

**To: Senator Jeff King, Chairman  
Members of the Senate Judiciary Committee**

**From: Pedro L. Irigonegaray  
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**Date: March 3, 2016**

**Re: SB 439 relating to grounds for impeachment of justices of the supreme court and certain judges of the district court**

I appreciate the opportunity to appear today. My opposition to SB 439 is based on its significant and troubling constitutional and public policy problems. My written remarks are only a brief overview of my concerns. I respectfully request that the Committee reject SB 439.

The impeachment process established in the Kansas Constitution is clearly defined: the House has the sole power to impeach, and all impeachments are tried in the Senate, Art. 2 § 27. The bases for impeachment are conviction of treason, bribery, or other high crimes and misdemeanors, Art. 2 § 28. The process and grounds for impeachment apply to the governor and other officers of the constitution, Art. 2 § 28, and to justices of the Supreme Court, Art. 3 § 15. The Supreme Court has constitutional authority for the discipline, suspension, and removal for cause of other judges, Art. 3 § 15.

SB 439 attempts to change the process in the Kansas Constitution by adding thirteen new statutory bases for impeachment in addition to the bases in Art. 2 § 28 of the Kansas Constitution. The unique statutory grounds established in SB 439 would only apply to the impeachment of supreme court justices and discipline of select members of the Judicial Branch. They would not apply to the governor or other constitutional officers.

Singling out supreme court justices and appointed district court judges for novel impeachment and disciplinary proceedings must be interpreted as an attempt by the Legislature to intimidate the Judicial Branch. Such an attempt flies in the face of all notions of fair and impartial courts or the concept of co-equal branches of government. SB 439 must be rejected for those reasons alone.

However, SB 439 presents additional disqualifying problems. The Legislature oversteps its constitutional authority in several ways: it impermissibly regulates the Supreme Court in the constitutional authority granted in Art. 3 § 15 relating to the discipline, suspension, or removal for cause of appointed district court judges by requiring the Court to use the statutory grounds established in SB 439. SB 439 distorts and inhibits the House's sole power to impeach granted in Art. 2 § 27 by requiring specific statutory grounds for impeachment in addition to the grounds listed in the Constitution. SB 439 improperly establishes separate and unique statutory grounds for impeachment of supreme court justices that are not applicable to the governor and other constitutional officers. Through SB 439 the Legislature attempts to amend the Constitution through statute and circumvent the process required under Art. 14.

The current process for impeachment and the process for discipline of judges do not need enhancement or clarification. Even if they did, SB 439 recklessly threatens the impartiality of the Judicial Branch; it is unconstitutional and cannot be defended. Ask yourself the following question: How many thousands of dollars—belonging to Kansas taxpayers—do we wish to continue to waste defending the indefensible?

Have you ascertained from the Office of the Attorney General the amount of taxpayers' dollars wasted defending 2014 HB 2338?

Although my office represented the Honorable Chief Judge Larry Solomon on a pro bono basis, I can assure each of you that the same is not true for the lawyers who were paid thousands of Kansas taxpayers' hard-earned dollars to defend the indefensible. The money which was wasted defending the indefensible should have instead been spent for meritorious reasons, such as our children's education and our highways.

Let me make this perfectly clear, we cannot, we will not remain indifferent if SB 439 is passed by the Legislature and signed into law by the Governor. I can assure each of you that legal action will be brought to stop the unconstitutional encroachment and abuse of our judicial system, which this bill represents. I can also assure you that if this bill becomes law, we will succeed in stopping it; for it is clearly an unconstitutional attempt to take over our judicial system, our system of government in a power grab of unprecedented magnitude.

You have the power, the responsibility to avoid the unnecessary, purposefully created constitutional crisis SB 439 would cause if passed into law. Stop it now, do not allow this bill to succeed, do not force Kansas into an unnecessary and expensive constitutional crisis, intentionally created by those attempting a political power grab at the expense of our democracy.

The ill-advised efforts by some members of the Kansas Legislature and the Governor to take control of our Judiciary represents an unprecedented and democratically dangerous attempt for a complete power grab of our government; such an abuse of power cannot be tolerated by a democratic society and it will certainly not be tolerated by the people of Kansas.

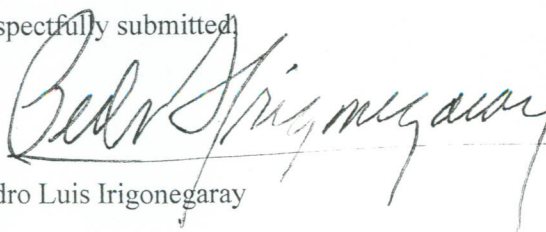
We must not permit those who are led by blind and clearly erroneous political ambition to continue to act with reckless disregard in their efforts to destroy the constitutional principle of separation of powers. We will not allow the destruction of Kansas' democratic principles to occur without our strongest possible opposition. Without three independent and equal branches of government, our democracy will not endure.

When you vote on this matter, please consider those who have made the ultimate sacrifice to protect our system of government, our American democracy. Their sacrifice requires you to do all you can to protect democracy; the system of governance they died protecting. SB 439 endangers the democracy for which they paid the ultimate price.

Finally, before you cast your vote, please consider our future; our children and grandchildren. What type of government do you wish for them to inherit from you? Do you really wish to provide them with a system of government in which tyranny reigns? Or would you rather provide them with a system of governance, our democracy, a system proven since the founding of our nation to be the finest in the world?

Please do not allow Senate Bill 439 to become law.

Respectfully submitted,



Pedro Luis Irigonegaray