

Neutral Oral Testimony on House Bill 2618
House Committee on Elections
Davis Hammet – Loud Light Civic Action
February 13, 2024

Chair Proctor, Members of the Committee,

Currently in Litigation: Kansas Supreme Court Argument a Week from Today

A lawsuit was filed in June 2021 requesting a preliminary injunction against the statute at issue in this bill. Now, nearly 3 years later and a week before the Kansas Supreme Court will hear additional arguments in the case, the committee is asked by the Attorney General to consider a bill that alters the language of the statute.

We appreciate the Attorney General’s newfound recognition that the statute, passed in 2021, is vague and broad. This comes as a relief after the office’s aggressive and vocal stance over the last two and a half years claiming the contrary. However, while a step in the right direction, the new proposed language still demands clarity.

Free Speech Chill May Continue: Unclear Distinction Between “Representing” & “Conduct”

In addition to free speech concerns, an issue in the current litigation is the vagueness and broadness of the statute. Therefore, special consideration should be given to ensuring that any language modifying the statute gives Kansans clear and specific boundaries on what speech and expression subjects them to the criminal punishment prescribed in the statute.

Under this bill the new Section 1(a)(2) would read “engaging in conduct ~~that would cause another person~~ *with the intent to cause a person to believe a that the person* engaging in such conduct is an election official.” What does this cover that is not covered by Section 1(a)(1) ”Representing oneself as an election official”? What specific “conduct” could someone engage in that is not an act of “representing oneself”?

Other Kansas statutes regarding impersonation offer specific boundaries to citizens so that they may know the line that crosses from free speech to criminal conduct. Under K.S.A. 25-2424, False impersonation as party officer is “willfully and falsely representing oneself to be an officer of any political party... with the intent to deceive any person or to influence in any way the outcome of any election” Under K.S.A. 25-2431, False impersonation of a voter is “representing oneself as another person... and thereby voting or attempting to vote.” Under K.S.A. 21-5917, “Aggravated false impersonation is falsely representing or impersonating another and in such falsely assumed character” and then lists specific acts that would constitute the crime.

Conclusion: HB2618 Still Leaves Kansans Unsure of What Activity is Illegal

We recommend this committee amend HB2618 to either remove every subsection under (a) except for (1) or to explicitly define the criminal conduct covered under Sec. 1(a)(2). If legislators are unable to readily explain the criminal “conduct” that is beyond “representing oneself” then citizens cannot be expected to make such interpretations. Thank you. I’m happy to stand for any questions when appropriate.