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**Testimony in Support of House Bill 2011
Removing the authority of the Secretary of State to prosecute election crimes**

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

February 17, 2021

Chairman Patton and Members of the Committee:

Thank you for the opportunity to offer this testimony in support of House Bill 2011. As many of you will remember, this bill was proposed last year as part of a bundle of bills reorganizing several functions within the Secretary of State's office and consolidating those functions within the Attorney General's Office. This year, those three policy proposals were presented to you in three separate bills. You have already heard, and the House has already adopted, the first two of those bills, which you merged together into House Bill 2079. The third of those proposals is before you today in this bill offered by Rep. Carmichael.

This bill 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 bill also imposes 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.

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 this bill, which would remove 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. For those reasons, 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.

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 House Bill 2011.

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