

Legislative Testimony

In **Opposition** to SCR1611
Senate Committee on Federal and State Affairs
February 25th, 2025

In Person Testimony

Chairman Thompson and members of the committee,

Thank you for the opportunity to testify. My name is Rashane Hamby, and I am the Director of Policy and Research for the ACLU of Kansas. On behalf of our 35,000 supporters across the state, I strongly oppose Senate Concurrent Resolution 1611.

SCR 1611 seeks to dismantle Kansas' merit-based judicial selection system and replace it with partisan judicial elections. This would inject politics into our courts, undermine judicial independence, and erode public trust in the judiciary. The ACLU of Kansas opposes this proposal because it threatens the rule of law, weakens the separation of powers, and allows special interests and partisan agendas to influence our state's highest court.

Kansas' Judicial Independence is at Stake

For more than 60 years, Kansas has used a merit-based selection system for Supreme Court justices through the Supreme Court Nominating Commission. This system was established in 1958 after public outrage over political corruption in judicial appointments. Before that, justices were elected in partisan contests, leading to widespread favoritism and ethical scandals—most notably the 1956 "Triple Play" scandal, in which Governor Fred Hall orchestrated his own appointment to the Kansas Supreme Court through backroom political deals (Stutzman, 2018).

To restore public trust, Kansas amended its constitution to create the current merit-based selection process, ensuring that justices are chosen for their legal expertise, judicial temperament, and qualifications rather than their political allegiance. The Kansas Supreme Court Nominating Commission has since served as a nonpartisan safeguard against political interference in the judiciary. Its structure balances legal expertise and public accountability, with attorneys and non-attorney members working together to evaluate candidates objectively (Robbin, 2010).

SCR 1611 threatens to dismantle this system and replace it with a method that has historically led to judicial corruption, political favoritism, and diminished public confidence—the very issues that led Kansas to adopt merit selection in the first place.

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The Consequences of Partisan Judicial Elections

Under SCR 1611, Kansas Supreme Court justices would:

- Run in partisan elections, requiring them to campaign and fundraise from political parties, special interest groups, and donors who may later appear before them in court.
- Engage in political activity, including contributing to and holding office in political parties—an extreme departure from judicial ethics standards.
- Respond to voter pressure and political attacks, rather than deciding cases based solely on the law.

The dangers of partisan judicial elections are well-documented. In states that use this system, studies by the American Bar Association (ABA), the Brennan Center for Justice, and legal scholars have shown alarming consequences, including:

- Increased political influence over court decisions (Shepherd, 2021).
- Soaring campaign spending, often fueled by dark money groups (Brennan Center for Justice, 2023).
- A decline in public trust, as judicial decisions become tied to political interests (Robbin, 2010).

Kansas' current system ensures that justices are selected based on qualifications, not political affiliations. If SCR 1611 passes, Kansas will become an outlier among U.S. states, abandoning safeguards that protect judicial integrity.

Lessons from Other States

Other states with partisan judicial elections provide clear warnings:

- Wisconsin (2023 Supreme Court Race): Over \$51 million was spent on a single judicial election, including \$45 million from dark money groups (Marquette Law School, 2023).
- Arkansas: Political gridlock in the state's Supreme Court has eroded public trust in judicial fairness (Ruetters, 2024).
- Texas & Pennsylvania: Justices routinely receive large campaign donations from corporations and law firms, creating clear conflicts of interest when those donors appear before them in court (State Bar of Texas, 2020).

Kansas should not invite these problems into our judicial system. The Supreme Court should not be for sale to the highest bidder.

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SCR 1611 is a Legislative Power Grab

The Kansas Supreme Court serves as a check on government power, ensuring that laws passed by the legislature comply with the Kansas Constitution. The real motivation behind SCR 1611 is clear: it is an attempt by the legislature to exert political control over the courts and remove a check on legislative overreach.

By eliminating the Supreme Court Nominating Commission, SCR 1611 erodes the separation of powers and compromises the judiciary's ability to:

- Protect fundamental rights, including reproductive rights, voting rights, and equal protection under the law.
- Hold the government accountable for unconstitutional or unlawful actions.
- Ensure justice is applied fairly, regardless of political influence.

A fair and independent judiciary is essential to democracy. This resolution threatens that foundation by politicizing the courts and weakening judicial accountability to the Constitution, not political parties (West Virginia House Judiciary Committee, 2018).

Conclusion

SCR 1611 is a radical departure from Kansas' long-standing commitment to judicial independence. The merit-based selection system has served Kansans well for more than six decades, ensuring that justices are accountable to the law—not to political parties, special interests, or campaign donors. This proposal threatens to corrupt Kansas' highest court, inject partisan influence into judicial decisions, and dismantle constitutional safeguards that protect fundamental rights.

For these reasons, the ACLU of Kansas strongly urges this committee to reject SCR 1611 and preserve a system that guarantees fair, impartial, and independent courts.

Thank you,

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References

Kansas Constitution, art. 3, §§ 5, 6, & 8 (n.d.). Retrieved from <https://www.kslegislature.org/li/>

Robbin, A. (2010). *The merit selection of judges in Kansas: A model for judicial independence*. University of Kansas Law Review.

Stutzman, R. H. (2018). *Kansas' Triple Play scandal and the shift to merit selection*. *Wichita Eagle*. Retrieved from <https://www.kansas.com/news/politics-government/article>

Kansas Judicial Branch. (n.d.). *Judicial selection in Kansas*. Retrieved from <https://www.kscourts.org/>

Marquette Law School. (2023). *Analysis of the 2023 Wisconsin Supreme Court race*. Marquette University. Retrieved from <https://law.marquette.edu/>

Brennan Center for Justice. (2023). *The influence of dark money in judicial elections*. New York University School of Law. Retrieved from <https://www.brennancenter.org/>

Shepherd, J. (2021). *Campaign contributions and judicial decision-making: The impact of money on state supreme courts*. *American Law and Economics Review*, 23(2), 231-267.

Reuters. (2024, August 22). *Arkansas Supreme Court blocks abortion question from state ballot over paperwork issue*. Retrieved from <https://www.reuters.com/legal/arkansas-supreme-court-blocks-abortion-question-state-ballot-over-paperwork-2024-08-22/>

State Bar of Texas. (2020). *Judicial elections and campaign finance: A growing crisis*. Retrieved from <https://www.texasbar.com/>

West Virginia House Judiciary Committee. (2018). *Report on judicial impeachment and corruption in the state supreme court*. Retrieved from <https://www.wvlegislature.gov/>