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SB 72 Opponent Testimony – Written Only

Aileen Berquist, Policy Director
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Senate Judiciary Committee
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Committee Chair and Members of the Committee,

My name is Aileen Berquist and I am the Policy Director for the American Civil Liberties Union of Kansas. We are a nonpartisan, non-profit organization that works to preserve and strengthen the civil rights and liberties of every person in our state. Thank you for the opportunity to present testimony today.

The ACLU of Kansas is committed to defending the constitutional rights of everyone in our state. As such, we are concerned about any legislation that threatens the integrity of our legal system and the rights of individuals involved. Because SB 72 strips defendants who use interpreters of their constitutional right to due process, we oppose SB 72.

Due Process

This bill would legitimize hearsay evidence by allowing statements provided by translators who are absent from the courtroom to be entered as evidence. Our hearsay rules exist for a reason. A court cannot determine the credibility of a statement if the person making the statement is not present to be cross examined. The Supreme Court has found that “[i]n almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.”¹ Allowing translator statements to circumvent the hearsay rule denies defendants their right to confrontation and cross-examination required by due process.

Creating a Two-Tiered System of Justice

We should not be promoting changes to our legal system that allow some defendants to be treated differently than others—but that is just what this bill does. Court cases across the country have found that we do not and should not have two systems of justice—one for English speakers and one for non-English speakers or those with limited English proficiency.² By legitimizing hearsay evidence for some defendants, but not others, we are creating separate conditions for people who do not speak English fluently.

¹ *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). See also *ICC v. Louisville & Nashville R.R.*, 227 U.S. 88, 93–94 (1913). Cf. § 7(c) of the Administrative Procedure Act, 5 U.S.C. § 556(d).

² *Ling v. State of Georgia*

Reliability

Reliability, trustworthiness, and accuracy of the interpreted statements would not be challengeable in court in the same way as in-person witness testimony if this bill is passed. While SB 72 does carve out an exception if the judge finds the translator had a motive to mislead or distort statements, this exception is too narrow. The bill fails to mention other relevant factors that may influence unreliable testimony including which party supplied the interpreter (i.e., is there institutional bias), the interpreter's qualifications and language skills, and whether actions taken subsequent to the conversations were consistent with the statements translated.³

We ask that you not vote SB 72 out of committee.

³ *U.S. v. Orm Hieng*, 679 F.3d 1131, 1139 (9th Cir. 2012).