

KANSAS JUDICIAL SELECTION

In recent years, outside special interest groups have funneled millions of dollars into our system in an attempt to dismantle the core foundations of our state—foundations that have protected our rural communities, small businesses, schools and those with special needs.

Today, these groups are attempting to overturn the will of the people and nearly 60 years of tradition, by pushing through radical changes to our court system that will replace our current fair and balanced approach with a political model.

HOW DID WE GET HERE?

In 1956, Governor Fred Hall found himself at the center of a scandal that engulfed both the Executive and Judicial branches of Kansas government. The scandal, known as the “Triple-Play,” occurred when he tried to install himself as Chief Justice on the Kansas Supreme Court after losing his reelection bid for Governor. Near the end of his term, both Governor Hall and the Chief Justice (a friend of Hall) resigned, and the Lt. Governor quickly installed Hall as the new Chief Justice - his only official act during the 11 days he served as Governor. Prior to the Triple Play, Kansas allowed the Governor to fill any judicial vacancies.

Following the scandal, Kansans voted to change the system, provide for citizen input into the process and created the current “merit based” process by amending the Kansas Constitution. And, for nearly 60 years, the Kansas Merit System – with input from attorneys, non-attorneys and the Governor – has worked well under both Republican and Democrat Administrations, ensuring that judicial principle outweighs partisan pressure.

The Kansas Court of Appeals was not included in the original constitutional amendment because it was not permanently established until 1977. In fact, the Kansas Merit Selection System has worked so well in filling judicial vacancies that the Executive and Legislative branches never saw the need to amend the Court of Appeals into the constitution or change the process for selecting justices.

WHO DECIDES?

The Kansas Merit Selection System is overseen by an independent panel of citizens known as the Kansas Supreme Court Nominating Commission (“The Commission”). The Commission screens all the applicants for a vacancy, assessing their qualifications and conducting interviews prior to forwarding the three most qualified candidates to the governor to interview and make the appointment. The justices and judges then stand for retention—six years for a Supreme Court Justice and four years for a Court of Appeals Judge. Each court has a mandatory retirement age of 75.

At no point does the Commission actually fill a vacancy, only the Governor has the power to make a judicial appointment.

WHO IS ON THE COMMISSION?

The Commission is a nine-member, citizen panel made up of four non-attorneys that are appointed by the Governor and four attorneys—one from each Congressional District—selected by other, local attorneys. The Chair of the Commission is an attorney elected in a statewide vote of all attorneys.

FACTS ABOUT KANSAS JUDICIAL SELECTION



MYTHS

The current system is undemocratic, extreme and secretive. It gives power to only members of the bar and leaves millions of Kansans without a voice.

Kansas judges vary in their levels of professional merit and, overall, Kansas judges are no more meritorious than are judges in dozens of other states with senate confirmations of judicial nominees.

The current system's politics occur primarily within the bar – as competing groups of lawyers try to get their members on the commission – and within the commission whose votes are secret.

The Framers of the US Constitution were dedicated to checks and balances so they chose senate confirmation of judges to ensure that appointments to the judicial branch require consent of both the executive and legislative branches.

Kansas Courts are too liberal, bad for business.

The Kansas Model is elitist, only system of its kind.

FACTS

The current system was **established by voters to replace former secretive process** with a merit-based system that is **designed to focus on judges' qualifications** and not political favors for the governor. The Kansas Merit Selection System is similar to other merit-based models and provides a transparent and open process that is responsible to the needs of the state through its independent, nominating commission. Recently, the United States Supreme Court upheld its constitutionality.

Kansas voters want a selection process that not only produces qualified judges, but also avoids politicizing our courtrooms. Since Kansans adopted our merit-based selection process, it has not produced a single unqualified judge nor have there been any cases of judicial misconduct or other improprieties from the bench. In fact, the Kansas Merit Selection System is the best way to ensure fair and impartial courts.

No evidence exists to support this claim by opponents of the current system. In fact, a natural set of checks and balances exists within the current system because **nearly half of the Commission is comprised of non-attorneys** selected by the Governor. Plus, the Governor retains sole power to fill judicial vacancies. **The proposed plan would turn the clock back 60 years**, politicize the process by eliminating the independent, citizen's voice and focus power back with the Governor who would make their decision behind closed doors, beholden to nobody.

The federal system has become paralyzed by politics and inaction. As of January of 2013, according to the nonpartisan Congressional Research Service, there were nearly **100 vacancies in the federal court system** leaving many so overburdened that they have been designated **"judicial emergencies"** by the Administrative Office of the US Courts.

When Kansas voters saw the abuse of power by the Governor during the "Triple Play," they changed the Kansas Constitution to implement the Kansas Merit Selection System. **Our system brings together members of the public, legal experts and the Governor to ensure the independence of our courtrooms.** The system has worked well for nearly 60 years.

According to the **US Chamber of Commerce**, in their 2012 State Liability Ranking Study, Kansas has the **"fifth best legal climate in the country" for business.** Changing the system would inject uncertainty in an already fragile economic recovery and could make it more difficult for companies looking to expand or relocate in Kansas.

The Kansas Merit Selection System was created by Kansans for Kansans and has been upheld as constitutional by the United States Supreme Court. Our system is in line with nearly half of other states that use some type of merit or gubernatorial-based selection process. Currently, only one other state—New Jersey—uses the broken federal model, and they also face gridlock over judicial nominees.