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TO: The Honorable Jeff King, Chair
And Members of the Senate Committee on the Judiciary

FROM: Mark D. Katz
Kansas Association of Defense Counsel

DATE: February 18, 2015

RE: KADC's opposition to Senate Bill 197

Chairman King, members of the committee, on behalf of the Kansas Association of Defense Counsel, we thank you for this opportunity to submit written testimony about Senate Bill 197, which appears to be an effort to regulate the supreme court nominating committee created by Article 3, section 5 of the Kansas Constitution. Unfortunately, on the short notice afforded for this hearing, we are unable to offer oral testimony, and our written testimony is incomplete. Nevertheless, we hope by this written testimony to identify some of the many serious and complex questions raised by the pending legislation.

KADC is a state-wide organization of lawyers admitted to practice law in Kansas who devote a substantial amount of their time to the defending civil cases in litigation. In addition to working to improve the skills of defense attorneys and elevating the standards of trial practice, our organization advocates for the administration of justice, because our clients depend on it. For this reason, KADC has consistently spoken out in favor of the independence of the judiciary, and in particular, Kansas' merit selection process. KADC strongly favors our current system for selecting judges to serve on the Kansas Supreme Court. It is clear to us that SB 197 is meant to have an impact on the merit selection of supreme court justices and district court judges, and we have significant concerns, both with the timing of this hearing and with various aspects of SB 197. Therefore, we respectfully suggest that the bill be tabled so that it can undergo comprehensive review; and if it is not tabled, we must oppose it.

There has not been sufficient time to fully study Senate Bill 197.

SB 197 was introduced on February 11, 2015 and referred to this Committee on the next day. On February 13, 2015, the public was advised that a hearing on the bill would take place on February 18, 2015—which provided two business days to review the bill prior to the hearing. We note at the outset that SB 197 is ten pages in length and is meant to amend eight separate statutes; it mentions and interacts with a host of others. It may have an impact on the

operation of a separate body created by the Kansas Constitution, and therefore it necessarily raises constitutional questions that require more than cursory review. It also regulates the collection, maintenance and public availability of a class of voters' personal identification and lists of a class of voters. We are unaware of any statute that permits the names and residential addresses of classes of citizens who vote in an election, or a list of such names and addresses, to be made available to the public. Certainly, the constitutionality and the wisdom of any such endeavor should be carefully considered—and should only be undertaken after the public has had sufficient time to study, review and comment.

Some questions suggested for detailed review.

SB 197 raises a host of complex questions. An incomplete list includes:

- Since Article 3, section 5(f) appears to limit the Legislature to the regulation of the supreme court nominating commission members' terms of office, procedures for selection and certification, and provision for compensation and expenses, does the Legislature have the constitutional authority to regulate how the supreme court nominating commission holds its meetings, maintains its records, and whether those records (or any of them) might be made available to the public?
- If the answer to this question is yes, how will the public availability of the supreme court nominating commission's procedures, hearings, deliberations and records be changed, if at all?
- Are applicants for the position of supreme court justice subject to the same confidentiality protections as others who apply for employment with the State of Kansas?
- What are the policy considerations in potentially making any of the nominating commissions' deliberations public, including a full understanding of the information discussed during those deliberations?
- What are the policy considerations of potentially requiring the votes of commission members to be made available to the public?
- What are the policy considerations of potentially requiring this same information to be made available to the public with regard to district court judges?
- What are the constitutional implications (both state and federal) of requiring a list of the names and addresses of a class of people who cast votes in an election to be made publicly available? Does the availability of such a list implicate notions of due process or equal protection or other constitutional issues?
- What are the policy implications of creating such a class of voters?

Clearly, there are many other questions to be asked, thoroughly researched, and answered; and it would seem in the best interests of the State and its citizens for the process to take place in the Legislature, first, rather than sometime later, in the courts—for surely judicial review of this bill is inevitable. For this reason, we respectfully recommend that SB 197 be tabled; and for as long as these important questions remain unanswered, we oppose its passage.