



GOVERNMENTAL ETHICS COMMISSION

<https://ethics.kansas.gov>

Proponent Testimony for HB 2562
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Thank you for the opportunity to provide testimony in favor of HB 2562.

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 has two components: updating a statute to be enforceable considering current technology and removing the requirement for "paid for" attribution to include a treasurer's name. The former is a recommendation of the Ethics Commission. The latter was not specifically recommended by the Ethics Commission, but the Commission does not oppose that change.

ELECTRONIC "PAID FOR" ATTRIBUTION

Currently, an electronic communication by a candidate, candidate committee, PAC, or party committee that contains express advocacy must include a "paid for" disclaimer at the end of the communication. This applies to websites, email, non-Twitter social media and other communications. Appending such attributions to emails is analogous to printed matter and compliance with the attribution requirement is simple and straightforward. Compliance for some websites and some social media pages can be difficult or impossible. Facebook is an example of this difficulty.

Facebook is a website that hosts internet communications in a rigidly structured manner. A typical Facebook page has a header but lacks a footer or other mechanism that may be utilized to append an attribution. Even if such a mechanism existed, pages have no end because of a reverse chronologically scrolling news feed. Required attributions may be added to the header, though technically this would not comply with the statute as currently written.

Additionally, Facebook added requirements for political advertisements to utilize "paid for" disclaimers. While this change may be beneficial to ease compliance in some ways, the format does not permit the addition of a treasurer's name. Facebook has not responded to multiple attempts to contact them regarding this conflict.

The Commission believes that the rigid formats of certain websites or other internet communications make appending the required attributions problematic.

CLEAR AND OBVIOUS STANDARD

The legislation would require that while the “paid for” disclaimer may occur elsewhere on an electronic communication besides the end of the page, it must nonetheless be “clear and obvious.” This is substantively similar to the FEC’s requirement that disclaimers must be “clear and conspicuous,” which ensures that a disclaimer should not be difficult to read or easily overlooked.

Thanks in part to the significant amount of information regarding the definition of “clear and conspicuous” in federal elections, the Commission would not have difficulty in educating individuals and organizations about the requirements. In fact, the proposed change would simplify the current statute, likely reducing alleged violations.