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Kansas Senate Judiciary Committee
Senator Jeff King, Chair
The Statehouse
Hearing Room 346-S
Topeka, Kansas 66612

Dear Chairman King and Members of the Committee:

I am pleased to appear and give testimony in regard to the Governor's nomination of Kathryn A. Gardner to become a Judge on the Kansas Court of Appeals.

A copy of my testimony is attached.

Thank you for the opportunity to appear.

Sincerely,

s/Leslie K. Prentice
Leslie K. Prentice
Witness

**Testimony in Support of the Governor's Nomination of
Kathryn A. Gardner for Judge, Kansas Court of Appeals**

My name is Leslie Prentice. Kathryn Gardner has been my colleague and personal friend for nearly 20 years. Thank you so much for this opportunity to testify on her behalf before this very important legislative committee. I assume that you already have before you much information regarding Kathryn's work history and many references to her truly outstanding character. So I am going to testify regarding two more specific points that seem particularly relevant for your consideration of this nomination by Governor Brownback. First, I will tell you what I have personally observed a judicial law clerk actually doing in federal court. Second, I want to testify as to my personal observations regarding why Kathryn Gardner will be an excellent judge on the Kansas Court of Appeals.

I have knowledge of what judicial law clerks do because I do that type of job. I am a specialized career law clerk in the federal court system. The official title for my position varies in federal courts across the country, but in our court I am most often referred to as a pro se law clerk or a staff attorney. I have worked as a pro se law clerk in the District of Kansas for nearly 30 years. Another pro se law clerk and I work on all prisoner cases that are filed in the United States District Court for the District of Kansas. You could view us as a pool of staff attorneys that work on prisoner cases. My husband is a career judicial law clerk for a different federal judge than the one under which Kathryn Gardner has served. I have many friends that either are or have been judicial law clerks.

To start, I must inject a disclaimer. There are rules of conduct in federal court that are taken very seriously and must be adhered to by all judicial employees. Those rules may be read to include a general prohibition against law clerks discussing outside the court the work that is done by judges and their staff in the judge's chambers. If my testimony at times seems generalized or guarded, it is because I am trying to stay within the court's ethical parameters. I am not testifying here today as a court official or as a representative of the court or any judge or court official. I am not testifying from court records, employment or otherwise, and I have no access to the records of others. I am testifying as to my personal

observations of what Kathryn Gardner and others have done in the position of law clerk in the federal court.

It is generally known among lawyers that judicial law clerks are selected from the brightest graduates of our nations' highly-regarded law schools. When a law student gets on the Government website to apply for a clerkship with a federal judge they will almost always see that the judge prefers applicants from the top 10% of the graduating class. Over my decades at the federal court I have seen many judges working mainly with career law clerks. In the past few years, I suppose in order to cut federal expenditures, federal judges were told to limit their staff to a single career law clerk and to otherwise employ term law clerks that work for a year or two only. It says much about Kathryn Gardner that she was hired and has been retained as a judicial law clerk for all the years of her service.

I was hired by the court, am technically under the Chief Judge, and do work for whichever federal judge a new prisoner case might be assigned to. Judicial law clerks, on the other hand, work for the judge that hired them and are officed in that judge's chambers. They may be referred to as chambers or elbow law clerks. Kathryn Gardner works for the Honorable Sam A. Crow. I have worked on some prisoner cases for Judge Crow that were assigned to him, but I am not a member of his chambers staff. Judge Crow was a military appeals judge before he was supported by Robert Dole and nominated for the federal bench by President Reagan, I believe, and he has served as a U.S. Magistrate and a U.S. District Court Judge for, I believe, over 30 years. I, and numerous others, hold Judge Crow in the highest esteem.

The type of work that Kathryn Gardner has performed while employed by Judge Crow in any other job would be aptly described as an apprenticeship. However, law clerks never automatically step into a judgeship and instead would have to go through the judicial selection process. But there is no doubt in my mind that Kathryn, by serving as a judicial law clerk to Judge Crow, has been trained in one of the best ways imaginable to perform the mechanics of being a sitting judge.

A federal judge needs law clerks and most have 2, while the Chief and a few others may have 3 and even 4. A

federal judge could not alone do all the processing, examination, legal research, drafting, editing, and docket management, among other things, that the number of cases assigned to each judge requires. While it might be a solution to hire many additional judges, I think we can safely assume that is not economically feasible.

