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Senate Judiciary
Testimony in Opposition to
SB197 Nominating Commissions
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Thank you for the opportunity to testify 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. That said, this bill should not be passed in its current form.

Again, 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. This bill only addresses one of those selection methods. If openness is truly the goal, it can only benefit each process. Apart from the fact that it only addresses one form of judicial selection, there are a few specific concerns that I would like to address.

First, the bill identifies the deliberation process as an open meeting. Interviews are already open to public. However, discussions about background information is 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. Specifically, the members may be discussing an applicant's work ethic, reputation, questions of ethics, and allegations of disgruntled litigants. 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. Likewise, if not already covered by the personnel matter exception, the bill should include a KOMA exception for the deliberative process, even though actual voting may occur in open meeting.

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. Further, the bill mandates the collection of personal voter information by the Secretary of State, including name, date of birth, social security number and address. Providing that specific set of information causes concerns regarding potential identify theft.

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 specific provision does not state if the new appointee must be a lawyer. That provision seems contrary to Article 3 of the Kansas Constitution.

We ask that you send this bill to Judicial Council for further study. There are simply too many unanswered questions. Thank you again for the opportunity to testify in opposition to SB 197. I am happy to answer questions.