



**KANSAS BAR
ASSOCIATION**

TO: **The Honorable John Barker, Chair**
 And Members of the House Judiciary Committee

FROM: **Gerald L. Green**
 On behalf of the Kansas Bar Association

RE: **Kansas Merit Selection Process**

DATE: **January 22, 2015**

Mr. Chairman and Members of the House Judiciary Committee;

My name is Jerry Green and I am the current President of the Kansas Bar Association. I appreciate the opportunity to provide valuable information about the Supreme Court Nominating Commission and the Kansas Merit Selection Process.

I am a lifelong resident of Kansas. I grew up in Hutchinson and attended Washburn University (B.A. 1973) and then Washburn University School of Law (J.D. 1976). I began my private practice in Wichita, returning to my home town in 1979 where I have practiced ever since. I am a member of the Gilliland and Hayes law firm, where my practice is focused primarily on civil litigation, and more often than not in the representation of defendants.

I have litigated cases all across Kansas and have appeared before the Kansas Supreme Court and Kansas Court of Appeals. So from a personal and professional standpoint, I have nearly forty years of experience with the Kansas judicial system. I firmly believe that the current merit selection system is a reasonable, accountable process geared towards finding the three most qualified individuals to sit on the bench.

To truly appreciate the Supreme Court Nominating Commission and the important role it plays in Kansas you must first understand its history. The Supreme Court Nominating Commission is over 50 yrs. old, borne out of backroom dealing and corruption in the executive branch. The infamous "Triple Play" was the catalyst that transformed the judicial appointment process into a nonpartisan merit based-system.

The "Triple-Play" involved Chief Justice Bill Smith, Governor Fred Hall, and Lieutenant Governor John McCuish. Governor Hall was defeated in the Republican primary by Warren Shaw, who then lost the general election to Democrat George Docking. Chief Justice Smith, a strong supporter of Hall, was seriously ill and contemplating retirement. However, Smith was concerned that if he retired after Docking took office in January 1957, Docking would appoint a Democrat to replace him.

Smith, Hall, and McCuish devised a plan to prevent such an appointment. Chief Justice Smith resigned on December 31, 1956, followed by the resignation of Governor Hall on January 3, 1957. Lieutenant Governor McCuish was then sworn in as governor. The first and only official act of his 11-day tenure as governor was to appoint Hall as Chief Justice of the Supreme Court.

Kansas citizens were rightly outraged and in 1957 voted to require Kansas Supreme Court Justices be selected by a nonpartisan commission. Today, the Supreme Court Nominating Commission is a nine-member board responsible for recommending qualified individuals for appointment to the Kansas Supreme Court and the Kansas Court of Appeals. Four of the Commission's members are non-attorneys appointed by the Governor; four others are attorneys selected by attorneys in each of the State's four Congressional Districts. The Chair of the Commission is an attorney elected by attorneys in a statewide vote.

To put it plainly the SCNC serves Kansas by interviewing applicants for open positions. The SCNC, operating in an open forum, takes formal applications, investigates resumes and conducts rigorous candidate interviews in an open, public setting. Kansas citizens are privy to the candidate's name, resumes and background, and can attend all interviews. With this information the SCNC determines the three most qualified candidates, whose names are forwarded to the governor for consideration and selection. It is important to distinguish that the SCNC looks for the three MOST qualified individuals and not simply a qualified individual.

The merit selection system eliminates politics and protects the independence of our judiciary. Merit selection contributes to fair and impartial courts, selects the most qualified applicants, reduces the influence of money in the system and allows judges to act free of political pressure. It is also important to remember that Courts act as a check and balance of the other branches of government and under merit selection judges are held accountable to the people thru retention elections and the law, not to political power.

Kansas is not alone in this thinking as 23 other states, including Iowa, Missouri, Nebraska, Colorado and Oklahoma, employ the merit selection process in some form. People in Kansas also believe in this process as 61% opposed changing the current system in a poll from Justice at Stake. More telling is that 54% of Kansans believe that it is in their best interest to have judges recommend by a majority-attorney panel. (Kansas Policy Institute Poll). This trend supporting merit selection has nationwide appeal as 3 states had votes targeting merit selection and all three failed (AZ 27.6-72.4; FL 37 to 63; MO 24 to 76).

