

Senate Ethics and Elections Committee

Wednesday, March 10, 2010

Testimony Regarding 2010 SB 563

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On behalf of the Kansas Supreme Court, thank you for the opportunity to offer some comments concerning SB 563. The Supreme Court favors sensible, equitable regulation of the financing of judicial retention elections. The Court supports openness and full disclosure for all sides of any ballot question. The public has a right to know who is behind any effort to influence voters. For those reasons, SB 563 is a noble, well-intentioned endeavor.

At the outset, it is important to realize that judges are not politicians. Although some Kansas district judges must run in partisan elections, once they are elected or appointed all Kansas judges strive to put politics aside entirely in doing their jobs. Reaching this goal is already complicated by the uncertainty in the area of judicial recusals caused by recent United States Supreme Court decisions.

It is a wise design feature of our system of government that judges are fundamentally different public servants than others covered by the Campaign Finance Act. As such, the ideal legislation that would cover judges standing for retention would be carefully tailored to the judicial role and circumstances. If that, for whatever reason, is not possible, there is still an absolutely indispensable ingredient to any amendment to existing law to bring judicial retention elections under campaign finance regulation. That absolutely indispensable ingredient is equity.

There are at least two aspects of equity that must be considered. The first aspect is equity between those favoring and those opposing a position. The second aspect is equity between retention elections and other elections covered by the Campaign Finance Act.

The amendment to SB 443 earlier considered by this committee is inadequate to cover the first equity concern. SB 563, which is before you today, is better, but still presents some concerns and does not appear to fully address the equity issues. What no one wants is legislation that limits one point of view without imposing identical limits on the other point of view.

Regarding the equity concern between judicial retention elections and other elections, one issue that is not addressed is that there is only one cycle in retention elections. There is no primary election. Campaign contribution limits may need to be adjusted to reflect that reality. For example, an increased donor pool necessarily increases the potential number of cases in which a judge may need to recuse. Contributors on both sides of the retention issue should be able to give at the same level as contributors to campaigns in which there is both a primary and a general election.

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In summary, while SB 563 is a good concept, its execution needs some adjustment before passage. The Supreme Court urges extreme caution in this process. Legislation on campaign finance is fraught with the possibility of unintended consequences, and no one wants to do more harm than good in this situation. Therefore, you may wish to examine the laws of other states for their approach to campaign finance for judicial retention elections. The Court's overarching consideration is support for openness and full disclosure for all sides of any ballot question, given the public's right to know who is behind any effort to influence voters.

Again, thank you for the opportunity to provide comments on SB 563.