

Guest column: Disorder in the court

Created Mar 15 2011 - 5:05pm

In a democracy like ours, should lawmakers be selected democratically?

Not according to Judge Richard Greene.

In the judge's Feb. 2 guest column in *The Capital-Journal*, he supported a process in which some of our state's most important lawmakers are selected in a deeply undemocratic process that makes the votes of some citizens count far more than the votes of others.

The lawmakers in question are our state's appellate court judges.

Judges are lawmakers? Yes.

Judges have routinely made law throughout our country's history and even earlier, going back to England. This judge-made law, called the "common law," has generally worked well and continues today to govern thousands of cases including those involving contracts, property rights and bodily injuries.

Common law rules differ from state to state. States with more liberal judges tend to have more liberal common law, while states with more conservative judges tend to have more conservative common law. The political leanings of appellate judges, rather than trial judges, are especially important because appellate judges have much more power over the direction of the law.

In short, the appellate judges of Kansas, like those of other states, are tremendously important lawmakers.

What is unusual about the lawmaking judges of Kansas is how they are selected. None of the other 49 states uses the system Kansas uses to pick its two appellate courts — and for good reason, because the Kansas system is a shockingly undemocratic way to select lawmakers.

At the center of the Kansas system is the Supreme Court Nominating Commission. Most of the members of this commission are picked in elections open to only 9,000 people — the members of the state bar. The remaining 2.8 million people in Kansas have no vote in these elections.

This plainly violates basic equality among citizens, the principle of one-person, one-vote. The current system elevates one small group into a powerful elite and treats everyone else like a second-class citizen.

Kansas lawyers tend to be fine people, but they're not superheroes. They don't deserve more power than lawyers have in any of the other 49 states.

In a democracy, a lawyer's vote should not be worth more than any other citizen's vote. As Washburn law professor Jeffrey Jackson writes, democratic legitimacy "would appear to favor a reduction in the influence of the state bar and its members over the nominating commission because they do not fit within the democratic process."

Kansas should break the grip its bar holds on the selection of our state's lawmaking judges. Fortunately, the Kansas House of Representatives has passed a bill that would do just that.

Will this responsible, moderate reform be enacted by the Kansas Senate?

Or will our state senators defend the deeply undemocratic view that a lawyer's vote should count far more than another Kansas citizen's vote?

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