

Kelty filed fraudulent campaign finance reports, including one count (count VI) wholly unrelated to these loans charging that the reporting of an in-kind commission of a public opinion poll was fraudulent. The final two counts, VIII and IX, both relate to the same personal loans accusing Kelty of commingling campaign funds with personal funds.

All of these counts suffer from similar legal defects that are more fully outlined below.

## ARGUMENT

### I. THE INDICTMENTS ARE DEFECTIVE AND MUST BE DISMISSED.

Indiana law provides that an indictment or a count thereof “*shall* be dismissed upon motion when it is defective.” *See* I.C. § 35-34-1-6 (2007) (emphasis added).

An indictment can be defective if: the statute defining the offense charged is unconstitutional, *see* I.C. § 35-34-1-6(a)(3); the indictment does not state the offense with sufficient certainty, *see* I.C. § 35-34-1-4(a)(4); the facts stated do not constitute an offense, *see* I.C. § 35-34-1-4(a)(5); or there exists some jurisdictional impediment to conviction of the defendant for the offense charged, *see* I.C. § 35-34-1-4(a)(10).

Likewise, both the Indiana Constitution and the United States Constitution require the dismissal of criminal indictments if the defendant has been denied due course and due process of the law respectively. *See* Ind. Const. art. I, § 12; U.S. Const. amend. XIV. The Indiana Constitution further requires that the accused in every criminal prosecution shall have the right “to demand the nature and cause of the accusation against him.” *See* Ind. Const. art. I, § 13.

Each of these statutory and constitutional infirmities exists in this case.

#### 1. The laws with which Kelty has been charged are unconstitutional.

##### A. *Counts III through VII are unconstitutionally void for vagueness.*

Five of the nine counts of the indictment (counts III through VII) are all charged under I.C. § 3-14-1-13 that says simply “a person who knowingly files a report required by I.C. 3-9 that

is fraudulent commits a class D felony.” Since the word “fraudulent” is not defined by this title of the Indiana Code, this statute is unconstitutionally void for vagueness under the Fifth and Fourteenth Amendment to the United States Constitution and Article I, Section 12 of the Indiana Constitution.

“[A]ny statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application,” should be invalidated as unconstitutionally vague because it “violates the first essential of due process of law.” *Connally v. General Construction Company*, 269 U.S. 385, 391 (1926).

A statute can be challenged for being unconstitutionally vague in two ways. When “vagueness permeates a [statute],” a facial challenge to the entire law is appropriate. *City of Chicago v. Morales*, 527 U.S. 41, 55 n.22 (1999). See *Kolender v. Lawson*, 461 U.S. 352, 358 n.8 (1983); *U.S. v. National Dairy Products Corp.*, 372 U.S. 29, 33 (1963) (“[A] bead-sight indictment can [not] correct a blunderbuss statute, for the latter itself must be sufficiently focused to forewarn of both its reach and coverage.”); *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939). Especially where a law implicates First Amendment protections, a court can strike down a statute as being unconstitutionally vague in all instances. See *City of Chicago* at 52. In such a situation, the United States Supreme Court has ruled that campaign contributions and expenditures are forms of political speech and therefore laws regulating campaign finance disclosure, such as I.C. § 3-14-1-13, are subject to limits proscribed by the First Amendment. See *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (“[W]e have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.”).