

**Written Testimony of State Representative Carmichael
In Opposition to HCR 5013
House Judiciary Committee
January 13, 2016**

Chairman Barker and Members of the Committee:

I offer this written testimony in opposition to the pending concurrent resolution. In the interest of disclosure, I proudly confess to being a thirty-plus year member of the Kansas Bar, Kansas Federal District Court Bar, Tenth Circuit Court of Appeals Bar, and the Bar of the United States Supreme Court.

As the committee may recall, I offered written testimony last year in opposition to HCR 5004 and 5005. At that time, I reminded the committee,

There's an old saying, "If it ain't broke, don't fix it." The wisdom of this statement clearly applies here. While our Secretary of State believes our state's judiciary is of inferior competence as compared with the federal judiciary, the facts do not support his conclusion. For example, The United States Chamber of Commerce's Institute for Legal Reform has surveyed the quality of state legal environments in all fifty states for the past 10 years. In the Chamber's most recent report, a copy of which is appended hereto, the Chamber concludes the Kansas legal system ranks fifth in the nation overall, eighth in the nation with respect to judicial impartiality and ninth in the nation in judicial competence.

Those statements remain correct today and, in the lexicon of the lawyer, are incorporated herein by reference.

Likewise, in my written testimony before the committee last year I shared the following brief lesson in Kansas history,

In 1956 amid scandal, Governor Fred Hall was defeated in the primary. Meanwhile Chief Justice William Amos Smith passed on to his eternal reward, after having announced he would resign prior to the new governor, George Docking, assuming office so Gov. Docking could not appoint his successor. After being unsuccessful in his bid to find post-gubernatorial employment in appointive federal office, Gov. Hall instead resigned his remaining term as governor and was promptly appointed by the former Lt. Gov., John McCush, to serve as Chief Justice; and thus the defeated Gov. Hall found a full time job in state government. This was all accomplished prior to the new Governor, George Docking, assuming office in January 1957, the year of my birth. The "Triple Jump" of 1956 led to the reforms which gave rise to our present Kansas merit selection process. The entire sorry story is described in Professor R. Alton Lee's outstanding and often cited article in *the Journal of the Kansas Bar Association* appended hereto.

Those remarks remain true today, and are also incorporated by reference.

Very simply, there is no demonstrated reason to abandon a tried and true method of judicial selection that has served our state well for over a half-century. Moreover, the pending concurrent resolution deliberately injects partisan politics, with disproportionate legislative input from the political party which happens to be in the majority on a given occasion, into the judicial selection process. Public confidence in the judiciary requires in the words of the inscription over the courthouse door in my district “free and independent courts, for a free and independent people.” I must oppose a selection scheme which countenances disproportionate partisan political input in the selection process if for no other reason than that it creates an appearance of political influence in the judicial selection process which is the antipathy of “independent courts.”

By my opposition to the pending concurrent resolution, I do not mean to say all provisions of the resolution are without merit. In fact, I support the “elevation” of our Court of Appeals to a constitutional court; and I recognize some view the current selection method as a “lawyer dominated” process. I stand ready to work with members of the committee, and others of good will and intent, to address these concerns; however, in a politically charged environment, knowing that a majority of our Supreme Court will be standing for retention in the next election, and amid unfounded allegations by some that our courts are less than competent or fail to follow the law, now is not the time to make changes to the constitution which has served us well for over a generation. Instead, I suggest that we work together to address these concerns in a future far less politically charged environment. As I said in my testimony last year,

Absent demonstrated bias or incompetency on the part of our Supreme Court, this representative urges the committee to defer the debate to another time so the political exigencies of the moment do not dictate an outcome which may adversely affect the Kansas judiciary for generations to come.

In my judgment, those words are equally applicable today. Thank you for your consideration of my thoughts.

Sincerely,

John Carmichael
Ranking Member House Judiciary Committee
Kansas State Representative
District 92