



Other Viewpoints

Judge interviews only part of reform

In making its interviews with candidates for the Kansas Supreme Court and Court of Appeals open to the public and reporters, the Supreme Court Nominating Commission is taking a welcome step that is likely to fortify public trust in the court system – but unlikely to satisfy those who want to overhaul how Kansas picks these judges.

Starting with interviews of Court of Appeals candidates Feb. 17-18, Kansans can observe both the prospective nominees and the process, getting a better understanding of the qualifications and values that the nine-member commission looks for.

The panel assesses the merits of the candidates and settles on three names to recommend to the governor for appointment to the bench. Of the 33 states that use nominating commissions to fill appellate court openings, Kansas will be the 11th to open its interviews to the public.

Kansans now can see for themselves how well the nonpartisan merit-selection process works, said Anne E. Burke, the Overland Park lawyer who chairs the commission.

Given that the commission is as old as Kansas' merit-selection system – adopted in 1958 after then-Gov. Fred Hall engineered his own appointment to the state Supreme Court – Kansans might wonder why it took so long to open the doors. The commission is a government body that seemingly should have been subject to the Kansas Open Meetings Act all along.

Asked about the closed-door policy, Kansas courts' information officer Ron Keefover pointed to a 1982 opinion issued by Attorney General Robert Stephan advising that the commission could decide itself to conduct its meetings in full public view, but couldn't be forced to do so by the Legislature.

In any case, the move toward transparency is wise. But don't expect the open meetings to quiet the commission's critics, for whom a lack of transparency has been only part of the problem.

Though the partisan "Fire Beier" effort to unseat several Supreme Court justices failed miserably in last month's election, the calls for reform are likely to multiply. As a state senator, Attorney General-elect Derek Schmidt unsuccessfully pushed for Senate confirmation of high court justices. And Gov.-elect Sam Brownback has questioned whether the current system is constitutional and also endorsed talk of reform, without specifics.

The new openness may even serve the reformers' case, undermining arguments that the system was working fine as it was.

Stephen Ware, a University of Kansas law professor who has crusaded for a selection system less dominated by lawyers, called the open interviews a "tiny, barely noticeable change" that won't affect the commission's deliberations – "secrecy where it matters."

If the new governor and newly empowered conservative majority in the Legislature push to change judicial selection, reform must not be driven by partisanship and ideology. If the goal isn't an impartial, independent judiciary that serves the rule of law, it will be wrong for Kansas and wrong for justice.

