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SECOND JUDICIAL DISTRICT
(Jackson, Jefferson, Pottawatomie and Wabaunsee Counties)

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February 3, 2025

Senator Kellie Warren

Senate Judiciary Committee Chairwomen

Re: SB 129

Dear Senator Warren:

I am writing this letter to you regarding SB 129. I am neutral on this bill, but I believe the committee should consider some background information. Further, the bill would be better if it applied to all District Magistrate Judges and District Judges.

In 2020 I began efforts seeking legislation to modify the current mandatory retirement age. I was attempting to do this to help Judge Nafziger extend his stay on the bench, but any judge approaching that age would benefit. The result was **SB 269**, a bill sponsored by a bipartisan group of Senators that would have required Judges of the District Courts to retire upon reaching age 79. The bill had a hearing and was reported favorably out of committee, but COVID and election year politics kept the bill from a vote.

In the 2020 session much was learned. At the meeting of the Judiciary Committee to work the bill a representative of KPERS testified. He noted that the average judicial tenure is just short of twelve years. He testified that the bill if adopted would not cost the State more. A list of District Judges by birthday was located showing that in any election year only one or two District Judges of 160 (at that time) reach mandatory retirement. Thus, changing the retirement age would not lead to a flood of judges staying on the bench longer. The fact that a judge's retirement generally maxes out after 20 years causes some judges to retire after obtaining 20 years on the bench regardless of age.

During consideration of the 2020 bill, it was also pointed out that many people have a longer productive work life than in past years. This is due to better health and modern medicine. When the judge retirement system was created in 1953 the mandatory retirement age was 70 but you could serve your term out. Many states (31) do have a retirement age for judges with the most common being 70 years of age according to a 2010 report of the National Center for State Courts. Vermont has set the age at 90. Some of these age limits are set by statute while others are in state constitutions.

The current Kansas mandatory retirement statute is one of the limits on the service of a judge. Based on my research, Kansas had no such rule until 1953 when the judicial retirement system was created. From 1953-2004 all state court judges were to retire at age 70, but they could finish their term if it extended beyond that date. K.S.A. 20-2608.

In 2004 the legislature amended the statute so that District Judges could serve until their 75th birthday, but the statute remained as it previously had for Supreme Court Justices. At least two prominent judges were affected by this change. Judge Rome of Reno County managed to extend his tenure on the bench, but Justice Kay McFarland was forced into mandatory retirement in January 2009. Even though Judge Rome was an elected judge of a different party, the Reno County legislative delegation worked to assist him on a bipartisan basis.

Judge Rome once again helped motivate change in 2009 with the help of Reno County legislators. That year the current system was created allowing all judges to serve until 75 and allow them to finish a term. The change allowed Judge Rome to remain on the bench until 2011. A bill was introduced in 2013 to lower the retirement age of appellate judges to 65 but it failed to pass.

The 2020 bill would have corrected an inequality in the current retirement system. The current system already allows some judges to serve to age 79, but others with an odd numbered birth year and/or a Presidential vs. a Gubernatorial election or retention year must leave at 75. A small number of judges can control their retention/election year if they are able to take the oath before or after the November general election. The best example of this is Justice Rosen who was selected before the general election but chose to take the oath after the election. As a result, though he may not have intended it, Justice Rosen can serve to age 79. This result is more common for Supreme Court Justices who have six-year terms.

Here in the Second Judicial District, we are familiar with this issue. In 2020 our Chief Judge Gary Nafziger and our Jefferson County Magistrate Judge Dennis Reiling faced an upcoming retention election. Those judges had been serving in the same courthouse since 1982 and were very close in age (months), but due to when their birthdays fell Judge Nafziger was forced to mandatory retire. Judge Reiling would be retained again in 2020 and retire on January 13, 2025, when his term expired. He is 78 years old.

I sympathize with the desire of SB 129 to assist the limited category of law trained magistrate judges in counties of 10,000 or fewer. However, I would urge the committee to consider broadening the bill for consistency. In each of the times that Judge Rome was assisted the legislature applied the bill to at least all Magistrate and District Judges.

Sincerely,

A handwritten signature in black ink that reads "Norbert Marek". The script is cursive and fluid, with the first letter of each word being capitalized and prominent.

Norbert C. Marek
District Judge