

## Testimony before the House Judiciary Committee

### Senate Concurrent Resolution No. 1611

Clark V. Owens II District Court Judge Retired 18th Judicial District

March 13, 2025

Good afternoon Representatives. I would like to thank you for the opportunity to speak in favor of SCR 1611. My name is Clark Owens and I am a retired judge from the Sedgwick County District Court (18th Judicial District). I retired from the court after 22 years, primarily serving in the criminal department. Prior to that I served for 8 years as the Sedgwick County District Attorney.

I am in favor of returning the selection of members on the Kansas Supreme Court to the voters of the state. The district court judges of this state have both the partisan election and appointment/retention districts. The voters in Sedgwick County chose to have partisan elected judges. In the state there are 17 appointment/retention districts and 14 partisan election districts. Over the years when I discuss this issue with other judges in Sedgwick County they seem to prefer our current partisan election system. When elected and re-elected you know that you have the support of the majority of the voters in your district.

In the appointment/retention districts, it is practically an appointment for life like the Federal Court. There has never been a Supreme Court Justice or Court of Appeals Judge in Kansas that has lost a retention election. Even on the district court level, I could find only one judge in 1980 that lost his retention election. In contrast to that it is not rare that an incumbent judge can lose an election in a partisan election district.

Currently the initial appointment to the Kansas Supreme Court is handled by the Supreme Court Nominating Commission submitting 3 names to the Governor. The Governor will then make the selection from those nominations. The Commission is made up of 5 lawyers chosen by lawyers and 4 citizens of the state chosen by the Governor. The power rests with the lawyers. Lawyers tend to be much more politically liberal than the population at large which may very well effect their choice of Supreme Court candidates.

There was an intense effort to defeat members of the Kansas Supreme Court in 2014 and 2016. Family members of the victims in the Carr murder case formed Kansans for Justice to oppose their retention. It was their belief that the Court was intentionally blocking the death penalty. In the first 5 cases to reach the Kansas Supreme Court, they found reversible error in all of them. I presided over one of the death penalty cases in State v. Michael Marsh. The Kansas Supreme Court decisions were then reversed by the United States Supreme Court. In the Reginald Carr and Jonathan Carr cases, Justice Anton Scalia asked the Kansas Attorney General: "Did the Kansas Supreme Court read these cases (referring to the Marsh case where the US Supreme Court reversed the Kansas Supreme Court)? Justice Scalia followed up: "How can you explain it if – if indeed our prior cases are so clear on the point?" Justice Scalia then stated: "They don't like the death penalty".

Despite their intense efforts the 2014 retention election ended in about 53% to retain and 47% to not retain. In 2015 the Kansas Supreme Court affirmed a death sentence for the first time. In 2016 the retention elections voted approximately 55% to retain and 45% to not retain. The subsequent retention elections then reverted to the normal 65%-70% to retain the Justices.

The retention elections are the most difficult for the voters to make intelligent decisions. Most attorneys get calls from their relatives and friends for advice. The contested judicial elections are different. There are two candidates running for the same office and generally publish campaign ads and participate in public debates where the voters are exposed to the differences in the candidates. It is easier for the voter to make an informed decision.

I urge you to pass Senate Concurrent Resolution No. 1611.