

STATE OF KANSAS
SENATE

STATE CAPITOL
300 S.W. TENTH STREET
TOPEKA, KS 66612
(785) 296-7667
mitch.holmes@senate.ks.gov



DISTRICT ADDRESS:
211 S.E. 20TH AVE.
ST. JOHN, KS 67576
(620) 234-5834

MITCH HOLMES

33RD DISTRICT

BARTON, EDWARDS, HODGEMAN, KIOWA, LANE, NESS,
PAWNEE, PRATT, RICE, RUSH, SCOTT & STAFFORD COUNTIES

Testimony In Favor of

SB 439

March 3, 2016

Kansas citizens have had to endure multiple bad decisions and actions at different levels of the Judiciary. The people of Kansas have no practical recourse. Or do they? The founders of both the U.S. and the Kansas constitution set up a system of checks and balances. Most Americans have been lulled into believing that the Judiciary serves as a check and balance to the other two branches. Actually, it goes all ways. All three branches of government serve as a check and balance to the other branches, including the Judiciary.

The constitutionally defined check and balance against an overreaching court is impeachment of judges and justices by the peoples' elected representatives. SB439 is based upon the constitutional duty of the Legislature to protect Kansans from unelected "lawmakers".

SB439 simply gives definition to the terminology in the constitution such as "high crimes and misdemeanors" and "for cause". It does not require any action of the Legislature. It is meant to bring specificity to broad, overarching terms by making a statutory definition. In past impeachments, the investigative bodies have had to define what an impeachable offense was for the purpose of the immediate situation. SB439 would put a definition in place so an investigative committee can use an existing standard rather than making one up "on the go".

Some examples of judicial misbehavior:

- The Carr brothers' death sentence overturned. This particular ruling was a slap in the face to the families of the victims. However, our Supreme Court has consistently exerted *political will* whenever the issue is capital punishment.

- The 2014 US senate race. Our Supreme Court blatantly used its power to give the advantage to a challenger of an incumbent senator through *two* different cases under a time crunch. The rule of law was set aside in favor of the political views of the Court in this shameful instance that prompted a legislative response in HB2104 where the word “shall” was defined!
- Earlier in 2014, a justice’s home was used for a fundraiser for a political candidate. Article 3, section 8, states “... No justice of the supreme court ... nor any judge of the district court holding office under a nonpartisan method ... shall directly or *indirectly* make any contribution to or hold any office in a political party or organization *or take part in any political campaign.*”
- In 1986, Kansans voted to amend the constitution to create a state-run lottery. We all thought we knew what a lottery was, but in the early 90’s, the court redefined “lottery” to mean black jack, roulette, slot machines, raffles, etc. Now we have casinos which are officially known as “expanded lottery facilities”.
- School finance cases are a long history of court action. In the mid 60’s, the constitution was amended to include “The legislature shall make suitable provision for finance of the educational interests of the state.” For approximately 25 years, the Legislature and the Court interpreted that to be a provision for local funding. In the early 90’s, the Court changed its opinion to say that means centralized funding. These 15 words simply mean it is in the hands of the people’s elected representatives to make funding decisions, but the Courts assert that it directs *them* to make spending decisions. The courts have inserted volumes of meaning into these 15 words. Even though I think the Rose Standards are good, our constitution does not mention the Rose Standards, or any other standards, in section 6 of article 6. The ‘standard’ is what the peoples’ representatives decide.

Our constitution does not belong to the court, it belongs to the people. The courts are not authorized to amend, insert, delete, or otherwise change the meaning of our constitution. Our Founders never intended for the courts to be lawmaking bodies. They are intended to administer justice under the rule of law.

In closing, I’d like to state that there is nothing new or radical in this bill; it is simply defining “high crimes and misdemeanors” and “cause”. This is not about a single issue or single action of any court. It is about a trend that has been going on for decades. The founders of our nation (and state) never intended for unchecked power. The whole purpose of three separate branches is to keep any one branch from getting too powerful. Over time, the checks on the court have fallen into disuse and the courts have responded by aggressively expanding their powers (especially powers that are reserved for the peoples’ elected officials). I believe this is very good for the long term balance of powers for Kansas.

I ask for your support of SB439.