

MINUTES

SPECIAL COMMITTEE ON JUDICIARY

October 1-2, 2019
Room 548-S—Statehouse

Members Present

Senator Eric Rucker, Chairperson
Representative Fred Patton, Vice-chairperson
Senator Elaine Bowers
Senator Julia Lynn
Senator Vic Miller
Senator Rick Wilborn
Representative John Carmichael
Representative Pam Curtis
Representative Nick Hoheisel
Representative Bradley Ralph
Representative Kellie Warren

Staff Present

Robert Gallimore, Kansas Legislative Research Department
Joanna Dolan, Kansas Legislative Research Department
Milesa Elumogo, Kansas Legislative Research Department (October 1)
Natalie Nelson, Kansas Legislative Research Department
Jason Long, Office of Revisor of Statutes
Jenna Moyer, Office of Revisor of Statutes (October 2)
Jason Thompson, Office of Revisor of Statutes
Connie Bahner, Committee Assistant

Conferees—October 1

Jeffrey Chanay, Chief Deputy Attorney General
Mary Kay Culp, Kansans for Life
Brittany Jones, Family Policy Alliance
Stephen Ware, law professor
F. James Robinson, Jr., Kansas Bar Association
Lynn Johnson, Kansas Trial Lawyers Association
Ken Berra, Kansas Association of Defense Counsel
Ed Peterson, MainStream Coalition

Conferees—October 2

Jeffrey Jackson, law professor
Senator Ty Masterson
Rachel Sweet, Planned Parenthood Great Plains Votes

Teresa Woody, Attorney for Plaintiffs/Appellants in *Hodes & Nauser, MDs, PA v. Schmidt*
Kurt Scott, Kansas Medical Mutual Insurance Company
Rachelle Colombo, Kansas Medical Society
Eric Stafford, Kansas Chamber
David Morantz, Kansas Trial Lawyers Association

Others Attending

No attendee list for October 1; see [attached list](#) for October 2.

OCTOBER 1 ALL DAY SESSION

Welcome and Introductions

Chairperson Rucker called the meeting to order at 9:35 a.m. He asked each Committee member to introduce themselves. Each member stated their name and what district in Kansas they represent.

Supreme Court Decision and Possible Legislative Response: *Hodes & Nauser, MDs, P.A. v. Schmidt*, No. 114,153

Chairperson Rucker opened the hearing on the Kansas Supreme Court decision in *Hodes & Nauser, MDs, P.A. v. Schmidt* (*Hodes*). The Chairperson asked Jason Long, Senior Assistant Revisor of Statutes, to provide an overview of the Kansas Supreme Court decision in *Hodes* ([Attachment 1](#)). Representative Carmichael questioned Mr. Long about the differences in the federal constitutional rights versus the Kansas constitutional rights involved in the case. Representative Warren had questions regarding the Kansas criminal laws relating to unborn children.

Chairperson Rucker recognized Jeffrey Chanay, Chief Deputy Attorney General, who testified regarding the Kansas Supreme Court decision in *Hodes* ([Attachment 2](#)). Deputy Chanay stated this briefing is intended to be informational only and is not intended to express the opinions of the Office of the Attorney General. Deputy Chanay's briefing explained the litigation that took place as a result of the enactment in 2015 of the Kansas Unborn Child Protection from Dismemberment Abortion Act (2015 SB 95); the decisions made at the District Court, Court of Appeals, and Kansas Supreme Court levels; and the current status of the litigation. Questions were asked by Representatives Carmichael, Patton, and Warren; Senator Miller; and Chairperson Rucker.

Deputy Chanay provided a briefing on *Hilburn v. Enerpipe, Ltd.* because he was not available October 2 to appear before the Committee ([Attachment 2](#)). Deputy Chanay stated this case is related to the constitutionality of monetary caps being applied to non-economic damages. The decision was rendered by a six-member Court due to Chief Justice Nuss' recusal from the case and no other judge was assigned to serve in his place. A number of questions were asked by Senators Lynn and Wilborn and Representatives Carmichael, Ralph, and Warren.