Given the strong support for merit selection when it was first ratified into the Kansas Constitution and the continued support we see from neighboring states and Kansas citizens it is difficult to see any reason for reform. Furthermore, there is no evidence that any reform measure will lead to more careful review of applicants. However, evidence exists that the Federal Model process in Kansas has eroded transparency. The current model to select Court of Appeal judges fails to release the names of all applicants. Kansas citizens have been unable to review applicants for two Kansas Court of Appeal judgeships since the executive branch has kept those names secret. This is not the case under merit selection and the SCNC. All names are made available to the public and not just the three applicants forwarded to the governor. This is important for how else can Kansas voters decide for themselves if the nominee was the most qualified.

On behalf of the Kansas Bar Association, I thank you for your time this morning and would be available to respond to questions at the appropriate time.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 6,900 members, including lawyers, judges, law students, and paralegals. www.ksbar.org



PRESS RELEASE

January 30, 2013

For Immediate Release

Contact: James Franko

316.634.0218

Kansans' Views on the Role of Government
K-12 funding should be based on efficient use of taxpayer funds; narrow opposition to judicial reform; overwhelming support for 'paycheck protection'

January 30, 2013 - Wichita - A new statewide public opinion survey shows strong support for having K-12 funding decisions based on efficient and effective use of taxpayer funds. This is especially noteworthy in light of the fact that no study has ever been conducted in Kansas to determine what it costs to achieve required student outcomes and have schools organized and operating in a cost-effective manner. The survey was conducted by [SurveyUSA](#) on behalf [Kansas Policy Institute](#) between January 24 and January 27; 500 adults were surveyed with a $\pm 4.5\%$ margin of error. The complete survey and interactive crosstabulations are [available here](#).

Asked whether cost-effectiveness should be the basis for school funding decisions, 74% agreed and only 23% disagreed. Responses were very consistent across political and ideological lines.

Self Identified As	Strongly / Somewhat Agree	Strongly / Somewhat Disagree
Republican	75%	21%
Democrat	76%	20%
Independent	70%	27%
Conservative	68%	28%
Moderate	76%	22%
Liberal	80%	16%

Participants were also asked "If the Kansas Legislature is not basing school funding decisions on what it costs to hit required achievement levels and also have schools operating in a cost-effective manner, should the Legislature conduct such a study and fund schools accordingly?" A strong majority, 59% said 'yes' while only 19% said 'no'. Again, Responses were very consistent across political and ideological lines.

The Shawnee County District Court based its recent school finance ruling on the 2005 *Montoy* decision, in which the State Supreme Court relied on a flawed 2001 Augenblick & Myers cost study. A&M admitted they deviated from their standard methodology and threw efficient use of taxpayer money out the window. A follow-up study by Legislative Post Audit very specifically said that they "...weren't directed to, nor did we try to, examine the most cost-effective way for Kansas school districts to be organized and operated."

KPI president Dave Trabert said, "In addition to funding schools, legislators also have a responsibility to ensure that taxpayer money is used efficiently. Lawsuits and hundreds of millions more in taxpayer funding have...and will continue to have... little impact on student achievement. The only way to determine whether schools are effectively and efficiently funded is to conduct a thorough student-focused review of the current system examining all of the inputs (not just money), make any necessary adjustments and cost it out."

Key findings on Judicial and Court Questions

A series of questions relating to the courts produced much more divided opinions. Kansans believe that courts should not have final say on how much money is spent on public education (54% vs. 44%) and courts should not have final say on the specific way that money is spent on education (56% vs. 40%). Interesting though, 54% of Kansans believe it is "...in citizens' best interests to have judges recommended for appointment to the Kansas Supreme Court and the Court of Appeals by a majority-attorney panel" while 39% disagree.

Even self-identified conservatives narrowly said the current system of appointing judges is in citizens' best interest (46% vs. 45%) while self-identified moderates and liberals expressing stronger support (53% vs. 41% and 69% vs. 23%, respectively).

Key findings on Paycheck Protection proposals

Proposed legislation that would prohibit government from collecting and remitting voluntary union dues intended to be used for political purposes is an extremely controversial topic this year - but apparently, only in the state capitol. Kansans of all political and ideological persuasion overwhelming support some form of change in the current practice.

