooks of its station managers. While Pester certainly may require all employees to follow company policies, these deductions from the manager's earnings include more than losses and shortages caused by the manager's failure to follow policy, but include losses attributable to the employees and factors outside the control of a station manager. Since it would violate the federal minimum wage statute for Pester to subtract shortages and losses from the minimum wage station employees, they attempt to charge their managers for an employee's dereliction. Likewise, it would violate the same laws to make deductions from a minimum wage paid to the station managers. Under the prior manager wage plan, which provided no 'bonus' but paid managers a higher than minimum hourly wage, these deductions for shortages and losses would have been clearly illegal under the Kansas Wage Payment Act. K.S.A. 44-319(a)(3) and K.A.R. 49-20-1(b).

"It is the Court's view that placing the risk and responsibility for these business

losses unaccompanied by increased compensation is unreasonable. For a manager to receive his entire wages under this plan, the station must be run almost flawlessly. Requiring an employee at the station manager level to, in effect, insure a company against robbery, employee theft, dishonored checks and credit cards, is inherently unreasonable and should not be enforced by governmental regulatory agencies or the courts."

In the instant case, the mutuel clerks must run their terminal without mistake, machine malfunction, customer refusal to pay all before they realize the full benefit of their daily earnings. None of the above items would provide the Respondent with a basis for proper withholding or deduction from wage even with a signed authorization. Accordingly, Respondent's terminal shortage policy is an inherently unreasonable attempt to do that which is otherwise prohibited by the wage payment act and, should not allow enforcement by a governmental regulatory agency.

[5] An employer who hires another to work for him and agrees to a method of compensation is contractually obligated to pay such compensation once the work is performed. Furthermore, K.S.A. 44-315(a) requires an employer to pay his/her employees all earned wages after termination on the next regular payday as through the employee is still employed. For the reasons set forth above the Respondent did not pay all earned wages due to Claimants.

[6] K.S.A. 44-321 states that "no provision of, or any right created under this act may in any way be contravened, set aside, or waived." What was the right "created" which could not be contravened by the employer, waived by either the employee or the

employer no set aside by the employer. In the instant cases, that "right created" was that income not be reduced by the cost of shortages.

[7] K.S.A. 44-315(b) invokes a penalty upon an employer who requires an employee to work, but then refuses to pay the agreed compensation for the work. The penalty will be invoked where the act by the employer is willful. A "willful act" is one done with design, purpose or intent on the part of the employer to do wrong or cause injury to the employee, Weinzirl vs. The Wells Group, Inc., 234 Kan. 1016, 677, P. 2d 1004 (1984). A penalty amount of 1% per day up to double the amount due may be assessed.

In this particular case, the presiding officer believes a "willful act" did occur. The Respondent decided to recover shortages through a cash payment made from mutual clerks to the Respondent. This clearly was an attempt to circumvent the provisions of the Kansas Wage Payment Law. With job dismissal or being laid off the consequences, the payback of shortages was certainly less than voluntary. The presiding officer views the action of the Respondent as a knowing act designed to do that which it knows is not otherwise allowed by law.

Furthermore, the record is clear the Respondent had knowledge of the law as early as December, 1991. They became aware of the ruling made by this Presiding Officer in an order dated October 14, 1991 (Driver vs. Woodlands #591-232) involving a similar scenario. The Respondent proceeded to change their policy regarding shortages wherein mutual tellers are not responsible for shortages. However,

Respondent elected to not pay the aforementioned Claimants while having full knowledge of the law and its consequences.

The Respondent mentioned that K.S.A. 60-514 should be reviewed when and if the willful penalty is assessed.

K.S.A. 60-514 states:

"The following action shall be brought within one (1) year. (3) An action upon statutory penalty or forfeiture.

Based on the preceding, the Respondent owes argues that no willful penalty could be assessed in this order should wages be found owing. The presiding officer believes the Respondent's argument is misguided. First of all, technically the Kansas Wage Payment Act does not provide penalties but does assess damages.

K.S.A. 44-315(b) states:

(b) If an employer knowingly fails to pay an employee wages as required under subsection (a) of this section, such employer shall be liable therefor and shall be additionally liable for damages in the fixed amount of one percent (1%) of the unpaid wages for each day, except Sunday and legal holidays, upon which such failure continues after the eighth day after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller, except that such penalty shall apply only in the event of a willful violation.

Secondly, the Claimant does not bring the action. The Presiding officer is bound to assess the willful damage if wages are found due and a willful violation existed. The Claimant files an action for wages to be paid. Damages may or may not be assessed. Thirdly, to allow an employee 3 to 5 years to file a wage claim but deny the potential damages attached thereto is to ignore the intent

of K.S.A. 44-315(b).

ORDER

It is the order of this Presiding Officer that wages be paid to the Claimants. Interest and penalties will be assessed pursuant to K.S.A. 44-323(a) and 44-315(b). The total amount due each Claimant is:

Claimant Gay	-	\$3,135.05
Claimant Hoskins	-	\$3,730.69
Claimant Stuhlsatz	-	\$1,748.21

The Respondent, Wichita Greyhound Park, Inc and/or Wichita Greyhound Charities, Inc., shall make such payments in negotiable monies of the United States, payable to the Claimant, but delivered to the Kansas Department of Human Resources, Employment Standards Section, located at 512 West 6th Street, Topeka, Kansas 66603-3150.

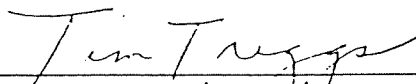
RIGHT OF REVIEW

This is an initial order of the presiding officer issued pursuant to K.S.A. 77-526(b). This initial order shall become final in accordance with K.S.A. 77-530(b) unless a petition of review pursuant to K.S.A. 77-527(b) is filed with the Secretary, Kansas Department of Human Resources, 512 W. Sixth Street, Topeka, Kansas 66603-3150, within 15 days after service of the initial order.

