

To: The Honorable Fred Patton, Chair,
and Members of the House Judiciary Committee

From: Deborah Hughes, licensed Kansas attorney

Date: January 25, 2019

Re: In support of HB 2020

Chairman Patton and members of the Committee, thank you for the opportunity to provide this written testimony in support of HB 2020.

I am a Kansas-licensed lawyer. I am in favor of HB 2020, which would repeal the changes made in 2016 (2016 Kan. Sess. Laws Ch. 93, SB 198) to the process for selecting lawyer members to the Kansas Supreme Court Nominating Commission (and District Court Nominating Commissions). I have had several concerns about the changes made by the 2016 law.

First, eligibility to vote in the Supreme Court Nominating Commission (SCNC) member-selection process is set by Art. 3, Sec. 5(e) of the Kansas Constitution. The only eligibility requirements are that the lawyer must be: (1) a licensed Kansas lawyer; (2) a resident of Kansas; and (3) a resident of the congressional district when voting for a member of that district. The changes made by 2016 SB 198 added extra requirements to the constitutional eligibility to vote in the SCNC process. These include the requirement that the lawyer provide some of the same information required of those registering to vote in political elections. See K.S.A. 2018 Supp. 25-2309(b)(1)-(5). That list includes sex, date of birth, and either a driver's license number or the last four digits of one's social security number. If the lawyer does not provide *all* that information, he or she is not "entitled to make nominations or receive and cast ballots in" SCNC elections. K.S.A. 2018 Supp. 20-170(c).

Second, the 2016 law made most of that information open to the public under the Kansas Open Records Act. See K.S.A. 2018 Supp. 20-170(e). That subsection makes the lawyers' names, residential addresses, and dates of birth subject to disclosure upon an open records request issued to either the Supreme Court or the Secretary of State. Before this law, lawyers could choose to keep their residential addresses private and protected from public disclosure by electing to use their business address or a P.O. box as their registered address. But now, the lawyer's residential address that he or she must provide in order to be allowed to participate in the SCNC election process is publicly available. All Kansas lawyers are subject to this—including many who have legitimate reasons for not wanting to have their home addresses available to anyone on request. Examples of those who may not want that information publicly available include judges, prosecutors, criminal defense attorneys, and attorneys who are victims of domestic violence and stalking, etc. Making the information required by law subject to public disclosure has the effect of discouraging participation in the important constitutionally-protected process of participating in SCNC elections.

I did not send in the "K.S.A. 2016 Supp. 7-127" form I received from the Appellate Court Clerk's Office in the summer of 2016. As a result, I was not allowed to vote in the election for the Chair of the SCNC—even though I was eligible to do so under the requirements of Art. 3, Sec. 5(e) of the Kansas

Constitution. I believed then that the changes made by 2016 SB 128 violated my constitutional right to participate in the SCNC process. The extra eligibility requirements imposed by the 2016 law and the KORA provisions in that law put me in the position of having to choose between giving up my constitutional right to vote in SCNC elections and providing information that will be available to anyone who wants to request it. We should be encouraging participation in the process, not discouraging it.

As of 2018, I am no longer a Kansas resident and therefore I am not eligible to participate in the SCNC election process under the requirements set out in the Kansas Constitution. Nevertheless, I am still a Kansas-licensed lawyer and I believe that the 2016 law has impaired the constitutional right of Kansas-resident lawyers who are in the same position I was in in 2016-2017.

Thank you for the opportunity to submit this testimony. I ask you that you pass HB 2020.