



**KANSAS BAR
ASSOCIATION**

TO: The Honorable Lance Kinzer, Chair
And Members of the House Judiciary Committee

FROM: Lee Smithyman
President of the Kansas Bar Association

RE: SB 8 – Creating the Kansas Commission on Judicial Qualifications

DATE: February 19, 2013

Good Afternoon Chairman Kinzer and members of the House Judiciary Committee. I am Lee Smithyman, President of the Kansas Bar Association and I provide this written testimony in opposition to SB 8 which would create the Kansas Commission on Judicial Qualifications.

The Kansas Bar Association has long supported the merit selection process and nonpartisan Kansas Supreme Court Nominating Commission for selecting Kansas appellate judges and justices. The present system has worked well for over 50 years and two recent polls confirm that Kansas citizens also believe the system is sound. See; Justice at Stake Poll (<http://bit.ly/UwKPvd>) and Kansas Policy Institute Poll (<http://bit.ly/12eZmkT>). Enacting SB 8 would do significant damage to a system that is fair, open and successful.

However, the Kansas Bar Association is keenly aware of the major criticism often leveled against the current merit selection process, that a majority of nominating commission members are selected by Kansas licensed attorneys. In response to this criticism the KBA Board of Governors met on December 7, 2012 and adopted the following resolution:

RESOLVED, that the Kansas Bar Association supports the merit selection system for appellate judges and justices, independent of how merit panel members are selected. The present application, interview, questioning and selection process provides the best available information to identify and select the most qualified appellate judges and justices, independent of political considerations.

The KBA used this resolution to offer specific changes to the merit selection process, namely a proposal to alter the configuration of nominating commission members. This proposal was introduced into the Senate and House Judiciary committees early in the session and they are formally listed as HCR 5004 and SCR 1605. However, their popular name, “4-5-6PLAN” provides more insight into the new nominating commission composition.

The KBA 4-5-6 PLAN would amend the Kansas Supreme Court Nominating Commission as follows:

- Four attorneys elected by registered Kansas attorneys, one per congressional district;
- Five members selected by the Governor, one per congressional district and a fifth members to serve as a non-voting chair.
- Six (non-legislator) members selected by House and Senate Leadership. Their numbers are divided as follows:
 - o Two selected by the President of the Senate;
 - o Two selected by the Speaker of the House;
 - o One selected by the Senate Minority leaders; and;
 - o One selected by the House Minority Leader.

The KBA believes that the 4-5-6 PLAN will protect judicial independence while allowing a more open democratic process by incorporating the Executive Branch, Legislative Branch and citizens (through retention elections) to play an active and meaningful role. The benefits of this plan far outweigh the proposal set out in SB 8.

In closing, the merit selection process should not be discarded. The process had provided countless qualified, independent appellate judges to Kansas’ highest courts. The KBA believes in the system as does countless of Kansas citizens.

On behalf of the Kansas Bar Association, I thank you for this opportunity to consider our thoughts on this important issue.

Lee Smithyman
KBA President
2012-2013

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,200 members, including lawyers, judges, law students and paralegals. www.ksbar.org

Attachments (Newspaper Editorials)