Additionally, K.S.A. 77-612 provides that judicial review of the final administrative action may be obtained only after a party seeking judicial review has exhausted all available administrative

remedies.

Entered in Topeka, Kansas this 24th day of November, 1992.



Tim Triggs

CERTIFICATE OF SERVICE

I, Craig N. Liskey, Senior Labor Conciliator, for the Secretary of Human Resources for the State of Kansas, do hereby certify that the above and foregoing is a true and correct copy of the hearing officer's initial order in wage claim case #'s 292-452, 292-440 and 292-446 as the same appears of record in the Department of Human Resources.

I do further certify that a true and correct copy of the above and foregoing Order was deposited in the United States Mail, first class postage prepaid, on the 24th day of November, 1992, addressed to:

James M. Gay
2403 W. Graber
Wichita, Ks. 67217

Michael Corrigan
707 N. Waco
Wichita, Ks. 67203

Carlene Hoskins
1213 Dover Dr.
Salina, Ks. 67401

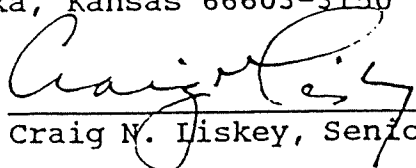
Wilfred Stuhlsatz
812 Parklane Ct.
Derby, Ks. 67037

Wichita Greyhound Park, Inc.
1500 E. 77th St. N.
PO Box 277
Wichita, Ks. 67147

Arthur Chalmers
200 W. Douglas Ave., Ste. 630
Wichita, Ks. 67202-3089

I also certify that in accordance with K.S.A. 77-526(h), a true and correct copy of the above and foregoing initial order was served this 24th day of November, 1992, by depositing a copy in Department of Human Resources building mail, addressed to:

Joe Dick
Secretary of Human Resources
c/o Employment Standards
512 West Sixth Street
Topeka, Kansas 66603-3150



Craig N. Liskey, Senior Labor Conciliator

Attach 2

ABC Legislative Proposal Amendments to Drug Tax Collection Statute

I. Bill Summary:

K.S.A. 1992 Supp. 79-5205 should be amended to clarify the Department of Revenue's ability to seize bank accounts and safety deposit boxes of drug tax violators as well as asset accounts with a tax warrant before an administrative hearing. The issuance of drug tax warrants should reference K.S.A. 79-3617 which relates to sales and excise taxes rather than article 32 of chapter 79, which encompasses the income tax.

II. Fiscal and Administrative Impact:

Passage of this proposal would simplify drug tax collection laws by clarifying the Department's authority with regard to drug tax assessments and collection. Clarifying the Department's ability to attach safety deposit boxes of drug "dealers," (as defined in K.S.A. 79-5201) would increase drug tax collections by an indeterminate amount. The ability to seize asset accounts and safety deposit boxes with a drug tax warrant, without a garnishment order or order of attachment would enable the Criminal Fraud Unit to move more quickly, minimizing the chances of such assets disappearing before the necessary paperwork is processed. This also would increase drug tax collections by an indeterminate amount. Because half of all drug tax collections are distributed to the local law enforcement agency which conducted the drug investigation, any increase in drug tax collections also benefit such agencies in their enforcement of drug laws.

III. Policy Implications/Background:

K.S.A. 1992 Supp. 79-5202 currently classifies all drug tax assessments as "jeopardy assessments." The term "jeopardy assessment," however, is not defined anywhere, although its meaning is well known to most department employees because it is provided for in K.S.A. 79-3610 for sales tax and in K.S.A. 79-3229 for income and withholding taxes. The purpose of a jeopardy assessment is to permit the director to make an immediate assessment and not wait for the appeal time to run before collection may begin since the collection of the tax is in jeopardy due to the nature of typical drug dealers. For the benefit of drug dealers and their attorneys, this should be spelled out.

Proposed language includes the word "may" in describing the Director of Taxation's authority in issuing drug tax assessments. The decision as to whether to make an assessment should be discretionary rather than mandatory. It is a waste of the department's limited resources to make assessments where circumstances indicate that there is no possibility of collection.

For the purpose of issuing drug tax warrants, K.S.A. 79-3617, which applies to sales and excise taxes should be referenced rather than article 32 of chapter 79, as is currently the case. The only statute in article 32 of chapter 79 which applies to collection of delinquent tax liabilities is K.S.A. 79-3235. Therefore, there is no reason not to cite the exact statute. However, K.S.A. 79-3617 is essentially identical to 79-3235 but is more appropriate for two reasons. First, 79-3617 is used for collection of delinquent sales and excise taxes, and since the drug tax is a tax on a business, it is essentially an excise tax. Secondly, 79-3617 does not provide for a 60-day waiting period as 79-3235 does, thus avoiding the confusion this causes to taxpayer's attorneys as to whether we can issue a tax warrant immediately upon failure of the taxpayer to pay when demand is made.

Sen. F. v. S.A.
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Clarifying the Department's authority to attach safety deposit boxes of drug dealers as well as asset accounts would alleviate uncertainty on the part of financial institutions. Some financial institutions, including Bank IV, have recognized that a tax warrant is the legal equivalent to an order of attachment issued pursuant to K.S.A. 60-706 and that it is not necessary to also file a garnishment in order to seize deposits and safe deposit boxes at financial institutions. However, there are some financial institutions which have refused to do so. For this reason, we have had to use garnishments, with the additional time and effort required putting us at a big disadvantage in cases where we are in a race with drug dealers to tie up their funds before they disappear.

