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**Testimony in Support of Senate Bill 293
Amending duties of the Attorney General and Secretary of State**

**Presented to the House Committee on the Judiciary
By Kansas Attorney General Derek Schmidt**

March 16, 2020

Chairman Patton and Members of the Committee:

Thank you for the opportunity to offer this testimony in support of Senate Bill 293, which was requested by my office and Secretary of State Scott Schwab. This bill proposes to transfer certain responsibilities currently in the Office of the Secretary of State to the Office of the Attorney General.

Charitable Organizations and Solicitations Act

First, the bill proposes to consolidate responsibility for administering and enforcing the Charitable Organization and Solicitations Act (COSA) in the Office of the Attorney General.

The COSA is the principal Kansas statute that protects charitable donors, promotes transparency in charitable giving, and prevents scam charities from operating in Kansas. It is the primary statute regulating charitable fundraising in Kansas.

While the statute has many specific components, in broad terms it does two things:

1. It requires certain charitable organizations, professional fund-raisers, and professional solicitors to register with the state and, as part of that registration, to provide certain information, such as financial information disclosing the uses of charitable contributions. The state, in turn, is to make available to the public certain information about these registrants so that Kansans who wish to make charitable donations may conduct research and inform themselves about the charities they may wish to support. Law enforcement organizations, primarily the Office of the Attorney General, also rely on these filings to help identify charity fraud and other violations of the COSA.
2. When a charity or other entity subject to the law violates the statute, the COSA authorizes various enforcement actions that may involve lawsuits, civil penalties, cost recovery, and/or injunctive relief.

Under current law, the Office of the Secretary of State manages the registration component; it receives and processes registrations and maintains the online database of filings. The Office of the Attorney General is responsible for the enforcement component; we receive and investigate complaints alleging violations of the COSA and, when appropriate, litigate violations.

When the COSA first was enacted in 1988, this division of labor probably made sense. At that time, the Office of Attorney General managed no registration programs and, thus, placing a charities registration program there would have been unusual. But today, our office does effectively manage several registration programs: roofing contractor registration, concealed carry licensing, private detective licensing, and bail enforcement agent licensing.

Thus, the rationale for dividing responsibility for this relatively small COSA program between two state agencies no longer is obvious. To the contrary, we think there likely are opportunities for efficiencies – perhaps not financial savings, but efficiencies in operations and effectiveness – by consolidating responsibility for the COSA program within a single agency. And placing that consolidated responsibility in the Office of the Attorney General makes sense because of our experience and expertise in enforcing the statute, which in many ways is a type of consumer protection statute.

Forty states, including Kansas, currently require some form of charitable registration and every state has some sort of authority to enforce laws against charities fraud, according to the National Association of Attorneys General. In 18 of those 40 states, the attorney general is responsible for both registration and enforcement – as proposed in Senate Bill 293. In the other 22 states, the attorney general is responsible for enforcement while another agency handles registration. Among those 22, there are a variety of other agencies handling registration, with secretary of state offices being the most common but others include the Florida Department of Agriculture and Consumer Services, the Maine Department of Professional and Financial Regulation, the New Jersey Division of Consumer Affairs, the Rhode Island Department of Business Regulation, the Utah Division of Consumer Protection, the Virginia Department of Agriculture and Consumer Services and the Wisconsin Department of Financial Institutions.

We think the time is right to consolidate the Kansas program for several reasons. First, our office has made consumer protection a priority and we would be dedicated to strengthening and improving our overall system of charitable organization regulation. If this change is made, we will work diligently to review the current status of the program, compare the program to national best practices, and if necessary make recommendations in future years to strengthen and improve the Kansas COSA program – this is work we want to do. Second, the current registration system needs technological upgrades to make it more user-friendly for both regulated filers and potential charitable donors; if the program is to be moved, doing so now can help ensure any upgrades are tailored to the operations of the attorney general’s office. Third, there is an ongoing national discussion about a so-called “single portal,” which would allow charities operating in multiple states to make their annual filings through a single location; again, making the transition now so the attorney general’s office can represent Kansas in the single-portal discussions seems sensible.

Safe at Home Program

The second component of this bill is transferring the address confidentiality program, commonly known as “Safe at Home,” from the Secretary of State to the Attorney General. This program allows victims of domestic violence, sexual assault, human trafficking or stalking to enroll in a program to provide an address that he or she may use to receive U.S. mail or service of process. The Secretary of State maintains a confidential list of the actual address where the participant is residing and forwards the mail received to the participant. This program has been housed within the Secretary of State’s Office since it was created in 2006.

