

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 1:30 P.M. on February 13, 2007 in Room 313-S of the Capitol.

All members were present except:

Representative Richard Carlson- excused  
Representative Ted Powers- excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mike Heim, Revisor of Statutes Office  
Carol Doel, Committee Assistant

Conferees:

Representative Lance Kinzer  
Chris Kobach, Professor of Constitutional Law University of Missouri (Kansas City)  
William Richards, Sr. NAACP  
Bill McKean, Concerned Citizen  
Alan Cobb, Americans For Prosperity - Kansas State Director  
Richard Hayse, Kansas Bar Association  
Richard Hite, Chair Supreme Court Nominating Commission  
Justice Fred Six (Ret)  
Thomas Wright, Secretary Treasurer of the Kansas Bar Association  
Janis McMillen, League of Women Voters of Kansas  
David Shriver, Attorney, Kansas Association of School Boards  
F. James Robinson, Kansas Association of Defense Counsel

Others attending:

See attached list

*The Chairman opened the meeting for bill introductions and recognized Phil Bradley who requested a bill regarding the licensing of micro breweries. The Chairman moved the motion seconded by Representative Peterson. With no objections, the bill will be accepted.*

*Chairman Siegfroid moved a bill requested by Representative Landwehr concerning children in need of care; relating to access of records. The motion was seconded by Representative Peterson. With no objections, the bill will be accepted.*

The Chair opened the floor for hearing on **HCR - 5008** - Governor would appoint supreme court justices, senate would consent; abolishing the supreme court nominating commission and asked Kathie Sparks of Legislative Research to give an overview of the bill.

Ms. Sparks related that **HCR - 5008** would do the following:

- Eliminate the Supreme Court Nominating Commission
- The Governor would have 60 days to recommend to the Kansas Senate a person to fill a vacancy on the Kansas Supreme Court
- The Chief Justice of the Supreme Court would make the recommendation of a person to fill a vacancy on the Kansas Supreme Court if the Governor fails to make the recommendation within the 60 days.
- The Office of Justice of the Kansas Supreme Court could not be assumed until the Senate confirms the individual by an affirmative vote of the Senate
- The House Concurrent Resolution must receive a two-thirds majority vote prior to the resolution being added to the ballot for the general election in 2008, unless a special election is called for by a concurrent resolution of the Legislature. (Attachment 1)

Representative Kinzer addressed the committee in support of **HCR 5008** which proposes changing the current method of Supreme Court judicial selection in Kansas. Representative Kinzer related that the basic rationale for the proposed change is simple. When the President fills a U.S. Supreme Court vacancy, he is not left to choose from among a list submitted by the American Bar Association or some other group. He or

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she is free to select the best available person for the job. The Representative opined that the Governor should have the same authority; subject to review by the Senate to avoid cronyism or other abuse of power. ([Attachment 2](#))

Kris W. Kobach, Professor of Constitutional Law, University of Missouri (Kansas City), came before the committee with testimony favoring **HCR 5008**. Mr. Kobach cited two factors that he believed weigh strongly in favor of the resolution. (1) the understandings of the Framers of the U.S. Constitution when they proposed the federal model on which **HCR 5008** is based, and (2) an argument that the federal model produces better Justices. He also provided some background information for the committee to consider. In conclusion, Mr. Kobach stated that the quality of Justices produced by the federal system is hard to deny. ([Attachment 3](#))

Mr. Kobach also supplied copies of Justice Biographies from the states of Kansas, New Jersey, and Maine for committee review. ([Attachment 4](#))

Representing the NAACP (National Association for the Advancement of Colored People) in support of **HCR 5008**, was William E. Richards, Sr. His testimony related that upon review of Article 3, paragraph 5, of the Kansas Constitution and the Record of Nominations for Kansas Supreme Court Justices, it is found that historically no Kansas Citizen of African-American extraction, regardless of how highly qualified legally and otherwise, has been submitted as a nominee for possible appointment as a Kansas Supreme Court Justice by the Kansas Supreme Court Nominating Commission. It is the opinion of the NAACP that the passage of **HCR 5008** would appear to provide a better method for the nomination and appointment of our Supreme Court Justices. ([Attachment 5](#))

Mr. Richards also presented a biographical sketch of Judge Cordell D. Meeks, Jr. Who was appointed by the Governor of Kansas to serve as District Court Judge for the 29<sup>th</sup> Judicial District of Kansas. ([Attachment 6](#))