The clarifications encompassed in this proposal do not represent a change in current collection efforts of the Criminal Fraud Unit but would provide a clear foundation for such efforts and shorten the appeal process in some cases. The asset seizures affected by this proposal are not related to forfeitures under federal law or state laws governing the forfeiture of unclaimed property.

IV. Impact on Other State Agencies:

Passage of this proposal would have no impact on other state agencies. The increased drug tax collections, however, would benefit local law enforcement agencies who receive half of all drug tax collections.

Proposed Amendments

79-5205 Same; ~~jeopardy assessments;~~ collection of tax; notice to taxpayer; presumption that assessment is valid. (a) ~~An assessment for a dealer not possessing stamps or other official indicia showing that the tax has been paid shall be considered a jeopardy assessment. The director of taxation shall~~ *At such time as the director of taxation shall determine that a dealer has not paid the tax as provided by K.S.A. 79-5204, the director may immediately assess the tax based on personal knowledge or information available to the director of taxation; mail the taxpayer at the taxpayer's last known address or serve in person, a written notice of the amount of tax, penalties and interest; demand its immediate payment; and, if payment is not immediately made, collect the tax, penalties and interest in any manner provided in article 32 of chapter 79 of the Kansas Statutes Annotated as provided by K.S.A. 79-3617. If in the execution of a tax warrant pursuant to K.S.A. 79-3617, property of the taxpayer is found to be in the possession or control of some person other than the taxpayer, including deposit accounts and safe deposit boxes at financial institutions, then the sheriff or officer or employee of the secretary shall serve a copy of the tax warrant upon such person and declare to such person that such property is being attached and that such person is made a garnishee and shall proceed as though served an order of garnishment pursuant to K.S.A. 60-717.*

(b) The taxpayer may, within 15 days from the date of mailing of the notice given pursuant to subsection (a), request in writing a hearing by the director on the correctness of the ~~jeopardy~~ assessment. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedures act. *Such a request shall not stay the collection of the assessment but shall stay the sale of real or personal property seized pursuant to a tax warrant until the correctness of the assessment is determined by the director.*

(c) The tax, penalties and interest assessed by the director of taxation are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show their incorrectness or invalidity. Any statement filed by the director of taxation with the court or any other certificate by the director of taxation of the amount of tax, penalties and interest determined or assessed is admissible in evidence and is prima facie evidence of the facts it contains.



2/24 5006

Attach.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

TESTIMONY OF
DAVID PLINSKY
ASSISTANT ATTORNEY GENERAL
BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
RE: HOUSE CONCURRENT RESOLUTION 5006
FEBRUARY 24, 1993

Dear Ms. Chairperson and Members of the Committee:

On behalf of Attorney General Bob Stephan, I ask for your support of House Concurrent Resolution 5006.

Many people have been concerned about the U.S. Supreme Court decision that allows desecration of the flag of the United States of America. I know you agree with Attorney General Stephan that we must protect the rights of the people of our nation, although we believe it is not necessary in the exercise of our freedom to destroy property. No one should have the right to desecrate the American flag.

Millions of men and women of the Armed Forces of the United States have fought valiantly and died to protect, for future generations, this sacred symbol of nationhood. Protecting the flag will not cut down on anyone's right of expression or anyone's right to participate in the governmental process.

Sen Fr SA
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In 1989, Attorney General Stephan proudly joined with the Kansas American Legion Commander Jack Chiapetti in initiating a statewide petition drive to encourage our Congressional delegation to support a constitutional amendment which would protect the integrity and dignity of the flag of the United States of America. More than 35,000 signatures were gathered. Kansans showed their support for such an amendment!

On behalf of Attorney General Stephan, I ask for your support of House Concurrent Resolution 5006 which urges Congress to propose for ratification by the states a U.S. constitutional amendment to prohibit desecration of the United States flag.

Thank you for your consideration.

Attach. 4

HOUSE CONCURRENT RESOLUTION 5006
TESTIMONY BY RALPH L. SNYDER, DEPARTMENT ASSISTANT ADJUTANT
THE AMERICAN LEGION DEPARTMENT HEADQUARTERS
FEBRUARY 24, 1993

On behalf of the more than 60,000 members of The Kansas American Legion thank you for providing me the opportunity to address you today in support of House Concurrent Resolution 5006.

The American Legion wholeheartedly supports House Concurrent Resolution 5006 which encourages Congress to offer for ratification, a Constitutional Amendment which would allow Congress and the states the power to prohibit the physical desecration of the Flag of the United States. As you know, state legislatures across the country routinely communicate with Congress through memorializing resolutions, and that is all we are asking of the Kansas legislature.

HCR 5006 would simply express the Kansas Legislature's opinion that the constitutional amendment process should be initiated. HCR 5006 calls for a procedure that would allow the American people, through their state legislatures, to decide whether they want a change in the United States Constitution to protect the Flag. HCR 5006 does not call for a Constitutional Convention which would allow for sweeping changes in our basic governmental document; in fact The American Legion officially opposes such a convention. This amendment would make a very specific change, similar to the other twenty-seven (27) amendments already added to the Constitution during the past 200 years.

Freedom of speech is not absolute, nor has it ever been. That's why there are laws against libel and slander. That is why we have obscenity laws, public decency laws and perjury laws.

Our freedom of political expression is also limited. For instance, no one can deface this building or the Washington Monument regardless how much they wish to protest a particular government policy or law.

M *Sen. L. A.*
2-24-93
Att 4

The right to petition government for the redress of grievances is also guaranteed by the First Amendment. Those who oppose government policies may use any number of reasonable methods to take advantage of the "redress" option. One such method was used by Martin Luther King in the 1960s with the Freedom marches in Washington and elsewhere. Those of us who support an amendment to protect the Flag are now using another method of redress.

