

**TESTIMONY OF DISTRICT JUDGE ANTHONY POWELL
IN SUPPORT OF JUDICIAL SELECTION REFORM**

Before the Senate Judiciary Committee

January 16, 2012

Mr. Chairman,

I appear before the Committee this morning in support of reforming our judicial selection process. As an elected district court judge in Sedgwick County for over ten years, and as one who just successfully went through the nomination commission process and was appointed by Governor Brownback only last week to the Kansas Court of Appeals, I feel I can give a unique perspective on this very important issue.

In my view, this debate can be boiled down to a simple question: Should free people have the right of self-government or not? Under the present system of judicial selection for the appellate courts, a small minority of Kansans—lawyers—are the gate keepers as to who can serve on such courts. This effectively removes the ability of the people and their elected representatives from selecting an entire branch of our government. And as we all know, the importance of the judicial branch continues to increase. From questions on the death penalty to school funding, the courts are increasingly entering into critical public policy issues. No one would suggest that a similar system be adopted for any other branch of government or official, why the courts?

In my view, the people have a right to choose their judges—either directly or indirectly. After all, it is not the judges' judiciary or the lawyers' judiciary—it is the people's judiciary.

Moreover, the notion that judges can be selected on purely objective criteria of experience, temperament, and education went out with the Robert Bork confirmation hearings in the 1980's. Judicial candidates are no longer evaluated solely on such considerations, but are also evaluated on subjective criteria—are they conservative or liberal, are they judicial activists or strict constructionists, or do they come from the right part of the state? These amount to value judgments that only the people or their representatives can make. One need only read in the news media about the differing reactions to the recent school funding decision to know that there is no consensus as to what makes a good judge. People and politicians differ—the process should reflect those realities.

I am happy to stand for questions.