Returning to the *Hodes* topic, Chairperson Rucker recognized Brittany Jones of the Family Policy Alliance, who testified regarding the Kansas Supreme Court decision in *Hodes* ([Attachment 3](#)). Ms. Jones stated the Family Policy Alliance has grave concerns with the *Hodes* decision, stating the court replaced the historical understanding of the common law with its own understanding of the words. She asserted the court's majority unmoored itself from history by reading malicious intent and prejudice into the actions of any governmental body if the majority disagreed with the law. Finally, she stated the decision created great uncertainty, rather than providing clarity, by opening the door for anything to be included under the expansive right to personal autonomy. Questions were asked by Chairperson Rucker and Senator Miller.

Mary Kay Culp, Kansans for Life, was recognized by Chairperson Rucker. She stated her support of amending the *Kansas Constitution* to reverse the *Hodes* decision ([Attachment 4](#)). Ms. Culp stated abortion is the ultimate exploitation of women and the *Hodes* decision ignores that the unborn child is a whole, separate, unique, living human being. She noted educational efforts by Kansans for Life and care centers they have opened across Kansas. She reviewed various abortion regulations and limits the Legislature has passed. She stated Kansans for Life support both an amendment to the *Kansas Constitution* and requiring Senate confirmation for Supreme Court justices. Questions were asked by Representatives Carmichael and Warren, Senators Lynn and Miller, and Chairperson Rucker. Representative Carmichael asked Ms. Culp to provide the statistics, studies, and authorities that show there is an increased rate of sterility following a second abortion. Senator Lynn requested a compilation of the legislation and work that has been done on the abortion issue. She also would like information on the court cases that are pending at this time on that issue and what rule and regulation activity has occurred regarding the laws that have been enacted.

Chairperson Rucker directed the Committee's attention to the following written-only testimony:

- Barbara Saldivar, Concerned Women for America ([Attachment 5](#));
- Brandi Fisher, MainStream Coalition ([Attachment 6](#)); and
- Kansas Catholic Conference ([Attachment 7](#)).

Chairperson Rucker recessed the meeting at 12:40 p.m. until 1:15 p.m.

Kansas Supreme Court Selection Process

At 1:22 p.m., Chairperson Rucker reconvened the meeting.

Chairperson Rucker opened the hearing on Kansas Supreme Court selection. Robert Gallimore, Managing Research Analyst, Kansas Legislative Research Department (KLRD), provided an overview of the judicial selection process in Kansas, as well as recent legislative efforts to amend the selection process ([Attachment 8](#)).

Chairperson Rucker recognized Professor Stephen Ware as a conferee, who testified in opposition to the current judicial selection process ([Attachment 9](#)). Professor Ware has been researching and writing on judicial selection and retention since the 1990s. He gave a brief history of judicial selection and retention process in the United States since the signing of the

U.S. Constitution, both at the federal level and across the states. He stated judges make decisions that influence the direction of the law. They do not merely apply or follow the law and, therefore, the political leanings of the judges matter. He stated the political leanings of Supreme Court justices are the most important simply because it is the highest court and the lower courts follow their decisions. It is his opinion the Kansas system is undemocratic because of the power that the Kansas bar (has in the selection process and such important lawmakers ought to be selected democratically. In Kansas, 10,000 members of the Kansas bar select 5 of the 9 members of the Supreme Court Nominating Commission (Commission), giving the bar majority control in the judicial selection process. He stated no other state gives the Kansas bar majority control in selecting Supreme Court justices. He stated other options are to: 1) reduce the number of Kansas bar-selected commissioners; 2) keep the current system, but add Senate confirmation; 3) replace the Commission with Senate confirmation; or 4) hold contestable elections.

Questions were asked by Representatives Carmichael, Hoheisel, Ralph, and Warren; Senators Lynn and Miller; and Chairperson Rucker. Professor Ware stated the best selection system is to spread out the power among multiple democratically elected officials. Professor Ware would like the Kansas Legislature to support a Supreme Court selection process that is analogous to the federal system where the executive and legislative branches select the judges.

