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January 22, 2013

The Honorable Jeff King, Chairman
Senate Committee on Judiciary
Statehouse, Rm. 346-S
Topeka, KS 66612

Re: Hearing on S.B. 18

Dear Chairman King and Members of the Committee:

I am the Assistant Riley County Counselor. I would like to speak in opposition to new subsections "(a)(3)" and "(f)."

If a temporary restraining order (TRO) is issued without prior notice to the adverse party, proposed subsection "(a)(3)" makes it a prerequisite that notice of the TRO issuance must be provided to the Attorney General if the State is the adverse party. Just like the State, TROs may be issued against a county or city without notice. Counties, with service on the county clerk, and cities, with service on the city clerk, should be provided the same notice if they are an adverse party.

The proposed change set out in subsection "(f)" would require counties and cities, but not the state, to post security prior to the issuance of a TRO. This security requirement will prevent counties and cities from using TROs for public health, safety, and welfare issues. Both counties and cities should be exempted from the security requirement. If not, at minimum, language should be added to the subsection giving the judge discretion to waive the security requirement.

Current injunction statutes references "temporary injunction" not "preliminary injunction." To avoid confusion, preliminary injunction should be replaced with temporary injunction in subsection "(c)" and deleted from subsection "(f)" since K.S.A. 60-905 provides for the issuance of a temporary injunction with adequate notice and security requirements.

Sincerely,

Craig Cox
Assistant Riley County Counselor

cc: Nathan Eberline, KAC
Steve Phillips, Assistant A.G.