

January 22, 2015

Kansas House Judiciary Committee
Hon. Representative John Barker, Chair
The Statehouse
Hearing Room 112-N
Topeka, Kansas 66612

HAND DELIVERED

Re: Testimony Regarding Judicial Selection Reform

Dear Chairman Barker & Members of the Committee:

On behalf of Governor Brownback and the administration, please accept this letter as testimony in support of judicial selection reform measures that are vital to protect the democratic interests of all Kansans in their system of government.

In his recent State of the State address, the Governor called for judicial selection reform in the following terms: "It is time we change the way we pick our Supreme Court. Recently, the Legislature introduced a greater element of public accountability to judicial selection by reforming the process for selecting appellate judges in Kansas. It is time for similar reforms to apply to the Kansas Supreme Court. Currently, we have the least democratic system in America to select Supreme Court justices. The Legislature should put before Kansas voters a proposed Constitutional amendment for a more democratic selection process – one either based on the federal model or providing for direct election of Supreme Court justices, as we did for the first 100 years of our history. With the Court involving itself in so many public policy issues, it is time the selection process be more democratic."

As the Governor stated, this is not the first time the administration has sought judicial selection reform. Indeed, many of my comments today echo those provided by the administration to this Committee in 2011 – which eventually led to elimination of the nominating commission and adoption of the "federal model" for Judges of the Kansas Court of Appeals in 2013. *See Kan. Stat Ann. 20-3020*. This approach should now be expanded to include the Justices of the Kansas Supreme Court.

The manner in which those who govern are selected and installed in positions of societal trust and authority is of fundamental importance. In fact, the particular mechanism of selection goes a long way towards defining the overall system of government – whether it is democratic or republican in form, or whether it is one form or another of authoritarian government. The

guiding principle of democratic forms of government must be that every citizen stands equal before the law, with an equal opportunity and voice in the process of choosing those who will make, enforce, and interpret those laws. Without this, the people cannot truly be said to be governed by consent.

Unfortunately, in Kansas our current system of selecting Supreme Court Justices fails the democratic accountability test. Rather than providing an equal opportunity and voice to all Kansans to participate and consent in the selection of the judiciary – through the actions of their duly elected representatives in the Governor’s Office and in the State Senate – the so-called “Missouri Plan” cedes the authority to select the State’s highest court to a small, select, and unaccountable group of practitioners.

Because our Supreme Court judicial selection system fails the democratic accountability test, it is in need of reform. The system of executive appointment and senate confirmation devised by our founding fathers has withstood the test of time over the centuries, providing the United States with a federal judiciary that is the finest the world has likely ever known. Applying the federal model to the selection of Kansas Supreme Court Justices would be an important step towards restoring to all Kansans the ability to have a voice in their government.

Without this democratic voice as an outlet for the will of the people regarding the judicial branch of government, the confidence and respect that our courts must have will erode. Judicial independence is a vital and necessary characteristic of fair and just judgment. But judicial independence must rest firmly on the foundation of the consent of the governed. Public confidence is the strongest and best buttress available to protect judicial independence and the just judgments that flow from it.

The judiciary should serve all Kansans. And all Kansans should have a voice in its selection. Accordingly, the administration urges your support for judicial selection reform regarding the Kansas Supreme Court.

Respectfully,

A handwritten signature in black ink, appearing to read "Brant M. Laue", written in a cursive style.

Brant M. Laue
Chief Counsel
Office of the Governor