Chairperson Rucker called upon F. James Robinson, Jr., Kansas Bar Association (KBA), as a conferee in support of the current judicial selection process ([Attachment 10](#)). Mr. Robinson stated the KBA strongly supports the current constitutional method for selecting Kansas Supreme Court justices and wants to minimize the role of partisan politics in the selection of justices. He asserted the federal system is unabashedly political and stated if the State of Kansas were to now reject the constitutional process in favor of the federal model, it would be taking a step backwards. He stated critics who claim the merit process is undemocratic fail to recognize this process was approved by super-majorities in the Legislature and an overwhelming popular vote. He stated although no selection process is perfect, the process used by the Supreme Court Nominating Commission is rigorous, transparent, and balanced. There is no valid reason for Kansas to consider putting politics into the process through gubernatorial selection. He stated he personally is opposed to Senate confirmation because it adds another political layer to the selection of judges. He strongly believes a nominating commission is necessary on the front end to screen and vet the candidates for consideration by political leaders. Questions were asked by Representatives Carmichael, Ralph, and Warren; Senators Miller and Wilborn; and Chairperson Rucker.

Chairperson Rucker recognized Lynn Johnson, Kansas Trial Lawyers Association (KTLA), who testified in support of the current judicial selection process ([Attachment 11](#)). He was the chair of the Supreme Court Nominating Commission from 1993 to 2001. He is an experienced trial attorney and has appeared before the Kansas Supreme Court more than 15 times and a like number of times before the Kansas Court of Appeals. He has also argued cases before the Tenth Circuit Court of Appeals. Mr. Johnson stated he does not want to have to argue cases before a Supreme Court that has been politically appointed. He agrees with Professor Ware's statement that the political leanings of judges matter. He stated although it is true judges make common law, the Legislature can modify the common law at any time. He stated to change the judicial selection process to follow the federal model would make the appointments political and would be taking a step backwards. He stated what should be considered is whether the current selection process results in judges who are independent, accountable, and qualified. He stated his experience with the Supreme Court Nominating Commission is it is nonpartisan, is free from political bias or influence, and everyone on the

Commission is allowed to voice their opinion. Questions were asked by Chairperson Rucker; Senators Bowers, Miller, and Wilborn; and Representative Carmichael.

Chairperson Rucker called upon Kenneth Berra, who testified on behalf of the Kansas Association of Defense Counsel, in support of the current judicial selection process ([Attachment 12](#)). He stated all trial lawyers in Kansas want to have fair judges. It is his opinion the Kansas Supreme Court Justices who handed down the decision in *Hodes* were fair, acted independently, and did what they thought was right. Questions were asked by Senator Miller, Representatives Carmichael and Warren, and Chairperson Rucker.

Ed Peterson was recognized by Chairperson Rucker to testify on behalf of the MainStream Coalition in support of the current judicial selection process ([Attachment 13](#)). The Mainstream Coalition is concerned a change in the selection process could result in additional politics being injected into the judiciary, resulting in a decrease in the quality of the judges. He stated the citizenry will start seeing everything in government as political and believes the current system is the least political system. In addition, he noted the vast majority of Supreme Court decisions are not political policy matters. Questions were asked by Representative Carmichael.

Chairperson Rucker concluded the meeting for the day and stated the Committee would reconvene at 9:40 a.m. on October 2. In response to Senator Miller's question, Chairperson Rucker requested the staff advise the Committee concerning the application of the Kansas Open Meetings Act (KOMA) to the voting of the Supreme Court Nominating Commission.

Adjourn

The meeting was adjourned at 4:30 p.m.

OCTOBER 2 ALL DAY SESSION

Welcome

Chairperson Rucker called the meeting to order at 9:45 a.m.

