

Is the Kansas Judicial Nominating Commission Failing Farmers and Ranchers?

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Overview

As someone who has been involved in the practice of law and/or legal education for the past 35 years, I find myself returning frequently to a foundational truth: a court's legitimacy relies entirely on its connection to the community it serves. A judiciary isolated from the lifeblood of its state is a judiciary at risk of institutional blind spots.

Right now, Kansas is wrestling with this very tension. The debate over how state Supreme Court justices are selected is often framed around raw partisan politics, but there is a deeper, structural flaw in the Kansas "assisted appointment" or "merit selection" system that deserves attention. By insulating the process within a specialized committee, Kansas has inadvertently (or, perhaps, intentionally) severed the state's highest bench from the realities of the Kansas economy - specifically, its multi-billion-dollar agricultural sector which is the economic engine of the state.

The Mechanics of Isolation

Under the system established by a 1958 Kansas constitutional amendment, a nine-member Supreme Court Nominating Commission controls the gateway to the high court. When a vacancy occurs, this panel interviews applicants and sends a slate of exactly three names to the governor, who *must* choose from that list. The commission is heavily influenced by the private bar, with five of its nine members elected entirely by licensed Kansas attorneys. This dynamic naturally creates an echo chamber centered around the state's dominant legal and population hubs. The consequences of this geographic and cultural imbalance are not theoretical. In May, the nominating commission announced its three finalists to fill the vacancy left by retiring Chief Justice Marla Luckert:

Nominee	Current Role	Location / County
Carl Folsom	District Judge	Lawrence (Douglas County)
K. Christopher Jayaram	District Judge	Lenexa (Johnson County)
Robert Wonnell	District Judge	Olathe (Johnson County)

Look at that map. All three nominees are from the urban and suburban corridors of northeast Kansas - Lawrence and the Kansas City suburbs. None of them represent the vast, production-driven expanses of central or western Kansas. More importantly, none of them possess a professional background, upbringing, or legal practice steeped in the complex realities of production agriculture.

Why Ag-Illiteracy Matters on the Bench

Agriculture is not just an industry in Kansas; it is the state's economic and cultural foundation, driving over \$25 billion in economic activity annually.¹ The legal framework governing this industry is incredibly nuanced, cutting across property rights, complex water law, environmental regulation, and corporate farm ownership structures. When a Supreme Court panel lacks a single voice intimately familiar with these concepts, bad jurisprudence follows. It is not a matter of bad faith; it is a matter of lived experience. An urban appellate judge can read a brief on water rights or a fence-line dispute, but they lack the intrinsic understanding of how a ruling might inadvertently disrupt generational farm successions, destabilize local credit markets, or running afoul of practical land management. To a lawyer sitting in a high-rise in Overland Park, a property dispute might look like a straightforward application of tort law. To a farmer in Elkhart or Thomas County, it could mean the difference between keeping a multi-generational operation solvent or selling it off to out-of-state developers.

This is not a hypothetical concern. Consider the Kansas Supreme Court's decision in *Simmons v. Porter*, 312 P.3d 345 (2013).² In that case, an employee of a family farming operation was injured in a shop fire while working on a farm vehicle. Because independent farming and ranching operations are explicitly classified as agricultural pursuits, they are exempt from mandatory workers' compensation. For decades, Kansas common law protected these family operations under the "assumption of the risk" doctrine when an experienced worker willingly encountered a known, routine farm hazard.

Yet, in *Simmons*, an urban-dominated Supreme Court completely abandoned this long-standing doctrine, replacing it with the state's comparative fault framework. Operating on a legal philosophy detached from the structural exemptions the legislature intentionally put in place to protect production agriculture, the court essentially assumed a legislative function. The ruling ignored the fluid, inherently hazardous, and unique realities of daily life on a working farm, exposing family operations to massive new tort liabilities that the legislature never intended to impose. When judges do not understand the industry they are regulating from the bench, destabilizing jurisprudence is the inevitable result."

A Path Toward True Representation

A court that consistently draws its membership from the legal elite of Douglas and Johnson counties will inevitably develop a jurisprudence that reflects urban sensibilities. When the selection process ensures that the biggest industry in the state doesn't even have a seat at the table during the screening process, the system is failing its constitutional duty to serve *all* Kansans.