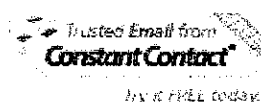
Asked whether governments should continue the current practice of withholding union dues, including the portion that is used for political purposes...or withhold regular membership dues only, so that employees wishing to contribute money for political purposes would write their own personal checks...or withhold no union dues, even self-identified government employees and union members say current practice should change.

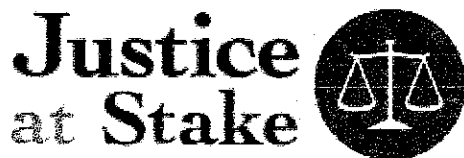
Self Identified As	Withhold All Dues	Only Regular Membership Dues	Withhold No Dues
All Respondents	12%	39%	38%
Republican	14%	35%	41%
Democrat	17%	45%	19%
Independent	9%	39%	38%
Conservative	11%	34%	42%
Moderate	10%	44%	28%
Liberal	25%	41%	16%
Gov't Employee	19%	42%	17%
Union Member	14%	53%	23%

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Kansas Policy Institute is an independent think-tank that advocates for free market solutions and the protection of personal freedom for all Kansans. Our work centers on state and local economic policy with primary emphasis on education, fiscal policy and health care. We empower citizens, legislators and other government officials with objective research and creative ideas to promote a low-tax, pro-growth environment that preserves the ability of governments to provide high quality services.

To speak with Kansas Policy Institute, please contact James Franko at (316) 634-0218.





New Poll: Kansans Say Judges Should Continue to Be Chosen on Qualifications, Not Politics

January 16, 2013

New Poll: Kansans Say Judges Should Continue to Be Chosen on Qualifications, Not Politics 61 Percent Oppose Proposal to Amend State Constitution

Washington, DC, Jan. 16 – A new poll commissioned by Justice at Stake, a nonpartisan organization dedicated to the preservation of fair and impartial courts, finds that 61 percent of Kansas voters—including majorities of Republicans and Democrats—oppose amending the state Constitution to change the way in which Kansas Supreme Court justices are selected. The findings come as the Kansas legislature begins hearings on a major change proposed to the state's merit selection system.

"Kansans don't want to tamper with their constitution," said Bert Brandenburg, Executive Director of Justice at Stake. "They want their judges chosen based on their qualifications, not partisan politics. They're not comfortable vesting so much power in the hands of a governor, even one that they like. They'd rather see judges go through an interview process that identifies the best candidates before, not after, the governor makes his pick."

Kansas voters adopted merit selection for their state Supreme Court in 1958. Under merit selection, a panel of lawyers and non-lawyers interviews applicants to be judges, checks their references and sends the most qualified finalists to the Governor. The Governor selects one of the finalists to fill the vacancy. Once on the court, judges can keep their seat if they periodically win a retention election.

By a nearly three-to-one margin, Kansans oppose abandoning their current system and replacing it with a proposed model that would allow the Governor to choose judges without first having candidates screened and recommended by a panel.

Polling was conducted by 20/20 Insight LLC, which surveyed a representative sample of 975 registered voters over a period of two days, January 13-14. The margin of error was 3.1%. [Click here for polling results.](#)

Justice at Stake is a nonpartisan, nonprofit organization dedicated to the preservation of fair and impartial courts. Its bipartisan board of directors includes Landon Rowland—former Chairman of Kansas City Southern Industries, Janus Capital Group, & DST Systems, and current Chairman of the Lead Bank—who will testify against the proposal on Thursday*. The Justice at Stake partnership comprises some 50 organizations representing the business, academic, faith-based, and legal communities, among others. Justice at Stake provides news, resources, research, and education focusing on fair-courts issues at the state and federal levels.

*Originally stated incorrectly as Friday

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Justice at Stake is a nonpartisan, nonprofit campaign working to keep America's courts fair and impartial. Justice at Stake and its 50-plus state and national partners educate the public, and work for reforms to keep politics and special interests out of the courtroom – so judges can protect our Constitution, our rights and the rule of law. For more about Justice at Stake, go to www.justiceatstake.org, or www.gavelgrab.org.

For More Information:

Laurie Kinney, lkinner@justiceatstake.org, Office: (202) 588-9454, Cell: (571) 882-3615

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Justice at Stake

717 D Street, NW, Suite 203 | Washington, DC 20004

Phone: 202-588-9700 | Fax: 202-588-9485

JUSTICE AT STAKE CAMPAIGN CFC# 47694

Keep our courts fair and impartial.

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