Supreme Court Selection Process (continuation of topic)

Chairperson Rucker recognized Jason Thompson, Senior Assistant Revisor of Statutes, who reviewed the open meetings requirements in regarding the Supreme Court Nominating Commission. He stated the Nominating Commission would fall under KOMA, which requires meetings be open to the public and no binding action could be taken by secret ballot. Further, no binding action could be taken during closed or executive session. The nominating commission is expressly prohibited from going into executive session except to discuss sensitive financial information that they may become aware of through background checks and personal financial records. The duty of the Nominating Commission is to submit three names to the Governor. To change the composition of the Nominating Commission requires a constitutional amendment. Questions were asked by Representative Carmichael.

Chairperson Rucker recognized Professor Jeffrey Jackson, who testified in support of the current judicial selection process ([Attachment 14](#)). He stated the current system is the best system for Kansas compared to the other systems (*i.e.*, the federal system or the partisan election system), though improvements could be made to the current system. An important principle in judicial selection is the judges should reflect the diversity of the people they serve. The federal system is ill-suited to Kansas because Kansas has a more or less permanent minority party and it is unlikely the minority party will be represented in a manner that reflects their numbers. In addition, governors tend to appoint people they know. He opposes partisan elections because they are subject to political manipulation, although he is not opposed to them at the county level. In the commission system, there is accountability through the retention elections. Questions were asked by Representatives Carmichael and Curtis, Senator Miller, and Chairperson Rucker.

Chairperson Rucker recognized Senator Ty Masterson as a conferee in opposition to the current judicial selection process and in favor of Senate confirmation ([Attachment 15](#)). Senator Masterson stated every proponent of the current judicial nominating system appearing before the Committee has been a lawyer. Senator Masterson stated Kansas has the worst judicial nominating system because it gives all the power to the Kansas Bar, which is a small, select group of individuals who have the ability to persuade others. He stated he is not promoting and he has not heard of anyone promoting bipartisan elections, stating mentions of such elections are only a smoke-and-mirrors tactic used by the opponents. He disagrees with those who contend the current system removes politics and is nonpartisan. Politics cannot be removed; it can only be disclosed. He does not see more diversity on the Kansas Supreme Court than on the federal Supreme Court. He stated only Senate confirmation in Kansas prevented Judge Jeffrey Jack from sitting on the Kansas Court of Appeals. Questions were asked by Senator Miller and Representatives Carmichael and Warren.

Chairperson Rucker asked Professor Jackson to return for further questioning by Representatives Carmichael and Warren.

Additional written-only testimony was submitted by John Jenks of the Greater Kansas City Chamber of Commerce ([Attachment 16](#)) and the Kansas Catholic Conference ([Attachment 7](#)).

Chairperson Rucker closed the hearing on the Supreme Court selection process and a five-minute recess was taken.

Supreme Court Decision and Possible Legislative Response: *Hodes & Nauser, MDs, P.A. v. Schmidt*, No. 114,153 (continued)

Chairperson Rucker opened the hearing on the Supreme Court decision in *Hodes & Nauser, MDs, P.A. v. Schmidt* and recognized Rachel Sweet of Planned Parenthood Great Plains Votes ([Attachment 17](#)). Ms. Sweet stated Planned Parenthood is opposed to any constitutional amendment that would remove women's access to abortion and their reproductive rights in general. She noted the majority opinion in that decision states while personal autonomy is a fundamental right, it is not an absolute right, and the State would retain its right to regulate abortion care using a strict scrutiny standard. The Court held in *Hodes* that other methods of abortion were less safe than dilation and evacuation (D&E) and presented increased risks. The Court further found the inherent right to personal autonomy in Section 1 of the *Bill of Rights*, including the right to control one's own body, to assert bodily integrity, and to exercise self-determination. She stated this right allows a woman to make her own decisions regarding her

body, health, family formation, and family life, including the decision of whether to continue a pregnancy. She asserted the *Kansas Constitution* was designed to protect every Kansan not only from government overreach, but from the ebbs and flows of political opinion, and it is disheartening to think the Legislature is considering amending the *Kansas Constitution* to remove, rather than protect, individual liberty.

