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TO: Sen. Mike Thompson, Chairperson
Sen. Tory Marie Blew, Vice-Chairperson
Sen. Oletha Faust-Goudeau, Ranking Minority Member
Members of the Senate Committee on Federal and State Affairs

FROM: Blake Shuart
Individually and on behalf of Hutton & Hutton Law Firm, L.L.C., Wichita

DATE: February 25, 2025

RE: SCR 1611 (“Proposing a constitutional amendment to provide for direct election of supreme court justices and abolish the supreme court nominating commission”)
(**OPPOSE**)

Chairperson Thompson, Vice-Chair Blew, Ranking Minority Member Faust-Goudeau and Members of the Senate Committee on Federal and State Affairs,

Thank you for the opportunity to present my viewpoints on this extremely important and impactful Resolution, and for your earnest efforts to evaluate whether moving forward with partisan elections of Supreme Court justices is best for Kansans. I understand there are many strong and conflicting opinions on the matter.

Most importantly, I respectfully urge this Committee to evaluate whether there is sufficient data available to reasonably conclude that our Kansas Supreme Court justices being appointed under the current system of “merit selection” are anything less than the best, most qualified applicants for the job. Simply stating that “our courts are being overturned too often” or “justices are too liberal” or “lawyers as a whole are more liberal and should not be making these appointments” is woefully insufficient to support such a drastic measure. These statements are also untrue.

Our Kansas Supreme Court is not being overturned by the Supreme Court of the United States (SCOTUS) at a rate that should generate any legitimate concern. The overall number of appeals taken by SCOTUS from state courts in recent years has been declining. As of last October, of the total cases the Court had agreed to hear for the upcoming term, only two of 28 arose from state courts.¹ Of the few state court cases across the country SCOTUS has agreed to hear since

¹ <https://statecourtreport.org/our-work/analysis-opinion/us-supreme-courts-declining-state-case-docket> (accessed Feb. 19, 2025).

2007, 126 out of 164 (76.8%) were overturned². This data point reflects a clear reality: SCOTUS overturns most of the state court cases they accept across all 50 states. If the Kansas Supreme Court is occasionally overturned by the U.S. Supreme Court, that is no anomaly. It hardly impeaches the quality of our judges or calls for a massive overhaul of our entire system.

Any concern for the political leanings of our justices or the bleeding of those views into their evenhanded application of the law is without factual support. Rather than try to argue against a negative, I would urge the Committee to request from proponents of this Resolution a list of cases in which our Supreme Court can be objectively determined to have departed from evenhanded application of the law in favor of a justice's individual beliefs and allegiances. Even suggesting this has occurred would require an objective review of the cases and the written opinions provided by the Court, which must be undertaken by experts in the field (and likely has not been). Attorneys are the experts, which turns to my third point.

The Supreme Court Nominating Commission is a nine-member citizen body. Five members are Kansas-licensed attorneys elected by their peers. Four members are non-attorneys appointed by the Governor. The Nominating Commission recommends three candidates to fill a vacancy on the Court and the Governor selects one of the nominees to serve. The justices must stand for retention elections at the first general election following their appointment to the Court and at the conclusion of each six-year term. The retention elections already in place require the justices to stand accountable to the public for their work on a regular basis, and if their performance is deficient or their opinions are based on politics and not evenhanded application of the law, the public can vote them out. The nine members of the Nominating Commission are geographically diverse and professionally diverse, are volunteers, and are subject to the highest possible standard of transparency in their interviews and deliberations. If the selection process was infused with liberal politics (or any politics at all), there would surely be plenty of data available to prove it. Again, there is not.

There is no evidence to support any claim that our Nominating Commission or the justices they help appoint are anything other than skilled professionals taking a nonpartisan approach to the crucial work they perform.

Without evidence to support the need for a change, radical reforms to our system—or any reforms at all—would be “all risk, no reward.” And elections certainly come with risks. Any past candidate for any political office can speak to the financial pressures. There is plenty of data available to track the infusion of money—“dark money” or otherwise—into modern campaigns.

Qualified Kansas electors deserve evidence of the need for sweeping change if they are asked to vote to amend our state constitution in three areas (Sections 5, 8 and Article 3). The question of the moment—what could be a pivotal moment in our state's history—is a simple one: *Where's the evidence?*

/s/ Blake A. Shuart, #24463

² [https://ballotpedia.org/SCOTUS_case_reversal_rates_\(2007_-_Present\)](https://ballotpedia.org/SCOTUS_case_reversal_rates_(2007_-_Present)) (accessed Feb. 19, 2025).