The First Amendment guarantees wide-ranging rights to individual citizens, and that is as it should be. But legislative and judicial history has shown there are limits to those rights. That is also as it should be. In our opinion and in the opinion of the mass majority of citizens, flag desecration exceeds those limits.

Our principle purpose today is simply to ask your support of a legislative measure which would encourage Congress to move forward with the Amendment process. We are not asking you to express an official position on such an amendment. You will have that opportunity when Congress approves an amendment and submits it to the states for ratification.

In June 1989 and in June, 1990, the United States Supreme Court ruled on the Constitutionality of two flag-burning statutes. On both occasions, those rulings were sustained by one vote margins. In June 1990 a majority of Congress voted in favor of a constitutional amendment, however that level of support fell eight (8) percent short of the required two thirds majority. In contrast, public opinion in favor of an amendment has always been overwhelming.

Therefore we believe Congress should reconsider this issue. We believe the American people -- through their elected representatives -- should be allowed to express their views on protecting the American Flag.

We also believe that Congress should deal with the issue again, because, in our opinion, members of the Senate and House were inconsistent in their treatment of the free speech issue when they dealt with this matter in 1989 and 1990. In June, 1990, most flag amendment opponents stated their opposition was based upon their concerns over infringement of free speech. Yet, eight months earlier the overwhelming majority of those same amendment opponents voted for a flag desecration bill which was more restrictive than the amendment would have been. The flag desecration bill, which became public law and was later overturned by the United States Supreme Court, was supported in Congress by a 9 to 1 ratio.

In an effort to summarize this entire issue, we have a situation in which 48 state laws on flag desecration, including K.S.A. 21-4114 were in effect prior to June, 1989, and some of those laws had been on the books for several decades. We have two U.S. Supreme Court rulings -- sustained by the narrowest of margins possible -- which struck down those laws, thus as HCR 5006 states "leaving the only course of action to be a Constitutional Amendment."

We have 58 percent of Congress voting for a flag amendment and 90 percent of Congress voting for a flag desecration law (which was overturned by the U.S. Supreme Court). Again leaving the only course of action being a Constitutional Amendment. And we have more than 80 percent of the American public expressing support for a constitutional amendment to protect the flag.

We believe these facts present a compelling case in support of moving forward on the amendment process. We are simply asking you to support that initiative by voting favorably on House Concurrent Resolution 5006.

Again, thank you for allowing me the opportunity to address you today.

Desecration of the flags. (a) As used in this section, unless the context otherwise requires, the term "flag" shall have the following meaning: Flag includes every flag, standard, color, or ensign authorized by the laws of the United States or of this state, and every picture or representation thereof, of any size, made of any substance, or represented on any substance evidently purporting to be such flag, standard, color or ensign of the United States or of this state, and every picture or representation which shows the design thereof.

(b) Desecration of flags is: (1) In any manner for exhibition or display, placing or causing to appear any word, figure, mark, picture, design, drawing, or any advertisement of any nature upon any flag of the United States or this State.

(2) Exposing to public view any such flag upon which is printed, painted, or placed or to which is attached, appended, affixed, or annexed any word, figure, mark, picture, design, drawing, or any advertisement of any nature.

(3) Exposing to public view, manufacturing, selling, exposing for sale, giving away or having in possession for sale or to give away or for use for any purpose any article or substance being an article of merchandise or receptacle of merchandise upon which is printed, painted, attached, or placed a representation of any such flag, standard, color, or ensign to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed.

(4) Publicly mutilating, defacing, defiling, or trampling any such flag.

(c) Desecration of flags is a class A misdemeanor.

History: L.1970, ch. 307, & 1; July 1.

Source or prior law:

