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TESTIMONY IN SUPPORT OF SCR 1621 AND SCR 1622
SENATE JUDICIARY COMMITTEE

The issue of Judicial Selection Reform has been before the Senate going all the way back to 2005 when Senator Wagle and then Senator, now Attorney General Schmidt sponsored SCR 1606 which would have made Senate Confirmation part of the Supreme Court selection process.

Over the past 15 years various proposals to reform our flawed system have been discussed. And over that same period of time, we have seen the need for reform amplified.

In 2019, we had the embarrassing spectacle of the nomination of Judge Jack, who would be on the Kansas Court of Appeals if not for the fact we adopted the federal model for that court several years ago. The current governor used a makeshift “nominating commission” to recommend Judge Jack, but it was only the reality of Senate Confirmation that saved the people of Kansas from that deeply flawed nomination.

Second, in that same year, the Kansas Supreme Court inserted an unfettered right to abortion into our 1859 State Constitution. As Justice Stegall noted in his dissent, “For the majority, the settled and carefully calibrated republican structure of our government must give way, at every turn, to [their] favored policy.”

This ruling was made possible by a flawed system which is rigged to allow justices with radical judicial philosophies to be appointed to the Supreme Court without the check of Senate confirmation.

Both of these instances highlight the need to reform the method of selection. There are two ideas on how to do so – one is based on a federal model and the other is direct elections. Neither is a novel approach, as both models are used by a number of other states.

As we consider these two ideas, fundamental questions come to mind. Do we stand for checks and balances, or do we stand for consolidating power in the hands of a few narrow interests? Do we stand for good government, or do we continue to allow a flawed system to perpetuate and produce even more extreme rulings and results?

The nominating commission system is fundamentally flawed in several respects:

- The absence of an appropriate check through Senate confirmation;
- The fact that the governor is forced to choose one of the three nominees, or it is chosen by the Chief Justice;
- The fact no justice is ever not retained; and
- The method of selection of the commission itself.

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While several states use some form of a nominating commission, Kansas is the only state in the nation where lawyers selected by other lawyers are *a majority of the* commission, thereby always controlling the process.

The beauty of a Constitutional Amendment is that the people will ultimately decide whether to retain the current model or choose one of the options before you today.

Do they want the current method, in which there are no checks and balances and lawyers selected by other lawyers control the system; and system that has produced a court which issued rulings like in 2019?

Or do they want the federal model, which has stood the test of time for the entirety of our nation's history and has produced a balanced court in which judicial philosophies run the gamut?

Or perhaps do they want direct elections, such as is used in states like Wisconsin and Michigan, and have also produced balanced courts that reflects their populations?

I do not have a strong preference either way – both have their strong points – but either would be a dramatic improvement over the current model, and either is more in line with the republican (small R) principles of government.

Thank you for the opportunity to provide written testimony.