

Senate Federal and State Affairs Committee
SCR 1611 – Judicial Selection
Proponent, WRITTEN-ONLY Testimony
James Franko, President
25 February 2025



Chairman Thompson and Members of the Committee,

Thank you for the opportunity to submit written-only testimony on SCR 1611.

Adam Smith, the father of classical economics, once said, “People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.” In today’s America, we find it very easy to believe this is the case when it involves someone(s) from the other political tribe. Rarely, however, do we accept this maxim for what it really truly means. People, all people--you and me included—are self-interested and subject to the same incentives that drive Smith’s “people of the same trade” to focus on their own interests at the expense of others. We sometimes try to delude ourselves into believing this isn’t the case, but these rationalizations are called “blind spots” for a reason.

As another economist, Milton Friedman observed, “Of course none of us are greedy it’s only the other fella who’s greedy.” It doesn’t mean those in Smith’s example are twisting their proverbial mustache and plotting against the public good. It is simply an acknowledgment of an immutable law of human nature. Wishing it away, high-minded platitudes, or willfully burying our heads in the sand cannot make it less so.

The question before the committee today is whether, or not, Kansas will recognize this same idea in how we currently select Supreme Court justices. The current system has the legal community effectively in charge of who sits on the highest court in The Sunflower State. While speaking no ill of members of the Kansas Bar, do we assume that lawyers are immune from the incentives and self-interest identified by Adam Smith in same year our republic was founded? We’re naïve if we do. Today is but the latest step in correcting course.

During this hearing, this committee will hear from people across the political spectrum about why the current system is great and terrible. You’ll hear why the “federal model” is the way to go or why “direct election” should be the order of the day. Answers to those questions will, if this resolution advances, ultimately be determined by the people of Kansas.

Whether any change is necessary or the federal model—and how we select Kansas Court of Appeals justices—or direct election prevails the decision will be taken by Kansans. As H.L. Mencken observed, “Democracy is the theory that the common people know what they want, and deserve to get it good and hard.” They may be right, or they may be wrong. But, there should be democratic accountability in how those who determine the supreme law of the land are selected.

It is time for this body to put the question before the voters of Kansas to decide if the current system works or if it is time for a change.