

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on February 8, 2006 in Room 313-S of the Capitol.

All members were present except:  
Michael Peterson- excused

Committee staff present:  
Jerry Ann Donaldson, Kansas Legislative Research  
Jill Wolters, Office of Revisor of Statutes  
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:  
Representative Lance Kinzer  
Kris Kobach, Professor of Constitutional Law, University of Missouri  
Karl Peterjohn, Kansas Taxpayer Network  
David Hanna, American for Prosperity  
Patricia Riley, Kansas Supreme Court Nominating Commission  
Retired Supreme Court Justice Fred Six  
Rich Hayse, Kansas Bar Association  
Jerry Palmer, Kansas Trial Lawyers Association  
Gene Balloun, Attorney  
Jim Robinson, Kansas Association of Defense Counsel  
Fred Logan, Attorney  
Janis McMillen, Kansas League of Women Voters

Chairman O'Neal opened the hearings on **HCR 5033 - governor would appoint supreme court judges, consented to by the senate; abolishing the supreme court nominating commission & HB 2770 - governor would appoint the court of appeals, consented to by the senate; abolishing the supreme court nominating commission.**

Representative Kinzer heard from constituents that they were feeling isolated when it came to the selection of justices and judges. The current system is intended to heighten confidence in the judiciary by isolating it from political influence. However, the reality is that this isolation serves to exacerbate public frustration and alienation from a process they see as elitist. The proposed bill would follow the appointment process of the federal judiciary.

The proposals would allow the Governor to nominate any attorney over the age of 30 to serve on the Kansas Court of Appeals or the Supreme Court. The Governor's nomination would then be subject to Senate Confirmation. (Attachment 1)

Kris Kobach, Professor of Constitutional Law, University of Missouri, informed the committee that six states use some variation of the federal model of appointment and confirmation when selecting judges & justices. He suggested that the current system being used in Kansas is a recipe for mediocrity. The nominating commission operates behind closed doors and the members are not known to the majority of the public. The Governor escapes responsibility because he only has to select a person from a list of three names that the commission has forwarded to him. There is the feeling that the nominee's of the commission have political connections instead of great credentials. (Attachment 2)

Karl Peterjohn, Kansas Taxpayers Network, agreed that the current process of selecting judges and justices is flawed and puts the average Kansan in a limited role of choosing the judiciary. The proposed bill would provide more public visibility. He suggested that the committee place a term limit on how long a person can be appointed to the courts. (Attachment 3)

David Hanna, Americans for Prosperity, commented that Kansas is currently experiencing a crisis of confidence among the people and their governments's ability to provide equal and fair justice. The judiciary must remain independent of politics so they can rule fairly under the law without fear of reprisal. A system of gubernatorial appointment and senate confirmation does not threaten the judicial

## CONTINUATION SHEET

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independence, but does level the political playing field by making those responsible for selecting our judges accountable to the people of Kansas. (Attachment 4)

Patricia Riley, Supreme Court Nominating Commission, explained how the commission is appointed and the process they go through to select three individuals to be nominated to the Governor for appointment. (Attachment 5)

Retired Justice Fred Six stated that if the state went to a senate confirmation of judges & justices, lawyers would be discouraged from running due to the contentious atmosphere of the confirmation process. (Attachment 6)

Rich Hayse, Kansas Bar Association, opposed any change in the current appointment system of judges. He believes that the structure of the Kansas Supreme Court Nominating Commission was designed to separate the nominators from partisan political influence. This way they can nominate the best and brightest from the applications they receive. (Attachment 7)

Jerry Palmer, Kansas Trial Lawyers Association, commented that he hadn't heard any proof that the federal system would be better than the current merit selection of judges. He suggested that the issues being heard today stemmed out of the Supreme Court decisions on school finance and the death penalty. The current system has continued to provide good judges and justices and does not need to be reformed. (Attachment 8)

Eugene Balluon, Attorney, Shook, Hardy & Bacon, opposed the proposals because he believes that the current system has been working for the last 50 years with the quality of the court increasing since merit selection was enacted. (Attachment 9)

Jim Robinson, Kansas Association of Defense Counsel, suggested that the proposals are the legislatures response of the court's decisions in the school finance and death penalty cases. Changing the constitution is not the answer, if citizens of Kansas have problems with the way the courts rule, then they can vote non-retention. (Attachment 10)

Fred Logan, Attorney, Logan & Logan, wondered why any attorney would want to put themselves and their family through a senate confirmation process. He believed that it would actually dissuade individuals to place their name in the hat for a judiciary appointment. (Attachment 11)

Janis McMillen, League of Women Voters of Kansas, saw the proposals as the first step towards election of all judges & justices and opposed the measures. (Attachment 12)

Committee minutes from January 23, 24 & 25 were distributed by e-mail. Because no changes were requested by February 8<sup>th</sup> the minutes stood approved.

The committee meeting adjourned at 5:45 p.m. The next committee meeting is scheduled for 3:30 p.m. on Thursday, February 9, 2006 in room 313-S.