HOUSE APPROPRIATIONS COMMITTEE

Hon. Ron Ryckman, Jr., Chairman
Hon. Sharon Schwartz, Vice Chairman
Hon. Jerry Henry, R.M. Member
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Room 112-N

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TESTIMONY IN SUPPORT OF HB 2449

Thank you, Mr. Chairman, and this honorable committee for this opportunity to testify in support of HB 2449. I am Daniel D. Creitz, Chief Judge of the Thirty-First Judicial District, and a member of the Executive Board of the Kansas District Judge's Association (KDJA) serving as the KDJA Legislative Co-Chair with Hon. James Fleetwood, Chief Judge of the Eighteenth Judicial District.

By way of background, I have been a judge about 14 years. Several years ago I was asked to assist with the Judicial Branch budget. I remain actively involved in that process.

2015 HB 2005 contains sufficient appropriations to keep the Kansas Courts open for business in FY 16 and 17 if there are no cuts in those appropriations and revenues remain stable. Those appropriated funds remain unchanged by HB 2449. Thus, passage of HB 2449 will ensure that the citizens of Kansas remain served by the Kansas Courts in FY 16 and 17. However, I caution that any appropriation cuts will cause the Kansas Courts to close.

Although HB 2005 contains sufficient appropriations for FY 16 and 17, it also contains a non-severability clause. Section 29, 2015 HB 2005, provides:

> "Except as provided further, the provisions of this act are not severable, nor are they severable from the provisions of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas. If any provision of this act or of 2014 Senate Substitute for House Bill No. 2338, chapter 82 of the 2014 Session Laws of Kansas, is stayed or is held to be invalid or unconstitutional, it shall be presumed conclusively that the legislature would not have enacted the remainder of this act without such stayed, invalid or unconstitutional provisions and the provisions of this act are hereby declared to be null and void and shall have no force and effect…"

On May 31, 2015, the Senate passed HB 2005. The next day, the House passed it. On June 5, 2015, HB 2005 became law.

On September 4, 2015, Chief Judge Robert Fairchild of the Seventh Judicial District, along with three other judges, two of whom are chief judges, filed a lawsuit in Shawnee County District Court. Shawnee County District Court Case No. 2015-CV-802. The *Fairchild* case challenged the constitutionality of the 2015 severability clause. That case is pending.

On September 22, 2015, the Honorable Derek Schmidt, our Attorney General, filed a petition for injunctive relief to enjoin all the state parties from enforcing the non-severability clause in 2015 HB 2005. Like *Fairchild*, in his petition the Attorney General asserted that the non-severability clause was unconstitutional. The Attorney General alleged in paragraph 19, that "key legislators, the governor, and all the parties" have a "unanimous desire" that the "non-severability clause should not operate to eliminate the judicial branch funding." Further, "due to the ever-present threat that judicial branch funding could be cut off before the legislature returns," the Attorney General sought an "order granting temporary injunction and stay." The State consented to this order and stay.

On September 22, 2015, this order was issued by the Honorable Daryl D. Ahlquist in the Thirty-First Judicial District, Chanute (Neosho County), Kansas, the district where I serve as Chief Judge. As the Attorney General requested, Judge Ahlquist enjoined the operation of the 2015 non-severability clause and stayed all proceedings in the case until March 15, 2016.

On December 23, 2015, the Kansas Supreme Court decided *Solomon v. State*, Case No. 114,573, declaring Section 11 of 2014 Senate Sub. for HB 2338 unconstitutional. That law's non-severability clause was not an issue raised in *Solomon.* But as I mentioned, it remains an issue in the pending *Fairchild* case.

As you recall, in addition to the unconstitutional Section 11, 2014 Senate Sub. for HB 2338 contained $2 million in State General funding for the Judicial Branch and new fees that were estimated at $6.2 million (half for the e-filing and e-courts project). It also moved away from docket fees being split among numerous entities to 99.01% of docket fees going to the Judicial Branch. Depending on the outcome of the *Fairchild* case, that ongoing funding could be eliminated.

According to our Attorney General, the non-severable clause in HB 2005 is an unconstitutional provision and must be fixed. HB 2449 maintains the appropriations of HB 2005, $131.2 million, including $101.9 million from the State General Fund (SGF) in FY 16, and $138.5 million, including $105.7 million from the SGF in FY 17, for judicial branch operations. More importantly, HB 2449 replaces the non-severability clause with a severability clause.

I urge the legislature to quickly pass HB 2449. Quick passage of HB 2449 without any cuts is necessary to avoid irreparable harm to the citizens of Kansas. Assuming revenues remain stable and if

there are no cuts in the appropriations, then the Courts of Kansas will remain open in FY 16 and 17. However, if there are cuts then the Courts of Kansas will close resulting in unnecessary havoc throughout the State. Cuts and the resulting closures would also be adverse to the public interest and safety of the citizens of this State.

Thank you for your time. On behalf of all the Kansas District Court Judges and all the other employees of the Kansas Judicial Branch, I urge you to pass HB 2449 quickly without any reduction in the appropriations which were approved last session.

NOTE: I have a caveat to this testimony. This bill only became available Tuesday afternoon. My time was limited to research this bill due to my local judicial responsibilities and caseload. There is also no mention in this bill of 2014 Senate Sub. for HB 2338. Thus I cannot testify that HB 2449 will fix all the problems likely created by the non-severability clauses of 2014 Senate Sub. for HB 2338 or 2015 HB 2005.