KANSAS JUSTICE INSTITUTE

Testimony to the Senate Committee on Education

S.B. 419: "Enacting the Kansas intellectual rights and knowledge act, providing a civil cause of action and penalties for violations of such act and authorizing students and student associations to exercise political and ideological beliefs, values and missions."

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Chairwoman Erickson and Members of the Committee:

Kansas Justice Institute[1] supports S.B. 419's intent and framework. That's because Kansans deserve robust protection of their right to free speech and expression.

Since at least 1969, the United States Supreme Court has been clear:

> State-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.[2]

What's more, it is a bedrock principle that a school cannot be permitted to engage in viewpoint discrimination when it regulates speech.[3] "Above all else," the United States Supreme

[1] KJI is a nonprofit, *pro bono*, public-interest litigation firm committed to upholding constitutional freedoms, protecting individual liberty, and defending against government overreach and abuse. KJI litigates First Amendment cases, among other types. *See, e.g., Cozy Inn, Inc. v. City of Salina, Kansas*, No. 24-CV-01027-TC, 2025 WL 3223806 (D. Kan. Nov. 19, 2025); *Bunner, et al., v. Beam*, 2019-cv-000785 (Shawnee County) (challenge to off-farm advertising prohibition for raw milk producers).

[2] *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511 (1969) (cleaned up). Although *Tinker* was written in the context of a different educational setting, the principles remain much the same in the postsecondary educational setting—except there, students should be afforded even greater latitude when expressing their views.

[3] *See Tinker*, 393 U.S. at 509, 511.

Court has held, "the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[4]

And as the United States Supreme Court wrote in 1943, "the very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."[5]

These principles are why S.B. 419 matters, and why KJI supports it.

KJI respectfully suggests for consideration the following items.

- If this Committee would like to strengthen the bill, it could consider amending "significant" to "compelling" on page 4, lines 9 and 37.
- Inserting "Section 11 of the Kansas Constitution Bill of Rights"[6] on page 3, line 27-28; and page 5, lines 1 and 40.[7]
- Clarification on whether postsecondary institutions may require permits for expressive activity; and if so, what objective, content- and viewpoint-neutral standards they must use when deciding whether to approve or deny such a permit, and the timelines for doing so.[8] These guardrails are important to ensure institutions do not use permitting to defeat the bill's purpose.
- It's worth mentioning that there appears to be a case from the Supreme Court of Alabama dealing with similar issues. *See, Young Americans for Liberty at The Univ. of Alabama in Huntsville v. St. John*, 376 So. 3d 460 (Ala. 2022).

Thank you for the opportunity to submit this testimony.

Respectfully submitted,

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Samuel G. MacRoberts

[4] *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).
[5] *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943).
[6] Section 11 states: "The liberty of the press shall be inviolate; and all persons may freely speak, write or publish their sentiments on all subjects, being responsible for the abuse of such rights; and in all civil or criminal actions for libel, the truth may be given in evidence to the jury, and if it shall appear that the alleged libelous matter was published for justifiable ends, the accused party shall be acquitted." Kansas Courts generally consider Section 11 to be, at a minimum, coextensive with the First Amendment. *See, e.g., League of Women Voters of Kansas v. Schwab*, 318 Kan. 777, 787 (2024).
[7] The Kansas Constitution should, respectfully, be included in any event. But adding it would help ensure consistency, as it is mentioned in page 3, line 28.
[8] On page 4, lines 21-27, it seems as though schools would be allowed to maintain a system of prior restraint. But given the overall context and purpose of the bill, it is unclear whether this was intentional.