



STATE OF KANSAS

March 13, 2025

Testimony on SB258 (Oral Proponent)

Senate Committee on Federal and State Affairs

Submitted: March 12, 2025

Chairman Thomspson and members of the Committee:

The Secretary of State supports this bill because intentional impersonation of a government official occurs not only in the election area but also in other areas. Intentional misrepresentation creates public confusion and undermines public confidence.

We provided the current bill language to the state's election litigation attorneys, the attorneys who have been litigating the current impersonation statute KSA 25-2438 amongst others.

Their recommendation is to slightly modify the current bill language adding to subsection (1) and move it to bill subsection (2) and further add what is underlined below: The amended bill would read as follows:

Section 1. K.S.A. 25-2438 is hereby amended to read as follows: 25-2438. (a) False representation of an election official is knowingly engaging in any of the following conduct by phone, mail, email, website or other online activity or by any other means of communication while not holding a position as an election official:

- (1) Representing oneself as an election official; or
- (2) engaging in conduct, including, but not limited to using an official seal or other insignia of the secretary of state or any county election office in any communication with voters, with the intent to cause a person to believe that the person engaging in such conduct is an election official.

The state's litigation attorneys believe this statutory language would satisfy the concerns voiced by the Kansas Supreme Court, in its May 2024 opinion, *League of Women Voters v Schwab*. There the Court found that the current statutory language was too broad and swept within its scope too much protected speech that is not fraudulent or deceptive because the Legislature included no intent to misrepresent or deceive requirement in the statute.

By including a requirement for intent to misrepresent or deceive, SB258 would provide a high degree of specificity and clarity demonstrating that the only speech being criminalized is constitutionally unprotected speech,

Restrictions on constitutionally unprotected speech do not trigger First Amendment guarantees. Such unprotected speech may be freely restricted by the state so long as the regulations

SCOTT SCHWAB
Secretary of State



Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564
sos.ks.gov

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fall within the scope of its police power. Unprotected categories of speech include fraud, obscenity, defamation, incitement, speech integral to criminal conduct, fighting words, true threats, speech presenting some grave and imminent threat the government has the power to prevent, and child pornography.

The “type of fraud” at issue here is the impersonation of an election official. To be clear, the Kansas Supreme Court specifically did **not** determine and left open the question of whether impersonation of a public official is, in fact, unprotected speech. It did, however, cite to several other court decisions that so held.

Respectfully,

Clayton Barker

Clayton L. Barker
Deputy Secretary of State, General Counsel
Clay.Barker2@ks.gov