

MINUTES

SENATE INTERIM COMMITTEE ON JUDICIARY

Wednesday, March 30, 2016

The House Interim Committee on Judiciary met at 1:30 p.m., on Wednesday, March 30, 2016, in the Multi-Agency Complex Building—Room B, in Little Rock, Arkansas.

Committee members present: Senators Jeremy Hutchinson, Chair; Linda Collins-Smith, Vice Chair; David Burnett, Linda Chesterfield, Joyce Elliott, David Johnson, and Terry Rice.

Other legislators present: Senators Jonathan Dismang, Gary Stubblefield and Scott Flippo; Representatives Bob Ballinger, Camille Bennett, Mary Broadaway, Charlotte Douglas, David Fielding, Vivian Flowers, Justin Gonzales, David Hillman, Monte Hodges, Douglas House, Reginald Murdock, Micah Neal, James Sorvillo, Clarke Tucker and Richard Womack.

Senator Hutchinson called the meeting to order and introduced judges in the audience.

Consideration to Approve Minutes (Exhibit B)

Without objection, the Minutes from the November 30, 2015, Senate Judiciary Committee and the Legislative Criminal Justice Oversight Task Force were approved.

Adoption of Interim Study Proposal 2015-160, *“Requesting that the Senate Committee on Judiciary Conduct a Study of the Custody Law in the State of Georgia that Allows a Child Fourteen (14) Years of Age and Older to Select the Custodial Parent.”* Senator Chesterfield stated the ISP would speak for itself after the information is received.

Upon motion by Senator Chesterfield, and second by Senator Elliott, Interim Study Proposal 2015-160 was adopted.

Discussion of Judicial Campaign Finance Reform and Judicial Appointments of Judges

Senator Hutchinson recognized the following individuals for comments:

The Honorable Karen Baker, Justice Position 6, Arkansas Supreme Court, stated there has been a lot of discussion in the media, editorials and opinion pieces. Everyone is taking a look at and evaluating how to best achieve and protect the public’s right to a fair and impartial judiciary. Ms. Baker was not speaking on behalf of the court, but noted the court is very aware and the entire judiciary is concerned about this issue and would like to participate in this process. Regarding disclosure, it is uniquely important to know who funds judicial elections. Some issues for the committee to consider when discussing judicial election reform include identifying the problems that need to be addressed, attorneys contributing to judicial campaigns, and “dark money”. She explained dark money is defined as an independent expenditure group whose donors are not disclosed and are engaging in electioneering activities. Legislation will have to address the issue of disclosure to require organizations that are engaged in an electioneering activity within a certain time period before the election.

Regarding fair judiciary campaign practices, Ms. Baker does not agree with the idea of appointing judges, but suggested creating a new system of public financing/attorney financing as a possibility to remove the appearance of impropriety or bias. She proposed a surcharge on attorneys license fees to finance Supreme Court and Court of Appeals judges’ campaigns who agree to certain spending limits.

The Honorable Clarke Tucker, State Representative, District 35, stated his proposed legislation deals with disclosure and coordination. The disclosure section of the bill deals primarily with “dark money” which addresses who pays for political advertising in Arkansas, as it affects the process of all elections and every issue of public policy. Moreover, Representative Tucker’s legislation would increase transparency in all Arkansas elections and

would not regulate the content of what someone says, or how much anyone spends. Some laws that are currently in place include contributions to campaigns and the independent expenditure committee.

Mr. Bob Edwards, President, Arkansas Trial Lawyers Association, stated trial lawyers believe that a jury of their peers is in the best position to address grievances and civil and criminal matters. The phrase “dark money” was coined this phrase due to the public being kept in the dark regarding the source of the money. Dark money or unreported money is the greatest threat to our freedom in this country today.

Mr. Eddie H. Walker, Jr., President, Arkansas Bar Association (ABA), spoke briefly about the ABA. He stated it is a voluntary association and represents the majority of lawyers in Arkansas. The ABA's mission includes service to the public and enhancement of the administration of justice. Mr. Walker is not advocating for a specific position, but noted that anything that distracts from maintaining a fair and impartial judiciary gets ABA's attention. A 17-member task force comprised of a number of lawyers with different perspectives from various sectors of the state was appointed to study this issue and is expected to make recommendations to the legislature in 2017. This task force is charged with addressing the following issues:

- Determining whether judges in Arkansas should continue to be elected or whether an appointed process would be more appropriate.
- If an appointed process is recommended, should it apply to all judges or only appellate judges?
- If an appointed process is selected, how should it be structured?
- Should some specific level of financial contribution to a judge's campaign trigger an automatic recusal of that judge regarding cases involving the contributor?
- What safeguards can be used to best protect the judicial election process from the influence of the unreported money?

In response to a question by Senator Rice regarding states that are now questioning their decision after approving the appointment process, Mr. Walker said he will provide the committee with a list of those states that are considering other options.

