



September 3, 2013

Kansas Court of Appeals: Appointment Testimony

Chairman King and members of the committee:

Thank you for allowing Kansans for Fair Courts to submit testimony for the vacant 14th Judicial Position on the Kansas Court of Appeals. I represent a coalition of organizations and thousands of individuals who have come together over the issue of ensuring free and fair courts for all Kansans.

I am not here to speak in favor or in opposition to Governor Brownback's nominee, Mr. Caleb Stegall, to the Kansas Court of Appeals. While Mr. Stegall may, in fact, be the most qualified applicant for the court, the secrecy surrounding his nomination and the desire by Governor Brownback to not release the names of other applicants for the vacancy makes comparison of Mr. Stegall's qualifications to those of the other applicants, impossible.

My concern is with the process and the lack of transparency and accountability within the new system for selecting judges to the court. Since 1981, under the Supreme Court Nominating Commission process, applicants for the Kansas Court of Appeals and the Kansas Supreme Court were made public. The system ensured that the qualifications of each applicant could be weighed and considered both on their own merits and as compared to their peers within the applicant pool. Under the new system, the governor makes selections and the Kansas Senate is asked to confirm them. However, without knowing if an individual applicant was the most qualified to begin with, the Senate is essentially being asked to vet the nominee without the benefit of having all of the facts.

When the Kansas Legislature passed the changes to the nomination process for the Court of Appeals, it claimed that it wanted an "open and transparent" process that would instill public confidence. However, the opposite has occurred and the precedent that is being set now will create a black mark on the judiciary.

What do we know? We know that about a year ago, Mr. Stegall applied for two separate openings on the Kansas Court of Appeals, but was not deemed to be the most "qualified" candidate for the openings. In fact, the second vacancy was filled by an applicant who had over a decade of experience as a District Court Judge in Sedgwick County. We also know that after being passed over for the position a second time, Mr. Stegall helped advocate for changing the system and closing it off from public scrutiny. Now, he finds himself the beneficiary of the new, closed process. In addition, as Chief Legal Counsel for Governor Brownback, Mr. Stegall was afforded a unique vantage point on this process as it was carried out.

We also know that this opening only received about half the number of applicants that the previous vacancies received. Is it any wonder that attorneys and judges didn't want to subject themselves to a process that fails to pass the very basic smell test?

Again, this is not about Mr. Stegall. It is about the fact that our legislative leaders and current administration took a public process and made it secret. At the end of the day, the new system has produced more questions than answers. Who else applied for the vacancy? What were the criteria that Governor Brownback used to make his selection? Who was in the room for the interviews and played a part in the decision making? Was Mr. Stegall involved in any of these meetings or privy to any information that was not available to the other applicants? In other words, was the system fair for all who applied? Unfortunately, we will never know, and no amount of questioning by your committee will get to those very key questions.

The Kansas Legislature, at the behest of Governor Brownback and Mr. Stegall, changed the selection process for filling Court of Appeals vacancies. Kansans must be reassured that this nominee is the most qualified for office—especially for the first vacancy filled under the new system. Unfortunately, we will never truly know if Mr. Stegall is the most qualified applicant for the position.

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