



**KANSAS TRIAL LAWYERS  
ASSOCIATION**

To: Representative Susan Humphries, Chair  
Members of the House Judiciary Committee

From: David Morantz, Shamberg, Johnson & Bergman, Chtd., Kansas City  
On behalf of Kansas Trial Lawyers Association

Date: March 13, 2025

Re: Election of Supreme Court Justices, SCR 1611 as amended by the Senate (Oppose)

I appear today on behalf of the Kansas Trial Lawyers Association (KTLA) to provide testimony on the selection process for Kansas Supreme Court justices and SCR 1611. KTLA opposes SCR 1611, which abolishes the Supreme Court Nominating Commission, merit selection process and institutes partisan elections of Supreme Court justices,

KTLA strongly supports the current Supreme Court Nominating Commission process (“merit selection”) as outlined in Article 3 of the Kansas Constitution. Our nation was founded on the protection of individual rights and freedoms by a judicial branch that is not beholden to special interests, campaign promises, or partisanship.<sup>1</sup> Kansas merit selection has proven to be the best system for assuring that justices are well-qualified and experienced and are free to make decisions regardless of politics.

Kansas long ago removed campaigning and politicking from the selection process for its justices. The Legislature crafted Kansas’ modified Missouri Nominating Commission process following the “Triple Play” debacle.<sup>2</sup> Kansans were outraged at the politically motivated maneuvering by the chief

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<sup>1</sup> “This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.” *The Federalist Papers*, No. 78.

<sup>2</sup> The “Triple Play” involved Chief Justice Bill Smith, Governor Fred C. Hall, and Lieutenant Governor John McCuish. In the 1956 election, Governor Hall was defeated in the Republican primary by Warren Shaw, who then lost the general election to Democrat George Docking. Chief Justice Smith was seriously ill and contemplating retirement. But he supported Gov. Hall and did not want to give the new Democrat governor to appoint his replacement, who would have been a Democrat. So Chief Justice Smith, Governor Hall, and Lt. Gov. McCuish

justice, governor, and lieutenant governor to replace an open seat on the Supreme Court. Kansans saw the need to change the process so that partisan motivations could not dominate any part of the selection process. They replaced popular elections of Kansas' highest court with a process that focused on the skills and experience of candidates, not political party. The Nominating Commission, merit selection process, was approved by more than 70% of voters. It is still the same process found in the Kansas Constitution.<sup>3</sup>

Kansas Supreme Court justices have a constitutional obligation to ensure impartiality for all parties that appear before them, regardless of the justices' individual personal beliefs. They must promise to adhere to the rule of law and to uphold the constitution. Campaign promises or loyalty to ideology or special interests are inconsistent to their duties.

The Nominating Commission process is the best process for assuring that applicants can fulfill their constitutional obligations and are the best qualified and most skilled to serve on the Court. Thirty-four (34) states and the District of Columbia use a nominating commission for at least a part of their selection process. In 26 of 35 jurisdictions, lawyers fill a majority of commission seats, even though only fifteen (15) require lawyer majorities by law. Nonlawyer commissioners control a majority of commission seats in only 6 states, and half the seats in 3 states.

The non-partisan Kansas Nominating Commission is composed of Kansas resident attorneys and non-attorneys. It has one purpose: to interview applicants, consider their abilities to do the job, and recommend the top three applicants to the governor. It is a transparent process. Kansas voters have access to information about the candidates and the ability to monitor the work of the Nominating Commission during interviews and discussions of the applicants<sup>4</sup>.

Kansas merit selection shields judicial candidates from improper influence during the selection process. A cursory examination of other means of selection clearly demonstrates the problems that Kansas has avoided. In Wisconsin, a state that elects its judges, more than \$51 million was spent on a Supreme Court election, with \$45 million in dark money pouring in from outside the state.

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devised a plan. Chief Justice Smith resigned on December 31, 1956, and Governor Hall resigned on January 3, 1957. Lt. Governor McCuish became governor for 11 days until the inauguration of George Docking. His only official act as governor was to appoint former Governor Hall as Chief Justice of the Supreme Court. The Kansas Legislature and Kansas voters amended the Constitution in 1958 to repeal elections and gubernatorial appointment and replace it with the current Supreme Court Nominating Commission selection process. *Source: The American Judicature Society, <http://www.ajs.org>.*

<sup>3</sup> The Supreme Court Nominating Commission is a 9-member citizen body. Five (5) members are Kansas-licensed, resident attorneys elected by their peers. Four (4) members are non-attorney residents appointed by the governor. The Nominating Commission recommends three (3) candidates to fill a vacancy on the Supreme Court, and the governor selects one nominee to serve. A justice must stand for retention election at the first general election following their appointment to the Court and at the conclusion of each six-year term. Citizens may vote to not retain any justice that is serving Kansans or the Court. Justices must retire at age 75 upon completion of their term.

