

MINUTES OF THE ETHICS AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Terrie Huntington at 9:35 a.m. on February 9, 2011, in Room 159-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Jill Shelley, Kansas Legislative Research Department
Ellen Martinez, Committee Assistant

Conferees appearing before the Committee:

Jean Schodorf, Kansas Senator
Carol Jacobson, Co-Chair for Voter Services, League of Women Voters of Kansas
Carol Williams, Executive Director, Governmental Ethics Commission
Ron Estes, Kansas State Treasurer

Others attending:

See attached list.

The Chairman called the meeting to order and opened the hearing on **SB 31 - Campaign finance; electioneering communications; reporting.** Staff explained the history behind this bill and how it relates to electioneering communication; establishing certain reporting requirements.

Carol Williams, Executive Director, Governmental Ethics Commission, spoke in favor of the bill. She felt that State has a compelling interest in providing voters information about issue ads so voters can be fully informed as to the source of support or opposition to candidates for state or local office and to identify those persons attempting to influence the outcome of elections in Kansas. (Attachment 1)

Senator Jean Schodorf testified in favor of the bill. She believed that this bill would provide increased transparency for voters when they are barraged by unknown groups who spend thousands of dollars in Kansas elections. (Attachment 2)

Carol Jacobson, Co-Chair for Voter Services, League of Women Voters of Kansas, spoke in favor of the bill and expressed concern over special interest groups' dollars influencing elections. This would be a step towards greater transparency in campaign electioneering. (Attachment 3)

Written testimony in support of **SB 31** was submitted by David W. Peterson, Lenexa, Kansas (Attachment 4)

Written testimony in opposition of **SB 31** was submitted by Jordan Austin, Kansas State Lobbyist, Nation Rifle Association of America (Attachment 5); Derrick Sontag, Kansas State Director, Americans for Prosperity (Attachment 6); Jeff Glendening, Vice President of Political Affairs, The Kansas Chamber (Attachment 7)

There being no further testimony, the hearing was closed.

The Chairman opened the hearing on **SB 67 - Gubernatorial inauguration donations; disposition of residual monies.** Staff explained that SB 67 would allow gubernatorial inaugural funds not obligated to pay expenses to be donated to a 501(c)(3) charitable organization.

Governor Sam Brownback submitted written testimony in support of the bill. There was no other testimony. (Attachment 8)

There being no further testimony, the Chairman closed the hearing.

The Chairman opened the hearing for **SB 66 - Elections; campaign finance; public service advertisements near elections; civil fine.** Senator Schmidt requested that the Committee not act upon SB 66 and proceed to SB 126.

CONTINUATION SHEET

The minutes of the Ethics and Elections Committee at 9:35 a.m. on February 9, 2011, in Room 159-S of the Capitol.

There being no discussion, the Chairman opened the hearing on **SB 126 - Elections; campaign finance; public service ads by candidates restricted**. Staff explained that SB 126 would prohibit a candidate from appearing in a public service announcement (PSA) or advertisement or use of the candidate's name in a PSA or advertisement during the 60 days before any election in which the candidate's name appears on the ballot.

Kansas State Treasurer Ron Estes testified in support of **SB 66**. He believed that public service announcements are intended to educate Kansans on available state programs to help serve their interests, not to serve as a free campaign commercial for a candidate before an election. (Attachment 9)

There being no further testimony, the hearing was closed.

The Chairman thanked everyone for appearing before the Committee.

The next meeting is scheduled for February 10, 2011

The meeting was adjourned at 10:29 a.m.

