



GOVERNMENTAL ETHICS COMMISSION

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Proponent Testimony for HB 2169
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Thank you for the opportunity to provide testimony in favor of HB 2169.

The Commission is a proponent of legislation that addresses a specific legislative recommendation from its Annual Report and is neutral to most other initiatives. This bill would help ensure that citizens of Kansas are able to know who is funding election communications and make it more difficult for organizations to evade transparency requirements.

Current Law

“Express advocacy” is a term of art in the Campaign Finance Act that is defined using a series of examples, such as “vote for Candidate,” “re-elect Candidate,” “Candidate for Office,” and others. Express advocacy is often a touchstone of whether an organization is required to provide transparency regarding the funding of the communication to Kansas citizens. For example, a communication does not require a paid-for attribution statement unless it utilizes express advocacy. In practice, if a communication does not include these phrases, there is likely little or no transparency required for the communication.

The 2018 election included many communications that avoided the transparency requirements by specifically avoiding the phrases in the statute, but clearly communicating the same message. Organizations that do not want to inform recipients of the source of the communication appear to be simply rewording their messages slightly.

FEC Solution

At the federal level, this concern is addressed through the wording that is proposed in HB 2169. If a communication is susceptible to no interpretation other than to encourage a vote for or against a specifically-identified candidate, then the communication is express advocacy even if it manages to avoid the exact phrases in statute. In practice, this prevents organizations from evading transparency requirements by using slightly different words or breaking up a phrase into parts.

The effect of this change would be to ensure that Kansas residents will be informed regarding communications that they receive about specific candidates in an election.

Narrow Interpretation

HB 2169 is focused on a narrow class of communications. The bill does not affect issue advocacy or other non-election communication about candidates or elected officials. In order to meet this standard, a communication would still need to specifically identify a candidate and encourage or discourage a vote for that candidate in an election. The Commission is satisfied with guidance provided by the FEC and anticipates no difficulty in educating candidates and organizations about this requirement.

Treasurer Disclosure

With respect to the removal of the requirement to list a treasurer in paid-for attribution, the Commission has no position.