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## STATE OF KANSAS

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### **Testimony on HB2618 (Oral / Proponent)**

Senate Committee on Federal and State Affairs

Tuesday, March 12, 2024

Chairman Thompson and members of the Committee:

Thank you for the opportunity to provide testimony on House Bill 2618 which passed the House 85-35.

There is a growing number of election-related complaints from people interacting with individuals and organizations whom they falsely believed to be election officials. While some of the misidentifications are harmless and unintended, some are not. There are several varieties of harmful intentional impersonation.

One is the financial scam. The National Association of Secretaries of State<sup>1</sup> has disseminated periodic warnings regarding people being solicited to provide sensitive personally identifiable information (PII) over the phone, purportedly to register to vote, to address problems with their registration, or to be sent a ballot. These intentional misrepresentations were cleverly done, using a prepared script. The solicitation implied the caller was an election official, but never so stated. Similar problems can occur via mail or social media where there is no express claim to be an election official, but the framing of the communication could deceive a reasonable person.

A second variation<sup>2</sup> is people going door to door and asking the residents for information about their voter registration or details about past voting purportedly to check the accuracy of voter records. Indeed, in March 2022, this scam was conducted in Johnson County requiring the county elections office to issue a statement warning the public that these individuals had no link to the county election office.<sup>3</sup>

This conduct is designed to avoid violating KSA 21-5917 which applies only to express impersonation of a public official.

It is these cunning, deceitful election-related solicitations and scams that the Legislature targeted in 2021 when it enacted KSA 25-2438. That provision, however, has been the subject of litigation since it was enacted. Although the provision has never been used to prosecute and has not been enjoined by a court,

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<sup>1</sup> <https://www.nass.org/node/1551>; <https://news.trendmicro.com/2021/02/24/4-common-voting-scams-you-need-to-beware-of-in-2020/>; <https://www.attorneygeneral.gov/protect-yourself/consumer-advisories/beware-of-voting-scams/>; <https://blog.knowbe4.com/malicious-actors-crash-u.s.-election-spoofed-emails-attempt-to-gather-u.s.-voter-registration-data>; <https://kslnnewsradio.com/2067347/beware-of-voting-scams/>; <https://us.norton.com/blog/emerging-threats/election-scams>

<sup>2</sup> <https://www.wamc.org/2023-09-01/election-officials-warn-of-people-impersonating-staff-confronting-voters-at-home>;

<sup>3</sup> <https://www.jocogov.org/newsroom/important-information-johnson-county-election-office-door-door-voter-registration-survey>; <https://www.kshb.com/news/local-news/johnson-county-urges-caution-in-door-to-door-voter-registration>

the statutory language was questioned by the judiciary as potentially too broad and thus raising First Amendment concerns.

HB 2618 was drafted to promptly address that concern by adding an explicit “intent” element into the existing law. That is, for a crime to occur, the government must prove beyond a reasonable doubt that the person intended to cause another to believe that the person was an election official.

Under HB 2618 a person commits a crime under the amended law if the person *knowingly*:

(1) Represents themselves as an election official;

Or

(2) Engages in conduct with the *intent* to cause another to believe that the person is an election official.

The amended language of HB2618 should address the judicial concerns raised with the current statutory language.

Thank you for your consideration of this testimony.

Respectfully submitted,

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