**SENATE ETHICS AND ELECTIONS COMMITTEE
GUEST LIST**

Date: February 9, 2011

NAME	REPRESENTING
Nathan Lindsey	Kearney + Associates
Angela Hobbs	
Judy Mohr	KGEC
Gael Weller	KGEC
Haron Otto	State Treasurer's Office
Paje Rauthier	Hein Law Firm
Lance R Bass	LKW
Jeane Schott	Senate
JEFF GLENNING	KS CHAMBER
Carol Jacobsen	League of Women Voters of KS
Dan Murray	KCTA
Bernie Koch	KEPC



GOVERNMENTAL ETHICS COMMISSION

www.kansas.gov/ethics

Written Testimony before Senate Elections Committee
in Support of Senate Bill 31
by Carol Williams, Executive Director
February 9, 2011

The mission of the Kansas Governmental Ethics Commission is to provide the public with timely and accurate campaign finance information for knowledgeable participation in government and the electoral process. In fulfilling its mission, the Commission believes the State has a compelling interest in providing voters information about electioneering communications or issue ads so voters can be fully informed as to the source of support or opposition to candidates for state or local office and to identify those persons attempting to influence the outcome of elections in Kansas. The Commission would like to see a loophole closed which currently allows sponsors of so-called "issue ads" appearing before an election, to spend thousands of dollars attempting to influence voters while not disclosing who is paying for the ads or how much the sponsors are spending.

An issue ad does not directly urge a voter to vote for or against a specific candidate. The ad usually discusses an issue and provides a candidate's support or opposition on that issue. The United States Supreme Court, in the case of *McConnell v. FEC* (2003), upheld the constitutionality of disclosure of electioneering communications made before an election. In the U. S. Supreme Court decision, *Citizens United v. FEC* (2010), the court, in an 8-1 decision, again upheld the disclosure provisions for electioneering communications. The high court made it clear that "magic words" were not required to trigger disclosure requirements. The majority in *Citizens United* emphasized that it is speech, not the speaker, that is protected by the First Amendment.

Senate Bill 31 would require any individual, committee, corporation, organization, association, or partnership that spends \$1,000 or more per calendar year for any electioneering communication to file a report with the Secretary of State on the same date candidates, party committees, and political committees are required to file receipts and expenditures reports. Such report would include the name of the clearly identified candidate mentioned in the electioneering communication, the name and address of each individual or other entity that

contributes more than \$1,000 to such person for the communication, and the name and address of the vendor who is paid or contracted to be paid more than \$1,000 for such communication. Any electioneering communication that occurs during the eleven days preceding the primary or general election will be required to be reported within 48 hours of making or contracting to make an expenditure for such communication.

Electioneering communication would be defined in the Campaign Finance Act to mean any communication broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences or otherwise distributed that unambiguously refers to any clearly identified candidate within 30 days before a primary election or 60 days before a general election to an audience that includes members of the electorate for such public office.

An electioneering communication would not include any news article, editorial, or letter to the editor printed in a newspaper, magazine or other periodical or any editorial endorsement or opinion aired by a broadcast facility so long as the newspaper, broadcast facility, etc., is not owned or controlled by a candidate or political party. In addition, an electioneering communication would not include any communication by a person made in the regular course and scope of their business, by a membership organization solely to its members and their families, any communication made to promote a candidate debate or forum, any communication made as part of a nonpartisan activity to encourage individuals to vote or register to vote, or any communication that refers to any candidate only as part of the popular name of a bill or statute.

Besides the Federal Government, there are currently at least 16 states and 4 cities that require reporting of electioneering communications.

The Commission believes it is unacceptable to interfere with the First Amendment rights of those who wish to have their voices heard on issues. The Commission also believes the rights of the voters to know who is paying for issue ads is just as important. Requiring issue ad disclosures will help voters "follow the money" in this ever-evolving campaign finance arena. The Commission urges passage of SB 31.

STATE OF KANSAS

JEAN KURTIS SCHODORF

SENATOR, 25TH DISTRICT

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DURING SESSION

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JOINT COMMITTEE ON ARTS AND
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COMMERCE

JUDICIARY

CONFIRMATION OVERSIGHT

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February 9, 2011

Senate Bill 31, Electioneering Communications

Chairwoman Huntington and members of the Committee,

I am here today to testify in support of SB 31.

