AMERICAN CIVIL LIBERTIES UNION of KANSAS

TESTIMONY OF
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IN **OPPOSITION** TO **HB 2612**
KANSAS HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

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Thank you, Chair Pauls, and members of the Committee on Federal and State Affairs for affording us the opportunity to provide testimony on HB 2612. The American Civil Liberties Union (ACLU) of Kansas, a membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas, **strongly opposes HB 2612**. The bill would grant state government the power to limit resettlement of refugees; in so doing, the bill is preempted by federal law and would permit unconstitutional discrimination, on the basis of alienage and potentially national origin.

- **HB 2612 is preempted by federal law.** The bill attempts to give the State of Kansas power over the resettlement of refugees, including the power to declare when "absorptive capacity" has been met or exceeded and the power to suspend resettlement activities. These are not powers that properly belong to any state's government, as they have been reserved to the federal government.

  As recently as 2012, in *Arizona v. United States*, federal courts found that the power to regulate immigration (which includes the admission and resettlement of refugees) is inherent in the concept of national sovereignty and therefore lies exclusively with the federal government. Federal law as it relates to admission and resettlement of refugees is articulated in the Immigration and Naturalization Act (INA) and the United States Refugee Act of 1980. The power to develop refugee admission and resettlement policy is specifically laid out and assigned to the federal government under Title III of the Refugee Act of 1980. In addition, the United States is a signatory to the 1967 Protocol relating to the Status of Refugees, which binds the United States—and all of its states and localities—to a series of international obligations concerning the treatment and resettlement of refugees, including the rights of refugees to choose their place of residence within their host country and to move freely within that country. These American laws and international treaties expressly reserve to the federal government the power to make determinations about refugee resettlement, even though that resettlement may take place with the cooperation of state and local government bodies or with state and local government resources. States are expressly *not* given the power to "veto" the placement of any refugee within their borders.

  Under the doctrine of preemption, states cannot adopt policy that explicitly contradicts federal policy. The State of Kansas may not grant to itself the power to make determinations about refugee resettlement, because that power is reserved to the federal government. Any attempt to assert such a power is preempted under federal law.

- **HB 2612 is discriminatory and unconstitutional.** Even if HB 2612 were not preempted by federal law and international treaty, it would still raise grave legal and constitutional questions. The bill would permit state government to deny public services to individuals residing in Kansas on the basis of their alienage or national origin, if the state determined that its novel and discriminatory concept of "absorptive capacity" had been met. Such denial of services through the refugee resettlement program, which is largely funded through the federal government, on the basis of national origin and alienage is in clear violation of Title VI of the federal Civil Rights Act. Furthermore, the Refugee Act demands that services for refugees funded by the federal government must be provided without regard to race, religion, nationality, sex, or political opinion. However, HB 2612 does not limit its denial of public services only to those that are directly funded through refugee resettlement programs. Instead, it would permit the denial of virtually any public services to refugees, if the state determines that "absorptive capacity" has been met. Such denial of services based exclusively on the innate, demographic characteristics of alienage or national origin is a textbook example of rank discrimination – the kind prohibited by Title VI of the Civil Rights Act (especially for federally funded program). In addition, courts have found that the Equal Protection Clause of the Fourteenth Amendment to the Constitution protects individuals from discrimination on the basis of alienage and national origin.

- **Even if adopted, HB 2612 would not stop the resettlement of refugees in Kansas.** The right to move about freely is robustly protected by the Constitution, and may not be restricted by government. That right extends to refugees and non-citizens, particularly in light of international treaties to which the United States is a signatory. Even if HB 2612 were adopted, and public services that would aid in refugee resettlement were thereby unconstitutionally and discriminatorily denied, the State of Kansas cannot prevent refugees from choosing to live within the state's borders.

- **HB 2612 will make Kansas vulnerable to legal challenge.** Because the bill is preempted by federal law, likely violates the Equal Protection Clause of the Fourteenth Amendment, and violates Title VI of the Civil Rights Act, HB 2612 will expose the state to a number of legal challenges.

- **This bill undermines Kansas and American values.** Quite aside from the legal and constitutional questions raised by the bill, HB 2612 strikes a blow against Kansas and American values. Our laws—including the Constitution—should represent the values that we hold dear as a state and as a country. HB 2612 proudly asserts a belief that discrimination is acceptable, that freedom for some should be circumscribed, and that hospitality will not be granted to refugees. HB 2612 should be rejected in order to demonstrate that, as Kansans and as Americans, we continue to treasure the values of equality, freedom, and hospitality.

We urge you to **oppose HB 2612** on these grounds.