

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 21, 2008, in Room 313-S of the Capitol.

All members were present:

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department
Mike Heim, Revisor of Statutes Office
Jason Long, Revisor of Statutes Office
Jeannie Dillon, Committee Assistant

Conferees: Jason Long
Mike Heim
Representative Lance Kinzer
Alan Cobb
Lt. Colonel William Richards
Justice Fred Six
Dick Hite
Professor Robert Casad
David Rebein
Jim Robinson

Others attending:

See attached list.

The Chair opened the meeting and asked for bill introductions. Hearing no bill introduction requests, Chairman Siegfroid opened the hearings on:

HB 2799 - Court of appeals judges appointed by governor, subject to senate confirmation; creating a court of appeals nominating commission to nominate three qualified persons; governor appoints any qualified persons and

HCR 5031 - Governor appoints supreme court justices, senate confirms; nominating commission membership amended; commission nominates three employees; governor appoints any qualified person.

A briefing on **HCR 5031** was given by Mike Heim, Revisor of Statutes. The bill has two basic objectives. It provides for an appointment by the governor, subject to consent of the senate and secondly, it provides for a different appointing authority for the Supreme Court nominating commission.

Jason Long, Revisor of Statutes, briefed the Committee on **HB 2799**. Mr. Long explained that the bill was similar to the **HCR 5031** with one major difference. **HB 2799** refers to the appointment to the court of appeals which is the appellate court, immediately below the Supreme Court in our state. The bill would essentially create a court of appeals nominating commission which would be separate and apart from the Supreme Court Nominating Commission. The commission would be appointed in a manner similar to the resolution; 3 members appointed by the speaker of the House, 3 members by the president of the Senate and 3 members by the governor. After answering questions asked by the Committee, Mr. Long was thanked by the Chair.

Lance Kinzer spoke as a proponent of the bills. He related that no other state in the country allows its bar to control the majority of supreme court nominees and he thinks that this is a problem. That is why he is suggesting restructuring to make some accountability to the system. He opined that it is wrong to give too much power to any one entity. In closing, Representative Kinzer said that we have a system that allows a very narrow group of people with a very narrow point of view to control the process.

(Attachment 1)

Americans for Prosperity was represented by Alan Cobb. Mr. Cobb said that Kansas is the only state that allows lawyers to dominate the process. He stated that it is true that our judiciary must be independent of

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the shifting political sands but that judicial independence applies to the judges, not to their selectors. (Attachment 2)

The Chairman invited Colonel William Richards, Topeka Branch of the NAACP, to the podium. Colonel Richards testified as a proponent to the **HCR 5031** and **HR 2799**. He urged the Committee to pass **HCR 5031**. He stated that the concurrent resolution provides more accountability, transparency, and democratic oversight than currently exists for the Kansas electorate. He opined that it will terminate the current charade of appointments by the Governor appearing to be no more than a “rubber stamp” operation. He concluded by saying that it is recommended that the process for considering and nominating persons to the Kansas Supreme Court include compliance with the Title V11 Civil Rights Act of 1964, as well as the Americans with Disabilities Act and the Kansas Act Against Discrimination. (Attachment 3 & 4)

Justice Fred Six, Kansas Supreme Court Justice (retired), spoke as an opponent to **HCR 5031**. In his testimony, Justice Six commented on the following points:

- The triple play of 1957
- Kansans desire a Supreme Court that is independent and accountable.
- **HCR 5031** will discourage Judges and lawyers in Kansas from becoming nominees.
- Potential for damaging the working relationship between executive branch and legislative branch.
- Track record of decisions based on the law, the facts and the record from the trial court
- The Kansas current merit selection system is currently being used by surrounding sister states.
- The Kansas merit selection system, adopted by the voters in 1958, is a judicial vehicle that has been used over the past 49 years.
- Kansas requirements that a Supreme Court Justice retire at age 70.
- The cost factor, fiscal impact and additional expense.
- **HCR 5031** does not support the independence of the Judiciary.

Dick Hite representing the Supreme Court Nominating Commission, addressed the Committee as an opponent to the proposal. He stated that he would like to concur with all of Judge Six’s comments regarding **HCR 5031**. He addressed the role of the lawyers on the commission and the criticism directed to the commission. The Commission’s interviews of applicants for appellate judges positions are not secret in the sense implied by its critics. When a vacancy occurs in one of the appellate courts, the Commission interviews as many as 35 to 40 individuals. Only three are nominated to fill the vacancy. He suggested that Kansans continue to want independent appellate judges and that there is no need for change. (Attachment 5)

The Chair recognized Robert Casad, professor of law emeritus of the University of Kansas. Mr. Casad said that the fact that someone disagrees with a court’s decision is certainly no argument for changing the system of judicial selection. He stated that the proponents do not want a politically unbiased judiciary; they want one that is politically biased in a way that they approve. (Attachment 6)

The Chair recognized David Rebein, an attorney from Dodge City, who appeared as an opponent to the bills. He asked the Committee to consider a number of points on why the current system is working. He compared the federal system to the current Kansas system we have now and explained why our state system is a more superior system. (Attachment 7)

Jim Robinson, Kansas Association of Defense Counsel, appeared in opposition to both the concurrent resolution and the bill. He shared many the reasons articulated by others. He contended that the resolution and the bill that the Committee has before them is an effort to tilt the “playing field” so that the legislature knows in advance how the “calls” are going to be made. He stated that the system works very well and we should not be changing it now. (Attachment 8)

The Committee members were allowed to ask questions of the conferees.

Written testimony was submitted by Ronald Cass (Attachment 9) and Stephen Ware (Attachment 10) who

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were proponents of **HB 2799** and **HCR 5031**.

Written testimony was submitted by Kellyanne Conway, CEO of Polling Company, Inc. (Attachment 11) who is neutral to **HB 2799** and **HCR 5031**.

Written testimony was submitted by Janis McMillen, League of Women Voters of Kansas, (Attachment 12) and Callie Denton Hartle, Kansas Association of Justice, (Attachment 12) who are opponents of **HB 2799** and **HCR 5031**.

The hearing was closed on **HB 2799** and **HCR 5031**.

The meeting was adjourned. The next meeting will be on February 25, 2008, at 1:30 in room 313 S.