



**Written Testimony in Opposition to HB2019, HB2020, HCR5002, HCR5003, and
HCR5005**

**House Judiciary Committee
Tuesday, January 22, 2013**

Mr. Chairman and House Judiciary Committee Members:

My name is Jennifer Bruning, and I am Vice President of Government Affairs with the Overland Park Chamber of Commerce. I am submitting written testimony today in opposition to HB2019, HB2020, HCR5002, HCR5003, and HCR5005, all of which abandon in some way our current non-partisan, merit-based judicial selection process for both the Kansas Court of Appeals and the Kansas Supreme Court.

The Overland Park Chamber of Commerce believes that an impartial judicial system is critical to maintaining a stable and prosperous business climate. When making financial and investment decisions, businesses require a non-partisan justice system which reduces the perception of risk and demonstrates that all parties start and remain on a level playing field.

Justice for businesses and individuals is more likely attained when judges are able to perform their roles based upon constitutional principles and the rule of the law, free from partisanship and the political and financial pressures of special interests. Recently at a seminar on "Politics and the Courts" co-sponsored by the Overland Park Chamber, Landon Rowland, chairman of Lead Bank, said, "The free market depends on the rule of law, and the rule of law depends on an independent judiciary." Indeed, further research indicates that where private parties reasonably expect that judges will enforce contracts and settle disputes impartially, transaction costs are lower, which in turn leads to a greater number of welfare-enhancing transactions. ("Partial Justice: The Peril of Judicial Elections", The Committee for Economic Development Subcommittee on Money in Politics, 2011).

These analyses are additionally supported by the 2012 State Liability Systems Ranking Study conducted by the U.S. Chamber Institute for Legal Reform which ranks Kansas fifth nationally for having a fair and reasonable state judicial system as perceived by business (<http://www.instituteforlegalreform.com/states>). In addition to this overall ranking, Kansas ranked in the top ten in very important subcategories for business and for any party appearing in court: 8th for judges' impartiality, 9th for judges' competence and 6th for juries' fairness. While not perfect, it is evident that our current merit-based selection process works well and that business and industry are fairly treated.

Job creators place a high value on consistency, integrity and predictability in running their businesses. The same is true for the judiciary. The participants in this 2012 survey were 1,125 in-

house general counsel, senior litigators, attorneys or senior executives of companies with at least \$100 million in annual revenues familiar with the litigation environment. More than two-thirds (70%) of the respondents to the survey reported that a state's litigation environment is likely to impact important business decisions at their companies, such as where to locate or do business. This is an increase from 67% in 2010, and 63% in 2008. **So why would we change a strong factor in our favor for national companies – the ones we say are the prospects we want to attract to Kansas?**

What about the average voter who may or may not be making a major economic development decision? What do Kansas citizens think? Do we really want to change the judiciary?

A new poll commissioned by Justice at Stake and conducted by 20/20 Insight LLC on January 13 and 14, 2013, indicates that 61% of Kansas voters – including majorities of Republicans and Democrats – oppose amending the state Constitution to change the way in which Kansas Supreme Court justices are selected. The margin of error was 3.1%.

“Kansans don't want to tamper with their constitution,” said Bert Brandenburg, Executive Director of Justice at Stake. “They want their judges chosen based on their qualifications, not partisan politics. They're not comfortable vesting so much power in the hands of a governor, even one they like. They'd rather see judges go through an interview process that identifies the best candidates before, not after, the governor makes his pick.”

For the reasons stated above, the Overland Park Chamber of Commerce opposes the bills listed above and supports a non-partisan merit system for selection of Kansas appellate and Supreme Court judges, including periodic retention elections to ensure a reasonable level of accountability. We oppose all efforts to impose partisan judicial elections for trial and appellate court judges. We understand that critics of the current judicial selection system believe that the majority of lawyers on the Kansas Supreme Court Nominating Commission wield too much political influence. We urge the Committee to not abolish the Commission, but instead to look for ways to reform it while still retaining judicial selection based upon merit as its primary component.