Questions were asked of Ms. Sweet by Senators Lynn and Miller; Representatives Carmichael, Ralph, and Warren; and Chairperson Rucker. Representative Warren requested Ms. Sweet provide the Committee with the cases where women have been prosecuted for a pregnancy outcome or inducing their own abortion. Senator Lynn requested information relating to how someone becomes a member of the Planned Parenthood Federation of America board. Ms. Sweet will provide a copy of the Federation's annual report.

Chairperson Rucker recognized Teresa Woody as a conferee ([Attachment 18](#)). Ms. Woody was co-counsel for the plaintiffs/appellants in the *Hodes* case and provided the following details regarding the case. The case arose from a challenge to 2015 SB 95, which banned and criminalized D&E procedures, the most common method of second-trimester abortions. The trial court found the plaintiffs had shown a substantial likelihood they would prevail on the merits and issued a temporary injunction staying the enforcement of 2015 SB 95 until such time as a decision on the merits is reached. There was no oral testimony given, although there were affidavits submitted. There has been no final decision on the merits of this case. The Kansas Supreme Court determined personal autonomy is a fundamental right under the *Kansas Constitution* and remanded the case back to the trial court. The Supreme Court did not make a decision as to the constitutionality of 2015 SB 95. Ms. Woody stated there is a misconception this opinion has determined the State cannot regulate abortion, and that is not the case. The Court recognized the State has the right to regulate abortion.

The Chairperson recessed the meeting for lunch at 12:28 p.m.

Lunch

The hearing reconvened at 1:35 p.m., and Ms. Woody returned for questions from the Committee. Questions were asked by Senator Miller and Representatives Carmichael, Ralph, and Warren.

Supreme Court Decision and Possible Legislative Response: *Hilburn v. Enerpipe Ltd.*, No. 112,765

Chairperson Rucker opened the hearing on the Supreme Court decision in *Hilburn v. Enerpipe Ltd. (Hilburn)*. Jason Thompson, Senior Assistant Revisor of Statutes, provided an overview of the case ([Attachment 19](#)). Mr. Thompson also stated the Kansas Legislative Research Department had prepared a history of statutory caps on non-economic damages in common-law tort cases for the Committee's review ([Attachment 20](#)).

Chairperson Rucker recognized Kurt Scott, President and CEO, Kansas Medical Mutual Insurance Company (KaMMCO) ([Attachment 21](#)). Mr. Scott stated because Kansas has had the caps in place for 30 years, Kansas went from being a state in the lowest percentile in terms of practice environment and professional liability environment to now being one of the best states to practice medicine. He stated it appears non-economic damages caps have been struck down

by the *Hilburn* case. It was a 3-1-2 decision. The decision was not clear, especially as it relates to medical malpractice cases. If it has struck down the caps in medical malpractice actions, it will cause costs to rise and create an environment where it is very difficult to predict whether there will be more cases and higher payments. It is KaMMCO's position the Legislature should be cautious, thoughtful, and deliberate before creating any legislation. Questions were asked by Representatives Carmichael and Ralph and Senator Miller.

Chairperson Rucker recognized Rachelle Colombo, Kansas Medical Society (KMS) ([Attachment 22](#)). Ms. Colombo stated there is a distinction between medical malpractice and personal injury cases, and at this time they believe *Hilburn* would apply only in personal injury cases and not in medical malpractice cases. KMS is asking the Legislature to wait before taking any action so further study can be done. Senator Miller asked Ms. Colombo if they would be in favor of the Legislature making an amendment to the *Kansas Constitution* addressing the cap for medical malpractice. She stated they are not asking for that at this time.

Eric Stafford, Kansas Chamber, was recognized by Chairperson Rucker ([Attachment 23](#)). Mr. Stafford stated not having caps will affect every Kansan economically. They will have to bear the costs of increased litigation. He stated when there is no cap on non-economic damages, plaintiffs will seek higher settlement amounts. Insurance premiums will rise for anyone who pays car insurance, liability insurance, or small business liability insurance. They are still studying what needs to be done to address this issue, so they are not asking the Legislature to do anything at this time. Questions were asked by Representatives Carmichael and Ralph.

