

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on February 21, 2005, in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Kansas Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Helen Pedigo, Office of Revisor of Statutes  
Nancy Lister, Committee Secretary

Conferees appearing before the committee:

Senator Wagle  
Senator Schmidt  
Phill Kline, Attorney General  
Roger Kemp  
Jack Focht, Attorney and Past President of the Kansas Bar Association  
Justice Fred Six, retired  
Dave Rebein, Supreme Court Nominating Commission

Others attending:

See attached list.

Chairman Vratil opened the meeting and hearing on **SCR 1606**;

**SCR 1606 Constitutional amendment to have the supreme court justices appointments subject to consent by the senate**

Proponents:

Senator Susan Wagle stated she was an advocate for the resolution for several reasons. The Supreme Court is the third branch of government and affects the quality of life for Kansans, yet the people of Kansas have no say in who is selected for these positions. In thirty states, people have more influence in the nominating process for Supreme Court Justices through voting or indirectly contacting their elected officials than what the appointment process allows. Currently, the nominating of justices is controlled by a majority of attorneys. Senator Wagle was supportive of the confirmation process Kansas uses in appointing Department Secretaries and stated she believed that court nominees should be subject to the same scrutiny. (Attachment 1)

Senator Derek Schmidt described the resolution as an opportunity for changing the justice selection process to strengthen the system by adding senate confirmation. Senator Schmidt stated that the objective of the resolution was to protect the institution of the court from the weakening that can come when public opinion concludes there is a pattern of conduct by a court majority that uses its "independence" to exert its own political preferences at the expense of foundational legal doctrines or at the expense of the popularly accountable branches of government. Senator Schmidt stated that the merit-selection system by itself lacks important checks and balances, and that it is appropriate to consider factors other than a justice's experience and credentials. Senator Schmidt stated that the approximately 9,500 members of the Bar in Kansas ultimately decide who is going to serve in the judicial branch of state government, and he believes this policy is inconsistent with the principles of Kansas. (Attachment 2)

General Kline, Kansas Attorney General, asked Chairman Vratil to allow him to introduced the next speaker, Roger Kemp, who lost a daughter to a brutal crime in 2002, and then make some remarks afterwards, and the Chairman concurred.

Roger Kemp, a citizen of Kansas, testified that he lost a daughter in a brutal murder at a Leawood swimming pool June 18, 2002. During the trial, he had faith in the justice system and a jury to decide the punishment of the murderer of his daughter. Mr. Kemp stated he is very unhappy that the justices have taken away the death penalty as an option, saying it is unconstitutional because the law isn't "worded right". Mr. Kemp stated that he supports our senate having the opportunity for final approval of Kansas Supreme Court candidates and that it would be good to know where the candidates stand on important issues of our day.

## CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on February 21, 2005, in Room 123-S of the Capitol.

([Attachment 3](#))

General Phill Kline, Kansas Attorney General, testified in support of the bill, stating that the current process for selecting Justices vests authority solely in the executive branch and a private sector organization in closed proceedings with little or any public scrutiny. The Nominating Commissions are selected in a process that has less than one percent of the electorate actively participating and little if any media coverage of the naming of the Nominating Commission or the selection process. General Kline stated there is nothing in the process that allows for appropriate scrutiny to prevent the perversion of the process through the application of pressure by legal employers, campaign contributors or interest groups to direct a selection. Senate confirmation would bring to the light the significance of the process, and through the accountability of openness, provide a greater check against the collusion of interests. ([Attachment 4](#))

### Opponents:

Jack Focht, Attorney and Past President of the Kansas Bar Association, testified in opposition to the bill, stating that the current system for appointing judges works well. Mr. Focht stated that the independence of judiciary is a value that all Kansans and Americans value and they do not want political decision makers to be subject to the whims of the ebb and flow of the "majority". Mr. Focht stated that it is inappropriate to attempt to pick or confirm judges because of their view points, that the only view wanted from our judges should be a desire to interpret our laws fairly in accordance with the Constitution. ([Attachment 5](#))

Justice Fred Six, retired Justice from the Kansas Supreme Court, spoke in opposition to the bill. Justice Six stated that 48 years ago he was an eye witness to the infamous "triple play of 1957" when, Chief Justice William Smith, hospitalized and an invalid, announced his intention to resign, but coordinated that resignation with Governor Fred Hall, in order to effect Hall's appointment to the Supreme Court. ([Attachment 6](#))

Justice Six stated that Kansans desire a Supreme Court that is independent and accountable. The current system gives voters a chance to reaffirm justices every six years on the voting ballot. Kansas requires Justices to retire at age 70 or to finish out a term if the 70<sup>th</sup> birthday falls within a six-year term.

Dave Rebein, Supreme Court Nominating Commission, introduced guests at the meeting, Pat Riley and Dale Cushinberry, also members of the Nominating Commission. Mr. Rebein stated that he wanted to speak not so much in opposition to the resolution as in favor of the existing merit system. He summarized that politics are left at the door for anyone serving as a Commission member, as they resign any political office held. ([Attachment 7](#)) Mr. Rebein summarized that the resolution might put a damper on number of attorneys that would put their name in the hopper; despite the good intentions of the resolution, it might also politicize the process and end up screening good conservative applicants, as it has in the federal process.

Written testimony was provided by Ann Kindling, Kansas Association of Defense Counsels ([Attachment 8](#)), and Nancy Kindling, representing the League of Women Voters of Kansas ([Attachment 9](#)).

Chairman Vratil adjourned the meeting at 10:30 A.M. The next meeting is scheduled for February 22, 2005.