

TESTIMONY OF CURTIS ROGGOW TO STATE HOUSE JUDICIARY COMMITTEE
RE: SCR 1601

January 16, 2013

Good afternoon, Chairman Lance Kinzer, and other members of the House Judiciary Committee. Thank you for inviting me to offer my testimony before you today. I appreciate the fact that you all have made your services available to serve our citizens and to do what you can to make the State of Kansas a better place to live and to raise our families.

My name is Curtis Roggow, and I am a partner with the law firm of Sanders Warren & Russell LLP in Overland Park, Kansas. My wife and I, along with our three children, have lived in Kansas since 1991, and my wife and I live in Shawnee. I have been practicing law in Kansas and have been a member of the Kansas bar since 1991. I am licensed in both Kansas and Missouri and have appeared before trial and appellate courts in both states. I am a litigator, and my primary concentration is on insurance coverage, insurance defense and commercial litigation.

I am here to testify regarding SCR 1601, which is under consideration before your committee. This proposed amendment to the Kansas Constitution would modify the current system of selecting judges to incorporate confirmation by the Kansas Senate into the process of selecting judges for the Supreme Court and Court of Appeals. While I am a lawyer and am proud to be a member of the legal profession in this state, I believe the current system gives undue weight to the bar in selecting judges to the Kansas courts and does not provide sufficient opportunity for the checks and balances of our state government to work in the process. Therefore, I support passage of SCR 1601.

We should consider the significance of the roles played by those who make up the judicial branch. Our judges on the appellate courts interpret our laws and regularly make rulings on legal issues that directly affect not only the lives of the parties to proceedings brought before them, but also the lives of others who live and work in this state. The citizens of our state should have assurance that the judges in our court system not only have the qualifications to sit on the bench but also share the values of those who live in our great state.

I would like to address the argument that the present system is non-political, as though to suggest that the current process for selecting members of our judiciary is free of any influence from politics. In my opinion, to describe the current system as non-political is disingenuous. Any system that is utilized to select judges will inevitably involve political influence in some form. While those who are involved in screening and interviewing candidates for a judicial position presumably seek to be fair and to weigh a person's credentials in an unbiased manner, personal philosophy and political views will inevitably influence how one views a candidate. None of us is totally objective; how we perceive the world and others around us is filtered through our experiences, philosophies and world views. This applies regardless of party affiliation. It applies regardless of whether one is a Republican, Democrat, Libertarian or Independent; or whether a person considers himself or herself to be a conservative, liberal or moderate.

Therefore, the current system of selecting our judges is not free from the influence of the political process. The attitudes and views of those who interview and screen judicial candidates will affect how the members of a nominating commission will view those candidates and which ones they will want to recommend to the governor. Members of a nominating commission will naturally be inclined to submit candidates who tend to reflect their views and philosophies. Likewise, the governor's own philosophies and political views inevitably will influence the appointment process. Changing the system for selecting judges will not necessarily make the process more political than it already is.

The proper way to evaluate a proposal to change the means by which we select our appellate judges in Kansas should not be to argue that one process will involve politics while the other does not. Rather, the proper approach will be to weigh whether the system used to select our judges provides a means to evaluate not only a candidate's legal credentials and demeanor but also to afford a fair opportunity for the public to bring their values to bear on the process. The goal will be so that those who sit on the bench fairly reflect the common values and philosophies of the citizens of this state, the people who will be affected by the rulings handed down by the courts in this state.

That is why I endorse SCR 1601. This amendment to our state's constitution will allow for the checks and balances that are established in our form of government to come to bear on the process of determining who will sit on the Kansas Supreme Court and Court of Appeals. There is a genius in our form of government -- where the executive, legislative and judicial branches are separated, and where both the governor and the members of the legislature are elected by popular vote. Allowing the state Senate a voice in the process will provide an opportunity for our republican form of government, where the Senators who are selected through the democratic process, who represent the perspectives of the general public, and who are accountable to their constituents, may provide a check and balance in the selection of those who will interpret our laws and decide legal issues that arise in our state. This will provide a greater opportunity for the selection process to pass before the eyes of members of the legislative branch who have their own accountability to the public, independent of the governor's. The process will a greater opportunity to allow our citizens to have a greater voice in deciding who will sit on the state appellate courts, which interpret our laws and hand down decisions that affect the lives of those who live and work in Kansas.

In practical application, I expect that if this proposed amendment to the constitution is ultimately enacted, the vast majority of the candidates submitted by the governor will be confirmed by the Senate. I seriously doubt that many of the choices for judicial candidates will result in a political free for all. That scenario will be very much the exception, not the rule. By the same token, if a judge selects a candidate who does not reflect the values of our citizens, or who will seek to legislate from the bench, there should be an opportunity through the checks and balances system for the senators who are directly accountable to their constituents to have a voice in the process. Let's allow a broader part of our governmental system, which reflects the division of powers and checks and balances system developed by our forefathers, to play an active role in determining those who will sit on the bench.

I am proud of my profession as a lawyer and have been privileged to practice in Kansas for nearly 20 years. If the Kansas Constitution is amended in this manner, I expect that members of the bar still will be able to provide useful input in evaluating the credentials and demeanor of judicial candidates. By the same token, lawyers constitute only a very small segment of the citizens of this state. The present system is heavily weighted in favor of permitting a very small portion of the citizens of Kansas to determine who will sit on the bench.

Thank you for inviting me to testify before you today. I appreciate your time and attention on this.

Curtis O. Roggow
7309 Hilltop Drive
Shawnee, Kansas 66227-2156
Home Phone: 913-441-3496
Work Phone: 913-234-6108
E-mail: c.roggow@swrlp.com