



**KANSAS BAR
ASSOCIATION**

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

FROM: Joseph N. Molina
On behalf of the Kansas Bar Association

**RE: SB 439 – relating impeachment of justices of the Supreme Court and
certain judges of the district court.**

DATE: March 3, 2016

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,200 members, including lawyers, judges, law students, and paralegals. www.ksbar.org

The Kansas Bar Association provides this written testimony in **OPPOSITION** to SB 439 - relating to impeachment of justices of the Supreme Court and certain judges of the district court.

The KBA opposes SB 439 because it expands the foundation for impeachment of Supreme Court Justices and district court judges beyond constitutional limits, uses definitions that are overly broad and ambiguous and instills a process for impeachment that does not apply to the other branches of government.

The Kansas constitution lays out the grounds for impeachment as follows:

§ 28: Officers impeachable; grounds; punishment. The governor and all other officers under this constitution, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

Kan. Const. Art. II, § 28.

SB 439 expands on these limits by taking advantage of the term “other high crimes and misdemeanor”. However, this phraseology usually covers allegations of misconduct peculiar to officials such as perjury, abuse of power, bribery, dereliction of duty and refusal to obey a lawful order. Here SB 439 goes far beyond these known definitions to include “subverting fundamentals laws and introducing arbitrary power” and “attempting to usurp the power of the legislative or executive branch”.

Moreover, if the intent of SB 439 is to simply codify existing laws then the additional grounds for impeachment appear to be superfluous and only provide avenues for court challenges.

The KBA is also concerned that these justifications for impeachment are overly broad. To allow the legislative branch the near unrestrained power to impeach a judge/justice for a ruling in a case damages the public's trust in the separation of powers doctrine. SB 439 allows the unfettered attack of justices who engage in their constitutional duty to decide cases and appropriates the Supreme Court's most important role of being the court of last resort.

In addition, impeachable offenses are ACTIONS taken by an official that violate the public trust. SB 439 would expand these offenses to include the mere attempt to commit an act. This overly broad interpretation may lead to an uncomfortable result of a justice being impeached for dissenting from the majority on an issue of whether a statute is constitutional?

Another issue is the apparent vagueness of the terms set out in SB 439 such as "subverting fundamentals laws and introducing arbitrary power". For instance, which laws are now deemed fundamental, and which powers arbitrary? Traditionally, statutory interpretation is left to the courts. However, under these circumstances it would appear the legislature would commandeer this authority, further weakening the constitutional divide between co-equal branches of government.

Finally, Article II, § 28 applies to the governor and all other officers under the Kansas constitution. However, SB 439 and the many new justifications for impeachment only apply to Kansas Supreme Court justices and other district court judges. It is important to remember that the Kansas Judicial Branch is a co-equal branch of government and by implementing non-uniform rationales for impeachment that only apply to one branch, the entire system is weakened.

It could even be argued that the legislature is attempting to usurp the powers duly empowered by the Kansas Constitution to the judicial branch. However, under SB 439, no consequences would follow these actions as SB 439 does not apply to the legislature.

It is for these reasons that the Kansas Bar Association OPPOSES SB 439. On behalf of the Kansas Bar Association, I thank you for your time and attention.