

TO: HOUSE GENERAL GOVERNMENT BUDGET COMMITTEE

FROM: F. JAMES ROBINSON
KANSAS ASSOCIATION OF DEFENSE COUNSEL

RE: JUDICIAL BUDGET

DATE: FEBRUARY 7, 2007

Chairman Yoder, members of the committee, thank you for the opportunity to appear today and comment on your review of proposed 2007 judicial budgets. My name is Jim Robinson. I have practiced law in Wichita for 23 years. I am on the Board of Directors of the Kansas Association of Defense Counsel (KADC), and appear today as a representative of that group. KADC is a statewide association of lawyers who defend civil damage suits. KADC supports the proposed appellate salary increases of \$9,000 for Supreme Court Justices and \$7,000 for Court of Appeals Judges.

The 2006 Legislature passed SB 337, which provided a \$9,000 salary increase to district judges and district magistrate judges. The original bill also provided \$9,000 salary increases for Supreme Court Justices and Court of Appeals Judges. However, the bill was amended to provide a \$2,000 salary increase for Court of Appeals Judges and only a cost of living allowance for Supreme Court Justices.

We understand that the amendment was in response to controversial decisions from the Supreme Court involving school funding and the death penalty.

Certainly, the Legislature has a keen interest in cases courts decide because the Legislature represents the persons affected by court decisions and because a few cases, like the school funding case, have a direct impact on the Legislature. It is appropriate in our democracy to criticize court decisions. Even the members of our organization have differing views about the school funding and death penalty decisions. But the judicial budget should not become a political referendum on the popularity of judicial decisions. The distinction between fair criticism of judges and retaliation against them is an important one.

Courts' ability to decide cases according to law without inappropriate interference from voters, interest groups, political opponents and elected officials is an enduring principle of a sound judiciary in our republican form of government. Our courts are charged to uphold the Constitution and the law regardless of whether the decision is popular at the time. Former United States Supreme Court Justice Jackson put it this way:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.

One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638 (1943). To carry out their charge the judiciary must remain a separate and co-equal branch of state government. Otherwise, the judiciary would become so beholden to the other two branches for their survival as to thwart their capacity to keep the political branches in check through the exercise of judicial review.

The Legislature's power to authorize judicial budgets and salary increases is an essential check to ensure that the judiciary is operating efficiently and effectively. However, this duty to minimize waste and to assure the wise stewardship of appropriations cannot be allowed to denigrate into an up or down vote on judicial decisions. Retaliation for politically unpopular decisions diminishes the independence of the judiciary and, equally important, the public's confidence in it and in the Legislature.

If the judiciary is to continue to attract from our ranks the most talented lower court judges, private practice attorneys, government lawyers, and academicians it is imperative that judges be adequately compensated. Certainly, those who aspire to the judiciary understand that some financial sacrifice is the price of public service, but there is a point below which salaries must not fall without discouraging the most talented persons from seeking judicial office.

The original version of S.B. 337 in the 2006 session was a step in the right direction. Now the salary increases for Court of Appeals Judges and Supreme Court Justices that were carved out in 2006 should be restored.