



February 10, 2015

### **Testimony in Support of HCR 5004 and HCR 5005**

Mr. Chairman and members of the committee:

The attached testimony was submitted on January 22<sup>nd</sup> as part of the Committee's informational hearing on Judicial Selection reform. Given the underlying concerns about the fundamental fairness of our Judicial selection process that are addressed by both resolutions under consideration by the Committee, please accept the attached as testimony in favor of both HCR 5004 and HCR 5005.

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January 22, 2015

## **Testimony in Support of Judicial Selection Reform**

Mr. Chairman and members of the committee:

On behalf of thousands of Americans for Prosperity members across Kansas, thank you for this opportunity to voice our support for long overdue reform in our process of selecting members of the Kansas Supreme Court.

Kansas is the only state in the union that has two classes of citizens, each with different voting rights. Under our current Supreme Court selection process, Kansas lawyers have the right to vote on a controlling majority five of nine seats of the Supreme Court Nominating Commission. The Commission acts as a powerful gatekeeper to one-third of our state government, all the way from the recruitment and screening of applicants through to the final selection of three candidates from which the Governor *must* choose.

Other states have similar selection processes, but Kansas stands alone as the only state to put a majority of the selection body in the hands of the bar.

### **The Current Selection Process is Political**

Our current Supreme Court selection system was an attempt to take politics out of judicial selection as a reaction to a flawed vacancy appointment system. The result was the replacement of a transparent political process of statewide judicial elections with a different kind of politics.

Proponents of the current Supreme Court Nominating Commission, the so called 'merit system' often suggest that system is free of political influence. While the process is not defined by traditional political parties, it is undoubtedly political.

A lawyer interested in becoming a member of the Commission would be wise to seek favor of various key lawyer groups. The majority of Kansas voters will never see the endorsement letters mailed and campaigning that is part of the Nominating Commission elections, it should come as no surprise that two of the largest law firms in Kansas and leadership of the Kansas Bar Association are well represented on the current Nominating Commission.

### **The Current Selection Process is not Transparent**

Public trust in any governmental body is based on confidence that the selection process is fair and represents the best interests of everyone. The broad ranging scope of Kansas Supreme Court decisions makes public

confidence even more critical. Unfortunately, most Kansans are not aware of the existence of the Nominating Commission, much less the decision making process.

The Commission is not subject to the Kansas Open Meetings Act, so the public has no insight into the criteria used to select judicial nominees. Likewise, all votes of the Commission are secret, so even the lawyers who voted for the board members have no way of holding their representatives accountable. It is difficult to imagine Legislators voting in secret, or Supreme Court Justices issuing nameless opinions.

### **Even Attorneys are not Fairly Represented**

The current judicial selection commission is made up of nine members, four appointed by the Governor from each Congressional District. The Chair of Commission is selected by a popular vote of bar members who are residents and licensed in Kansas. The remaining four commission members are selected by a popular vote of the lawyers in each Congressional district.

Congressional districts are roughly equal in population and are periodically adjusted after each census. However, population of Kansas residents does not correlate to the size of the bar in each district. The 1<sup>st</sup> Congressional District has slightly more than 1000 eligible lawyers, while the 3<sup>rd</sup> District has more than 3500. This disparity results in a gross overrepresentation of lawyers in some parts of the state.

### **Democratic Alternatives are Working in Kansas**

A system of gubernatorial appointment with Senate consent does not threaten judicial independence, as witnessed by the independence of our federal judiciary. Similarly, popular election was successfully used for the first 91 years of Kansas existence.

More recently, appointments to the Kansas Court of Appeals have been made by means of the 'Federal' system with the Governor appointing and the Kansas Senate approving. Currently, 14 of the 17 District Courts are selected through partisan election. Reform of the Kansas Supreme Court selection process is not a sea change, as proponents of the status quo may claim, but rather an extension of existing models.

Our judiciary must be and remain independent of the shifting political sands; able to rule consistently and fairly under the law without fear of reprisal. But judicial independence applies *to the justices*, not to their selectors. Rather, accountability and fairness should be foundation for any judicial process. Members of Americans for Prosperity all across Kansas look forward to helping find the best means of selecting our Supreme Court.

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