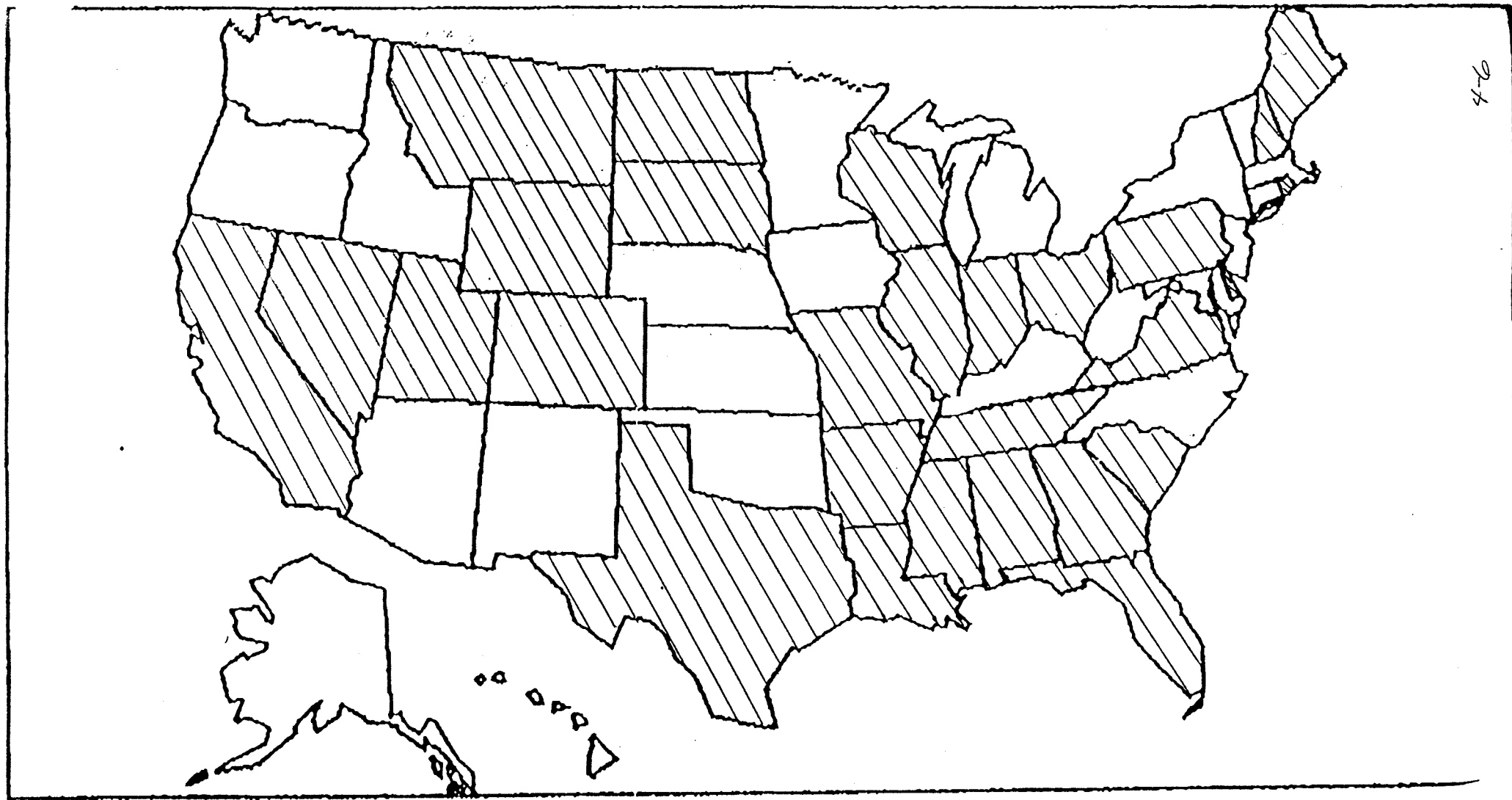
73-709

Cross References to Related Sections:

Flags and patriotic emblems, see 73-701 et seq.

STATES THAT HAVE PASSED FLAG RESOLUTION

1. Alabama
2. Arkansas
3. California
4. Colorado
5. Delaware
6. Florida
7. Georgia
8. Illinois
9. Indiana
10. Louisiana
11. Maine
12. Mississippi
13. Missouri
14. Montana
15. Nevada
16. New Hampshire
17. North Dakota
18. Ohio
19. Pennsylvania
20. Rhode Island
21. South Carolina
22. South Dakota
23. Tennessee
24. Texas
25. Utah
26. Virginia
27. Wisconsin
28. Wyoming



TESTIMONY ON FLAG DESECRATION
FOR KANSAS SENATE FEDERAL & STATE AFFAIRS COMMITTEE

By Darrell Bencken
State Adjutant
Kansas Veterans of Foreign Wars

Madam Chair, members of the committee, on behalf of the 70 thousand members of the Kansas Veterans of Foreign Wars and its Ladies Auxiliary, I'm happy to be here today to testify on behalf of this resolution.

The members of the Veterans of Foreign Wars certainly understand what freedom of speech and the other provisions of the bill of rights mean to Americans, because we fought to preserve those very rights.

As combat veterans the flag we followed in battle means more to us than just being a national symbol, the stars and stripes to us is all that America stands for, to my way of thinking, and I think, to most Americans way of thinking, to desecrate that flag is not a right, but a desecration of the very documents, the Constitution and Bill of Rights, that provide the American people with the just and true freedoms we deserve and enjoy.

Some people today think that if it feels good they have a right to do it, I do not think that was the spirit or the intent of our founding fathers when writing the Constitution and Bill of Rights.

Perhaps the words spoken by President Woodrow Wilson on a flag day long ago best captures the meaning of the American flag:

"The flag of the United States has not been created by rhetorical sentences in declarations of independence and in bills of rights. It has been created by the experience of a great people, and nothing is written upon it that has not been written by their life. It is the embodiment, not of a sentiment, but of a history, and no man can rightly serve under that flag who has not caught some of the meaning of that history."

I respectfully ask this committee to pass this resolution, I have attached a copy of our National resolution.

Sen F&S.A.
2-24-93
all 5

U. S. FLAG DESECRATION

WHEREAS, although the right of free expression is part of the foundation of the Constitution of the United States, very carefully drawn limits on expression in specific instances have long been recognized as legitimate means of maintaining public safety and defining other societal standards; and

WHEREAS, certain actions, although arguably related to a person's free expression, nevertheless raises issues concerning public decency, public peace, and the rights of other citizens; and

WHEREAS, there are symbols of our national soul, such as the Washington Monument, the United States Capitol, and memorials to our greatest leaders which are the property of every American and are worthy of protection from desecration and dishonor; and

WHEREAS, the United States Flag is a most honorable and worthy banner of a nation which is thankful for its strengths and committed to curing its faults, a nation that remains the destination of millions of immigrants attracted by the universal power of the American ideal; and

WHEREAS, the law as interpreted by the United States Supreme Court no longer accords the Stars and Stripes the reverence, respect and dignity befitting the banner of that most noble experiment of a nation-state; and

WHEREAS, it is only fitting that people everywhere should lend their voices to a forceful call for restoration of the Stars and Stripes to a proper station under law and decency; now, therefore

Submitted by Department of Nebraska

To Committee on AMERICANISM AND COMMUNITY ACTIVITIES

Resolution No. 103

BE IT RESOLVED, by the 93rd National Convention of the Veterans of Foreign Wars of the United States, that we petition Congress to propose to the states an amendment to the Constitution of the United States which specifies that Congress and the states have the power to prohibit the physical desecration of the United States Flag.

