

Hon. Kevin M. Smith
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House Judiciary Committee

Re: Testimony on judicial selection in Kansas

Madam Chair and honorable members of this committee, I am Judge Kevin Smith from Sedgwick County, Kansas. I speak on my own behalf and not for the 18th judicial district. When it comes to the Supreme Court nomination process, there's an elephant in the room few will acknowledge. Judicial selection of Supreme Court justices and its results is political.

The two most important issues reviewed by that court the past ten years are school funding and the death penalty. On both issues the left's position prevailed in the state's highest court, and often conflicted with United States Supreme Court decisions, and the right's positions lost, multiple times on each issue. Here's why.


Our Constitution mandates a commission composed of five Kansas bar appointments, all lawyers, and four civilian appointments, for selection of Supreme Court justices. This commission submits applicants to the Governor for appointment. If an applicant isn't approved by the five lawyers he or she won't cross the Governor's desk, regardless of the Governor's political affiliation.

The two other branches of government, the Governor and legislature, are democratically elected by the people. The judicial branch's highest court is picked by a commission controlled by five lawyers. This is not democratic but most certainly has political consequences. This process is called "merit selection." However, with few exceptions, only the left side of the political spectrum has sufficient merit to warrant consideration, which is, of course, absurd.

I am a district court judge elected by the people. Some districts have appointed district court judges, but this process is also democratic since the people choose whether their district judges are elected or appointed. Our appeals court judges are also appointed, but these too are part of the democratic process since a democratically elected Governor appoints them. In either case, if the people take issue with judicial decisions they can either change the process for choosing judges, or evict the Governor from the governor's mansion in the next democratic election.

If the people have the right to choose their Governor, representatives and senators, and district court and appeals court judges then they should be empowered to elect Supreme Court justices, who's decisions impact many state policies. Anything else is un-democratic. For the sake of democracy we should amend the Kansas Constitution so the people have a voice in choosing justices for the highest court in Kansas.

Sincerely,



Hon. Kevin M. Smith