



KANSAS BAR
ASSOCIATION

TO: The Honorable Marc Rhoades, Chair
And Members of the House Appropriations Committee

FROM: Whitney Damron
On behalf of the Kansas Bar Association

RE: HB 2396 – An Act concerning appropriations, Commission on Judicial
Performance

DATE: March 29, 2011

Good afternoon Chairman Rhoades and Members of the House Appropriations Committee. I am Whitney Damron and I appear before you today on behalf of the Kansas Bar Association in opposition to HB 2396. This legislation would eliminate the current funding stream necessary for the Commission on Judicial Performance to operate.

The KBA supported the creation of the Kansas Commission on Judicial Performance as well as legislation extending its sunset date that was adopted by the Legislature in 2009. The KBA also opposed efforts to redirect the Commission's funding in 2010.

Since its creation in 2006, the Commission has developed and implemented a comprehensive evaluation process that has been well-received by the public as evidenced by the news articles attached to my remarks.

Legislators may recall the impetus for the creation of the Commission is to provide meaningful, nonpartisan information to the public on the performance of incumbent district judges, district magistrate judges, Court of Appeals judges and Justices of the Kansas Supreme Court. Prior to the creation of the Commission, there simply was no substantive way for citizens to obtain information on judges and justices prior to casting their votes at retention elections. The Commission publishes this information on its website and publicizes its available in advance of elections. The general public is privy to this information and the evidence indicates that Kansas citizens have availed themselves of these statistics. For example, in the months preceding the 2010 elections the Commission's website was visited over 40,000 times, receiving nearly 955,000 hits.

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Besides providing the public with information on judges up for retention the Commission also provides valuable information to judges themselves. A goal of the Commission is to improve the judiciary by improving the performance of individual judges and justices. Judicial performance evaluations allow judges to see how they measure up against preset standards and how they perform against other judges. The evaluations also identify strength and weakness of judges thru constructive criticism.

The Kansas Bar Association is concerned that any withdrawal of funding for the Commission could jeopardize the entire program, as the evaluation process is an ongoing process that simply cannot be started and stopped between elections. The Commission issues evaluations to judges every two years, the next evaluations are scheduled to be issued, this fall. To defund the program now would force the Commission to abandon these reports.

The State of Kansas is facing a significant budget shortfall and we recognize the intent of the bill is to reduce cost during these challenging times. However we believe other funding options should be considered before diverting funding from a program designed to provide information for a co-equal branch of government.

On behalf of the Kansas Bar Association, I thank you for your consideration of our comments today.

WBD

Attachments

About the Kansas Bar Association

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 6,900 members, including lawyers, judges, law students and paralegals.

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By The Associated Press

SALINA — When faced with the list of judges up for retention on past election ballots, voters who hadn't studied their decisions or had a brush with the judicial system employed various strategies to mark their ballots.

"There have been studies done on that," said Randy Hearrell, executive director of the Kansas Commission on Judicial Performance. "Some marked all 'yes,' some all 'no.' Some said they did every other one. Some started and didn't finish."

Whatever method was used, the result was predictable: Judge retained.

For the first time in 2008 and again this election, voters have available a new source of information about judicial performance so they can take a more educated approach to retention votes, Hearrell said.

With a visit on the Internet to kansasjudicialperformance.org, voters can see which judges will appear on the Nov. 2 ballot in their judicial district and how those judges are rated by attorneys, jurors, court employees, peers and other people involved in court cases.

Voters can access specific survey results on the website for district judges, seven Court of Appeals judges and four Kansas Supreme Court justices whose names will appear on ballots.

The performance review process, which was created by legislation passed in 2006, is funded through court docket fees. A Colorado firm, Talmey-Drake Research and Strategy, is contracted to conduct the survey and compile results.

After the 2008 election, Hearrell said the number of voters who didn't mark the section of the ballot containing the list of judges decreased by about 5 percent. "We'd like to attribute that to this being out there and people having more information about the judges," he said.

He said since the first year the survey has been streamlined in an effort to improve participation. Questions seen as unnecessary or duplicative were removed, he said.

The site does not rank judges based on particular decisions in specific areas of political interest, and because of that, it has received some criticism from the anti-abortion organization Kansans For Life.

The statute that established the evaluation system set out certain criteria upon which judges must be evaluated, including legal ability, integrity, impartiality and temperament, Hearrell said.

Survey questions are along the lines of: "Does court start on time?"; "Is judicial discretion used to reach a fair decision?"; and "Are all parties treated with respect?"

"While it may not be perfect, at least now there's some information out there about the judges that never was available until this started," Hearrell said.

The site uses a grading system similar to the 4.0 grading scale used by schools and universities. Judges are required to have at least a 2.0 or C grade average for the site to recommend they be retained, and so far all judges have met that criteria, Hearrell said.

That criteria may become more stringent for future elections, he said. The agenda for the commission's November meeting includes consideration of raising the required minimum grade.

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However, he said high marks should come as no surprise with most judges.

"Generally the ones who get appointed aren't just average," he said. "Hopefully, they're the best of the pile."

