



**KANSAS TRIAL LAWYERS
ASSOCIATION**

To: Senator Mike Thompson, Chair
Members of the Senate Federal & State Affairs Committee

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

Date: February 25, 2025

Re: Election of Supreme Court Justices, SCR 1611 (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 election 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.¹ 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.² Kansans were outraged at the politically motivated maneuvering to replace

¹ “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.

² 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 an appointment. So Chief Justice Smith, Governor Hall, and Lt. Gov. McCuish devised a plan. Chief Justice Smith resigned on

an open seat on the Supreme Court. They acted quickly to end elections of Kansas' highest court and enacted a non-partisan selection process, which was approved by more than 70% of voters. It is still the same process found in the Kansas Constitution.³

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.

Kansas merit selection focuses on identifying the best qualified, most experienced applicants for openings on the Supreme Court. The non-partisan Nominating Commission, composed of Kansas attorneys and Kansas citizens, has one purpose: to interview applicants, consider their abilities to do the job, and recommend the top three to the governor. It is a transparent process, giving Kansans access to information about the candidates and the ability to monitor the work of the Nominating Commission⁴.

Kansas merit selection and Supreme Court Nominating Commission is the best process for shielding 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. 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.

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.

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>.

³ 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-attorneys 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. Justices must retire at age 75 upon completion of their term.

⁴ 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.

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.⁵ Inviting such antics into the selection process for our highest court is a step backward for the state.

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 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 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.

⁵ 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.