Kansas Plans to Shake Up State Court Judges

by Phyllis Schlafly May 14, 2008

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Kansas will have a proposition on the ballot in November that could send shock waves into the tenure of state court judges. The voters in Johnson County, Kansas (suburban Kansas City) will vote on the right to elect their 10th judicial district court judges instead of having them chosen by the lawyers.

We hear a lot in the media about bringing democracy to the world. Kansans are asking for more democracy in the middle of the United States.

How state judges get their jobs is a matter of state option, and there is a wide variety of rules.

Some state court judges are elected by the people, some in partisan elections, some in non-partisan elections. About half the states, including Kansas, use some variation of the so-called Missouri Plan, a process that originated only in the 1940s, which gives broad control to the licensed attorneys.

Missouri voters are unhappy with their Missouri Plan because the lawyers have successfully placed on the bench a succession of liberal judges, and it may be another six years before a Republican has a chance to be appointed to the state supreme court. In April, the lawyers successfully lobbied against the Missouri state legislature's attempt to reform the process.

Kansas gives its licensed lawyers an unusually powerful role in the selection of state supreme court justices. Some voters are beginning to see a connection between that extraordinary control and the judges' widely criticized decision to order the state legislature to appropriate hundreds of millions of dollars of additional taxpayers' money to the public schools.

The appropriation of taxpayer funds, and the raising of taxes that this necessarily requires, should absolutely be legislative, not judicial functions. The grabbing of spending and taxing powers by the courts is a major reason why we call these judges supremacists.

Under the Kansas procedure, when there is a vacancy on the Kansas supreme court, a Nominating Commission (on which the attorneys enjoy a 5-to-4 majority) secretly chooses its three favorites, and the Governor must pick one of those three. That's the whole process: no checking, no appeal, no oversight, no second opinion.

This plan is supposed to result in the "non-partisan" and "merit" selection of judges, but scholars who have studied the process have concluded that the commission selects judges based on the socio-economic interests of the attorneys and their clients.

Attorneys are a special-interest group just like any other group that aggressively lobbies for the interests of its members. In Kansas, the commission has had no shame about selecting judges who make political contributions to Democratic candidates.

Kansans are asking, why should the lawyers have such extraordinary control over the selection of judges who will then rule on cases brought by the lawyers who gave them their jobs? Nine other states allow their licensed attorneys to select some of the nominating commission members, but 41 states either give the lawyers

no power in the initial selection of supreme court justices or balance the lawyers' role with commissioners chosen by democratically elected public officials.

We hear a lot of talk today about the need for an "independent" judiciary. We do need a state judiciary that is independent of the attorneys and their special interests, especially the trial lawyers.

Kansans in Johnson County have discovered they have the right to change their procedure and elect their judges. To put this proposition on the ballot, they enthusiastically collected 14,000 signatures, twice the number required.

A judicial activist on the Wisconsin Supreme Court felt the wrath of voters in April when he became the first justice ousted by voters there in 41 years. Democratic Governor Jim Doyle, who had appointed him, called the negative campaign for that seat a "tragedy," but the real tragedy is when the voters have no say-so in combating the tyranny of the judiciary.

Many important issues face state court judges in addition to school funding. Same-sex marriage was decided by only one vote in the highest court of five states. It's unlikely that any judge elected by the people would declare the Pledge of Allegiance unconstitutional, as some life-tenured federal judges have done and may do again.

We've got a better chance of sticking with the will of the American people if state judges are elected rather than appointed by lawyers who have an interest in winning big-verdict cases before those very judges.