Submitted by Department of Nebraska

To Committee on AMERICANISM AND COMMUNITY ACTIVITIES

Resolution No. 103

2/24 5006
Attach. 1

**A statement to the Federal and State Affairs Committee of the Kansas Senate,
February 24, 1993, regarding Resolution 5006.**

Senator Oleen and members of the Committee,

Thank you for this opportunity to speak in opposition to Resolution 5006. My name is David Collins. I am a disabled veteran of the Vietnam War; Captain, United States Army Retired; a recipient of the Bronze Star and Order of the Purple Heart. I did not enter military service because I wanted to go to war. I entered military service because I believed then, as I do now, that the principles on which this Nation is founded are worth defending. The most precious and fundamental of those principles is freedom of speech.

The Flag is a symbol representing different things to different people, often with great emotional ties. Soldiers are carried to their graves in flag draped coffins. I think of them when I see the Flag. At times the Flag has been the symbol of a grateful nation. At other times it only symbolized the principles for which a mother's son or daughter thought they were to have served. I view the Flag as a symbol of the ideals for which our Nation should stand. However, many people loyal to our Nation's founding principles see the Flag as a symbol of the current policies and actions of our government; a government which is supposed to act in accordance with those principles, but which sometimes fails grievously in that task.

There have been, and there will be, times in our history when the greatest patriots are those Americans who recognize that their government is doing something terribly wrong and who have the courage to focus our attention on that wrong - even if they must shock us to do so. If someone takes my flag and burns it, I will have them arrested for theft and destruction of property. If they come into my yard and burn a flag, I will have them arrested for trespassing and endangering my family's safety. But, if someone believes that our government's actions are wrong and chooses to protest those actions by burning their own flag on their own property or in a public place where fires are permitted, then we should all be willing to risk our lives in defense of that freedom; for in defending their freedom we defend our own.

When a protestor burns a flag, the only thing destroyed is a piece of cloth. Not only do the founding principles of our Nation continue to exist in spite of that act, they are reaffirmed by the tolerance which permits the act. The Flag of principles will continue to fly at the same time that the flames from a burning flag tell the world, "Here we truly are free."

Some people support this resolution because they see the act of burning a flag as a sign of disrespect. It most probably is; not disrespect for the Flag, but for the government's policies and the people who make those policies. We all know that respect cannot be created by executive or legislative fiat. Respect must be earned. A democracy such as ours can only survive if it has the courage and confidence to allow any of its citizens the right to express opinions of dissent, and to allow the rest of us the right to be exposed to those opinions. If we diminish these rights, then the principles by which we govern will no longer deserve our respect. Do not dishonor the Flag by undermining the principles it represents. Do not use the Flag as a political stage prop. Please have the courage and confidence to vote in opposition to Resolution 5006.

Sincerely,



David R. Collins
2709 Westdale Road
Lawrence, Kansas 66049

Sen F & SA
2-24-93
all 6

Attn.

PRESENTATION
TO
Committee on Federal and State Affairs

February 24, 1993

Madam Chairperson and Committee Members:

I am Master Sergeant Michael Hager, The State Enlisted Personnel Sergeant for the Kansas Army National Guard. I come here to testify in support of House Concurrent Resolution No. 5006 and on behalf of Major General James F. Rueger, The Adjutant General of Kansas and the men and women of the Kansas Army National Guard. The story of the origin of our National flag parallels the story of the origin of our country. As our country received its birthright from peoples of many lands who gathered on these shores to found a new nation, so did the pattern of the Stars and Stripes rise from several origins back in the mists of antiquity to become emblazoned on the standards of our infant Republic.

General Washington, when the Star Spangled Banner was first flown by the Continental Army, is reputed to have described its symbolism as follows: "We take the stars from heaven, the red from our mother country, separating it by white stripes, thus showing that we have separated from her, and the white stripes, the posterity representing liberty."

The brilliant Henry Ward Beecher said: "A thoughtful mind when it sees a nations flag, sees not the flag, but the nation itself. And whatever may its symbols, its insignia, he reads chiefly in the flag, the government, the principles, truths, the history that belongs to the nation that sets it forth. The American flag has been a symbol of Liberty and men rejoiced in it.

In a 1917 Flag Day message, President Wilson said: "This flag, which we honor and under which we serve, is the emblem of our unity, our power, our thought and purpose as a nation. It has no other character than which we give it from generation to generation. The choices are ours. It floats in majestice silence above the hosts that execute those choices, whether in peace or in war. And yet, though silent, it speaks to us, speaks to us of the past, of the men and women who went before us, and of the records they wrote upon it.

We celebrate the day of its birth; and from its birth until now, it has witnessed a great history, has floated on high the symbol of great events, of a great plan of life worked out by a great people.

"Woe be to the man or group of men that seeks to stand in our way in this day of high resolution when every principle we hold dearest is to be vindicated and made secure for the salvation of the nation. We are ready to plead at the bar of history, and our flag shall wear a new luster. Once more we shall make good with our lives and fortunes the great faith to which we were born, and new glory shall shine in the face of our people."

Sen Fr SA.
2-24-93
Act 7

people struggled to found a great Nation. Its spirit is fervently expressed in the words of Thomas Jefferson:

"I swear, before the alter of God, eternal hostility to every form of tyranny over the mind of man."

Traditionally a symbol of liberty, the American flag has carried the message of freedom to many parts of the world. Sometimes the identical flag that was flying at a crucial moment in our history has flown again in another place to symbolize continuity in our struggles in the cause of liberty.

