



KANSAS ASSOCIATION OF DEFENSE COUNSEL

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TO: Representative Susan Humphries, Chair
House Committee on Judiciary

FROM: Samantha Woods, President
On behalf of the Kansas Association of Defense Counsel

DATE: March 12, 2025

RE: Kansas Association of Defense Counsel's Written Testimony Opposing Senate
Concurrent Resolution No. 1611

Chairwoman Humphries, thank you for the opportunity to submit testimony on this matter. My name is Samantha Woods, and I am the President of the Kansas Association of Defense Counsel (KADC). KADC is a state-wide organization of lawyers admitted to practice law in Kansas who devote a substantial amount of their time to defending clients, including businesses, in civil litigation cases. In addition to working to improve the skills of defense attorneys and elevating the standards of trial practice, our organization advocates for the administration of justice because our clients depend on it. For this reason, KADC has consistently spoken out about the importance of the separation of powers and the impartiality of the judiciary. Our support of Kansas' current merit selection process for the selection of Kansas Supreme Court Justices furthers our commitment to those fundamental principles.

KADC strongly opposes Senate Concurrent Resolution No. 1611. Paramount to our objection is the importance of fair and impartial courts and the role that merit selection plays in a healthy justice system. Direct election of Kansas Supreme Court Justices directly undermines judicial independence and introduces a system of ever-increasing political pressures. Disputes between the branches of government do not constitute a reason to amend the Constitution. Those tensions simply reflect the checks and balances of our government. To safeguard the neutrality of our Justices, we ask that you reject Senate Concurrent Resolution No. 1611.

KADC favors our current system for selecting judges to serve on the Kansas Supreme Court. We oppose efforts to change that system, including direct elections as proposed in Senate Concurrent Resolution No. 1611.

I. KADC opposes direct elections of Supreme Court Justices.

Direct elections of Kansas Supreme Court Justices will politicize the judiciary and the process by which they are selected for the bench. Problems surrounding direct judicial elections can include significant spending by interest groups, both inside and outside the state of Kansas, conflicts of interest for judges who decide cases affecting their campaign supporters, and judges who change

their behavior on the bench to avoid being the target of attack ads in the next campaign cycle. Contributions to judicial campaigns, at a minimum, create the appearance of an indebtedness to the campaign contributors. These pressures impede the impartiality of the judiciary, which can lead to less predictable and less fair outcomes. Even if only the perception of fairness is lost, the public's confidence in our judicial system will be eroded. The belief that the judiciary should operate and be treated like other political arms of the government maligns a basic tenet of the judiciary, which is exclusive fidelity to the rule of law. The public benefits from the current merit-based selection of an impartial judiciary, free from political partisanship.

Also of concern is that direct election of Kansas Supreme Court Justices would result in legal decisions themselves being politicized, rather than an impartial adjudication of a matter on the merits and legal precedent. Justices must be able to decide a case objectively, insulated from political pressure. It is crucial our judges remain outside of the political fray. Judges are frequently tasked with deciding divisive social and political issues. Judges are bound by their own, immutable ethical cannons to decide cases based upon the facts and the law without influence by campaign donors or popular opinion. It is vital for our highest court to uphold the integrity and independence of the judiciary, a task that would be exceedingly difficult if forced to campaign for office. The direct election of judges has been correctly described as antithetical to the notion of an impartial court and should be rejected by the Committee.

II. The current merit selection system for Kansas Supreme Court Justices results in judicial independence and an impartial judicial system.

The current merit selection process has served the citizens of Kansas since 1958, when it was added to the state constitution. Kansans implemented a system of selecting Supreme Court justices that is both open and non-partisan. Applicants for a vacancy on the Supreme Court are thoroughly vetted by an impartial nominating commission comprised of both attorneys and non-attorneys. The nominating commission conducts public interviews of the applicants. A panel of highly qualified candidates is then forwarded to the Governor for consideration and selection. These merit-based nominations ensure the selection of highly qualified jurists with recognized integrity, character, ability, and temperament. Under this process, vacancies are filled within reasonable timeframes and without delays that disrupt the Court's important work.

Essential for the operation and respect of the rule of law is the public's confidence in the judicial system. The infamous "Triple Play" was precisely the sort of political gamesmanship that undermines public confidence in the rule of law. Indeed, it was this level of underhanded manipulation of the system that led to the amendment of the Kansas Constitution to insulate the courts from political maneuvering. To be clear, there has been no watershed event demonstrating that the system is corrupt, has been misused, or that the constitutional boundaries of the merit selection process have been stretched to a breaking point. Fair and impartial courts are the foundation of our judiciary branch in our government and our justices are held accountable personally and professionally.

III. History has already addressed the complaints registered against non-partisan, merit selection.

The proponents for abandoning non-partisan, merit selection raise complaints that have been addressed many times during our history. Some complain about the Court's opinions that are critical of the Kansas Legislature's decisions. The tension between the legislature and the courts is intentional and is as old as the United States itself. In 1803, Chief Justice Marshall wrote the opinion

in *Marbury v. Madison*¹ that enshrined judicial review of legislative action in our civic canon.

So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.²

These words are the foundation of both federal and state constitutional jurisprudence – and the institutional resentment felt by American legislatures toward the judiciary. This tension existed when Kansans adopted merit selection. Our state’s citizens knew the Supreme Court would engage in review of legislation, and they chose a method of judicial selection that would insulate appellate judges from legislative and executive branches seeking to influence that review. Disputes between the branches of government do not constitute a reason to amend the Constitution. Those tensions exist by design.

Some complain that the Court’s decisions do not reflect current public feelings; yet resistance to the sometimes fickle winds of public opinion in service of the rule of law is the touchstone of American courts. The bedrock function of our courts is to apply the law without regard to public opinion. The people have their say about what the law should be through their representatives in the legislative branch; but when it comes to the application of those laws, the justice system is meant to speak without regard for whether a cause is popular or not. Each individual and his or her cause, regardless of public favor, stands equal before our courts. Making our judges more susceptible to public opinion would not serve this critical goal. “The truth is ... the danger is not, that the judges will be too firm in resisting public opinion, and in defense of private rights or public liberties; but that they will be too ready to yield themselves to the passions, and politics, and prejudices of the day.”³

In sum, on behalf of the Kansas Association of Defense Counsel and its attorneys who represent the interest of Kansas’ civil litigants in the courts every day, the merit system for selecting Kansas Supreme Court Justices is an efficient, effective, and fair system of ensuring that Kansans have impartial Justices to resolve their disputes. There will always be decisions rejected by politicians. That is the essence of the checks and balances between the governmental branches. The current system should be maintained, and we encourage the Committee to reject Senate Concurrent Resolution No. 1611.

¹ 1 Cranch 137 (1803).

² 1 Cranch at 178 (emphasis added).

³ Story, Joseph, Commentaries on the Constitution of the United States, vol. III, p. 476 (1833).