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Written Testimony, Neutral on HB 2618
Senate Committee on Federal and State Affairs

Good morning members of the Senate Committee on Federal and State Affairs. Thank you for this opportunity to submit testimony on HB 2618, which would require specific intent as a criteria for the crime of falsely representing an election official.

My name is Teresa Woody, and I am the Litigation Director for Kansas Appleseed Center for Law and Justice, a nonprofit, nonpartisan organization dedicated to the belief that Kansans, working together, can build a state full of thriving, inclusive, and just communities.

Every Kansan who casts a vote deserves to have that vote counted. Kansas communities depend on this right. It is important that everyone has the ability to exercise their right to vote, not only because it is the fair and just thing, but also because research shows their health depends on it. Barriers perpetuate health inequalities and are linked to limited accessibility of comprehensive health care, less-secure housing, less nutritious food, lower quality education, fewer jobs with livable wages, and less freedom from crime and discrimination.¹

Kansas Appleseed appreciates the changes made to HB 2618, however as written it creates confusion over the law and establishes an intimidation tactic into law. If not clear, the bill risks creating barriers to voters and limits their first amendment rights to vote.

In 2021, the legislature enacted K.S.A. 25-2438 – False Representation of an Election Official. Kansas Appleseed Center for Law and Justice, Inc. and others (“Plaintiffs”) challenged K.S.A. 25-2438(a)(2)-(3), which makes it a severity level 7, nonperson felony to engage in "conduct that gives the appearance of being an election official" or conduct that "would cause another person to believe a person engaging in such conduct is an election official."

Plaintiffs sought a temporary injunction on the grounds that the language of K.S.A. 25-2438(a)(2-3) is unconstitutional because the language is overbroad and unconstitutionally vague, and violates Plaintiffs’ first amendment rights of free speech and free association.

The Shawnee County District Court dismissed Plaintiffs’ claims, and Plaintiffs appealed. A divided panel of the Court of Appeals held that Plaintiffs did not have standing and affirmed the dismissal of their claims. Plaintiffs appealed, and the Kansas Supreme Court accepted the case for review.

On December 15, 2023, the Kansas Supreme Court reversed the Court of Appeals and reinstated Plaintiffs’ claims. Justice Stegall, writing for a unanimous Court, found that Plaintiffs’ did have standing, and that . . . “[W]e can ask and answer the precise question presented—is there actually a credible threat of prosecution under K.S.A. 25-2438(a)(2)-(3) in the case of an

¹ Yagoda, N. “Addressing Health Disparities Through Voter Engagement.” *Annals of Family Medicine* (2019). <https://www.annfammed.org/content/17/5/459.long>.



innocent or unreasonable listener mistake? Given the plain language of the statute we think the answer must be yes.”²

Based on the Court’s decision, the Attorney General seeks the passage of HB 2618, which deletes section (a)(2) and modifies section (a)(3) of K.S.A. 25-2438.

With respect to HB 2618, we are pleased that the Attorney General has realized that the statute as drafted is unconstitutional and to that effect the changed language is better than the original language of the statute. However, with the removal of section (a)(2) and the modification of (a)(3), the last amended clause now says nothing more than that it is a felony to impersonate an election official. It is now merely redundant of the first clause. Both sections (a)(2) and (a)(3) of the existing statute should simply be omitted, to avoid any confusion.

The language in the original statute was to intimidate voters and thus limit their first amendment voting rights. It is paramount that HB 2618 is clear to avoid any infringement on Kansas voters’ rights. HB 2618 should remove redundancies to ensure its purpose and effect are clear to Kansas voters.

² December 15, 2023 Opinion at 19.