

DEFENDING OUR FOUNDING FATHERS' VISION



James Madison defined tyranny as the “accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective.” (Federalist #47)

Proponents of the constitutional amendment argue that it advances direct democracy, a principle that has value in the legislative and executive branches. However, this argument overlooks both our Founding Fathers' vision for an independent judiciary and the absence of any demonstrated problem with Kansas's current merit-based system. The framers were deliberate in distinguishing the judiciary from the political branches, recognizing that courts serve a different function that requires insulation from short-term political pressures.

At the Constitutional Convention, the founders consistently emphasized the need for a judiciary that was independent, nonpartisan, and capable of checking the other branches without being captured by them. The U.S. Constitution accomplishes this through life tenure and impeachment, while allowing the legislative branch to amend laws and the people to amend the Constitution itself to change the courts. Kansas has adopted a parallel approach where justices are selected through a merit-based process and held accountable through statewide retention elections. This balance addresses the same foundational concern that our republic must preserve judicial independence while maintaining democratic oversight.

The judiciary's authority rests on its ability to apply the Constitution and laws impartially, free from the “veering gales of politics” that dominate electoral contests. If justices are forced to campaign and fundraise for reelection, they risk becoming beholden to outside interests and partisan outrage, eroding the very independence that allows courts to function as a coequal branch. History underscores this lesson. Kansans adopted the merit-based system in 1958 precisely to prevent partisan political scandals from compromising the highest court, just as the Declaration of Independence condemned a system in which judges were dependent on political favor.

In a constitutional republic, direct democracy reaches its proper height in the legislative branch, the people's branch, where partisan accountability is not only expected but essential. Reforms such as independent redistricting, expanded voting rights, or citizen-led ballot measures strengthen democratic participation where it belongs. By contrast, selecting justices demands restraint from direct democratic impulses to protect the rule of law.

Preserving Kansas's merit-based judicial system ensures that courts remain grounded in the Constitution rather than swayed by donors, factions, or the passions of the moment. Any concerns of a lack of democratic accountability in the Supreme Court is addressed by our process of holding statewide retention elections.



Alexander Hamilton said in **Federalist #78** that *"if [election of Justices were left] to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws."*



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