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To: House Committee on Judiciary  
Rep. Fred Patton, Chair

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

Re: **HCR 5014 A PROPOSITION to amend article 1 of the constitution of the state of Kansas by adding a new section thereto, concerning oversight by the legislature of certain executive branch actions.**

Date: March 22, 2021

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing nearly 5,700 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 Patton and members of the Committee, my name is Aaron Popelka, and I am with the Kansas Livestock Association (KLA). KLA policy supports efforts to reduce the regulatory burden on livestock producers. As a result, KLA supports HCR 5014 as a necessary check on executive rulemaking authority.

Since Kansas became a state, the statute book has grown significantly in size. As the volume of statutes has grown, the number of interpretive regulations has grown as well. On occasion, the executive branch, particularly those executives of a different philosophy than the legislature, can misinterpret the legislature's grant of rulemaking authority. In such case, a well-intentioned statute, can be subverted by the executive, harming the regulated community.

Often when regulations go awry, it is difficult for the regulated community to fight back. There are only two paths to redress this issue. First, a person could file a costly court case that might just as easily be lost as won. Second, one could ask the legislature to rewrite the statute, subject to a gubernatorial veto, or if not vetoed, subject to the same regulatory misinterpretation that occurred before.

KLA believes that HCR 5014 would provide a simpler remedy than rewriting the statute, and less costly remedy than filing a judicial action. HCR 5014 would simply allow both houses of the legislature, by a majority vote, to revoke a regulation that exceeded statutory intent.

A constitutional amendment is necessary because in *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45 (1984), the Kansas Supreme Court struck down a statute of a similar nature because it violated the Presentment Clause and separation of powers in the Kansas

Constitution. Therefore, the Kansas Constitution must be amended to clarify that revocation of a regulation does not require presentment to the governor.

HCR 5014 is narrowly tailored to avoid unnecessary intrusion on the separation of powers. The legislature is not empowered by HCR 5014 to enforce or administer its statutes, but merely invalidate a regulation that exceeds its original statutory scope. The governor retains the ability to craft a new regulation, if necessary, to carry out the underlying statute in question.

KLA appreciates the opportunity to share its support for HCR 5014 and asks the Committee to recommend it favorable for passage.