Mr. Dan Greenberg, President, Advance Arkansas Institute, stated “dark money” or unreported money is actually reported, just not in the way we want it to be reported. Anyone can go to the Internet or send a request to the organization after it completes the 990 form, to see what money was spent. Arkansas is entering into a new era of politics where independent expenditures are becoming a larger part of the political landscape. It is harder to make a case for judicial elections than electing other offices, because judicial candidates face a tougher job than other candidates when they discuss issues. Judicial candidates are forbidden to discuss how they would rule in concrete cases, as the rules are different. Therefore, there is a stronger case for some type of merit selection procedure than there is for electing other public officials. Mr. Greenberg stated, “if the committee is seriously considering merit selections, it is important to respect the principle of popular elections in self-government, as it is important how we choose our judges, as it respects the value of self-government.” It is dangerous to have a committee of un-elected individuals that will have great power over the selection proceedings.

Senator Hutchinson stated that he has had discussions regarding merit selection, noting that Arkansas has to do either one or the other to reform the financing of elections.

Mr. Jerry Cox, President, Family Council, stated when looking at the selection of judges, the issue or concern involves outside money and outside influences and how they are going to influence who gets elected. Mr. Cox does not perceive outside money would not influence whatever process is put in place. It is a huge public relations mountain to attempt to climb as the public starts to sense that the legislature or the establishment is somehow trying to take a vote away from the people.

Mr. David Ray, Director, and Ms. Teresa Oelka, Vice President for State Operations, Americans for Prosperity (AFP), stated he was speaking in opposition to the proposed draft legislation of campaign finance reform, specifically, the mandate regarding private contributions to non-profit organizations being made public. This

measure seeks to reclassify large amounts of speech as electioneering communications and would require mandatory reporting of names and addresses to the government in a process discouraging many from engaging in the democratic process. Mr. Ray urged the committee to oppose the draft proposal and similar efforts that are used to influence the power of law to dissuade the use of political speech. Moreover, this discussion supposedly is focused on campaign finance reform, but in reality it is a discussion about restricting the speech of private charitable organizations. Mr. Ray noted Representative Tucker's draft legislation will trigger government reporting mandates for both 501(c)3 and 501(c)4 organizations which include the National Rifle Association, NAACP, ACLU, Right to Life, Family Council, and Planned Parenthood, etc. Consequently, this legislation would have a profound impact on free speech in Arkansas. According to Mr. Ray, the Supreme Court has long held the rights of individuals to privately give to non-profit organizations to prevent intimidation of their donor.

Ms. Teresa Oelka stated while in her current capacity as vice president, in the last 3 years, there has been targeting and harassment of donors to 501(c)3 and 501(c)4 organizations. Activists and AFP employees have also been the target of frequent harassment. Notably, AFP activists have been the victims of harassment and death threats from progressive organizations and government. Moreover, these organizations have attempted to hack AFP's website, emails, and team members' bank accounts multiple times. It is with certainty that public disclosure of private donations will have a chill on the opportunity for citizens to exercise their right to speak out on issues. Senator Hutchinson stated the biggest issue has involved the recusal issue for citizen litigants, which gives a citizen the right to ask a judge to recuse himself or herself if he or she receives \$1.5 million from a group.

The Honorable Wendell Griffin, Judge, 5th Division Circuit Court, stated he is unequivocally in favor of continuing the process of Arkansans electing their judges. Merit selection is a misnomer, as judges are elected in Arkansas by voters and voters are defined as people with the qualifications who have merit. Judges have to meet the same requirements, whether they are elected or appointed. Merit selection does not allow voters the opportunity to elect. Judges are the only public officials elected in this state who have no term limits, but have the longest terms. Judge Griffin stated, "It did not make sense to have the people with the longest terms have the least amount of democratic input."

Mr. Tim Cullen, Lawyer, stated transparency is a good idea in elective politics, but it is more than a good idea when it involves the judiciary, as it is a constitutional right. As the judicial system stands now, Arkansas has a problem with outside groups funding elections, which can affect the outcome of the election. These groups do not have to disclose their donors or expenditures. He hopes the committee revisits the unreported money issue that 501(c)4 organizations are spending in judicial races.

Ms. Nancy Emmons, Citizen, stated due to the election process, she has visited many counties in Arkansas, and citizens feel as if their voices are not being heard. According to Ms. Emmons, citizens are being informed that they would no longer have a part in the process of electing judges. She noted Arkansas has lost a great opportunity when the voice of the people is taken away.

Discussion of the FY 2015 Annual Report by the Division of Youth Services (DYS)

Due to time constraints, Senator Collins-Smith made a motion to approve the report. Senator Elliott seconded and the FY 2015 Annual Report was approved by the Committee.

With no further business, the meeting adjourned at 5:03 p.m.