- The public has an interest in knowing who is paying for the increasingly sophisticated and expensive electioneering communications that have developed with modern technology, so they can have the information they need to make an informed decision about candidates.
- In Kansas, we require reporting the name of someone who contributes over \$50 to an election campaign. If they spend over \$150, we must report their occupation or their spouse's occupation if they are not employed.
- However, our current laws allow organizations and individuals to spend thousands of dollars advocating for or against candidates without disclosing who is funding their efforts.
- I experienced this with my own campaign for Fourth District Congress in the 2010 primary election. An Ohio-based political group known as Common Sense Issues spent over \$70,000 in the final weeks of the campaign attacking me and another candidate in the Republican primary, Wink Hartman. This group is allowed to spend unlimited money advocating for or against candidates, but they do not have to disclose the source of their funding.
- It's not fair that a Kansan who contributes \$50 must be disclosed, but shadowy out-of-state organizations can involve themselves without accountability.
- We need to plug this gaping hole in our campaign laws for the sake of fairness and to allow our citizens to make better-informed decisions. We should know who is paying for all political advertising.
- For several years, states' campaign disclosure information systems were graded by a group called the Campaign Disclosure Project, a project of the UCLA School of Law, among others. The last year for their ratings was 2008, when Kansas was ranked 34th in campaign disclosure, earning a grade of D-plus.

SB31 would provide increased transparency for voters when they are barraged by unknown groups who spend thousands of dollars either for or against candidates in elections in the State of Kansas.

Thank you for allowing me to testify.

A handwritten signature in cursive script that reads "Jean Kurtis Schodorf". The signature is fluid and extends across the width of the line.

State Senator Jean Kurtis Schodorf
District 25

Ethics and Elections Committee

Attachment 2

Date 2-9-11

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*Carol Jacobson
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*Kay Hale
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Voter Service*

*Webmaster
Carol Yoho*

*VOTER Editor
Linda R Johnson*



**LEAGUE OF
WOMEN VOTERS®
OF KANSAS**

**Testimony to the Senate Ethics and Elections Committee
Provided by the League of Women Voters of Kansas
February 9, 2011**

In support of Senate Bill No. 31

Good morning. Thank you Senator Huntington, Senator Schmidt and members of the Senate Ethics and Elections Committee for this opportunity to come before you and testify on behalf of Senate Bill No. 31.

My name is Carol Jacobson. I'm the co-chair for voter services for the League of Women Voters of Kansas. I'm here to testify on behalf of the League and our 700 state-wide members in our eight Kansas chapters.

The League is a grassroots, non-partisan, non-profit, all volunteer political organization that has been in existence for more than 90 years. Our mission is to encourage active participation of citizens in local government. The League never takes a position on an issue until we have studied it and have arrived at a consensus within the membership of the whole. We study public policy issues and we adopt positions based on member consensus. Then we educate and we act.

One of our public policy positions is related to the Election Process and Campaign Finance. Our interest is to improve methods of financing political campaigns in order to ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office and promote citizen participation in the political process.

In view of this public policy position, the League of Women Voters of Kansas supports Senate Bill No. 31 which, in Section 1, requires:

Any person who spends or contracts to spend an amount of \$1,000 or more per calendar year for any electioneering communication shall submit a campaign finance report prescribed and provided by the governmental ethics commission for each electioneering communication,...

Fair and clean elections, determined by the votes of American citizens, should be at the center of our democracy. While special interest money has always been a concern in elections, corporations – including foreign corporations – may now intervene directly in elections, taking power away from voters. The League strongly supports legislation that will enhance disclosure.

Senate Bill No. 31 will facilitate greater transparency in campaign electioneering. We encourage you to support this legislation, to pass it out of committee to the Senate Floor for a positive vote, and on to the House of Representatives.