True judicial merit should encompass more than just an impressive resume at an urban defense firm or an appellate defender's office. It must include an understanding of the unique forces that

¹ The \$25 billion represents only the direct farm-gate receipts. When accounting for indirect and induced economic impacts, including agribusiness, agricultural equipment manufacturing, food processing, and local farmer cooperatives, the total economic contribution is much larger.

² The Supreme Court's opinion was written by Justice Biles, who ascended to the bench from his firm in Overland Park.

keep Kansas running. Whether through the proposed constitutional amendment to move toward a direct election model or an overhaul of the nominating commission's geographic requirements, the current process must change. Farmers, ranchers and the rule of law deserve a bench that actually understands the ground it stands on.

The Commission Itself

It is true that not all nine of the current commissioners are completely disconnected from agriculture or rural Kansas. Structurally, the Supreme Court Nominating Commission is designed to pull members from across the state, requiring one lawyer and one non-lawyer from each of the state's four congressional districts, plus a statewide chair. Because the Big First Congressional District spans central and western Kansas, the individuals representing that district are deeply tied to rural and agricultural communities. However, the disconnect isn't necessarily due to a total lack of rural representation on the panel. Rather, it stems from how the commission's voting dynamics and structural makeup consistently dilute that rural perspective when it comes to selecting finalists.

The operational reality of the current roster reveals a sharp divide between the urban/suburban members and those from agricultural areas. Representing the First District are members such as Robert J. Frederick (an attorney practicing out of Garden City) and Diane Oakes (from western/central Kansas). Individuals from this region live and work in the heart of production agriculture, interacting daily with agribusinesses, water districts, and rural landowners. Members such as Katie A. McClafin (an attorney from Overland Park) and Carol S. Marinovich (former mayor of Kansas City, Kansas) represent the heavily populated Third District. The Second District features members from Topeka and Lawrence, such as Frances Gorman Graves and Jennifer M. Cocking. Representing the Wichita area are members Thomas J. Lasater and Ebony S. Clemons-Ajibolde, whose backgrounds tie closely to urban business, energy, and aerospace.

But even with agricultural representation sitting at the table, the commission's structure systematically disadvantages rural interests during the selection process through two main mechanisms.

The numbers game. The commission operates on a raw majority-rules voting system. Because the population and the concentration of licensed attorneys are heavily skewed toward the I-35 corridor, the center of gravity for the private bar is deeply urban. When the five attorney members (the four district representatives plus the statewide chair, Terrence J. Campbell) vote, the prevailing legal philosophies and networking circles of Johnson, Wyandotte, and Douglas counties naturally carry immense weight. The two votes from the First District simply get outnumbered by the coastal-urban mindset of eastern Kansas.

The final voting rounds. The voting results from the selection of the three finalists illustrate this exact dilution. In the final balloting rounds, the candidates representing urban benches captured the absolute majority of the commission's support: K. Christopher Jayaram (Lenexa) secured a perfect 9 votes; Carl Folsom (Lawrence) secured 7 votes; and Robert Wonnell (Olathe) secured 5 votes. Meanwhile, qualified applicants with ties to broader state interests, such as Wichita attorney Molly McMurray Gordon and Board of Tax Appeals Chair Kristen Wheeler, were left behind with only 3 votes each.

The structural flaw is not that the agricultural sector has zero representation on the commission. The flaw is that the system is engineered in a way that allows a concentrated block of urban legal professionals to consistently override rural perspectives, ensuring that the final three names sent to the governor's desk represent only one corner of the state.

Conclusion

Ultimately, the issue with the Kansas Supreme Court Nominating Commission is not a lack of well-meaning individuals; it is a structural numbers game that rural Kansas is engineered to lose. While agricultural communities have dedicated voices at the table, their perspectives are systematically diluted and outvoted by a concentrated block of urban legal professionals. The recent selection of three finalists exclusively from Lawrence and the Kansas City suburbs is not an anomaly - it is the predictable output of a flawed system that favors the I-35 corridor and shuts out the very engine of the state's economy.

When the state's highest court lacks an intrinsic, lived understanding of complex water law, property rights, and generational farm successions, the risk to the agricultural sector is profound. True judicial merit must reflect the entire state, not just its most populated hubs. If Kansas is to have a judiciary that commands true legitimacy, the selection process must be reformed. Until either the nominating commission's geographic requirements are overhauled or the state shifts to a direct election model, the system will continue to fail its constitutional duty. Kansas farmers, ranchers, and rural communities deserve more than just a token seat at the table - they deserve a bench that actually understands the ground it stands on.