– *The Wichita Eagle, via the Associated Press*

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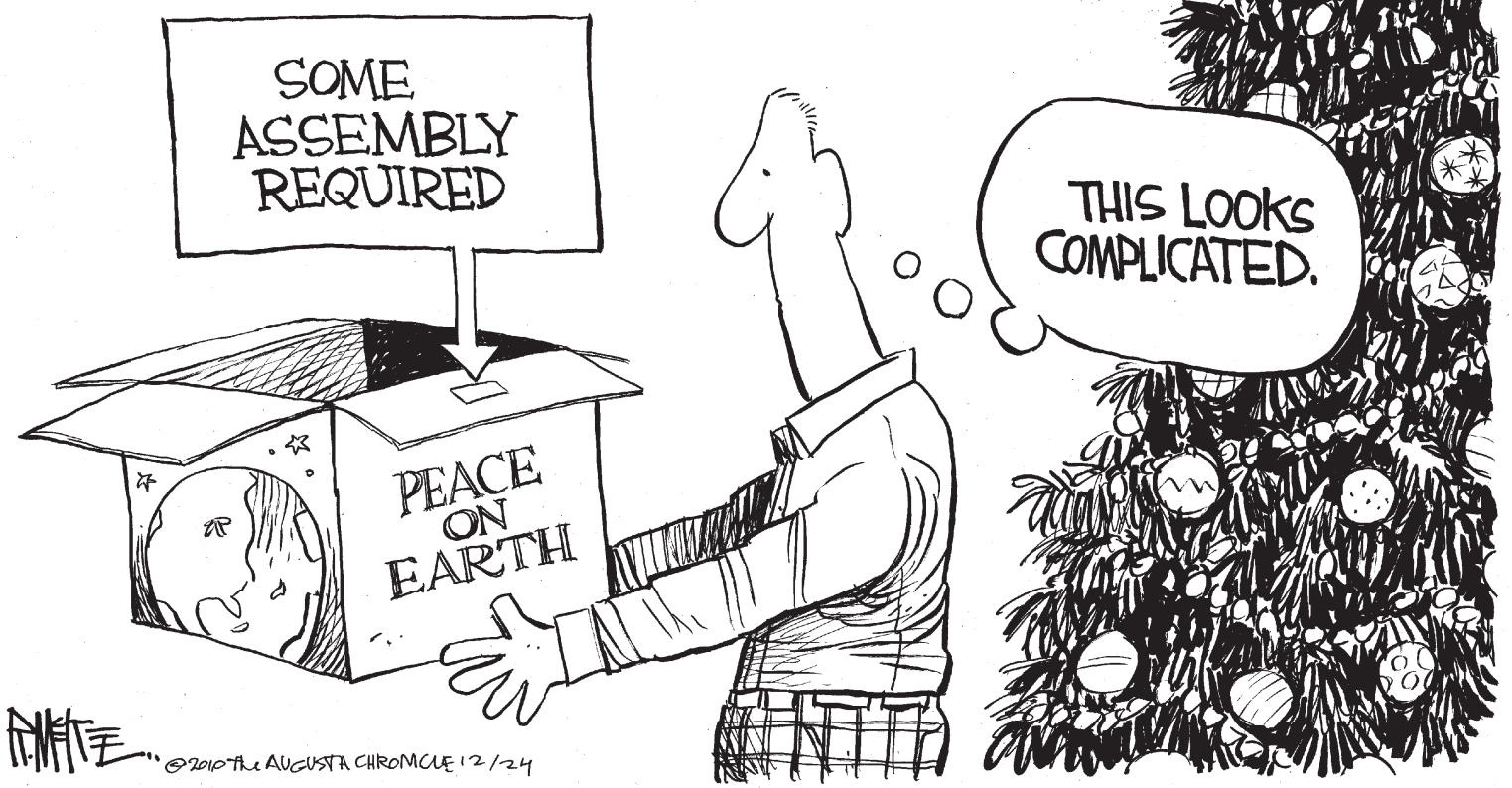
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'Twas the night before Christmas



Is a non-elected choice representative?

I had the privilege of witnessing an interesting side of democracy on Sunday, the process to choose a successor for Rep. Jim Morrison.

It's something that happens probably more often than people think. You have to replacing an elected official for a variety of reasons besides death. In Independence this year, Republicans had to find a successor for Sen. Derek Schmidt, who was elected as attorney general.

The process is simple. The elected Republican precinct committee members meet. Anyone can be on the ballot as long as they persuade a committee member to nominate them, and then the committee takes a vote.

At first it seemed that our hometown candidate, city Councilman Dave Voss, was in the lead. He had 14 more votes than his nearest competitor on the first ballot. However, it seems Voss wasn't able to make much of an impact outside the county. He only picked up six of the 34 vote up for grabs when Brian Baalman and Brenda McCants were eliminated, while Rick Billinger of Goodland picked up 28. It was a secret ballot, but observers said those votes were likely from the other three counties.

The whole thing was fairly harmonious, although the losing candidates were undoubtedly disappointed.

Not all states do this exactly the same way. I was working in Wyoming when Sen. Craig Thomas died. Thomas, a Republican, had served as U.S. Senator since 1995. He died of complications from leukemia in June 2007.

The process to replace him was interesting. The Wyoming Republican Party took applications for the job. They got 31 qualified applicants. Then a party committee met in Casper and narrowed it down to three. Each county committee got to send three people to sit on the committee. I wasn't able to attend, but I did cover the meeting for my paper.

The process was similar: each candidate made a speech, then the committee held a vote. They narrowed the field to 10, then allowed



Kevin Bottrell

• Simple tricks and nonsense

some longer speeches, and finally picked the top three: a former top aid to Sen. Thomas, a state senator and a former state treasurer. The committee sent these three names to the governor, who picked one. The winner would serve until the general election that November (even though Thomas' term didn't expire for another year), when he or she could run to retain the seat.

The really interesting part was that the governor at the time was a Democrat. This could ensure a little bipartisan oversight and cooperation, or it could have been an opportunity for a little partisan backstabbing. In this case it was the former. The governor picked the state senator, John Barrasso, who turned out to be a good fit for the job and won the election in November.