We urge you to vote for transparency in our elections.

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Ethics and Elections Committee

Attachment 3

Date 2-9-11

David W. Peterson
14720 West 80th Street
Lenexa, Kansas 66215
913-894-5389
E: dpeterson71@everestkc.net

February 9, 2011

Testimony in Support of Senate Bill No. 31

Dear Sen. Huntington, Chairwoman, and Members of the Senate Committee on Ethics and Elections,

As a Kansas citizen who has actively participated in many state political campaigns, I always felt that I could make a difference. Over the years I have worked for candidates and issues by door-to-door campaigning, making telephone calls, helping with literature drops and yard sign deliveries, and contributing cash to politicians and causes that I support. However, in recent years I have often seen all of my efforts wiped out by a last minute advertising blitz by independent advocacy groups that are now usually set up as tax-exempt 501(c)(4) organizations. Because of the Citizens United decision, these advocacy groups are not required to disclose the names of their donors, and these groups have become a funnel for anonymous campaign donations from what appear to be very wealthy individuals and companies. I have begun to feel that all my hard work on a political campaign, and the hard work of others does not matter. It will just get blown away by the power of these advocacy groups and their secret donors.

As ordinary citizens making political contributions, we must provide our name, address, and occupation or employer, and all of this information and the amount of our contribution becomes a public record. Fair is fair. The individuals and companies who contribute anonymously to these powerful advocacy groups should not be allowed to hide their identity. What has happened to America when the contributors to these powerful groups don't have the courage to put their name to the candidates and causes they support? I am glad the founders of our country who signed the Declaration of Independence did not insist on anonymity. They were true patriots who bravely signed their names and put their very lives on the line.

As a lifelong Kansas citizen, I strongly urge the committee to support Senate Bill No. 31 that will encourage all Kansas citizens to feel that they can make a difference when they participate in the democratic process.

Respectfully,

Dave Peterson

Ethics and Elections Committee
Attachment 4
Date 2-9-11



National Rifle Association of America

Institute for Legislative Action

11250 Waples Mill Road

Fairfax, Virginia 22030-7400

Senate Committee on Ethics and Election
Chairwoman Terrie Huntington
Room 159-S
Kansas State Capitol
Topeka, KS 66612

Dear Madam Chair,

February 9, 2011

On behalf of the National Rifle Association I would like to register in opposition to SB 31. This bill is a blatant violation of the personal privacy rights of all the members of our organization and the citizens of the United States of America.

The language used in this bill would require the NRA to list all the personal information of all of our members who donate \$1,000 or more to the NRA and make that information available to the public. While the bill specifically exempts communication to members, NRA reaches well beyond our membership lists during every election cycle and in most of our communications. The money that is used for these communications is donated to NRA as an organization and not specifically earmarked for electioneering communications. In most cases, this would even include our lifetime memberships. Therefore our simple members and donors would be affected by this legislation and the reach of this bill extends beyond the Kansas state border.

The dangers associated with disclosing the public information of NRA members affect them in a number of ways. First, 99% of our members own firearms, so since the bill requires the disclosure of not only names and addresses but occupations, then criminals will know the addresses of homes where firearms are located and whether or not that person has a job so they'll know if the residence will be empty during the day. It will essentially be a criminal shopping list. Second, this bill requires the disclosure of our member's information even if they do not live in Kansas. There is absolutely no reason for anyone in Kansas to be concerned if we receive a donation from someone in Maryland. Third, it could be very dangerous to disclose the personal information of an NRA member who has sought protection in a domestic violence situation where their address and occupation, which were formerly private, are now available to that violent offender.

As I mentioned, our day to day communication goes way beyond just our membership and that is where this bill would trigger the reporting requirements of all our members. We have a special division of NRA whose sole responsibility is to target high dollar donors, so all those individuals would have their personal information made public and they don't even live in Kansas. If legislation such as SB 31 would pass, then I can naturally assume that these donors would cease to contribute money and this would have an extremely negative impact on our organization. NRA has done a great deal of positive work here in Kansas through both the Legislature and through elections and would not like to see our efforts become limited or restricted due to the unrealistic requirements set forth in this bill.