Chairperson Rucker called upon David Morantz, President, KTLA ([Attachment 24](#)). He stated the *Hilburn* opinion is important because it restores the inviolate constitutional right to trial by jury and ruled non-economic damage caps are unconstitutional in all personal injury actions. KTLA's position is a constitutional amendment to Section 5 of the *Bill of Rights* would be fraught with danger. Juries are allowed to decide very important issues, such as disputes over real estate, money, whether a criminal defendant will have their liberty taken away, and whether a person should be put to death. Juries should, therefore, be allowed to decide the amount of damages in civil actions. KTLA believes no legislative action is needed in response to the *Hilburn* decision. Questions were asked by Representatives Carmichael, Ralph, and Warren and Senator Miller.

Chairperson Rucker directed the Committee's attention to the following written-only testimony:

- Chad Austin, Kansas Hospital Association ([Attachment 25](#));
- Kansas Advocates for Better Care ([Attachment 26](#));
- Matthew Bretz, Bretz and Young, on behalf of Zachary Short and Jonathan Romain ([Attachment 27](#)); and
- Mike Burgess, Disability Rights Center of Kansas ([Attachment 28](#)).

Chairperson Rucker closed the hearing on the *Hilburn* decision.

A brief recess was taken at 3:15 p.m.

Committee Discussion and Recommendations for Report to the 2020 Legislature

Chairperson Rucker opened the floor for discussion and recommendations to the 2020 Legislature. The Chairperson directed the Committee to take a few minutes to read the draft recommendations he and Vice-chairperson Patton had prepared ([Attachment 29](#)).

Legislative Response to *Hilburn v. Enerpipe Ltd.*, No. 112,765.

Chairperson Rucker opened the floor for discussion on the *Hilburn v. Enerpipe, Ltd.* decision.

Representative Ralph stated it was apparent the conferees were unanimous in asking no action be taken or, if any action were to be considered, further study should be done. He stated the Committee's report should indicate it accepted those recommendations and did not intend to take any action.

The Chairperson read the proposed recommendation:

It is the recommendation of the Special Committee on Judiciary that the Legislature continue to evaluate the ramifications of the *Hilburn* decision prior to determining what, if any, action to take.

Senator Miller moved the Special Committee on Judiciary adopt the draft recommendation regarding the Hilburn decision, seconded by Senator Lynn.

Discussion ensued as to whether the Kansas Chamber agreed with this recommendation.

Chairperson Rucker called for a vote on the motion. *The motion carried.* Chairperson Rucker noted the vote was unanimous.

Legislative Response to *Hodes & Nauser, MDs, P.A. v. Schmidt*, No. 114,153.

Chairperson Rucker opened the floor for discussion.

Representative Carmichael moved they not adopt the recommended language with respect to the decision in Hodes, seconded by Representative Curtis.

Representative Patton made a substitute motion to adopt the language as outlined in the draft recommendations, seconded by Representative Hoheisel.

Representative Carmichael stated he cannot and will not support this recommendation and asked to reserve the right to file a minority report.

Senator Miller stated he intends to vote against the motion. He believes the language in the recommendation mischaracterizes the ruling of the Court. In addition, there is not a final decision in that case since it has been remanded back to the district court.

Chairperson Rucker read the proposed recommendation:

It is the recommendation of the Special Committee on Judiciary that Kansas voters be provided the opportunity to adopt a constitutional amendment that would reverse the holding of the Kansas Supreme Court in *Hodes v. Nauser, MDs, P.A. v. Schmidt* regarding the existence of a right to an abortion under the *Kansas Constitution*.

Representative Ralph stated there is nothing in the recommendation that indicates there was a final decision by the Kansas Supreme Court. He does not think the language in this recommendation will be held to any particular legal standard with regard to how it is described. He believes the sentiment of the recommendation will be understood and he has no problem with supporting it.