Hearrell said computer software is used to extract the names and addresses of defendants and witnesses from court records so that they can be sent questionnaires. So far, he said, 4 to 6 percent of defendants have responded to the survey, and on average they give judges the lowest grades — an overall score of 3.08.

"You'd be surprised," he said. "Some will say things like, 'The judge saved my life,' Of course, there are those that say, 'The judge ruined my life,' too."

Typically, respondents who served as jurors give judges the highest marks, he said. Ratings from attorneys, other court employees and others involved in court proceedings usually fall somewhere in between, he said.

He said in other states where judicial performance evaluations have been used longer, judges who receive low grades have often chosen not to seek re-election so the results are never made public.

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Comments (3)



Judicial Un-Selection

By parkay | 10/22/10 - 02:09 pm

Kansas voters are not stupid enough, mostly, to fall for the sham Commission on Judicial Performance that rubber-stamps approval on every judge, including the bad ones, the soft-on-predator judges that hand down probation or 60 days for raping our children, the leftists who repeatedly put us at unnecessary risk by violating sentencing guidelines. Vote NO on retention of Kansas Supreme Court "judges" for stalling the prosecution of Overland Park Planned Parenthood abortion mill crimes for so long, and for gagging a judge who is a witness. We've seen some of the criminal evidence published already, showing how Planned Parenthood abortionist quacks criminally exploited and abused mothers by falsifying state documents to cover up illegal abortions. Now, if Johnson County DA Howe fails to get convictions on the numerous felony charges, he will be seen by voters as deliberately slacking the prosecution, and voted out. On the other hand, if DA Howe successfully attains convictions on the criminal, racist abortionist quacks, the abortion lobby will surely make a huge effort to destroy his career permanently. Also, if DA Howe is too vigorous in presenting evidence on the falsified documents that the second-trimester abortion mill submitted to the state of Kansas, the leftist baby-hating Kansas Supreme "court" will come down hard on him.

Do the right thing, Mr. Howe, if you have the guts for it.

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Oh My

By trojan84 | 10/22/10 - 03:32 pm

That was funny.

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What a *****.

By olddem | 10/22/10 - 05:46 pm

What a [filtered word].

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Posted on Thu, Oct. 28, 2010

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Look at whole record when voting on judges, not just one ruling

2 Comments

By Bert Brandenburg

When should a judge be thrown out of office?

This year, Kansans will join voters in 15 states when they engage in a special type of ballot known as a retention election. Voters must choose "yes" or "no" on whether to grant another term to Kansas Supreme Court justices, Court of Appeals judges and, in some counties, local trial judges.

Citizens can, of course, vote however they choose, for any reason, in an election. But courts play a special role in our democracy. For this reason, it's important to consider the potential consequences of voting out judges based on a single ruling or issue.

We depend on courts that are impartial, even when they handle controversial cases or face political attacks. We don't want courts consulting with pollsters before issuing rulings. We want them to rule based on the Constitution and the rule of law.

Courts protect everyone's rights under the Constitution, even when at a moment in history, the rights belong to a minority with little power elsewhere.

Some Americans will point to *Brown v. the Topeka Board of Education* — a significant step in ending racial segregation in our schools — as one historic victory of law over injustice. The U.S. Supreme Court also has protected the rights of gun owners (in *District of Columbia v. Heller* and later, *McDonald v. Chicago*), the rights of property owners (in *Lucas v. South Carolina Coastal Council*) and the rights of parents to choose which school to send their children to (in *Zelman v. Simmons-Harris*).

The greatest danger of ousting justices over a single issue is that it could force courts to ignore important constitutional rights in the face of fluctuating political pressures.

Retention elections are intended to be an option for voters to remove a jurist in the rare instance in which one is unfit for office. For instance, removal may be warranted if a justice has defied the rule of law by taking bribes or committing other serious crimes. If a justice exhibits general incompetence or lacks the temperament or character to hear and decide cases fairly and impartially, removal may be reasonable. Finally, if a judge fails to reach timely decisions, or displays an unusually high reversal rate, removal may be appropriate.

Voters should have confidence that judges are fair and impartial, that they have appropriate character, capabilities and credentials, and that they will uphold the law. We expect judges to be smart, hardworking and invested in their communities.

To make sure your judges and justices have these qualities, you should consult multiple sources. In Kansas, you might start with biographical information distributed by the Kansas courts to learn about your judge's training and experience, as well as editorials in your local newspaper. You might also look at judicial performance evaluations, which allow attorneys, court staff and parties in lawsuits to rate judges based on criteria such as legal knowledge, integrity, judicial temperament, communication skills, administrative performance and service to the public. You can find judicial performance evaluations on the Kansas Commission on Judicial Performance's website. Finally, talk to your neighbors — they may have met the judges or appeared before them in court.

Considering a judge's entire record, using multiple sources of information, is the best long-term insurance to protect any state's system of justice. Beliefs and attitudes change with the decades, but the need for an impartial court system does not. If we undermine our courts through one-issue, litmus-test voting, the rights that get disregarded may someday turn out to be our own.

Bert Brandenburg is executive director of the Justice at Stake Campaign, a group based in Washington, D.C., that works to keep courts fair, impartial and free from special-interest agendas.

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