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MEMORANDUM

To: Chairman Barker and members of the House Committee on Judiciary

From: Jason Thompson, Senior Assistant Revisor of Statutes

Date: February 16, 2016

Subject: 2015 HCR 5013

2015 HCR 5013 would revise Article 3 of the Constitution of the State of Kansas, relating to the judiciary. The revision would place the law concerning the Court of Appeals into the Constitution, change the method of selecting judges for such court, and change the membership of the Supreme Court Nominating Commission. All current provisions of Article 3 would be renumbered, modernized, and amended to conform with such changes. If adopted by the House and Senate, the proposition would be on the ballot at the November 2016 general election (see page 9).

The revision would continue the current system in which the Supreme Court Nominating Commission nominates three persons for the office of Justice of the Supreme Court and the Governor appoints one of such persons (§ 5, pages 2-3). The revision would also change the current system in which judges of the Court of Appeals are appointed by the Governor, with the consent of the Senate, to a system in which they are selected in the same manner as justices of the Supreme Court (§ 6, page 4). The revision would continue the current system of retention elections: Term of 6 years for justices (§ 5, pages 2-3) and 4 years for judges (§ 6, page 5).

The revision would change the membership of the Supreme Court Nominating Commission (§ 5, pages 3-4). Current membership is nine members: One member, the chairperson, is an attorney (resident member of the bar) selected by a vote among all resident members of the bar; four other members are attorneys, one member from each congressional district selected by a vote among all resident members of the bar in each such district; and the four other members are not attorneys, one member from each congressional district appointed by the Governor from among the residents of each such district. Commission membership would change to 15 members: Four attorney members, one attorney selected from each congressional

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district by the resident members of the bar in each such district; five members appointed by the Governor as follows: One member from each congressional district; and one member from the state as a whole who shall serve as the non-voting chairperson of the commission; and six members appointed by the Legislature as follows: Two by the President of the Senate; two by the Speaker of the House of Representatives; one by the Minority Leader of the Senate; and one by the Minority Leader of the House of Representatives.

§ 30: Delegation of powers to interstate bodies. The legislature may confer legislative powers upon interstate bodies, comprised of officers of this state or its political subdivisions acting in conjunction with officers of other jurisdictions, relating to the functions thereof. Any such delegation, and any agreement made thereunder shall be subject to limitation, change or termination by the legislature, unless contained in a compact approved by the congress.

Article 3.--JUDICIAL

§ 1: Judicial power; seals; rules. The judicial power of this state shall be vested exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law; and all courts of record shall have a seal. The supreme court shall have general administrative authority over all courts in this state.

§ 2: Supreme court. The supreme court shall consist of not less than seven justices who shall be selected as provided by this article. All cases shall be heard with not fewer than four justices sitting and the concurrence of a majority of the justices sitting and of not fewer than four justices shall be necessary for a decision. The term of office of the justices shall be six years except as hereinafter provided. The justice who is senior in continuous term of service shall be chief justice, and in case two or more have continuously served during the same period the senior in age of these shall be chief justice. A justice may decline or resign from the office of chief justice without resigning from the court. Upon such declination or resignation, the justice who is next senior in continuous term of service shall become chief justice. During incapacity of a chief justice, the duties, powers and emoluments of the office shall devolve upon the justice who is next senior in continuous service.

§ 3: Jurisdiction and terms. The supreme court shall have original jurisdiction in proceedings in quo warranto, mandamus, and habeas corpus; and such appellate jurisdiction as may be provided by law. It shall hold one term each year at the seat of government and such other terms at such places as may be provided by law, and its jurisdiction shall be co-extensive with the state.

§ 4: Reporter; clerk. There shall be appointed, by the justices of the supreme court, a reporter and clerk of said court, who shall hold their offices two years, and whose duties shall be prescribed by law.

§ 5: Selection of justices of the supreme court.

(a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file his declaration of candidacy to succeed himself as hereinafter required, or failure of a justice to be elected to succeed himself, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided.

(b) In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to him, the chief justice of the supreme court shall make the appointment from such nominees.

(c) Each justice of the supreme court appointed pursuant to provisions of subsection (a) of this section shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less

than sixty days prior to the holding of the general election next preceding the expiration of his term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to succeed himself. If a declaration is not so filed, the position held by such justice shall be open from the expiration of his term of office. If such declaration is filed, his name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall _____
(Here insert name of justice.)

(Here insert the title of the court.)

be retained in office?"

If a majority of those voting on the question vote against retaining him in office, the position or office which he holds shall be open upon the expiration of his term of office; otherwise he shall, unless removed for cause, remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term he shall, unless by law he is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

(d) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of the supreme court is hereby established, and shall be known as the "supreme court nominating commission." Said commission shall be organized as hereinafter provided.

(e) The supreme court nominating commission shall be composed as follows: One member, who shall be chairman, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district; and one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district.

(f) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.

(g) No member of the supreme court nominating commission shall, while he is a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.

§ 6: District courts.

