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March 11th, 2013

**Testimony in opposition to
Prosecutorial Authority for Secretary of State**

Honorable Chair Schwab and members of the committee:

Thank you for the opportunity to testify in opposition to SB 63. My name is Patrick Vogelsberg and I appear today representing the Kansas County and District Attorney Association (KCDA). The KCDA opposes the current form of SB 63 that gives prosecutorial authority to the Secretary of State.

First, there is no current authority by statute (KSA 75-401 et. seq.) for the Secretary of State to prosecute any action in any form. Therefore, this section is a significant expansion of the Secretary of State's power. This expansion of power is unnecessary and redundant given that county and district attorneys already have, "the duty [...] to appear in any court having jurisdiction within the county and prosecute or defend on behalf of the people all actions and proceedings, civil or criminal, in which the state or the county is a party or interested." K.S.A. 19-702(a); See also K.S.A. 22a-104(a)(similar duties of the district attorney). Giving independent authority to the Secretary of State to prosecute local crimes provides unnecessary overlap of duties and resources.

Additionally, as written, the proposed language would create the need for separate investigatory and prosecutorial personnel within the Secretary of State's office. This increase and devotion of resources appears again, to be unnecessary and wasteful given that there are already officials more appropriately positioned and resourced to deal with such matters. If such concurrent authority exists in other agencies, there usually is the appointment of a special assistant attorney general. Absent such concurrent authority, the traditional approach is for the attorney general to consult with and advise county attorneys, when *requested* by the county attorney, in all matters pertaining to the county attorney's official duties. See K.S.A. 75-704.

The KCDA believes that any prosecutorial power to enforce this legislation should remain with the local county or district attorney. Crimes that are considered in this legislation are no different from all of the other crimes currently being prosecuted by our local county and district attorneys. If the situation requires, the county or district attorney will request the advice and consultation of the attorney general on the crimes suggested by this legislation.

However, the KCDAAs understand that there may be a desire by legislators to have a statewide official with prosecutorial authority for voter fraud crimes. Two years ago the KCDAAs opposed any expansion of prosecutorial authority, including that of the Attorney General. However, in the spirit of compromise, the KCDAAs are agreeable to the Attorney General receiving that authority in SB 63. This at least keeps prosecutorial authority in the hands of professional prosecutors.

Therefore, if this committee decides to work SB 63, the KCDAAs request that the bill be amended to remove prosecutorial authority for the Secretary of State and leave the power to prosecute these crimes with professional prosecutors.

Respectfully submitted,

Patrick Vogelsberg
Kansas County and District Attorney Association