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To: House Judiciary Committee

From: Michael P. Whalen

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Subject: H.B. 2289 - Regarding Administrative Driver's License Hearings

Chairman Barker and Members of the Committee:

I am proud to be able to address this Committee and to explain my support for the proposed changes in the Administrative Driver's License Hearings as proposed in H.B. 2289.

There currently exists an inequity in the procedure for driver's license hearings in the current legislation as it applies to the rules for hearings in the Kansas Department of Revenue (KDR).

At present, a driver at the hearing bears the burden of proof, yet he is denied the right of access to all of the information that is necessary in order to carry that burden, that of the officer incident reports. The officer reports are necessary and vital to the ability of a driver to support their burden. There would apparently be no additional burden on the State to provide such documentation, or at the very least, to allow access to such reports. As the law now stands, any video or audio recording of the incident is admissible and discoverable. A simple change in law would even the playing field and satisfy the requirements of Due Process. And the validity of the Due Process in KDR driver's license hearings has been a regular topic for the Kansas Supreme Courts and the Kansas Court of Appeals in the last couple of years. *See Manzano v. Kansas Department of Revenue*, 50 Kan.App.2d 263 (2014).

Another issue that is addressed by this legislation is that the driver should be allowed to challenge the legal basis of the initial stop of the vehicle if it is unlawful. As the statute is currently written, any basis for a stop, including an illegal stop based upon racial profiling, cannot be challenged when pursuing administrative relief for the suspension of driving privileges. It is true that the ability to operate a motor vehicle is a privilege, but it is a constitutionally protected privilege in that before it can be taken away, a driver can request, and must be given, a hearing that comports with constitutionally required rights of Due Process. *See Kempke v. Kansas Department of Revenue*, 281 Kan. 770, Syl. 2-3 (2006).

Without the ability to challenge the validity of the initial officer stop or contact, there is an encouragement to law enforcement to act outside of the law and to act with impunity. The

actions of the officers need be challenged so that improper and illegal conduct is neither encouraged nor tolerated. This standard is no less than that afforded an individual in a criminal case and the standard of review for such a determination is the same. This amendment creates no additional burden or cost to KDR nor to law enforcement and succeeds in supporting and casting an opportunity for the checks and balances of the criminal justice system to be fairly applied across the board to all Kansas citizens.

The benefits of this legislation are multi-fold. First, it corrects inequities in the balance of proof and information that is currently awry under the present statute. Second, the rights of all citizens are protected from a tolerance of law enforcement overreach. Third, there will be a savings of funds and court docket space that regularly arise from the challenges made through the filing of appeals to the district courts related to these issues.

Thank you for your time and consideration in reviewing my testimony and for considering these proposed amendments.