

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:35 a.m. on February 5, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Haley (excused)

Committee staff present:

Mike Heim, Research
Gordon Self, Revisor
Mary Blair, Secretary

Conferees appearing before the committee:

Orville Cole, Attorney, 4th District
Jane Nohr, Assistant Attorney General

Others attending: see attached list

Minutes of the February 2, 2001 regular meeting were approved on a motion by Senator O'Connor and seconded by Senator Gilstrap. Carried.

SCR 1604—nonpartisan selection of district judges and creation of commission for evaluating judicial performance

Conferee Cole testified in opposition to **SCR 1604**. He discussed the current system of selecting judges whereby the majority of electors decide whether they want to use the elective system or the appointive system. He stated that it has been his experience that this has worked well and he challenged statements made by proponents of the resolution regarding the necessity for change. He stated that the only change advisable in the judicial system would be the creation of a judicial evaluation commission to evaluate appointed judges. (attachment 1) Discussion followed.

Conferee Senator Pugh testified in opposition to **SCR 1604**. He presented personal testimony about his experiences working with judges in the elective system stating that there is better treatment of attorneys, litigants, et al, with this system. With the appointive system a lot of new rules are written by others apart from the legislative body. He stated that the voters need to retain the ability to choose which system they want. (no attachment) During discussion the Chair emphasized that the purpose of the commission provided for in the resolution is solely to act as a body that develops a judicial evaluation process.

Written testimony in support of **SCR 1604** was submitted by Terry Leatherman of the Kansas Chamber of Commerce and Industry. (attachment 2)

SB 99—concerning the offender registration act

Conferee Nohr testified in support of **SB 99**, a bill which amends the offender registration law and brings the state into compliance with the federal law under the Jacob Wederling Act. She reviewed the state's current registration law which requires persons convicted of certain violent and sexually oriented offenses to register with the sheriff of their county of residence. She stated that the amendments would add to the list of required registrants those convicted in another state who have moved to Kansas. The amendments further provide for a separate definition of the term sexually violent predator (SVP) to distinguish it from the civil commitment of SVPs. (attachment 3) During discussion grammatical changes were noted by the Conferee.

The Chair distributed to Committee a memorandum from Natalie Haag, Office of the Governor, regarding certain requested changes to **SB 76**, a bill concerning state and tribal relations. (attachment 4)

The meeting adjourned at 10:31. The next scheduled meeting is January 6, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 5, 2001

NAME	REPRESENTING
Terry Leatherman	KCCT
Gene Nohr	KBI
Wicklynn Hessel	Budget
Whitney Damm	KS Bar Assn.
Bruce Dimmitt	Independent
Kathy Porter	Judicial Branch
Melissa Wangemann	Sec. of State
Bill Henry	KS Governmental Consulting
John P. Miller	Associated Press
KEITH R. LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Paul Davis	KS Bar Assn.
Paul Jones	KSC
Joe Herold	KSC
Sheila S. Walker	KDOR - DMV
Notable Shurburgh	KDOR
Nancy Lindberg	A-G
Coleen Mull	Kathy Damm + Assoc
Sumner Bechard	KDMA
Lyman Cole	Sen. Lipon's Office Staff

5342
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BEFORE THE SENATE JUDICIARY COMMITTEE

January 23, 2001

Testimony of Orville J. Cole concerning submitting a constitutional amendment to Kansas voters to require all District Judges to be appointed.

DON'T CHANGE A SYSTEM UNLESS IT'S AN IMPROVEMENT.

Fifty-three counties in Kansas still elect their district judges. These counties have the option under current law to change to the appointive system, if a majority of their electors wish to change. I hear no clamor from the grass roots to make such a change. The clamor that I hear is mostly from judges already on the bench, part of the Bar Association and some activists who have judicial designs. These people are all protecting their own turf.

THE CLAIM THAT APPOINTING JUDGES TAKES THE JUDICIARY OUT OF POLITICS IS A MYTH.

There is an old saying that "you can take the judge out of politics but you cannot take politics out of the judge." This was amply displayed in the recent presidential election contest in Florida. The seven Florida Supreme Court Judges were all appointed by democratic governors. These judges run for reelection without opposition just as they do in Kansas. The decision this Court made in rewriting the election laws passed by the Florida Legislature and completely ignoring the laws of the State was a political decision, pure and simple, based on raw politics. High-sounding platitudes of fairness and impartiality by appointed judges disappeared under a cloud of partisan politics.

I practice in a four-county strongly Republican judicial district. Because of a succession of democratic governors during the last 30 years, we ended up with all democratic district judges, none of whom would have been elected if an opponent could have run against them.

THE APPOINTMENT OF JUDGES CREATES AN ELITE CLASS OF UNTOUCHABLES.

All appointed judges cannot be perfect. Yet, I do not know of any appointed Supreme Court Judge or Court of Appeals Judge who has ever been voted out of office and I only know of one appointed District Court

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Judge in the state that was not retained. When judges cannot be opposed and no rival can point out to the public the judge's deficiencies and shortcomings, the voter has nothing on which to make a decision and usually votes to continue the status quo. Regardless of how arrogant or dilatory the judge becomes, he sits in an untouchable position.

