

OPEN UP PROCESS OF PICKING JUSTICES

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Gov. Kathleen Sebelius recently appointed Dan Biles to the Kansas Supreme Court, showing once more what an unusually secretive and clubby process our state uses to select its highest judges.

Biles is the law partner of the Kansas Democratic Party's chairman, and the governor is, of course, a Democrat. Sebelius said that she and Biles have been friends for more than three decades, and he has made campaign contributions to her.

Importantly, Biles is a member of the former Kansas Trial Lawyers Association, now called the Kansas Association for Justice. Sebelius used to be state director of that group of lawyers who most aggressively push to increase lawsuits and expand liability.

People can decide for themselves whether that is the direction they want for Kansas courts, but what is unusual about Kansas is how little the people's views matter. All the power in selecting the justices of the Supreme Court belongs to the governor and the bar (the state's lawyers). So if the governor and bar want to push the state's courts in a particular direction, there are no checks and balances in the judicial-selection process to stop them.

After Kansas justices have gained the advantages of incumbency, they are subject to retention elections. But these "elections" lack rival candidates and thus rarely include any public debate over the direction of the courts. In fact, a retention election is nearly always a rubber stamp, and no Kansas justice has ever lost one. With these judges so entrenched once they are on the court, the process for initially selecting them is all the more decisive.

Kansas is unusual in limiting Supreme Court selection to the governor and the bar. By contrast, when a federal judge is nominated, a Senate confirmation process allows citizens and their representatives to learn about the nominee and play more of a role in selecting judges.

Many states around the country use that process, too. But in Kansas the governor and the bar get all the power, and they exercise that power through a commission's secret vote. There is no public record of who voted which way.

This secrecy prevents journalists and other citizens from learning about crucial decisions in the selection of our highest judges. In this closed process, a small group of insiders (members of the Kansas bar) have an extremely high level of control. In fact, Kansas is the only state in which the bar selects a majority of the Supreme Court nominating commission. Why does the division of power between lawyers and nonlawyers lean further toward the lawyers in Kansas than in any of the other 49 states?

The Kansas bar defends this with the claim that the bar keeps judicial selection from being "political." But when the process results in a governor appointing one of her own friends and campaign contributors, you have to wonder what kind of politics goes on behind closed doors or at trial lawyers' cocktail parties.

Politics are inevitable when it comes to picking judges. The question is whether the politics will remain largely confined to the bar or become more open to the public and its elected representatives.

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