In conversations with Secretary Schwab and his staff since he took office last year, we believe this program would be a better fit within the attorney general’s office. If this bill were to pass, we would house the program within our Victims Services Division, which has specialized staff who work with the victims of crime every day. That division is led by the state Victims Rights Coordinator, a position created by statute under the attorney general’s jurisdiction since 1989. Our office is in regular contact with many domestic violence shelters and victim advocacy organizations around the state, who are among the groups that assist victims with signing up for the Safe at Home program. So, again, we believe this program will be a good fit with the existing services provided by our Victims Services Division.

Requested Amendment: Prosecution of Election Crimes

This bill, as originally introduced, also contained a provision that would remove the statutory authority of the Secretary of State to prosecute certain election crimes and would make related changes to the system for handling these cases. This section of the bill, which was removed by the Senate Judiciary Committee, would also impose a duty on the Secretary of State to report evidence of election crimes to the Attorney General and the appropriate county or district attorney and to cooperate with and assist county and district attorneys and the Attorney General to investigate and, if appropriate, prosecute cases of suspected election crimes.

As you know, in 2015 the Legislature enacted Senate Bill 34, which created the authority of the Secretary of State to prosecute certain election crimes. That proposal was first introduced in 2011 as part of House Bill 2067, Kansas Secure and Fair Elections Act (SAFE Act). At that time, I submitted testimony in support of the provision of that bill that granted the Attorney General original jurisdiction to prosecute election crimes, and had no objection to the provision granting that authority to the Secretary of State. I noted that in 2011, there was precedent for granting authority to bring prosecutions to state officials other than the Attorney General – namely, the Securities Commissioner for criminal prosecutions of securities laws. When the proposal was reintroduced in 2015, I did not testify on the bill, but my position on its proposals had not changed. Since the law was enacted in 2015, at least four things have changed that lead me now to advocate for removing the Secretary of State’s prosecution authority but leave the Attorney General’s authority intact:

1. The current Secretary of State has made clear that he does not wish to have, and does not intend to exercise, the statutory authority to prosecute election crimes. Rather, he prefers to return to a more traditional relationship in which professional criminal prosecutors in

the Office of Attorney General or in county or district attorneys' offices would handle prosecution of these matters as they may arise.

2. The current staffing of the Secretary of State's office does not include any attorneys with criminal prosecution experience. That is a more traditional approach to staffing the office than was true in the previous Secretary of State administration.
3. In 2016, I established the Fraud and Abuse Litigation Division within the Attorney General's office. This criminal-prosecution division, which did not exist when the Secretary of State was granted prosecution authority in 2015, handles general criminal fraud, elder abuse, financial crimes and similar matters. Its existence is important because now, unlike in 2015, the Attorney General's office has standing capacity that can handle and absorb referrals of any election crimes cases from the Secretary of State. It no longer is the situation, as it was in 2015, that any election fraud cases referred to our office would be competing for prosecution resources with the demands of major person felonies such as homicides or sex crimes against children.
4. In 2017, the Legislature declared it to be the public policy of the state of Kansas "that the prosecuting attorneys who bring criminal actions in the name of the state of Kansas, other than county and district attorneys, and the funding therefor should, to the extent practicable, be located in the attorney general's office under the jurisdiction of the attorney general." *See* K.S.A. 75-766(a). This policy is intended "[t]o promote efficiency in staffing and operations and consistency in enforcement of the criminal law." *Id.* That public policy had not been codified in statute when the Secretary of State's prosecution authority was enacted in 2015, but consistent with that policy the Legislature has consolidated with the Attorney General, rather than the Securities Commissioner, authority to prosecute criminal violations of the securities laws, thus removing the precedent I pointed out in my 2011 testimony as a justification for the Secretary of State's prosecution authority. It seems sensible at this time to further that declared policy by consolidating prosecution authority for election crimes with the Attorney General and with county and district attorneys rather than leaving it with the Secretary of State.

For these reasons, I ask that you amend Senate Bill 293 by reinserting the original Section 12 of the bill, returning it to its form as it was originally introduced.

The bill before you today is the result of conversations over the past year with Secretary Schwab and his staff. We believe the changes outlined in this bill will lead to a more efficient use of resources reflect the common-sense good-government approach the people of Kansas expect from their elected officials.

Thank you again for your consideration of Senate Bill 293.