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WRITTEN TESTIMONY FOR SENATE COMMITTEE ON ETHICS AND ELECTIONS

TO: MEMBERS OF THE SENATE COMMITTEE ON ETHICS AND ELECTIONS
FROM: JEFFREY A. CHANAY, DEPUTY ATTORNEY GENERAL, CIVIL LITIGATION DIVISION
DATE: FEBRUARY 7, 2012
RE: SENATE BILL 333

Chair Huntington and Members of the Committee:

On behalf of the Office of Attorney General Derek Schmidt, I offer the following written testimony in support of Senate Bill 333.

SB 333 strikes the language in multiple statutes that requires petition circulators to be residents of the state and have the qualifications of an elector in Kansas. The proposed amendments are intended to comply with the United States Court of Appeals for the Tenth Circuit's ruling in *Yes on Term Limits, Inc. v. Savage*, 550 F. 3d 1023 (10th Cir.2008). In the *Savage* case, the Tenth Circuit found Oklahoma's ban on non-resident petition circulators to violate the First Amendment. In 2010, the Office of Attorney General settled a similar challenge by the Constitution Party to the Kansas non-resident ban by agreeing that the Kansas statute in question violated the First Amendment. (*Constitution Party of Kansas v. Biggs*, in the United States District Court for the District of Kansas, Case No. 10-4043-SAC-KGS). SB 333 is intended to reflect current case law as interpreted by the Tenth Circuit.

The Office of Attorney General suggests using the opportunity of this legislation to clarify the appropriate conditions that must be followed by petition circulators. The following balloon language is something that we believe should be considered for inclusion in the bill by amendment:

New Section. All petition circulators, whether residents or non-residents of the State of Kansas, are required to agree to submit to the jurisdiction of the state, including its agencies, political subdivisions, and election officials, for purposes of subpoena enforcement regarding the integrity and reliability of the petition process.

The Secretary of State may have some additional proposals that will also merit consideration.

Thank you for the opportunity to comment on this legislation.