

# KBA Board of Governors



KANSAS BAR  
ASSOCIATION

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## Merit Selection Talking Points

### HISTORY & GENERAL INFORMATION

- Kansas Judiciary is a co-equal branch of government
- Merit Selection has been in place since 1958 (Triple Play happened in 1956)
  - Merit Selection approved by over 60% of Kansas voters
- Merit Selection extended to Court of Appeals (statutory)
- 23 states currently use a variation of merit selection
- Merit Selection maintains an independent judiciary

### CURRENT SELECTION SYSTEM

- Governor appoints 4 non-attorneys; **licensed Kansas attorneys (NOT THE KBA)** elected 4 members, one from each congressional district and the chair of the nominating commission.
- Supreme Court Nominating Commission reviews, interviews, and vets all applicants
  - Nominating Commission evaluates integrity, judicial temperament, experience, legal knowledge, etc.
  - Application and interview process is open to public
- Governor chooses judge from a three person panel submitted by the Commission
- New judicial appointees stand for retention election at the next available general election and then every 6 years after
- Current system approved by citizens, provides independent courts and maintains separation of powers between the three branches of government

### WHY MERIT SELECTION

- Merit Selection not only sifts out unqualified applicants, it searches out the most qualified.
- Professional qualifications are emphasized
- Highly qualified applicants will be more willing to apply given the inclusive nature of merit selection
- Citizens can evaluate judges performance and have a direct impact through retention elections (IOWA Supreme Court Justices failed retention election)
- Kansas judiciary ranked high for best business climate (5<sup>th</sup> in 2012)
  - 4 of top 5 used merit selection (US Chamber 2012)
- Justice at Stake Poll found that 61% oppose changing merit selection (<http://www.gavelgrab.org/?p=50590>)
- Kansas Policy Institute poll completed by SurveyUSA found that 54% of Kansans believe that it is in citizens' best interest to have judges recommended by a majority-attorney panel.
  - 46% to 45% of self-identified conservatives said the current system is in citizens' best interest
  - 53% to 41% of moderate republicans believe the same(<http://archive.constantcontact.com/fs124/1102590621053/archive/1112306591634.html>)
  - 3 states had votes targeting merit selection and all three failed (AZ – 27.6 to 72.4; FL 37 to 63; MO 24 to 76)(See; <http://www.gavelgrab.org/?p=47490>)

### KEY POINTS TO MAKE

- Judicial Selection should focus on qualifications, impartiality, fairness, experience and integrity – NOT POLITICS
- Judicial Selection should be free from INFLUENCE and make rulings based in the law
- Judges should be free to make unpopular decisions that are based on facts and the law
- Judges serve as check on other branches

- Current system supported by people
  - Merit selection has democratic legitimacy – original 1958 popular vote and retention elections
- Current System is CONSTITUTIONAL (Doole vs. Burke)