(a) The state shall be divided into judicial districts as provided by law. Each judicial district shall have at least one district judge. The term of office of each judge of the district court shall be four years. District court shall be held at such times and places as may be provided by law. The district judges shall be elected by the electors of the respective judicial districts unless the electors of a judicial district have adopted and not subsequently rejected a method of nonpartisan selection. The legislature shall provide a method of nonpartisan selection of district judges and for the manner of submission and resubmission thereof to the electors of a

judicial district. A nonpartisan method of selection of district judges may be adopted, and once adopted may be rejected, only by a majority of electors of a judicial district voting on the question at an election in which the proposition is submitted. Whenever a vacancy occurs in the office of district judge, it shall be filled by appointment by the governor until the next general election that occurs more than thirty days after such vacancy, or as may be provided by such nonpartisan method of selection.

(b) The district courts shall have such jurisdiction in their respective districts as may be provided by law.

(c) The legislature shall provide for clerks of the district courts.

(d) Provision may be made by law for judges pro tem of the district court.

(e) The supreme court or any justice thereof shall have the power to assign judges of district courts temporarily to other districts.

(f) The supreme court may assign a district judge to serve temporarily on the supreme court.

§ 7: Qualifications of justices and judges. Justices of the supreme court and judges of the district courts shall be at least thirty years of age and shall be duly authorized by the supreme court of Kansas to practice law in the courts of this state and shall possess such other qualifications as may be prescribed by law.

§ 8: Prohibition of political activity by justices and certain judges. No justice of the supreme court who is appointed or retained under the procedure of section 5 of this article, nor any judge of the district court holding office under a nonpartisan method authorized in subsection (a) of section 6 of this article, shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign.

§ 12: Extension of terms until successor qualified. All judicial officers shall hold their offices until their successors shall have qualified.

§ 13: Compensation of justices and judges; certain limitation. The justices of the supreme court and judges of the district courts shall receive for their services such compensation as may be provided by law, which shall not be diminished during their terms of office, unless by general law applicable to all salaried officers of the state. Such justices or judges shall receive no fees or perquisites nor hold any other office of profit or trust under the authority of the state, or the United States except as may be provided by law, or practice law during their continuance in office.

§ 15: Removal of justices and judges. Justices of the supreme court may be removed from office by impeachment and conviction as prescribed in article 2 of this constitution. In addition to removal by impeachment and conviction, justices may be retired after appropriate hearing, upon certification to the governor, by the supreme court nominating commission that such justice is so incapacitated as to be unable to perform adequately his duties. Other judges shall be subject to retirement for incapacity, and to discipline, suspension and removal for cause by the supreme court after appropriate hearing.

§ 16: Savings clause. Nothing contained in this amendment to the constitution shall: (a) Shorten the term of office or abolish the office of any justice of the supreme court, any judge of the district court, or any other judge of any other court who is holding office at the time this amendment becomes effective, or who is holding office at the time of adoption, rejection, or resubmission of a nonpartisan method of selection of district judges as provided in subsection (a) of section 6 hereof,

and all such justices and judges shall hold their respective offices for the terms for which elected or appointed unless sooner removed in the manner provided by law; (b) repeal any statute of this state relating to the supreme court, the supreme court nominating commission, district courts, or any other court, or relating to the justices or judges of such courts, and such statutes shall remain in force and effect until amended or repealed by the legislature.

Article 4.-- ELECTIONS

§ 1: Mode of voting. All elections by the people shall be by ballot or voting device, or both, as the legislature shall by law provide.

§ 2: General elections. General elections shall be held biennially on the Tuesday succeeding the first Monday in November in even-numbered years. Not less than three county commissioners shall be elected in each organized county in the state, as provided by law.

§ 3: Recall of elected officials. All elected public officials in the state, except judicial officers, shall be subject to recall by voters of the state or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by law.

Article 5.--SUFFRAGE

§ 1: Qualifications of electors. Every citizen of the United States who has attained the age of eighteen years and who resides in the voting area in which he or she seeks to vote shall be deemed a qualified elector. Laws of this state relating to voting for presidential electors and candidates for the office of president and vice-president of the United States shall comply with the laws of the United States relating thereto. A citizen of the United States, who is otherwise qualified to vote in Kansas for presidential electors and candidates for the offices of president and vice-president of the United States may vote for such officers either in person or by absentee ballot notwithstanding the fact that such person may have become a nonresident of this state if his or her removal from this state occurs during a period in accordance with federal law next preceding such election. A person who is otherwise a qualified elector may vote in the voting area of his or her former residence either in person or by absentee ballot notwithstanding the fact that such person may have become a nonresident of such voting area during a period prescribed by law next preceding the election at which he or she seeks to vote, if his new residence is in another voting area in the state of Kansas.

§ 2: Disqualification to vote. The legislature may, by law, exclude persons from voting because of commitment to a jail or penal institution. No person convicted of a felony under the laws of any state or of the United States, unless pardoned or restored to his civil rights, shall be qualified to vote.

§ 4: Proof of right to vote. The legislature shall provide by law for proper proofs of the right of suffrage.

§ 7: Privileges of electors. Electors, during their attendance at elections, and in going to and returning therefrom, shall be privileged from arrest in all cases except felony or breach of the peace.

Article 6.--EDUCATION