Over the years, the history and tradition of our Flag has not been past on in the same vigor as that of our fore fathers thus we see the younger generations desecrating our Flag due to ignorance of its meaning and what it represents. To correct this problem we all must strive to educate our younger generation on our Flag and its traditions. In the mean time it is imperative that we preserve our Flag through the passing of House Concurrent Resolution No. 5006.

Many men and women of Kansas fought and gave their lives for our country, they did so to preserve the very things our flag represents. The American flag goes into battle to keep reminding our soldiers of what it represents to them and our families at home.

In closing, let me express my appreciation for your past legislative support. Our men and women serving in your Kansas Army National Guard are dedicated to serving their State and Nation. We ask for your favorable consideration of this House Concurrent Resolution No. 5006.

Attach. 8

TO: Senator Lana Oleen, Chairperson
Senate Federal and State Affairs Committee
FROM: David Orr, American Civil Liberties Union
of Kansas
Date: February 24, 1993
Subject: HCR No. 5006

All of us here have, probably on many occasions, waved the American flag, or saluted the flag, or pledged allegiance to the flag. We perform these acts to express our commitment to certain ideals that we hold dear. These acts, are very highly regarded forms of expression.

Burning the American flag is a contemptible form of expression. But no matter how despicable the idea that it expresses is, it's still expression. And judging from the reaction that that act evokes from any patriotic American, it's a very powerful form of expression. Vile as it may be. But if the first article of our Bill of Rights says anything, it says that the expression of ideas cannot be suppressed on the grounds that those ideas are vile. Or despicable. Or contemptible. The Framers of the Constitution, who wrote and signed that Bill of Rights, had lived under British regime in which they were forbidden by law from speaking out against the Crown. So they gave us this Bill of Rights to make sure that in this country that couldn't happen. That Bill of Rights has remained intact for 202 years. How valuable is it to us? What are we willing to sacrifice for it? We've sacrificed countless lives in countless wars for the ideals it contains. And to most of us it would be a sacrifice to stand there and watch some one burn the flag. But the American flag is not weakened when some individual is able to burn a flag without fear of retaliation by the State. To the contrary: that is a sign of the strength and endurance of our flag.

This Resolution says (on line 9 of p. 2) that because desecration of the flag is an atrocious act, it should be prohibited. How can this be construed as consistent with the First Amendment? There's a certain legislator in a southern state by the name of David Duke, who says things that are very, very atrocious, to say the least. And probably many members of the groups against whom his remarks are directed would be more offended at hearing those words he speaks than they would be by the sight of a flag being burned. But we don't put David Duke in jail. This is the United States of America. And we make sacrifices to uphold our American ideals.

We are not talking today about passing another statute for the K.S.A. We're talking about amending the CONSTITUTION! Toying with the Constitution is a very, very grave matter. And we're not talking about just any part of the Constitution - We're talking about the Bill of Rights. This amendment would be the first in our Nation's history to make an exception to the Bill of Rights. After 202 years of an untouched First Amendment, what circumstances have arisen that justify such an alteration?

A symbol can have immense value. The American flag is such a symbol. But a symbol can have value only at the level of that which it symbolizes. And when you take away from what the American flag symbolizes, you take that much away from the American flag. And that is true and fundamental desecration of the flag.

Please, leave the constitution be.

Sen 7 + S.A.
2-24-93
Att 8

My name is Tom Dobelbower, a resident of Topeka, Kansas and for the past twenty years, I have served as scoutmaster for Troop 172 here in Topeka.

I am not here representing the Boy Scouts of America, but I do support the ideals of responsible citizenship that the Boy Scouts of America have emphasized and encouraged since the Congress of the United States approved its charter in 1910.

Before you today is a resolution requesting you, the Legislature of Kansas, to memorialize the Congress of the United States to propose an amendment to the United States Constitution to protect our flag from physical desecration.

I really don't know why I'm here today, asking you to support this resolution. I can't imagine anyone not in favor of protecting our flag. Too many Americans have fought for it, too many have given their lives defending it to ever let anyone dishonor it. The Stars and Stripes represent the heritage of our democracy. It is a sacred symbol of our freedom and should be treated with the respect it so richly deserves.

The American flag is the baton of our nation . . . it is passed on from generation to generation. Let not this generation allow it to fall into disrespect.

The tradition of respecting our flag is a meaningful part of the moral fiber of this country. With your support we can uphold the proud tradition that our flag represents.

Thank You

Sen Fr SA
2-24-93
Cdl 9

Washburn
Student
Association
Washburn University
1700 College
Topeka, Kansas 66621
(913) 232-4297

Offices Located
in Memorial Union



"Students
Working For
Students"

2/24/1993

To the Honorary Members of the Federal and State Affairs Committee;

It's with distinct pleasure that I have the forum to address this committee today. I'm a Senior at Washburn University pursuing a BBA, with an emphasis in Economics and Finance. I rise today in support of House Concurrent Resolution #5006. My remarks are a culmination of thoughts and opinions shared with me by students from Washburn, and from other peers I've talked to across the state.

It's amazing to me, being the 21 year old male that I am, that it be necessary to address the issue of flag desecration with a constitutional amendment. Since an early age I've been instilled with values through education and have learned of the importance and significance that America plays in the lives of all citizens. We pause as youngsters to recite the Pledge of Allegiance, we pause at nearly all publicly held sporting events to hear the National Anthem and we drape the coffins of the dead, who may have given their lives to uphold the freedoms that we as Americans consider to be so important.

I feel as though the First Amendment has been abused, and that the founding fathers would be in agreement with me. Never would an action as desecrating such a grand symbol of the U.S. be allowed to occur. I encourage open and frank discussion on the meaning of freedom of speech, and the examination of "permissible" speech.