**THE ONLY CHANGE ADVISABLE IN THE JUDICIAL SYSTEM
WOULD BE THE CREATION OF A JUDICIAL EVALUATION
COMMISSION TO EVALUATE APPOINTED JUDGES.**

Voters are voting blind on appointed judge's retention because the judge has no opponent running against him and most voters have had no contact with the judge. There is very little in the press about judges' conduct. A commission should be appointed to evaluate all appointed judges, with their findings published in advance of retention elections. The appointees should not be selected by the Governor, Supreme Court or Bar Association, but by the House and Senate Judiciary Committee members.

Respectfully,

A handwritten signature in black ink, appearing to read "Orville J. Cole". The signature is written in a cursive, flowing style with a large initial "O".

Orville J. Cole

LEGISLATIVE TESTIMONY



The Unified Voice of Business

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SCR 1604

February 5, 2001

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Judiciary

by

Terry Leatherman
Vice President – Legislative Affairs
Kansas Chamber of Commerce and Industry

Mr. Chairman and members of the Committee:

My name is Terry Leatherman. I am the Vice President of Legislative Affairs for the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to explain why the Kansas Chamber supports approval of SCR 1604.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 2,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 48% of KCCI's members having less than 25 employees, and 78% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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att 2

KCCI is appearing on the issue of merit selection of judges for the first time, after reviewing this issue this fall and having its Board of Directors ratify policy direction in support of the merit selection just last month. The principle reasons for KCCI's support for SCR 1604 are outlined below.

First, in determining which method provides the greatest opportunity for a person with outstanding judicial qualifications to be chosen, KCCI would respectfully assert the merit selection system is superior to partisan election of judges. Can a person who holds the qualities most feel are critical to be an effective judge survive the rigors of an election? The answer is clearly yes. Can a clearly qualified candidate fail to be the person chosen in the screening and appointment process in the merit selection system? Again, the answer is yes. However, the merit selection system is structurally superior to partisan elections in identifying individuals who hold the intellectual and performance skills we desire in people appointed to serve as judges.

Second, the Kansas Chamber feels the merit selection process achieves the delicate balance of assuring public accountability of judges, while greatly reducing the political realities of partisan elections. If the election process has one clear advantage to merit selection, it would be the direct involvement of voters. With that advantage comes significant drawbacks. Judges are challenged to finance campaigns with contributions from individuals they deal with in their courts. The jurist's election success depends on the quality of campaign organization, the skill of their 30-second radio spot or the placement of their newspaper ad. Merit selection removes these aspects that can occur in judicial elections yet maintains citizen involvement by requiring retention votes of sitting judges.

Finally, KCCI finds comfort that passage of SCR 1604 will not change the Kansas Constitution. Instead, it is important to always remember SCR 1604 is only the needed first step that must be taken to uncover the wishes of Kansas voters. Ultimately, a change to merit selection will only be determined by the people of Kansas. One final note. Merit selection is far from foreign to Kansas, where a slight majority of judicial districts have chosen that process over electing judges.

Thank you for the opportunity to express the Kansas Chamber's support for SCR 1604. I would be happy to answer any questions.



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att 3

Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

Testimony in Support of SB 99
Before the Senate Judiciary Committee
Jane Nohr, Assistant Attorney General
Kansas Bureau of Investigation
February 5, 2001

Chairman Vratil and members of the Committee,

I am pleased to appear today on behalf of the KBI in support of SB 99, which enhances the offender registration database (K.S.A. 22-4901 *et seq.*) currently maintained by the KBI. As most of you are aware, the offender registration act requires persons convicted of certain violent and sexually oriented offenses to register with the sheriff of their county of residence. This system has three major benefits: it provides law enforcement with important investigative information; it allows neighbors, employers, parents, etc. to check on risks in their community; and, perhaps most importantly, it provides substantial deterrence to these offenders by reminding them that law enforcement is aware of them in their community and already has their fingerprints, description, DNA, and address.

These amendments would require persons in Kansas, who have been convicted of child molesting, rape, murder and other serious offenses, but are currently not covered by the statute, to register with the state. Primarily, the amendments that we are proposing would add to the list of required registrants non-resident workers employed in Kansas, non-resident students attending college in Kansas, those persons convicted in military courts and new residents who were required to register in their previous state of residence. Each of these categories are convicted offenders, in Kansas, who otherwise would be outside the current law. We think it is particularly important to clarify that the Kansas statute covers those persons who were convicted in another state and have moved here because we don't want Kansas to become a attractive refuge for violent offenders seeking to avoid the registration required in their home state.

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2-5-01
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There is also a separate definition of "sexually violent predator", for use in the offender registration act, to distinguish it from the civil commitment of sexually violent predators.

I would be happy to address any questions.

Thank you for your consideration.

STATE OF KANSAS

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BILL GRAVES, Governor
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OFFICE OF THE GOVERNOR

Memorandum

To: Senator John Vratil
From: Natalie G. Haag
Re: Senate Bill 76
Date: February 5, 2001

As we discussed, the Governor has several concerns regarding Senate Bill 76. We are requesting the Committee strike the language limiting the Governor's authority to enter compacts as set forth on lines 23 and 24 of the bill. Specifically, we are requesting the Committee strike the words "who have entered into gaming compacts with the state of Kansas."

Additionally, it does not seem practical for the legislature to review and approve every agreement the state makes with a Native American tribe. Accordingly, we are requesting the Committee strike the italicized word "agreement" and references to said "agreement" throughout the bill.

Thank you for considering our concerns on this legislation.

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att 4