



KANSAS COURT OF APPEALS

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To: The Honorable Jeff King, Chair
Members of the Senate Judiciary Committee

RE: SB No. 8 and Senate Concurrent Resolution No. 1601

Date: January 17, 2013

Mr. Chairman and Members of the Senate Judiciary Committee:

As Chief Judge of the Kansas Court of Appeals, I offer the following comments in response to proposed changes to the judicial selection process for our court, including SB No. 8 and Senate Concurrent Resolution No. 1601. As part of our responsibility to promote the integrity, fairness, and impartiality of the judiciary, the judges on the Court of Appeals have asked me to convey the following points for your consideration in the debate concerning judicial selection for our court.

First, we believe that the record shows that the Court of Appeals serves the people of Kansas exceedingly well. In 2012, our court filed 1,286 written opinions and disposed of over 1,800 cases. Few of our decisions garnered any mention in the press or stirred up any controversy among the public. Most of the appeals in our court are completed in less than 1 year from the date of filing to the date of decision. In fact, performance records indicate that a vast majority of our opinions are filed within 60 days of the hearing.

The mission of the Court of Appeals is to bring appellate justice to the people of Kansas, and we believe that we perform that mission well. In the last 2 years, judges from our court have traveled to all 31 judicial districts to hold hearings at local courthouses and sometimes at local schools. When we travel, our judges regularly speak to civic groups and schools across Kansas about our system of government, including the importance of maintaining fair and impartial courts. Moreover, our judges routinely participate in continuing education programs for judges and lawyers throughout the state.

All decisions by the Court of Appeals are subject to petitions for review by the Kansas Supreme Court, but less than 3 percent of our court's decisions are reversed or modified on review. Our judges do their best to impartially apply the rule of law to the facts of each case. That diligence has been noticed. In 2012, the United States Chamber of Commerce ranked Kansas as the 5th best state overall in terms of a business-friendly legal system. The Chamber also ranked Kansas 8th in judicial impartiality and 9th in judicial competence. In short, we believe that changing the method of judicial selection for our court is a solution to a problem that does not exist.

Second, the judges of the Court of Appeals remain firmly committed to the merit selection/retention system for the appellate courts of Kansas. Under our current selection process, all attorneys and trial judges in Kansas receive notice and are invited to apply for any appellate court vacancy. The applicants must submit detailed information concerning their qualifications and experience, including writing samples. The names of all applicants are made available to the public for comment.

Members of the nominating commission screen each applicant and references are checked to learn each applicant's reputation in the community. Usually, each applicant is interviewed by the entire nominating commission. These interviews are open to the public. The nominating commission then submits to the governor the names of the three most qualified applicants, without regard to political considerations. These names also are made available to the public and a KBI background check is performed. Although the current process may not be perfect, it is designed to assure that only well-qualified applicants are submitted to the governor.

The judges of the Court of Appeals oppose Senate Concurrent Resolution No. 1601 because it eliminates Kansas' nonpartisan merit-based nominating commission. We recognize that some people have criticized the current merit selection system because practicing lawyers elect a majority of the members of the nominating commission. A simple solution to this criticism would be to restructure the makeup of the nominating commission so there is less control by the lawyers. Our judges believe that any reasonable modification to the structure of the nominating commission would be preferable to scrapping the merit selection system in its entirety.

Finally, while we see no need to change the method of judicial selection in Kansas, we agree that the appropriate vehicle for any change should be a constitutional amendment affecting both appellate courts in Kansas, as opposed to legislation affecting only the Court of Appeals. In 1958, 60 percent of the Kansas voters approved an amendment to the state constitution adopting the merit selection system for justices of the Supreme Court, and this system was adopted by the Kansas Legislature when the Court

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of Appeals began operating in 1977. Our current merit selection system for the appellate courts reflects the people's will, and the system should only be changed by a public vote.

Thank you for the opportunity to express our views on this legislation. We hope that you will examine our court's record of success and consider this matter carefully before changing the judicial selection process in Kansas.

FOR THE KANSAS COURT OF APPEALS


THOMAS E. MALONE, CHIEF JUDGE