

Opponent Written Testimony on Senate Bill 258

Senate Committee on Federal and State Affairs

Davis Hammet – Loud Light Civic Action

March 13, 2025

Chair Thompson, Members of the Committee,

Current Legal Status – Permanent Injunction Against K.S.A. 25-2438(a)(2) & (a)(3)

The current language in K.S.A. 25-2438 came from a 2021 Senate floor amendment by Sen. Tyson. Following its passage our organization and others filed a lawsuit in June 2021. Three and a half years later, in December 2024, the Court entered a permanent injunction against enforcement of (a) subsections (2) & (3) after the Kansas Supreme Court found the new subsections were overly broad and criminalized free speech protected activities.

Of note, subsection (1) criminalizing “Representing oneself as an election official” was not challenged in the lawsuit. While it is redundant since other statutes cover impersonation of officials, it is not and no one believes it should be legal to impersonate an election official. As that is already illegal activity, SB258 criminalizes something beyond impersonation.

Discussed by KS Supreme Court – SB258’s Proposed SubSection (2) was in 2024’s HB2618

(2) ~~engaging in conduct that gives the appearance of being an election official; or~~
(3) ~~engaging in conduct that would cause another person with the intent to cause a person to believe that the person engaging in such conduct is an election official.~~

Last year, a bill (HB2618) with an identical change was moving in the Legislature and the proposed language was discussed during the February 20, 2024 Kansas Supreme Court argument as the Attorney General argued if passed it’d resolve the lawsuit. Importantly, Justice Stegall, Wall, & Biles appeared to recognize that HB2618 would not end the lawsuit because the state cannot explain what activity is illegal under (2) that is not covered by (1). **The state argued it covers “subtle conduct,” but as Justice Wall asked “what does that mean?”** This is the key issue with the original 2021 bill, the 2024 proposed bill, and this new 2025 bill. Since impersonating an election official is already illegal– **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 of a 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.

Opponent Written Testimony on Senate Bill 258

Senate Committee on Federal and State Affairs

Davis Hammet – Loud Light Civic Action

March 13, 2025

SB258's Addition to SubSection (1) Would Criminalize Use of State Election Forms

(1) Representing oneself as an election official, *including the use of any official seal or other insignia of the secretary of state or any county election office in any such communication; or*

The Secretary of State's (SoS) seal is on the state voter registration form and other election information materials that are distributed to the public by the SoS and county election officials. These forms are used in community voter registration drives and educational events. This language appears to turn all such fundamental free speech activity into criminal conduct. How else could you construe this proposed text?

Conclusion: SB258's Vague & Broad Language Targets Free Speech

If legislators can't define the line between legal and illegal conduct in SB258, how are the people, police, & prosecutors supposed to know the line?

We recommend this committee oppose SB258. If legislators are unable to readily explain the criminal "conduct" that is beyond "representing oneself" then citizens cannot be expected to make such interpretations. Kansas citizens and many organizations had their free speech rights unconstitutionally chilled by the unvetted, overly broad language passed in 2021. It took years of irreparable harm before the problems created in 2021 were resolved just three months ago when a permanent injunction was issued. Thank you for your consideration.