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To: House Committee on Federal and State Affairs
Rep. John Barker, Chair

From: Aaron M. Popelka, V.P. of Legal and Governmental Affairs, Kansas Livestock Association

Re: **HCR 5004 A PROPOSITION to amend article 9 of the constitution of the state of Kansas, relating to counties by adding a new section 6 which pertains to home rule for counties.**

Date: January 31, 2017

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing nearly 5,200 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker cattle production; cattle feeding; dairy production; swine production; grazing land management; and diversified farming operations.

Thank you, Chairman Barker and members of the Committee, my name is Aaron Popelka and I am with the Kansas Livestock Association (KLA). KLA opposes HCR 5004 as it would grant excessive authority to counties, remove a key oversight function of the state legislature, and endanger individual property rights of landowners.

While local control has its place, expanding county home rule beyond the current statutory grant of authority in K.S.A. 19-101, 19-101a, 19-101b would remove a necessary check on local power. Currently, the legislature can add or amend restrictions on county governance in K.S.A. 19-101a. HCR 5004 would remove the ability of the legislature to enact additional restrictions on counties when necessary. Furthermore, HCR 5004 expands charter authority for counties. Currently, counties cannot charter out of restrictions in K.S.A. 19-101a. HCR 5004 would remove that restriction. This is especially concerning to agriculture that has specific restrictions on counties in K.S.A. 19-101a(a)(27) concerning, among other things, corporate farming laws and water pollution control permits.

While the loss of these restrictions may not seem consequential, it could devastate production agriculture. For instance, KLA staff recently fielded a call from a county attorney concerned the county commission was trying to prohibit corporate agriculture. After investigation, the circumstances showed that a group of local landowners were jealous because a larger, corporate-owned farm operation out-bid them at a land auction. These neighbors were able to convince the county commission to pursue a resolution to ban corporate agriculture. KLA was able to point the county attorney to the restriction in K.S.A. 19-101a(a)(27) and halted the impermissible use of home rule. Under HCR 5004, this county would be able to charter out of

this law, adversely impacting a number of small and large, family-owned corporate farms and ranches.

Another real world example of county overreach involves water pollution control permits, as referenced in K.S.A. 19-101a(a)(27). In the case *David v. Board of Commissioners*, 227 Kan. 753 (2004), the Norton County commission tried to enact more stringent water pollution control regulations than the state and federal government. This was motivated by local emotion where a majority of commissioners did not approve of a local agricultural operation and tried to regulate it out of existence using environmental permits as a front. Fortunately, statutory home rule authority was available to protect the landowner. Again, like the above referenced corporate agriculture example, under HCR 5004 a county could charter out of this restriction, upending a consistent, reliable regime of environmental regulation.

In addition, many counties are currently in noncompliance with state zoning laws that prohibit counties from zoning land or buildings used for agricultural purposes. Just this past year, KLA encountered a county that had enacted resolutions restricting the type and location of different agricultural activities. When KLA brought this violation of state law to the attention of the county counselor and commission, and provided them with numerous Kansas Supreme Court cases supporting the agricultural exemption, the county's response was, "If you don't like our resolutions file a lawsuit." Upon further research by KLA staff, of the 54 zoned Kansas counties, 25 have resolutions in violation of the state zoning prohibition on agriculture.

This rampant disregard for state law is, at a minimum, disturbing. If HCR 5004 were enacted, it would only embolden counties and prevent landowners from asking the state legislature for relief in K.S.A. 19-101a. This highlights another problem with constitutional county home rule. A majority of counties have very few professional staff and are often ill-equipped to work through the difficult process of properly evaluating county authority. If HCR 5004 were to pass, it would inevitably result in a default decision by counties that when in doubt, assume authority to regulate and let the courts sort it out later.

Finally, there is no need to grant constitutional home rule because if the local need is deemed worthy, the legislature can expand current statutory authority. The only reason a county would want to expand its regulatory authority to constitutional home rule is because it believes the legislature would not allow its intended regulation. For those who value property rights, this alone should be reason enough to oppose HCR 5004. Landowners that reside and operate farms and businesses in the county have a higher expectation of privacy and self-control of their property. HCR 5004 would denigrate this expectation.

KLA appreciates the opportunity to share its perspective with the Committee about why the concept of constitutional county home rule would adversely affect property owners and agricultural operations. KLA opposes HCR 5004 and asks the Committee not to approve the bill for further consideration.