



Free Press  
Viewpoint

Time for change  
in judge selection

The people of Kansas might just get a chance to vote on a change in the way we select judges for our high courts in the next year or two. And it’s about time.

The system we have is about as undemocratic as you could get. The state went from electing judges to the Kansas Supreme Court and the Court of Appeals to having them appointed by the governor from a list submitted by a “nominating commission.” The governor has little say in it, except the final choice.

The commission is made up of four members appointed by the governor and five elected by the state’s lawyers. The system was made part of the Kansas Constitution after the infamous “Triple Play” of 1957, when Chief Justice Bill Smith, a Republican, resigned early so the incoming governor, Democrat George Docking, would not get to appoint his replacement.

Justice Smith was said to be a strong supporter of Gov. Fred Hall, who then resigned his position. The lieutenant governor, John McCuish, then became governor and, as his only official act, appointed Hall to fill the vacancy for chief justice. He served only two years, however, resigning to run again for governor. (He’d lost the 1956 Republican primary as an incumbent, and lost again in 1958.)

Hall left for California, but his legacy was “reform” of the judicial nominating process. A governor no longer can appoint his friends, because he has no input on the list. Control of the nominations vests mostly in the lawyers, a small group expected to rise above politics to select the best minds for our courts.

But, as a group, who’s more political than lawyers? The system mostly has served to perpetuate control of the courts by members of the Topeka establishment, center-left thinkers who in recent years have pushed the state away from the conservative principles held by a majority of voters.

It’s not that the change took politics out of the process, it seems, but that it eliminated any say the voters or the governor have. If the testimony of two conservative members shows anything, the process is so skewed that some commission members deride any nominee seen as a conservative.

Of course, judges have to stand for a yes-or-no “retention” vote every six years, so voters do have some control, but not one judge has been ousted so far.

Compare that to the fairly dignified elections we see for district judge positions in rural areas, and it’s hard to see any advantage to the state’s process. When a judge isn’t seen as performing, voters can and do make a change. And these campaigns seldom revolve around liberal-or-conservative issues.

While it’s not fashionable to say it, we believe the voters usually make pretty good decisions. They could handle selecting our judges. However, it might be more difficult for us to know candidates in a statewide race.

How to change the system? One plan is to give the governor back at least part of his power to make selections. Another is to keep the nominating commission, but make the judges subject to confirmation by the state Senate, as in the federal system.

Or we could just let the voters decide. They did it for years.

None of those ideas would guarantee a conservative court, or a liberal court, for that matter. Appointing judges to what amounts to a lifetime job can be a dicey proposition, as any number of presidents have learned. Judges can be mighty independent when they feel like it.

But giving the governor and the people more say – and the state’s lawyers a little less – makes sense to us. – *Steve Haynes*

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Check your pocketknife at the door

A visit to the Statehouse in Topeka brought home the fact that this is still a working person’s state.

While the state has spent millions of dollars repairing, painting, polishing and updating the 150-year-old building, and she looks great, what I noticed is the guard at the door.

Like most statehouses and quite a few court-houses, you have to empty your pockets and walk through a metal detector. A guard checks you through and you are on your way to see your senator or representative, attend a hearing or just wander around and look at the frescos, polished pillars and gleaming floors.

Your representative will still have a tiny office in a row with other representatives and your senator perhaps a little bigger space, but both will say that it’s a big upgrade from what they used to have.

But, back to the entry.

I slid through the checkpoint like melted butter. I’ve done this a hundred times in buildings and airports. Steve, however, was carrying his Leatherman Tool – a sort of updated



Cynthia Haynes

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Swiss Army knife.

The guard offered to hold it for him, putting his name on a sticky note and laying the tool carefully on top of the X-ray machine from which my purse was just emerging. While, I’m short and had a bad angle, it looked to me like it was the fourth or fifth item to be placed up there.

On our way out, Steve asked for his Leatherman Tool and the guard asked him his name noting that he had two of them up on the make-shift counter.