<sup>4</sup> The non-partisan, 9-member Supreme Court Nominating Commission is a geographically and professionally diverse citizen commission that serves voluntarily. Commission meetings are open; in fact, the Commission must work at an even higher standard of transparency and openness than other state bodies. Interviews of candidates and deliberations of the Commission are public, as are the applications of candidates.

Arkansas' Supreme Court elections have resulted in judicial gridlock. And in North Carolina, a partisan election dispute has prevented a supreme court justice from taking the bench and consumed much of the state's judicial system.

Kansans can be confident that its Supreme Court is well-qualified to administer the judicial branch as well as to serve as the state's highest court of review. The reversal rate of Kansas Supreme Court decisions is 66%, which is better than the rate for all state supreme courts (77%). However, applications for the US Supreme Court's review greatly outnumber the actual cases that SCOTUS hears, and the reversal rate doesn't reflect the Kansas Supreme Court decisions where the US Supreme Court (SCOTUS) declined review. Since 2019, SCOTUS has let the decision of the Kansas Supreme Court stand without review in 93% of the cases where review was sought<sup>5</sup>.

Kansas' court system provides important work for our citizens. Our courts operate and oversee vital community services such as drug diversion programs, child in need of care services, veterans' courts and mental health initiatives, to name a few. The Kansas Supreme Court is responsible for managing the local courts that implement these services. Political interference in the Kansas Supreme Court will create gridlock and harm vital community programs.

With merit selection, Kansas has side-stepped the partisan gameplaying between the President and the U.S. Senate that has left Federal judicial positions unfilled for months or years. Senate consent has made the selection of Federal judges and justices as political as any other executive branch appointment or legislative matter that comes before the U.S. Senate. Washington-style politics have not had a place in Kansas' process for selecting Supreme Court justices since the Nominating Commission process was enacted. And such politicking does not benefit Kansans or the fair administration of justice.<sup>6</sup> Inviting such antics into the selection process for our highest court is a step backward for the state.

Efforts to change the selection process for Kansas district court judges from merit selection to partisan election have been few. The most recent occurred in 2008, in Johnson County, when voters rejected a ballot question, 58.9%.<sup>7</sup>

No selection process is perfect. By its nature, litigation and appeals result in decisions that one party to the litigation may disagree strongly with. However, disagreeing with the Court's rulings is

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<sup>5</sup> Since 2019, parties in 73 Kansas Supreme Court cases sought review from SCOTUS. And SCOTUS only granted review in five (5) of those cases.

<sup>6</sup> The Kansas Supreme Court has distinct constitutional duties. The Kansas Constitution specifies that the Supreme Court has original jurisdiction in quo warranto, mandamus, and habeas corpus proceedings, Article 3. The Supreme Court is required to determine the validity of reapportionment statutes. A determination of the Supreme Court that reapportionment is valid is final until legislative districts are again reapportioned, Article 10.

<sup>7</sup> *"Shall the following be adopted? The present method of nonpartisan selection of judges of the district court in this judicial district by the governor upon nominations by a district commission and subject to retention in office by a vote of the voters shall be discontinued and there is hereby adopted in this judicial district the election of judges of the district court by the voters. YES or NO If the question is adopted, then Johnson County will move to a system of electing judges."*

not the basis for changing the way justices are selected. In fact, attempting to select justices to control outcomes undermines justice. It erodes citizens' confidence that anyone bringing a case to court will receive the same treatment no matter what their financial, social, or political standing. And it would violate the trust that Kansans should have that Kansas courts are courts of law, and not courts of grace, favor, and political paybacks.

The process in the Kansas Constitution -- the Supreme Court Nominating Commission process -- has proven to be the best system for protecting the democratic ideals of the separation of powers and the rule of law. The experiences in other states, and the Federal government, show that nominating commissions are preferred, and other selection methods fall short. On behalf of the Kansas Trial Lawyers Association, I offer strong support for the current Supreme Court Nominating Commission process for the selection of Supreme Court justices and respectfully request that the committee oppose SCR 1611.