In a court case, the judge needs to determine what the facts are and what the law is that must be applied to those facts. The Judge is presented with the facts and the law by the parties. But if the parties agreed as to these two elements they would not be in court. A judicial law clerk is the judge's assistant, and discusses and consults with the judge as to what is before the court. The law clerk normally hears everything that the Judge hears in a case she is working on, as she is present during trials, hearings, and conferences. She reads everything that is presented to the Judge in the case. Kathryn, I am sure has read from first page to last, any case assigned to Judge Crow that she is told to work on. She has in this way been exposed to a wider variety of cases than most private practitioners. She has become very proficient at reviewing the factual statements of opposing parties together with their opposing evidence for the purpose of reaching a resolution of their differences. An appellate court judge often has to review numerous records in order to determine whether they support the facts that were found by the lower court. Kathryn, I am sure, has pored over tons of agency records, transcripts, affidavits, medical reports, and other evidence just as the attorneys did that gathered and presented it.

Kathryn has read all legal briefs by attorneys on both sides that were filed in all the cases worked on by her. Generally, attorneys have an obligation to point the court to the relevant law in a case, but of course may advocate the law that favors their client. As in any profession, lawyers may not always do their best work. But the judge must be fully cognizant of all the law applicable to the case. Kathryn has conducted additional legal research for the Judge on numerous subjects and then has acted as advisor to the judge as to that law. Often law clerks are asked to prepare written memos for their judge regarding the law and/or facts in a case and even to propose orders. A good judge resolves factual disputes fairly based on the evidence, and justly according to the law. There can be no doubt that Kathryn has had years of excellent training and

experience to do both of these things. The law clerk does not do the judging. The judges I have had the honor of working for are strong individuals. A law clerk understands their judge and respects his or her position.

After the judge has reviewed the evidence and thoroughly researched the law, then the next step is issuing a decision. In federal court, a decision is usually accompanied by a written opinion. This is the way that the parties are informed of the court's ruling in their case and that the public may become aware of the law and how it is applied. Parties deserve to know what facts the judge found in their case if they were disputed, the law that was applied, and the reasons the judge made the ruling in their case.

I have seen memos prepared by Kathryn because law clerks in the Topeka federal court make use of research done by others in our court. Kathryn is an excellent and thorough legal researcher, and she is a topnotch legal writer. She has recently taught a course on legal research and writing at Washburn Law School. She is able to very reasonably analyze facts and explain that analysis. Her legal research skills have been honed to be swift and thorough. Her writing is crystal clear, which is a talent and an acquired skill that very few possess. In short, Kathryn is an expert legal researcher and writer and has been trained for years to do precisely what a federal judge does to reach a decision in a case.

Lastly, even though Kathryn as a law clerk has never judged a case, I have seen the following personal characteristics in my friend Kathryn that will make her an excellent judge. She is a kind person that cares about other people regardless of their circumstances, and she treats all people and attorneys with respect. She has a life-long faith at her core that has surely contributed to making her the very strong and brave person with very high moral standards that she is. I do believe that Kathryn Gardner will make decisions based on the facts and law and never on personal bias. She acts with decorum and clearly has what we refer to as a "judicial demeanor." She is well-practiced at adhering to judicial ethics, because law clerks cannot do what a judge may not do. And believe it or not, she can be very funny and often says or does things with a twinkle in her eye. I believe she won the Cowboy Poetry Contest at a rodeo last year, and her entertaining

personal poems are a hit at court events. Kathryn has a wonderful family with three beautiful and bright grown daughters, and a wise husband who works with her to make their family very supportive and functional. She spent ten years in private practice, she is interested in and has maintained her involvement with the local bar and community activities. For example, she is the President of the Inns of Court this year. In summary, Kathryn has all the talent, education, experience, training, and character that are needed to make a lawyer a good judge. Kathryn Gardner has excelled in the legal academic sector, succeeded in the private practice sector, and has been highly valued at the federal court, where she has been very well trained for the extremely important task of deciding disputes among the citizens and businesses within the State of Kansas. I have no doubt that she will do so competently and fairly.

Thank you again for this chance to speak to you today in support of the Governor's nomination of Kathryn A. Gardner for the Kansas Court of Appeals.