

OP-ED: Justice Selection

By Lawton R. Nuss

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Some members of the legislative and executive branches of Kansas government have publicly expressed their admiration for many "things Texan." For example, they acclaim Governor Rick Perry's conservative leadership and praise Texas' lack of a state income tax. Their high regard for our southerly neighbor may explain why our legislature is considering whether Kansas should switch to Texas' system for selecting Supreme Court justices. Texas procures justices through statewide elections.

Perhaps those admirers of the Lone Star State who want to turn Kansas' 57-year-old merit selection system into Texas-style elections should carefully consider the opinion of the former Chief Justice of the Texas Supreme Court. Wallace Jefferson's views were published last month in the *Dallas Morning News*.

Jefferson is alarmed about the sudden increase in spending by special interest groups to influence state judicial elections. This spending promotes a perception "that justice is for sale," which in turn "undermines the public's trust in impartial courts." According to Jefferson, these political marketing campaigns do not emphasize judges' merit. Instead they "seek to pack courts with judges who will advance a particular agenda." As a result, the people believe they have no neutral forum to vindicate their rights.

Jefferson speaks with firsthand, conservative-credentialed, in-depth knowledge of elections for Supreme Court justices. He was appointed to the Texas high court by Governor Rick Perry in 2001 and won a statewide election the following year. In 2004 Perry appointed him Chief Justice. He later won statewide elections for this office before he voluntarily left the court in 2013. Accordingly, it says a lot when this experienced jurist so publicly opposes electing justices.

The former Chief Justice essentially rejects yet another proposed change the Kansas Legislature is considering for selecting our state's justices. Replacing our time-tested merit selection system with the so-called "federal model" will permit the Governor to choose whomever he wants, followed by Senate confirmation.

Rather than embracing the federal solution, Jefferson supports merit selection. As he describes, "This method, used by 23 states to select their top judges, gives a nonpartisan commission the responsibility to evaluate the objective qualifications of judicial candidates and make recommendations to the governor for appointment." Kansas is one of those 23 states.

I agree with my Texas colleague. In Kansas, merit selection is a healthy competition that compares side-by-side the qualifications of numerous applicants. Their names and qualifications are made public, and the selection process itself is open for Kansans to see. Politics and its ever-increasing money play no role.

But under the federal solution, only the name of the Governor's appointee is made known. Accordingly, this model gives neither the people of Kansas—nor even the Senate—an opportunity to compare the appointee's qualifications to those of anyone else. So unlike merit selection which establishes the appointee was "one of the best" of all who applied, Senate confirmation of an appointee only establishes he or she was the "best of the one" presented.

Some claim merit selection is an undemocratic process because the people allegedly play no part and it produces justices who are unaccountable. Actually, the people added it to the Kansas Constitution in 1958 with a voter approval of nearly 60%.

This has resulted in the people voting in statewide elections every 6 years on whether to retain a particular justice. This past November approximately 400,000 Kansans voted to keep my two colleagues who were listed on the ballot. Under this "undemocratic" process, hundreds of thousands of Kansans will get to vote on additional "unaccountable" justices in 2016.

Let's keep our system.

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