What some people don't like about these processes is that it drastically narrows the voting block involved in the "special" election, and you end up with a representative chosen by a majority of 98 people rather than a majority of 12,000, or in the case of Wyoming, a majority of 270,000. And they're right, it does violate the spirit of "one person, one vote."

Would it be better to simply hold an election for the entire district? I think not. For one thing, that's how it's written in the law. Article 39, Chapter 35 of the Kansas Statutes lays out the procedure. For another, holding a special election is an expense for the county, whereas a party meeting is relatively cheap. It also takes time. There has to be a filing period, enough advance notice for the voters and enough time to canvass the votes. The next legislative ses-

sion begins Jan. 10. Having the party fill the vacancy gets it done more quickly.

McCants had been asking where the other candidates were during the primary, and she has a good point. Had they considered it at the time? Did they think they couldn't win against an incumbent like Morrison? Did they know he was sick and were waiting for this opportunity? Had someone, the state party leadership perhaps, instructed them to do so?

McCants was the only one to challenge Morrison, and she didn't get the nod this time either. Was the deck stacked against her? Without being on the inside, you can't know for sure.

So it's not a perfect process, but it's not bad. What I liked is how open the Republicans made it. Even though it was largely an internal party meeting, Thomas County Republican Chairman Josh Faber, who called the meeting and presided, was open and talkative about the process beforehand. The public was allowed to come to the meeting – although few showed up who weren't guests of a delegate. Theoretically, anyone could have put their name in with not too much effort.

The best scenario would have been to have more competition back in the primary and general elections, then maybe we wouldn't have been obliged to have a representative elected by so small a portion of one party.

However, Republicans in the 121st District can be reasonably satisfied with the result. They didn't get to vote, but the people they elected as precinct committee members did, and presumably they elected those committee members because they share their values and trust their judgement.

Kevin Bottrell, news editor of the Colby Free Press, is a Colorado State University graduate who believes that the middle road is often the high one. Contact him at kbottrell@nwkansas.com

Give back in gratitude this season

Gov. Mark Parkinson used his recent video address to wish Kansans a happy holiday season and look back on the past year's progress:

This time each year, we celebrate the season and remember to be grateful for the blessings in our lives.

Each year, we reflect on the past year's struggles and strife. And each year, we strive to be better than the last. In this respect, this year is no different than any other. But with the challenging times many Kansans and Americans have been through, now is the time than to remember what is truly important – family and friends.

And just like past years, we think of those loved ones who are serving our country abroad and spending time away from their families this Christmas. Kansans have a deep appreciation for our men and women in uniform and the enormous sacrifice they make to protect our country and our way of life. That's why we pay tribute to them this holiday season and look forward to a happy New Year with their safe and speedy return.

The holidays also remind us that there are many Kansans who are struggling to make ends meet. The economic recession took its toll, causing more Kansans to need assistance,



Mark Parkinson

• Governor of Kansas

but leaving fewer resources for philanthropic organizations. I know all Kansans will join Stacy and me in giving back to our communities this holiday season by opening their hearts and their wallets to those in need. Your small contribution can make a world a difference for a Kansas family this Christmas.

As too many Kansans continue to face hardships, it is easy to forget the progress we have made this past year with our economic recovery. Kansas weathered this downturn better than many states, thanks to our diverse economy. And we continue to remain stronger than other states as we work our way out of this recession.

Now we're seeing revenues come in higher than expectations, creating a surplus for our state budget and signaling that more Kansans are contributing to the economy. Meanwhile, we have the seventh-lowest unemployment

rate in the country and respected publications continuously name Kansas one of the best states for business.

But this progress cannot stop here – there are still too many Kansans looking for work, too many families struggling to make ends meet and too many opportunities that lie ahead. We will come out of this recession and become even stronger than before.

So, just like past years, we give thanks, we honor our faith, we spend time with those we love and we give to those in need. But let's also recommit ourselves to the future we all hope to see. Only together can we achieve it.

From my family to yours – have a merry Christmas, a happy Hanukkah and Kwanza and a promising new year.

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U.S. Sen. Sam Brownback, 303 Hart Senate Office Building, Washington, D.C. 20510. (202) 224-6521

Mallard Fillmore

• Bruce Tinsley

