

February 11, 2015

To: Rep. John Barker, Chair
Members, House Judiciary Committee

From: Martin Dickinson

Re: HCR 5004 and HCR 5005 – Selection of Supreme Court justices

For 47 years, as a lawyer, teacher, and law dean, I have closely observed the Kansas Supreme Court. I have been personally acquainted with most justices, and some are my former students.

Some justices were Republicans before appointment, some were Democrats, and many just wanted to be good lawyers, paying little attention to politics. The only common denominator is that those elevated to the Supreme Court have been professionals dedicated to the rule of law, regardless of politics. This has been assured by the nonpartisan merit selection process, which has permitted Kansas to attract some of its best legal talent to this vital public service.

I am concerned about proposals for changes in this very successful system, especially those offered by the Governor in his State of the State message.

Governor Brownback has proposed popular election of judges. This would have three immediate results:

Candidates would run on overt political platforms. For example, one candidate would commit to support all anti-abortion efforts. Another would pledge to resist every effort to diminish abortions. The Supreme Court would become little more than a third branch of the Legislature.

Money would rule. Corporations, unions, and wealthy individuals could in effect “buy” judges with campaign contributions.

Many of the best qualified attorneys would decline to participate in a system in which political allegiance and money are controlling.

Governor Brownback also proposed adoption of the federal system—nomination by the Governor with concurrence of the Senate.

Do we really want to adopt the ills of the federal government? One of the tragedies of our times is the increasing politicization of the United States Supreme Court. In many cases the Supreme Court has become little more than a super-legislature, with each justice’s vote determined by whether he or she was appointed by a Republican or Democratic president.

Is it really more democratic for justices to be chosen by a single individual?

Someday each of us might find his or her life, liberty, or property in the hands of the Kansas Supreme Court. Would you want your fate determined by judges chosen because of their personal political beliefs? Would you want your fate determined by judges chosen because their supporters had deep pockets?

I believe the answer is clear: “If it ain’ t broke, don’ t fix it.”

Note: I am a member of the faculty of the KU School of Law, but I do not speak for or represent either the University or the School of Law