House Concurrent Resolution #5006 provides that step necessary to facilitate discussion on what should be considered "acceptable" freedom of speech.

Thank you for your time and consideration!

Sincerely,

Craig A. Miller

Craig A. Miller
Senator

*Sen F & S.A.
2-24-93
Att 10*

My name is Clarence Malone and I am here today to present testimony prepared by Paul Lenherr, Public Relations Chairman for the Kansas State Council of the Knights of Columbus. I convey to you his regrets for not being here personally and I thank you for the opportunity to present this testimony on his behalf.

The Kansas State Council of the Knights of Columbus is comprised of 30,000 members in 224 local councils throughout the State. Orderwide, membership in the Knights of Columbus exceeds 1.5 million members. One of the founding principles of our organization is Patriotism. I am here today to testify on behalf of the Kansas Knights of Columbus in support of House Concurrent Resolution #5006 as proposed by the Kansas American Legion.

In 1990 the United States Congress passed the Flag Protection Act only to see it struck down by the Supreme Court as unconstitutional on the basis that it abridged the freedom of speech. Their decision was contrary to the belief of the vast majority of the people of Kansas and of this nation. We feel that their liberal interpretation of Article Three of the Bill of Rights can only lead to a gradual decline in respect for our flag and for which it stands. To correct this situation the only avenue open is to amend our Constitution.

Patriotism or Love of Country was instilled in each of us in our childhood upbringing. The flag adorned every classroom and each school day began with the Pledge of Allegiance to the flag. We were taught the proper etiquette of handling, displaying and storing the flag. We were taught to respect it and likewise learned to cherish all that the flag represents. For the most part the same holds true for our children today. But unlike us, the children of today may well go home from school and witness on the evening news the paramount action of protest, the burning and/or desecration of our flag, under the guise of


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free speech. What effect will this have on them and on their children in the generations to come? Will not the repeated witnessing of such disrespect for the flag ultimately lead them to a gradual deterioration of what the flag represents?

The United States of America remains the envy of and the model for all other nations today. Our flag is recognized throughout the world as a symbol of hope. As American citizens our blood tends to thicken when we see our flag burned or desecrated by dissidents in other countries. What will our reaction be if such action is frequently displayed by the dissidents in this country? I doubt the majority will idly stand by for any length of time. As Americans we do not hesitate to ask the men and women serving in the military to fight in defense of our flag. Why then, is it too much to ask of the American citizens to give their unswerving loyalty to that very same flag? Why should the law protect the actions of a few, when their behavior is viewed by the majority as wrong and unacceptable?

To date there doesn't appear to be a problem in Kansas or in this nation, but why wait until there is? I can think of no reason why Kansas should not be among the states memorializing the United States Congress to propose an amendment to the Constitution prohibiting the physical desecration of our flag. I feel the vast majority of your constituents are patriotic individuals and would appreciate and support your effort on this matter. Personally, and on behalf of 30,000 other Knights of Columbus members in Kansas, I ask your utmost consideration in passing House Concurrent Resolution #5006 as proposed by the Kansas American Legion.

Thank you for the opportunity to address you this morning on this matter.



Paul L. Lenherr
PUBLIC RELATIONS CHAIRMAN
Kansas State Council
Knights of Columbus



KANSAS STATE COUNCIL KNIGHTS OF COLUMBUS



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(913) 626-9203

February 20, 1993

Dear Clarence:

Enclosed please find a copy of House Concurrent Resolution #5006 along with 25 copies of my testimony in support of this resolution. It has been passed in committee for the house and on the floor of the House of Representatives. On the 24th of February it comes up in the Senate Federal & State Affairs Committee. This committee will meet at 11:00 A.M., in Room 254E, on Wednesday February 24th.

If you prefer to write your own testimony, please feel free to do so. If you do, you will need 25 copies of it for distribution to the committee members. What I have provided is basically what I said in the house committee. Feel free to use it or any part of it as you see fit, for you know more about testifying than I do.

Again I want to thank you for helping me out with this. I have a conflict on the 24th that I can not get out of. Again many many thanks! If you have any questions please give me a call 437-6343 Work or at home 437-2915.

Paul

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Attch 12

5121 Vista Acres Drive
Manhattan, KS 66502
February 20, 1993

Sen. Lana Oleen
State Capitol
Topeka, KS 66612

Dear Lana:

Enclosed is a Wichita Eagle editorial that expresses my beliefs regarding a Constitutional amendment to punish flag-burners. I ask you to vote against amending the Constitution for such restriction of freedom of speech.

I had the opportunity to spend nine (9) months in the Peoples' Republic of China in 1988 and 1989. Leading up to the Tiananmen Massacre on June 3, 1989, many Chinese friends and students told us of the difficult times they had endured by demand of local, provincial, and national politicians. When the students and laborers began their public protest in late April and early May, they were fighting corruption and an out-moded form of government. The leaders in Beijing believed their power would erode if they entered into any negotiations, so they resorted to force.

As a foreigner, I thought the protests were justified and was disappointed that the Chinese leaders chose to punish the citizens who questioned their actions rather than use the opportunity to listen to future leaders and map a plan for improving their government. To return to the USA and learn that President Bush supported amending our Constitution to punish citizens who feel disenfranchised enough to resort to burning the flag made me question if our political leaders were just as insecure as are the Chinese leaders.

As Rep. Brown is quoted in the editorial, "You cannot pick and choose which freedoms of expression you want in the United States of America." Exercising the right to disagree and protest is what keeps our government responsive to the people. Without this right, it is very difficult to prevent a few from forcing their beliefs on others.

I hope the Senate will kill this resolution.

Sincerely,

Judy Schrock

Judy Schrock

539-9464

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