

Legislative Testimony

In **Opposition** to HCR5008
House Committee on Judiciary
February 3rd, 2025

Written Only

Chair Humphries and Members of the Committee:

My name is Rashane Hamby, and I serve as the Director of Policy and Research at the American Civil Liberties Union (ACLU) of Kansas. The ACLU of Kansas is a nonpartisan, nonprofit organization with more than 35,000 supporters statewide, dedicated to preserving and strengthening the civil rights and liberties of every Kansan. I submit this testimony in strong opposition to House Concurrent Resolution 5008 (HCR 5008). While legislative oversight is a core function of government, this resolution raises significant constitutional, legal, and practical concerns that undermine the separation of powers and threaten the integrity of Kansas' regulatory framework.

Violates Separation of Powers

HCR 5008 violates the separation of powers doctrine, a fundamental principle of Kansas governance. The Kansas Supreme Court has already ruled that legislative vetoes of agency rulemaking are unconstitutional in *State ex rel. Stephan v. Kansas House of Representatives & Senate* (1984)¹. That case struck down a previous Kansas statute allowing the legislature to modify or revoke agency rules through concurrent resolution because it usurped executive authority and bypassed the governor's role in lawmaking. By granting the Kansas Legislature the power to approve, revoke, or suspend administrative rules without passing a new law, HCR 5008 is an attempt to make an end-run around the principles of accountability, transparency, and separation of powers that were central that legal dispute. This amendment would: (1) Allow the legislature to interfere with executive rulemaking outside the normal lawmaking process, (2) Bypass the governor's constitutional role in approving or vetoing laws, and (3) Violate the long-cherished principle of the separation of powers that is crucial to American democracy. The separation of powers exists to ensure no branch has unchecked authority, yet HCR 5008 concentrates power within the legislature at the expense of the executive branch's ability to enforce laws efficiently.

Disrupts the Administrative Process

¹ Kansas Supreme Court Decisions & Attorney General Opinion

State ex rel. Stephan v. Kansas House of Representatives & Senate, 236 Kan. 45, 687 P.2d 622 (1984)

- Kansas Supreme Court ruling that legislative vetoes of administrative rules violate separation of powers and presentment requirements in the Kansas Constitution.

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HCR 5008 disrupts the administrative rulemaking process by injecting politics into regulatory decisions, delaying critical regulatory actions, and creating instability. State agencies develop rules and regulations under legislative authority, ensuring that statutes are effectively implemented and enforced. These rules undergo public hearings, stakeholder input, and legal review to serve the best interests of Kansans. HCR 5008 undermines this process by allowing the legislature to block, suspend, or reject rules before they take effect, circumventing established administrative procedures. This could result in public health, environmental, and safety regulations being delayed or blocked, even after expert review and public comment; businesses and industries facing regulatory uncertainty, making Kansas a less predictable and less competitive state for investment; and emergency response measures—such as public health protections or consumer safeguards—being stalled by legislative inaction or political gridlock. Agencies already operate under statutory requirements and judicial oversight, ensuring accountability without the need for unnecessary legislative intervention. This amendment is therefore disruptive, unnecessary, and a threat to the efficiency of state governance.

HCR 5008’s Substance Has Already Been Rejected by Kansans

HCR 5008 is identical in its core substance to a prior constitutional amendment that the Legislature referred to voters for consideration in 2022. That amendment was widely and wisely criticized for undermining checks and balances and threatening individual rights. Kansans soundly rejected that attempt to expand legislative power at the expense of the separation of powers. In 2022, voters defeated a constitutional amendment that would have given the legislature increased authority over executive agencies—just as HCR 5008 does--signaling a clear preference for maintaining the current balance of power. .

Sets a dangerous precedent

HCR 5008 sets a dangerous precedent for future legislative overreach by granting the legislature the ability to revoke agency rules for vague and subjective reasons, such as being “overly burdensome” or “not beneficial to the public good”. These broad justifications lack clear legal standards, allowing political interference based on ideology rather than objective regulatory necessity. By creating an unchecked legislative gatekeeping mechanism, this resolution empowers lawmakers to selectively approve or reject rules, forcing agencies to navigate a political process before implementing regulations. This could open the door to selective enforcement, favoritism, and policy decisions driven by legislative will rather than public need. HCR 5008 does not “protect Kansans from burdensome regulations”—instead, it empowers the legislature to block regulations that serve the public interest but may be politically unpopular among certain groups.

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For these reasons, HCR 5008 is unnecessary, harmful to effective governance in Kansas, and a repudiation of core principles of American governance. The Framers of the United States Constitution were adamant about the necessity of maintaining a separation of powers for good reason; Kansas should continue to follow their example, as our state constitution has done since the state's founding. HCR 5008 violates the separation of powers, disrupts the administrative process, and sets a troubling precedent for unchecked legislative control over executive functions. I urge the committee to reject HCR 5008 and uphold the constitutional balance of powers that ensures effective, transparent, and accountable governance in Kansas. Thank you for your time and consideration.

Thank you,

Rashane Hamby
Director of Policy and Research