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To: Representative John Barker, Chairman
Members of the House Judiciary Committee

From: Lynn R. Johnson, Esq.
Shamberg, Johnson & Bergman, Chartered, Kansas City
On behalf of the Kansas Association for Justice

Date: January 13, 2016

RE: HCR 5013 Constitutional amendment revising Article 3; relating to the judiciary

The Kansas Association for Justice (KsAJ) is a statewide, nonprofit organization of trial attorneys. KsAJ strongly supports the Kansas Constitution and its provision for the merit selection, Nominating Commission process for Supreme Court justices established by Kansas voters. KsAJ opposes HCR 5013.

Under the current Supreme Court Nominating Commission process, Kansas-licensed, resident attorneys elect five (5) attorney members of the Commission, including the chair; four (4) of the Commission members are non-attorneys who are appointed by the governor.

HCR 5013 proposes to expand the current nine (9) member Nominating Commission to fifteen (15) members and to change the process for selecting the commission members. The new Nominating Commission process established in HCR 5013 would replace the current processes for selecting jurists for both the Supreme Court and the Court of Appeals. Under HCR 5013, Kansas attorneys would elect (4) attorney members. The governor would appoint five members, including the non-voting chair. The remaining six (6) members would be appointed by partisan leadership within the legislative branch as follows: two (2) each by the Speaker of the House and the Senate President, and one (1) each by the minority leader of each chamber.

Protecting and promoting a fair and impartial judiciary must be the highest priority for policymakers. The judicial branch is intended to be shielded from political interests and public passions in a manner that the executive and legislative branches are not. Judges and justices must be accountable to the law and rule according to the constitution; they must be able to make unpopular decisions and not be biased, coerced, or swayed by partisanship.

The current Nominating Commission process is the best means to identify candidates for the Supreme Court based on their qualifications, not politics. There is no evidence the current

process has failed to produce high quality candidates to serve on the Court. Nominating Commission members constitute a diverse cross section of citizens and lawyers whose sole goal is to find qualified candidates and recommend the top three to the governor. From those three options, the governor is empowered to make a final appointment selection.

The current Nominating Commission process limits the opportunity for partisan bias and undue influence on the Supreme Court. Every governor has the power to appoint justices as well as select members of the Nominating Commission, reducing any party's political influence on the court or the selection process. At the same time, the governor represents the will of Kansas voters in both his/her selection of Commission members and appointments to the Supreme Court.

HCR 5013 does not improve upon the current Nominating Commission process. Nothing suggests that HCR 5013 establishes a process that will result in even better qualified nominees. HCR 5013 injects greater partisanship into the selection of Nominating Commission members because eleven (11) members, including the chair, are appointed at the sole discretion of political leaders in the legislative and executive branches. HCR 5013 has a practical problem; the chair is a non-voting member and may not break a deadlock of the committee. A deadlock could prevent a slate of candidates from being sent to the governor in a timely fashion.

Efforts to change a judicial selection process that has worked as well as Kansas' Supreme Court Nominating Commission process must be viewed with suspicion. Speculation that Kansas' appellate jurists are underqualified, represent a minority view point, or are undemocratically selected is unfounded and misrepresents the independent-but-co-equal nature of the judicial branch. Changing the selection process to control judicial decision making or in hopes of different outcomes undermines the democratic ideal of the separation of powers. Controversial rulings are precisely the reason why the judicial branch must be protected from political and popular will.

The Kansas Association for Justice supports returning the selection process for Court of Appeals judges to the current Nominating Commission process used for Supreme Court justices. The Kansas Association for Justice opposes changes to the current Nominating Commission process used for Supreme Court justices. The Kansas Association for Justice opposes HCR 5013.