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TO: HOUSE JUDICIARY COMMITTEE
FROM: F. JAMES ROBINSON, JR.
KANSAS ASSOCIATION OF DEFENSE COUNSEL
DATE: February 19, 2013
RE: SB 8

Chairman Kinzer, members of the committee, we thank you for this opportunity to submit written testimony concerning SB 8. I am a past president of Kansas Association of Defense Counsel (KADC), a statewide association of lawyers who defend civil lawsuits and business interests. I am also the state representative of DRI (Defense Research Institute), a national association which is the voice of the defense bar. I am here today on behalf of these groups. I am unable to appear in person because of prior commitments.

SB 8 does not solve our real concerns with the appointment of appellate judges by the Governor followed by Senate confirmation. Layering in between these steps a commission that vets an appointee is a positive step that can help minimize the partisan nature of judicial appointments. But this additional step does not remove our concerns that:

- When the appointment is made the Governor acts as a commission of one, with little transparency about the persons who were considered for the position, the criteria used to select the appointee, and whether political affiliation or social connections were given greater weight than judicial qualifications;
- Partisan bickering between the Governor and the Senate of the sort seen at the federal level (there are currently 89 judicial vacancies and 35

pending nominations)¹ and in states such as New Jersey² will delay the confirmation process leading to larger workloads for sitting judges, and longer waits by litigants for court decisions;

- Senators of the Governor’s party will stress the appointee’s qualifications and ideology, while the Senators who oppose the appointee focus their attacks on the appointee’s ideological views rather than the appointee’s experience, painting the appointee as extreme and likely to base his or her decision on political rather than judicial considerations. This can lead to the circus-like atmosphere seen in the U.S. Senate and create the perception that the Kansas judiciary is not an independent branch of government that is “above the fray” of politics;
- Even the most qualified candidates may be discouraged from accepting an appointment to the bench because of the specter of a microscopic inquiry into his or her background, and the potential for political attacks; and
- The rigors of a politically charged confirmation process in the Senate may wear down the appointees and their families, causing an otherwise qualified appointee to withdraw from the process.

SB 8 does not avoid this troubling fallout of a partisan confirmation process and therefore cannot ensure that the Kansas judiciary is staffed with the best and brightest judges.

Further, we question the effectiveness of such a commission as a tool to fairly vet appointees. Anyone who has made an important hiring decision knows that it is difficult to evaluate a single appointee without seeing others who were considered for the position.

Finally, the Kansas model should not emulate the process used at the federal level where the American Bar Association evaluates appointees as “well qualified,” “qualified,” or “not qualified,” based on subjective criteria such as “integrity,” “professional competence,” and “judicial temperament.” Each of these qualities is important. But more objective criteria should be developed, which would focus on clear, definitive experience requirements.

¹ <http://www.uscourts.gov/JudgesAndJudgeships/JudicialVacancies/CurrentJudicialVacancies.aspx>

² “Christie Introduces Two New Nominees For New Jersey Supreme Court,”

http://www.nj.com/politics/index.ssf/2012/12/christie_press_conference.html; “New Tangle in Battle Over Court in Trenton,” <http://www.nytimes.com/2011/01/04/nyregion/04judge.html?ref=johnewallacejr>; “The Politicization of a Respected Court,” http://www.nytimes.com/2010/12/16/opinion/16thurs3.html?ref=opinion&_r=1&