

Date – February 14, 2025

Bill number – SCR 1611

Opponent

Rand Simmons, private citizen and attorney

Chairman Thompson and Members of the Committee:

I oppose SCR 1611 because this is a bad idea.

1. How are Justices chosen now?

All judges currently go through an application, interview, questioning and selection process. Application is made to the nominating commission at each level and after consideration, the commission chooses three options for the governor to choose from.

2. Does this process work?

As an attorney practicing for 19 years, I can say without reservation that the vast majority of the judges with whom I interact are people of exceptional character and competence, with first class legal minds. I have had less direct, personal contact with the Supreme Court Justices, but in reviewing their written opinions weekly for the past 19 years, I am confident that we are getting high quality people in those positions.

3. Who should choose Supreme Court Justices?

Currently, a nominating committee made up of five lawyers and four nonlawyers chooses Supreme Court Justices. Why so many lawyers? It takes years of being in a court room to know to what to look for in a judge and years of being a judge to show that you have what it takes.

4. Why shouldn't citizens directly elect Supreme Court Justices?

For many reasons:

A surprising number of smart people do not understand how the legal system works. This should not be surprising. No one has the time and energy to know everything. The legal system is complex and there is no real reason for a nonlawyer to spend the effort becoming truly acquainted with it. This is the same for other fields, I certainly don't know enough about accounting or medical practice to have intelligent opinions about how those professions should be governed.

How informed could voters be on the various cases and statutes? It is not easy for trained lawyers to follow the decisions of the Supreme Court. It would be nearly impossible for a lay person. If we were to change the system for selecting Supreme Court Justices, we would merely change from a situation in which a relatively small number of people with a lot of information is making the choice to a possibly somewhat larger number of people who have little to no information. It is unlikely that this would be an improvement. And it is very likely that it would decrease the quality of the Supreme Court Justices.

Legal issues are not political positions. Each case is decided on the statutes and the facts of the case. Decisions are based on the case in front of them, not how they might like the facts of the case to be.

Justices are NOT politicians. I cannot imagine how injecting partisan politics into the selection of Supreme Court Justices would make that a better process. Partisan politics in this era of polarization and demonization of the other side is caustic and divisive and does not appear to improve anything.

Finally, this proposal is unnecessary. Historically, the courts make various rulings on statutes through case decisions. Then, the next year, the Legislature changes the laws or creates new laws, and the courts follow those new statutes as they are required to do.

If this is about changing the Kansas Constitution on a substantive matter, like abortion. Then we should address that directly. We should not hollow out the legal system by injecting politics into it.