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Written Testimony Regarding Judicial Selection in Kansas
Kansas House of Representatives Judiciary Committee
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The Kansas Family Policy Council supports efforts to change the way in which Kansas Appeals Court Judges and Supreme Court Justices are selected. Not only does the current system provide inadequate accountability or transparency; the current system appears to be outdated when compared to the selection process in all other states in the nation.

Kansans want to perceive their government as accountable and responsive; however the closed nature of the current judicial selection process provides very little accountability in the sense that the selection process is controlled by a very small group of individuals. The fact that the majority of those included in the selection panel are attorneys creates an atmosphere where those selected to the bench appear to meet only those standards established by the legal profession. Those in the legal profession in many cases could espouse standards and opinions of potential judicial candidates which are not necessarily shared by a majority of Kansans; all of whom are affected in one way or another by rulings and decisions handed down from the courts. Any proposal for future judicial selection must include components that allow for a less restrictive process for considering judicial appointments.

A system providing more transparency is also needed in the selection process. At this time Kansans are not privy to any of the discussions or deliberations of the nomination commission. The details about how judicial selections are made are important because reasons as to why one

nominee is selected over another should provide an indication as to how judges might interpret the laws of our state. When one considers that most every aspect of the legislative and administrative process in Kansas is subject to open disclosure, the veiled system of selecting judges runs counter to the spirit and candor of the other two branches of our state government. Details about decisions made by the selection panel are not publicly disclosed and those voting for or against judicial nominees are unaccountable for their decisions.

Lastly, Kansas is the only state in the nation that utilizes such a closed and impenetrable system to select its judges. By far, a preponderance of other states (37) have adopted systems that involve either direct election of judges or a system that allows for accountable elected officials to appoint and confirm judges. Whether the selections process involves direct election by voters or appointment/confirmation by elected officials, both models provide varying degrees of accountability to voters in those states. That sort of accountability is completely absent in the current judicial selection process in Kansas.

Any changes to the Kansas judicial selection process must include elements granting both accountability and transparency to the decisions that are made in placing judges on the bench. While many would perceive this as injecting partisanship into the process, it should be noted that the nominating commission is composed of what can only be considered partisan members. History indicates that all gubernatorial appointments to the nominating commission have been made in a partisan manner. Similarly, the bar chooses the majority of the commission from among its members in each congressional district – any partisanship or prevailing ideology present in the bar is likely reflected on the nominating commission. None of the commission appointees are vetted or confirmed by any publicly accountable body.

A limited number of states (12) utilize nominating commissions which to varying degrees limit the influence of the bar in their decisions. Kansas stands out nationally as utilizing the only system in the nation according a majority of control of the commission to members of the bar, granting what many consider a narrow interest group complete control over the process of selecting judges.

Kansas desperately needs to update its judicial selection process and in so doing inject visibility, transparency and accountability into what has been a veiled and somewhat secretive process for many years.

Kansas Family Policy Council supports efforts to change judicial selection and considers direct public election of Appeals Court Judges and Supreme Court Justices to be the most accountable option available to Kansans. This manner of selection is utilized in 22 states across the nation and we do not see why a system granting complete authority to Kansas voters would not work here also. Already, a number of District Courts across the state use elections to select judges without apparent complication.

A selection process which mirrors the federal system would be of some merit, but would provide Kansans with only limited, indirect accountability regarding any judicial appointments in the form of a retention vote. Because voters rarely understand the mechanism governing judicial appointments combined with a dearth of information regarding the individuals subject to retention; the retention vote is a failed concept offering no real accountability. The retention vote does not provide adequate information for voters to make well-informed decisions and it rarely calls into question the actual performance and conduct of any judicial candidate facing retention. This can be evidenced by perhaps a most extreme example in the 2012 elections when voters retained a deceased Appeals Court Judge to serve on the bench with 636,376 votes.

For reasons of accountability and transparency, the judicial selection process in Kansas should not involve a nominating commission and should restore accountability of the judiciary via direct elections to all Kansans who are subject to rulings and decisions by the court system on a day to day basis.

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