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**To: Representative John Barker, Chairman
Members of the House Judiciary Committee**

**From: Callie Jill Denton JD
Executive Director**

Date: March 18, 2015

**RE: SB 197 Concerning attorneys; relating to the supreme court nominating commission
and judicial district nominating commissions (As Amended by the Senate)**

The Kansas Association for Justice (KsAJ) is a statewide, nonprofit organization of trial attorneys. KsAJ supports transparency in the selection processes for appellate court jurists. While SB 197 improves the public's access to information about applicants to the Court of Appeals, it undermines an already open process for applicants to the Supreme Court. SB 197 also raises constitutional concerns that deserve scrutiny before SB 197 is advanced.

SB 197 will limit the Supreme Court Nominating Commission's access to private opinions relating to an applicant's qualifications. SB 197 declares that the Supreme Court Nominating Commission is a public body, and is subject to the Kansas Open Meetings Act. But SB 197 permits the Nominating Commission to recess for an executive session only for the purpose of discussing sensitive financial information contained within the personal financial records or official background check of a candidate. Opinions received from private citizens relating to a candidate's integrity, professional competence, and judicial temperament, and the basis for the opinion, could no longer be reviewed confidentially in an executive session. Such opinions, offered by a candidate's colleagues, friends, family, or members of the public, offer valuable insights to the Commission. But if SB 197 is enacted, such opinions might not be offered as freely, nor discussed as openly.

The Supreme Court Nominating Commission already operates in a transparent fashion. The names of applicants, and their interviews before the Commission, are open to the scrutiny of the press and public now. The current process strikes a good balance. Restricting the Commission's ability to hold executive sessions, and deterring private opinions on the qualifications of applicants, does not promote a more deliberative process to identify "three persons possessing the qualifications of office." Instead, it discourages candid opinions and informed review of relevant information by the Supreme Court Nominating Commission.

In judicial districts that select judges through the merit selection, nominating commission process, SB 197 limits judicial nominating commissions from holding executive sessions, and the concerns are similar to those previously described.

KsAJ supports amendments made by the Senate to require that the name and address of each applicant for the Court of Appeals to be made public by the governor. The provisions, in Section 11, increase the public's information about applicants to the Court of Appeals.

While Sec. 11 is a step in the right direction, the Court of Appeals selection process is still not as open to the public as the current process for the Supreme Court. Unlike the Supreme Court Nominating Commission process, the governor's process for considering Court of Appeals applicants has been closed to the public and press. The governor alone has significant discretion to establish the application and interview process, selection criteria, and the extent to which information about the process or applicants is made available to the press and public. While the Senate's confirmation hearing provides the public a final review of the governor's appointment, it is retrospective.

The constitutional implications of SB 197 should be considered carefully before SB 197 is advanced. The Supreme Court Nominating Commission was created by an amendment to the Kansas Constitution, and its status as a nonpartisan commission is set out in Article Three, Section 5, (d), (e), (f) and (g); the powers and duties of the Commission, Commission members, the Legislature, and the governor are established therein. SB 197 contains new regulation by the legislative and executive branches of the judicial branch and of Kansas attorneys. It also grants the legislature, the governor, the attorney general, and the secretary of state new authority over the Supreme Court Nominating Commission and the process for selecting attorney members of the Commission. Constitutional questions relating to the separation of powers should be evaluated, along with questions regarding whether the authority granted the legislature in Section 5 of Article Three has been exceeded.

KsAJ supports carefully tailored policies that promote transparency in the selection processes of appellate court jurists. Amendments to Sec. 11 of SB 197 are a step in the right direction. However, the remainder of SB 197 raises concerns. SB 197 deserves greater consideration and review before it is advanced. On behalf of the members of the Kansas Association for Justice, I respectfully oppose SB 197.