Since it was a slow time of the day and there was no one behind us, I asked the guard how many “knives” he usually had.

He grinned and said up to a dozen from time to time, but the record, he said, was the day the Pepsi truck drivers visited the capitol. By the time they were done going through the machine, there were 53 box cutters sitting on top, he said.

Last year, after all the legislators had gone home and there were few visitors to the capitol, they had 13 unclaimed sharp things no one had remembered to pick up. These were turned in and placed in an evidence locker, he said.

It just shows that no matter how fancy some of the suits going through those doors are, there are still a heck of a lot of working people with pocket knives, box cutters and other sharp things visiting the Statehouse. And that’s a good thing.

Cynthia Haynes, co-owner and chief financial officer of Nor’West Newspapers, writes this column weekly. Her pets include cats, toads and a praying mantis. Contact her at c.haynes @ nwkansas.com

School finance thorny issue to rural areas

One of the key issues in the Kansas Legislature this year is education reform. In January, a panel of district-court judges issued a ruling regarding the adequacy of school funding, and that is one of the driving forces in the discussion. Significant turnover in the legislature has led many to look at our system of public education with fresh eyes. Several subtopics are simultaneously percolating.

Constitutional amendment

According to Article 6b of the Kansas Constitution, “The legislature shall make suitable provision for finance of the educational interests of the state.” In recent decades, Kansas has been involved in three court suits on the definition of suitability. The fact that courts have gotten involved has created great consternation among many in the Legislature, and this year there is an effort to stop that cycle of lawsuits and get the courts out of school funding.

Sen. Jeff King (R-Independence) has introduced a resolution to add the following sentence to Article 6b: “The financing of the educational interests of the state is exclusively a legislative power under Article 2 of the constitution of the state of Kansas and as such shall be established solely by the Legislature.”

Some believe that this stronger language would make it much harder for the courts to become involved in the future. However, if this is true, those of us who live in rural Kansas should be concerned. As the population shifts from rural to urban, we are increasingly outnumbered in the Legislature.

This raises the possibility that some future Kansas Legislature may decide to enact school finance legislation that disadvantages rural



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school children. We cannot allow that to happen. In a democracy, the judicial system exists to provide justice for all, including protecting the rights of the minority from the rule of the majority.

The principle of equitable funding is central to the goal of providing all Kansas children with the best possible education, and placing the responsibility exclusively in the hands of an increasingly urbanized Legislature would present grave threat to rural Kansas.

School vouchers

Our system of free enterprise is founded on the principle that free and open competition is a good thing. Certainly that is true for private enterprise, and some are suggesting that Kansas should insert competition into its public education system in order to produce greater outcomes and reduce costs.

I believe we should strive to foster competition among educators, individual attendance centers and school districts. But some in the legislature are proposing to go further ... to issue school vouchers whereby the state’s current annual cost of educating a student would be paid to that family so the student could attend a private school.

It is easy to imagine that might create some

competition, but remember that the playing field is very uneven. Private schools, by their very nature, can select who attends. So the result would be that the best and the brightest would migrate to private schools while those students who are more costly to educate would be left behind in public schools with a shrinking level of funding. How can that be good for Kansas?

Interestingly, the voucher idea is surfacing at the same time that some are again beginning to talk about further school consolidation. In rural Kansas, where entire school districts may have enrollments of 100 or less, and the closest school outside of the district may be 30 miles away or more, a new private school springing up to offer “competition” just doesn’t make much sense.

The 2010 census revealed that 77 of Kansas’ 105 counties are losing population. A voucher system that encourages new private schools and draws students away from public schools that are already shrinking would threaten the very existence of many rural schools in Kansas.

I have high respect for the private schools throughout Kansas and the great work their dedicated educators perform. But in order for Kansas’ system of excellent public education to remain strong, the private education system must remain private. Public dollars must always be reserved entirely for public education.

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