

THE PECK PERSPECTIVE

(From the Capitol)

March 10, 2025

This week I'll write about two bills the left has done a good job of misinforming Kansans about – SCR 1611 and SB 4.

SCR 1611 is a proposed constitutional amendment which, if passed by the House, will allow Kansans to say if they wish to determine the personnel on the Kansas Supreme Court. While SB 4 makes certain that election day is election day and does not drag out for several days past the time when ballot counting starts.

Electing Supreme Court Justices (SCR 1611): Kansas stands alone as the only state that enshrines the power to decide who sits on our highest court to a commission controlled by five lawyers (selected by other lawyers). This system, implemented in 1958, has failed and has produced a court with little philosophical diversity and zero accountability to the people. Additionally, and embarrassingly, the Kansas Supreme Court is the most overturned court in the United States. Clearly, it's time to restore the power to the people of Kansas to decide who the members of the supreme court should be.

Currently when there's a vacancy on the court, a 9-member nominating commission (a majority, 5, are lawyers) convenes and selects three nominees who are sent to the governor. The governor must choose one of the three. If the governor doesn't think any of the three are qualified and refuses to appoint one of them, the Chief Justice of the court then has the power to select who will sit on the court. No one else in Kansas has a say and the selection is not subject to Senate confirmation. Admittedly, there is a retention election every six years, but there has never been a Justice not retained.

The Senate passed SCR 1611 by a vote of 27–13 (I voted yes), so if the House passes the resolution (they need 84 votes) and voters choose to amend the Constitution, supreme court judges in Kansas will, starting in 2028, become accountable to all Kansans, not just a few lawyers, through direct elections.

It's important to note that if SCR 1611 is passed by Kansas voters, the entire supreme court will not be up for election at the same time. Positions 1,2 and 3 will be voted on in November 2028, positions 4 and 5 in 2030, and positions 6 and 7 would be voted on in 2032. Justices would be elected to a six-year term and vacancies for unexpired terms would be filled by election as provided by law.

Direct elections allow for sunlight into the process, requiring justices to disclose their philosophy. And, direct election of state supreme court justices is not unique, as there are currently 22 states that use a form of direct elections.

It is very telling that the only groups testifying in opposition to SCR 1611 were lawyers. Apparently they like their sweet deal of being the only ones involved in deciding who sits at the top of the Kansas court system.

Election Day is Election Day (SB 4): Since 2017, Kansas has allowed ballots to arrive for three full days after an election if it is postmarked on or before Election Day. Those extra days have provided uncertainty as to the results of close elections and allowed for the possibility of ballots being mailed after 7:00 p.m. on Election Day.

SB 4 does nothing to suppress a voter's opportunity to cast a ballot, it simply sets the cut off for receipt of advance ballots at 7:00 p.m. on Election Day, the same deadline as other ballots.

Last week the Senate concurred with the House amendments to SB 4, sending it to the governor. Some expect Governor Kelly will veto the bill – and she may. However, SB 4 passed the Senate 30–10 (I voted yes) and the House 80–39, with six members absent. Those numbers tell us that if the Governor wields her veto pen once again, there's a good chance the legislature will override yet another Kelly veto.

SB 4 would take effect on January 1, 2026, meaning the 2025 local elections would be the last year in which the current "grace period" is in effect.

Until next time, may the blessings of God be yours.

Virgil Peck
State Senator