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House Judiciary
Written Testimony in Opposition to
SB197 Nominating Commission
March 18, 2015

Thank you for the opportunity to provide written testimony in opposition to SB 197. As an applicant who has appeared before the Supreme Court Nominating Commission and as an 8 year member and Secretary of the 10th Judicial District Judicial Nominating Commission, I firmly believe that transparency in government is a good idea, and it should be our goal to make judicial selection at all levels as transparent as possible.

Likewise, transparency in the selection of judges is an important goal and one that should be pursued whether it is the merit selection process, the election process or the current modified federal model being used for the Court of Appeals. Senate amendments provide more openness with regard to that process, and such amendments should be retained if this bill passes. If openness is truly the goal, it can only benefit each process.

There are a few specific concerns about the bill that should be addressed. First, the bill identifies the deliberation process as an open meeting. Interviews are already open to public. However, discussions about background information are not public, and rightly so. Just when considering applicants for any job there is certain private information that becomes available that may not be proper for an open meeting. Not only is information from the public interviews discussed, but also information gleaned from background investigations of the applicants. These discussions may include what judges, lawyers and citizens have said about the applicant and any concerns identified in the application process. This type of discussion should not be made public. That is clearly why the Kansas Open Meetings Act allows executive sessions to discuss personnel matters.

The provisions relating to the regulation of the legal profession are somewhat troubling as a separation of powers issue. The legislature has no authority over the regulation of attorneys in Kansas, but the bill mandates that.

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Finally, one more concern regards the provision of the bill where the Governor appoints a member when a vacancy occurs among the lawyer members of the Supreme Court Nominating Commission. That provision seems contrary to Article 3, section 5 of the Kansas Constitution which specifically mandates how and by whom each member is selected.

A number of concerns remain with regard to this bill. Thank you again for the opportunity to provide written testimony in opposition to SB 197.