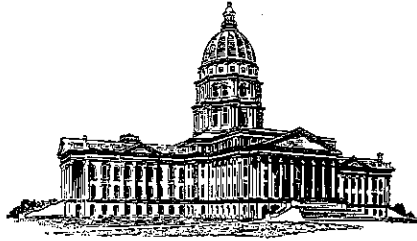


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GREG SMITH

Chairman King, and Members of the Senate Judiciary Committee:

Thank you for allowing me to provide written testimony in favor of SB 439. This is a topic I teach in my government classes – a history of the impeachment of judges. With my students it is necessary to explain that impeachment does not mean a person is removed from office. Many think that is the case. Impeachment merely means that formal charges have been brought by the House of Representatives. A trial is held where the Senate sits as the jury and if the impeachment charge is sustained the guilty party is removed from office.

The reason I teach this topic is to answer the very question that SB 439 answers – What is an example of “other high crimes and misdemeanors?”¹ History is replete with examples of what this term means and what judges, as well as other elected officials, have been impeached for.

My research has unearthed that sixty-one federal judges or Supreme Court Justices have been investigated for impeachment, of whom thirteen have been impeached and seven convicted. My research also has turned up one Kansas judge, Judge Theodosius Botkin in 1891. He was charged with being “incompetent, guilty of oppression in office, being a gambler, a habitual drunkard, and corrupt in office.”² All of these charges sound similar to those outlined in SB 439.

Federal judges have been impeached for similar reasons – “arbitrary and oppressive conduct of trials,” “abuse of power,” “arbitrary and oppressive conduct of trials,” and “sexual assault, obstructing and impeding an official proceeding, and making false and misleading statements.”³

SB 439 provides clarity to an ambiguous phrase and codifies the Wyandotte Kansas Constitutional Convention Founders intent to protect the fundamental principle of “the consent of the governed.” Judges are not elected. Retention elections are a farce. Kansas has retained a

¹ Kansas Constitution, Article 2, §28, U.S. Constitution, Article 2, §4

² Trial of Theodosius Botkin, judge of the 32d judicial district, before the Senate of the state of Kansas, on impeachment by the House of representatives for misdemeanors in office. April, 1891. Published by order of the Senate.

³ Federal Judicial Center, History of the Federal Judiciary,
http://www.fjc.gov/history/home.nsf/page/judges_impeachments.html

judge who was deceased and never, in the history of the state, removed a judge from the bench via the retention election process. Why is that? Most people have no idea what a judge has or has not done or what occurs in a court. Unless you need to be in a courtroom – or a case makes the news – people are unaware of the proceedings and of any wrongdoings or even of stellar conduct by a judge.

No new power is conferred on the Legislature by passage of this bill. No constitutional right is usurped. Instead the people of Kansas are enabled. Government is run by the consent of the governed – not by the courts.

I would ask that the committee recommend SB 439 favorable for passage.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Greg Smith", written in a cursive style.

Greg Smith