What's Right About Kansas

Wichita trial lawyers may soon feel like they're not in Kansas anymore. Late last week, the Kansas state House of Representatives passed a law that would change the way the state selects its appeals court judges, scaling back a system that has given disproportionate power to lawyers and pushed state courts to the left.

Since 1958, Kansas has been among the so-called "Missouri Plan" states, where slates of judges are hand-picked by a supposedly nonpartisan judicial nominating commission and handed to the Governor for a final selection. In reality, the process has become highly politicized, holding the Judiciary in thrall of lawyers and bar association leaders who dominate selections.

Under the reform supported by Kansas Governor Sam Brownback, appeals court judges would instead be selected under the federal government model, whereby a governor nominates judges subject to legislative confirmation. The framers of the U.S. Constitution designed such a system to make judicial selection politically accountable.

For evidence of the trouble that commissions cause, look no further than the political friction in neighboring Iowa. In November, Iowa voters recalled all three state Supreme Court Justices who were up in retention elections. Furious about a court decision that overturned a state law defining marriage as between a man and a woman, voters expressed their displeasure with judges who were elevated by the liberal state bar.

New Republican Governor Terry Branstad had no choice but to fill the three vacancies recently from another list of nine names tendered by the same nominating commission. Of the nine, two were recipients of the Iowa Trial Lawyers Association Judicial Achievement Award and a third was a liberal law professor who was not a member of the bar until the day she was nominated.

Mr. Branstad chose the three best options, but his tepid statements about the nominations suggest he might have chosen none of them if he'd had the choice. He has said he'd support a constitutional amendment to bring the state over to the federal model of judicial selection, akin to the changes underway in Kansas.

These state battles have been taking place without much national media attention, even as groups like the George Soros-funded Justice at Stake funnel big money into campaigns to sell the lawyer-dominated process to voters. But disillusionment is increasing. Last year Tennessee reduced the influence of bar associations on judicial selection, and Missouri legislators are moving to adopt the federal model as early as this year.

Kansas is the only state that gives the members of its bar a majority on the judicial nominating commission. That commission also handles the nominations for state Supreme Court justices, and changing that would require a state constitutional amendment. The Sunflower State is nonetheless off to a good start at making judicial appointments more than a preserve of the lawyers guild.