Bill McKean a citizen of Wichita favors the passage of **HCR 5008** stating that since th 2004 primaries, he has actively lobbied the reporters and editors of the Wichita Eagle, elected officials, politicians , judges, prominent attorneys and law professors throughout Kansas to reduce the effects of nepotism and cronyism in the Kansas judiciary by increasing accountability and transparency. Mr. McKean further opined that the problems originate at the Supreme Court and infect the Office of Judicial Administration, the Kansas Judicial Council and the Kansas Bar Association and the local bar associations. ([Attachment 7](#))

Mr. McKean also submitted information about Nick Badgerow, a member of the Kansas Judicial Council. ([Attachment 8](#)), copies of e-mails which he had sent to various people ([Attachment 9](#)), a copy of an article entitled, *The Committee For Judicial Ethics Finds Judge Janice D. Russell: Guilty* ([Attachment 10](#)), and numerous other articles regarding the judicial system. ([Attachment 11](#))

Alan Cobb, Kansas State Director, Americans for Prosperity, testified in support of **HCR 5008**. Mr. Cobb gave the opinion that the nominating committee is controlled by a majority of Kansas lawyers. The group has become a powerful gatekeeper to one-third of our state government, all the way from the recruitment and screening of applicants through to the final selection and appointment. Mr. Cobb feels that a system of gubernatorial appointment with senate consent does not threaten judicial independence, but does level the political play field. ([Attachment 12](#))

There were no other proponents of **HCR 5008** and the Chair recognized opponents with Richard Hayse, of the Kansas Bar Association addressing the committee. Mr. Hayse related that this legislation would allow the Governor to appoint any person, including a person with no qualifications whatsoever, subject only to confirmation by a majority of the Kansas Senate. In place of a well-tested selection system, this legislation would substitute a purely political process. ([Attachment 13](#))

Richard Hite, Chair Supreme Court Nominating Commission, appeared before the committee opposing **HCR 5008**. The members of the Commission unanimously agree that the present merit selection of Supreme Court Justices works well and should not be changed. The members of the Commission are very concerned about the effect of a requirement that the Governor's appointments be ratified by the Senate. ([Attachment 14](#)) Mr. Hite also presented copies of the forms which need to be completed by a nominee. ([Attachment 15](#))

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Retired Justice Fred Six presented testimony in opposition to **HCR 5008**. Justice Six gave the opinion that this legislation would discourage judges and lawyers in Kansas from becoming nominees for consideration as members of the Supreme Court. It also has the potential for damaging the working relationship between the Executive Branch and the Legislative Branch. It is the feeling of Justice Six that **HCR 5008** does not support an impartial judiciary. (Attachment 16)

Justice Six also provided copies of "*Judicial Selection in the States*" (Attachment 17), and "*The Bureau of Justice Statistics - State Court Organization 1998*". (Attachment 18)

Thomas Wright, Secretary Treasurer of the Kansas Bar Association and former member of the Supreme Court Nominating Commission came before the committee opposing the legislation in **HCR 5008**. In his testimony, Mr. Wright stated that the independence of the Judiciary should be paramount to all of us and that judicial independence is not advanced by **HCR 5008**. (Attachment 19)

Janis McMillen, President, League of Women Voters of Kansas, represented the League in opposition to **HCR 5008**. The members of the League feel that we must maintain the independence of the judiciary by keeping politics out of the selection system - to keep politics out of the courts. (Attachment 20)

David Shriver, Attorney, Kansas Association of School Boards, strongly opposes the passage of **HCR 5008**. The KASB does not believe sufficient facts exist to justify changing a system of selection of justices to the Kansas Supreme Court that has produced a non-partisan, highly qualified bench of jurists. (Attachment 21)

The Kansas Association of Defense Counsel was represented by F. James Robinson in opposition to **HCR 5008**. Mr. Robinson summed his testimony by stating that the citizens of Kansas do not need, nor should they want, to replace the present system that is working very well with a Senate Confirmation process that is fraught with problems. (Attachment 22)

Callie Denton Hartle of the Kansas Trial Lawyers submitted written testimony opposing **HCR 5008**. (Attachment 23)

With no further business before the committee, Chairman Siegfried adjourned the meeting.