

**SCR 1611 Testimony**  
**Steve Brunk, City Elders of Kansas**  
**Proponent**

To: Chairman Mike Thompson  
Committee Members

The Kansas Bar Controls the Supreme Court of Kansas  
And We The People Are Eliminated From The Selection Process

**It's true.**

In our Constitution The Kansas Bill of Rights clearly states, "All political power is inherent in the people, and all free governments are founded on their authority".

But the Supreme Court selection process is controlled by a "nominating commission", controlled by the Kansas Bar, with no connection to *We the People*.

**How exactly did we get to this place?**

It's a long and relatively unknown story. At one time, Kansans enjoyed direct elections of our Supreme Court Justices, just like all other branches of our government. They, like other elected officials, were accountable to *We The People*. But in 1957 that all changed with the infamous political Triple Play.

**The Triple Play**

Governor Fred Hall, a young "firebrand politician", had just lost his re-election bid. His political allies of those days wanted to keep their influence alive in the state, so they concocted a lame duck scheme to keep Hall politically viable.

Here's how the scheme unfolded:

- Supreme Court Justice William Smith, 69, retired from the Court for "health" reasons.
- Outgoing Governor Hall retired from his position as Governor, temporarily elevating Lt. Governor John McCuish to the Governorship.
- New Governor McCuish then appointed previous Governor Hall to the Supreme Court, filling the vacancy left by the now retired William Smith.
- This "Triple Play" took approximately 15 minutes to accomplish on January 3, 1957, just prior to the new administration being sworn in.

**Public Reaction**

It was their hope that these job switches would mostly go unnoticed during the holidays. They couldn't have been more wrong. The public rightly reacted with outrage, demanding a change to prevent this kind of political trickery from ever happening again.

Again, the Supreme Court Justices were elected directly by the public at that time. The only necessary change would have been to modify the mechanism for filling a vacancy.

But in the heat of the moment the legislature and the public overreacted – instead opting to change the entire nature of the Kansas Supreme Court.

### **The Nominating Commission**

They changed the Kansas Constitution to eliminate Supreme Court direct elections and instead established a nominating commission comprised of nine individuals. Those nine individuals have the authority to select three names and provide those names to the current Governor any time a Supreme Court vacancy occurs. The Governor must then select one of those names to be on the Supreme Court. If the Governor fails to select one of the three names, the Chief Justice of The Court makes the selection. The appointments to the highest Court in Kansas would now be made by the nominating commission, not the Kansas citizens.

### **So, who gets to be on this powerful, unaccountable nominating commission?**

As if it isn't grievous enough to take the power of selecting the Court away from the citizens, this nine-member commission is made up by the Governor appointing four members with the remaining five members (a majority) all appointed by the Kansas Bar. Let that soak in – instead of citizens, now only lawyers get to choose who picks the Justices for Kansas' highest court.

### **The Kansas Reality**

Kansas became the only State which has a Supreme Court Nominating Commission with a majority of its' members who are lawyers, elected by the rest of the Bar. In other words, we are the only State in which one profession, lawyers, has absolute control over the membership of the highest court in state government. With the Commission appointments being primarily dominated by large trial attorney corporations, it is no wonder that a liberal bias has pervaded our Supreme Court for decades.

### **The Need to Change**

Whether you are for or against any rulings made by this Supreme Court, we must agree that the current selection process controlled by the Kansas Bar has to be changed. Otherwise, there is no connection to *We The People*...no accountability.

Stephen Ware, a professor of law at the University of Kansas, submitted testimony to the Kansas Legislature on this topic. He published articles that researched how all 50 states select their supreme court justices. His research shows that the Kansas Supreme Court selection process is undemocratic, extreme, and secretive. His testimony then elaborated on those three areas.

**The Kansas Supreme Court will never be accountable for their decisions, and most importantly it will never represent Kansans or their values under the current selection scheme.**

### **What will it take to change?**

The only mechanism available is for *We The People* to amend the Constitution of the State of Kansas. This must be done to restore political power and authority to the people as intended.

## SCR 1611

The Constitution provides a framework for all of our laws to follow. In the case of SCR1611 the framework doesn't have enough structure. The lack of some specificity leaves it open to attack and open to speculation about the consequences of passing this resolution.

Page 1 beginning on line 18 says "The rules applicable for such elections and the designation of position numbers shall be provided by law". The only details given are the justices will be elected by the citizens, the nominating commission will be abolished, and terms will be for six years.

It leaves too many questions; Can justices run for additional six year terms or will the legislature limit them to only one term? And can a future legislature change that?

Will positions 1-6 be from anywhere in the state, or will positions 1-4 coincide with our congressional district boundaries giving better representation on the court from rural areas?

The explanatory statement on page 3 beginning on line 39 states, "Any vacancy on the court for an unexpired term shall be filled at the next even-year election for the remainder of that term. What happens if a vacancy occurs by resignation or death the day before the next even year election? Or a week or a month before? Does that give enough time for ballots to be printed, and for anyone to establish a campaign?"

I would strongly encourage this body to amend this and provide some specifics to the resolution. Make positions 1-4 to coincide with our four congressional districts, and make positions 5-7 be from anywhere in the state. That will give some representation on the Court from each congressional district. Otherwise the more populous areas of our state will have a natural advantage

Please make this a non-partisan election. It opens up criticism that is unnecessary and can derail the effort to correct our current undemocratic system.

And finally, I would encourage you to look at the mechanism for filling a vacancy. It was the provision for filling a vacancy that initiated the infamous Triple Play in 1957 that changed our open, democratic system of elections to our current undemocratic, extreme, and secretive appointment process.

I am asking you to be politically agnostic in putting this resolution together.

In short, we are strong proponents of citizen elections but believe the current resolution is inadequate and needs further discussion.

Thank you,

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