Representative Warren noted an error in the case title in the draft recommendation: the “v.” between “Hodes” and “Nauser” should be an “&”. Chairperson Rucker instructed members to make that change in the draft language.

Chairperson Rucker called for a vote on the substitute motion. An oral vote was taken, and he stated the ayes had it. *The recommendation was passed with the noted correction to the case title.*

Representative Carmichael asked if he would be able to file a minority report. Chairperson Rucker stated he has no objection to that and will give him a time frame before adjournment.

Supreme Court Selection Process

Chairperson Rucker read the proposed recommendation regarding the Supreme Court selection process:

It is the recommendation of the Special Committee on Judiciary that the Legislature continue to study the issue to consider:

- 1) Whether the makeup of the Supreme Court Nominating Commission should be changed as to the apportionment of the number of attorney-elected members to the number of lay members;
- 2) Whether the current selection method should be retained with the addition of requiring Senate confirmation of the Governor’s nominee; or
- 3) Whether the current selection method should be replaced with a model that abolishes the use of a nominating commission.

Senator Miller moved to adopt the recommended language with the addition of a point number 4): “Whether the current procedure for nominating justices should be changed in any way,” seconded by Representative Patton.

Discussion ensued as to whether other options need to be added, such as partisan elections, selection of the chairperson of the Commission by the Chief Justice of the Supreme Court, or other options that have not been raised or discussed.

Representative Carmichael stated he is concerned by enumerating three options with specific language, others are excluded by implication.

Senator Miller stated he would also support an additional amendment that clearly indicates partisan elections are not being recommended because no one has advocated for that.

Representative Carmichael made a substitute motion to continue to study this issue to consider, including but without limitation to, 1) Whether the makeup of the Supreme Court Nominating Commission should be changed as to the apportionment of the number of attorney-elected members to the number of lay members; 2) Whether the current selection method should be retained with the addition of requiring Senate confirmation of the Governor's nominee; 3) Whether the current selection method should be replaced with a model that abolishes the use of a nominating commission; or 4) Whether the current procedure for nominating justices should be changed in any way, seconded by Representative Curtis.

There was discussion on whether this recommendation would limit looking at other options.

Representative Warren suggested the recommendation just read, "It is the recommendation of the Special Committee that the Legislature continue to study the issue."

Representative Carmichael withdrew his substitute motion, with the concurrence of Representative Curtis.

Further discussion was held.

Representative Hoheisel made a substitute motion to state it is the recommendation of the Special Committee on Judiciary that the Legislature continue to study the issue, seconded by Representative Ralph.

There was discussion on the substitute motion.

Chairperson Rucker called for a vote on the substitute motion. *The substitute motion passed.*

Senator Lynn made a motion that the issue be studied in both the House and Senate Judiciary Committees in the 2020 Legislative Session, seconded by Representative Ralph.

There was discussion regarding the motion.

Senator Lynn asked to withdraw her motion. Chairperson Rucker allowed her to withdraw her motion.

Senator Miller made a motion that it is the further recommendation of the Special Committee on Judiciary that any study not include consideration of any plan that contemplates selection of justices by popular vote, seconded by Representative Carmichael.

Senator Lynn stated her opposition to taking that option off the table.

Chairperson Rucker called for a vote on the motion. The motion failed to pass.

Representative Carmichael suggested they recommend to the Legislature it consider repealing the provisions relating to partisan selection of district court judges, but he stated he would not make that motion since the time is late.

Chairperson Rucker conferred with staff. He advised the Committee staff has informed him it will take them about a month to prepare the draft committee report. He will give Representative Carmichael or others two weeks after receipt of the draft committee report to file any minority reports.

Adjourn

Chairperson Rucker adjourned the meeting at 4:35 p.m.

Prepared by Connie Bahner

Edited by Robert Gallimore

Approved by the Committee on:

November 20, 2019

(Date)