I strongly urge you NOT to support SB 31. The bill is poorly written and can expose many individuals to dangerous or harmful situations. It should not be the goal of this committee to make attempts to silence and restrict 1st amendment rights of the people of the United States of America. I say that because this bill affects all our members and not just the ones here in Kansas. Vote NO on SB 31!

Thank you,

Jordan Austin
Kansas State Lobbyist
NRA-ILA

Ethics and Elections Committee
Attachment 5
Date 2-9-11

AMERICANS FOR PROSPERITY®

KANSAS

February 9, 2011

Testimony in Opposition of Senate Bill 31 Senate Ethics and Elections Committee

Madam Chair and Members of the Committee,

Americans for Prosperity opposes Senate Bill 31, concerning campaign finance; relating to electioneering communication; establishing certain reporting requirements. AFP believes this legislation to be an attack on anonymous, political free speech.

Anonymous Free Speech

Clearly there are free speech/free association implications of denying anonymity to citizens who are critical of politicians.

In 1958 the U.S. Supreme Court ruled in *NAACP v. Alabama* that forcing an organization to disclose its members chills their rights of free speech and free association. Justice Harlan: Immunity from state scrutiny of petitioner's membership lists is here so related to the right of petitioner's members to pursue their lawful private interests privately and to associate freely with others in doing so as to come within the protection of the Fourteenth Amendment.

Thomas Paine's influential "Common Sense" was initially published as being written by an "Englishman." Other Founding Fathers of this country used pseudonyms or anonymous free speech in writing the Federalist Papers. More recently, many who were blacklisted during the McCarthy era used pseudonyms to continue working.

The use of anonymous free speech is not a loophole or some nefarious political tactic. A much-cited 1995 Supreme Court ruling in *McIntyre v. Ohio Elections Commission* reads: Protections for anonymous speech are vital to democratic discourse. Allowing dissenters to shield their identities frees them to express critical, minority views . . . Anonymity is a shield from the tyranny of the majority. . . . It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation . . . at the hand of an intolerant society.

Ethics and Elections Committee
Attachment 6
Date 2-9-11

Disclosure for Newspapers?

In *Citizens United v. FEC*, the court spent a great deal of time discussing and determining that corporations are not different than individuals when it comes to political speech and the First Amendment to the United States Constitution.

The Court did not, however, discuss if different types of corporations should receive different treatment regarding political speech.

The bill before you gives certain types of corporations, newspapers for example, different requirements than others. It is unclear, at this point, if such exceptions will pass Constitutional muster.

But should newspapers be exempted from the same requirements put forth by this legislation or similar proposals? Should a newspaper be required to disclose its' subscribers, advertisers, and shareholders for an editorial they craft that clearly identifies a candidate within a certain time period of an election? Thousands of readers are potentially swayed by editorial writings, thus proponents of SB 31 should call for more disclosure than just the name of the newspaper.

This is but one example of the types of questions that should be asked before seriously considering passage of this legislation.

Thank you for your consideration on this important matter.

Derrick Sontag
Kansas State Director
Americans for Prosperity

**Testimony before the Senate Ethics and Elections Committee
SB 31 – Campaign Finance
Jeff Glendening, Vice President of Political Affairs**

February 9th, 2011

Thank you Madam Chair and members of the committee for the opportunity to provide written testimony in opposition to SB 31 because of its prescribed limitations on political free speech. The outcome, whether intended or not, would be to circumvent the First Amendment protection of free speech in the weeks leading up to an election.

The concept of anonymous free speech predates our country's independence. The authors of one of the most widely recognized primary sources for constitutional research, the Federalist Papers, was known only as "Publius." It was not known until after their deaths that the works were written by Alexander Hamilton, James Madison and John Jay. The Anti-Federalist Papers, also a primary source of our constitution, were first printed anonymously under names such as "Cato", "The Federal Farmer" and "Brutus".

Stepping back even further into history, the author of Thomas Payne's Common Sense was originally known as "Written by an Englishman" and the man many to believe to be the most prominent Founding Father, Benjamin Franklin, wrote numerous articles under the name of "Mrs. Silence Dogood".

Some have argued in the past that legislation such as SB 31 is designed to confront and negate anonymous organizations engaging in election related propaganda. SB 31 reaches more broadly by undercutting well known organizations such as The Kansas Chamber by forcing the release of a members list because of the mere mention of a candidate's name.

In summary, we believe that government should not engage in restricting the protected free speech of private organizations. This measure is not simply a campaign finance reform bill; it is an attack on the First Amendment. **We urge the Committee to reject the erosion of political free speech prescribed in SB 31.** Thank you for your consideration.



835 SW Topeka Blvd. Topeka, KS 66612 785.357.6321

Ethics and Elections Committee
Attachment 7
Date 2-9-11



**Senate Bill 67
Written Testimony
By Governor Sam Brownback
February 9, 2011**

Dear Chairman Huntington and Committee Members,

Thank you for the opportunity to submit written testimony on Senate Bill 67.

I support amending K.S.A. 25-4186 to allow incoming governors the discretion of donating all residual funds not otherwise obligated for the payment of expenses incurred for the gubernatorial inauguration to any charitable organization which qualifies as a 501(c)(3) not-for-profit corporation.

Our state's history shows Kansans are a charitable people. And I believe those who give their financial support to an inauguration would want the residual funds go to an organization whose mission is to assist Kansans in need of a hand up rather than used to supplement the budget of a governmental agency.

Again, thank you for the opportunity to submit written testimony on Senate Bill 67.

Sincerely,

Sam Brownback
Governor



900 SW JACKSON ST., STE 201
TOPEKA KS 66612-1235

STATE OF KANSAS
Ron Estes
TREASURER

PHONE: 785-296-3171
FAX: 785-296-7950

Senate Ethics & Elections Committee

February 9th, 2011

Thank you Madam Chair and members of the committee for allowing me the opportunity to come and testify on **Senate Bill 126**.

Over the past decade the difference between public service announcements and campaign commercials during the campaign season has become blurred, and candidates and voters have raised questions whether the timing of these ads are politically motivated.

During my campaign for Kansas State Treasurer, I made a commitment to the voters that I would do all that I could to prevent future State Treasurers and other elected officials from using public service announcements and advertisements for a state agency's programs to help themselves get re-elected. I am here today to suggest that allowing the state agencies to utilize state resources to run these ads right before an election is wrong and should no longer be allowed.

These public service announcements are intended to educate the citizens of Kansas on the programs available by the state to help serve their best interests. They are not intended to serve as a free campaign commercial for a candidate before an election. Everywhere I traveled during my campaign, Kansans agreed with me.

As your State Treasurer, I have a statutory responsibility to promote and administer the Learning Quest 529 Education Savings Program. This bill allows me to continue to do that, but during the campaign season the advertisements would not include me, my name, or my photograph.

Here are the highlights of the bill:

- Neither the candidate, image of the candidate or the name of the candidate may appear in agency sponsored PSA or advertisements 60 days prior to the primary or general election in the year their name appears on the ballot.
- This includes television, radio, and newsprint advertising.
- This bill also prevents officials from sending out any unsolicited direct mailing valued at \$2,000 or more.
- Websites and printed materials used in the regular course of business are still allowed.

Thank you Madam Chair for the opportunity to be here today. I'd be glad to answer any questions you may have about the bill.

Ethics and Elections Committee
Attachment 9
Date 2-9-11