

Do You Know What The Kansas Triple Play Was and How it Made us an Abortion State?

by Steve Brunk and Robert Noland

The March letter to the congregation “Did you know that Kansas is now an abortion destination state?” stated that Kansas, once one of the most pro-life states in the nation, is now one of the most extreme states for allowing abortion access.

Since 1978 there have been approximately 471,900 *recorded* abortions in Kansas.

While there were 6,916 abortions in 2019, that number skyrocketed to 12,318 in 2022. Even more disturbing is the estimated number for 2024 will be over 20,000 and climbing.

Kansas had nearly two dozen good pro-life laws but that all ended in 2019 when the State Supreme Court “discovered” a “right to abortion” in the Kansas Constitution. Since then, all of our protections for women and their unborn children are being systematically overturned.

How exactly did we get to this place?

It’s a long and relatively unknown story. At one time, Kansans enjoyed direct elections of our Supreme Court Justices, just like all other branches of our government. They, like other elected officials, were accountable to *We The People*. But in 1957 that all changed with the infamous political Triple Play.

The Triple Play

Governor Fred Hall, a young “firebrand politician”, had just lost his re-election bid. His political allies of those days wanted to keep their influence alive in the state, so they concocted a lame duck scheme to keep Hall politically viable.

Here’s how the scheme unfolded:

- Supreme Court Justice William Smith, 69, retired from the Court for “health” reasons.
- Outgoing Governor Hall retired from his position as Governor, temporarily elevating Lt. Governor John McCuish to the Governorship.
- New Governor McCuish then appointed previous Governor Hall to the Supreme Court, filling the vacancy left by the now retired William Smith.
- This “Triple Play” took approximately 15 minutes to accomplish on January 3, 1957, just prior to the new administration being sworn in.

Public Reaction

It was their hope that these job switches would mostly go unnoticed during the holidays. They couldn’t have been more wrong. The public rightly reacted with outrage, demanding a change to prevent this kind of political trickery from ever happening again.

Again, the Supreme Court Justices were elected directly by the public at that time. The only necessary change would have been to modify the mechanism for filling a vacancy. But in the heat of the moment the legislature and the public overreacted – instead opting to change the entire nature of the Kansas Supreme Court.

The Nominating Commission

They changed the Kansas Constitution to eliminate Supreme Court direct elections and instead established a nominating commission comprised of nine individuals. Those nine individuals have the authority to select three names and provide those names to the current Governor any time a Supreme Court vacancy occurs. The Governor must then select one of those names to be on the Supreme Court. If the Governor fails to select one of the three names, the Chief Justice of The Court makes the selection. The appointments to the highest Court in Kansas would now be made by the nominating commission, not the Kansas citizens.

So, who gets to be on this powerful, unaccountable nominating commission?

As if it isn't grievous enough to take the power of selecting the Court away from the citizens, this nine-member commission is made up by the Governor appointing four members with the remaining five members (a majority)-all appointed by the Kansas Bar Association. Let that soak in – instead of citizens, now lawyers get to choose who picks the Justices for Kansas' highest court.

The Kansas Reality

Kansas became the only State which has a Supreme Court Nominating Commission with a majority of its' members who are lawyers, elected by the rest of the Bar. In other words, we are the only State in which one profession, lawyers, has absolute control over the membership of the highest court in state government. With the Commission appointments being primarily dominated by large trial attorney corporations, it is no wonder that a liberal bias has pervaded our Supreme Court for decades.

The Need to Change

Whether you are for or against abortion ... whether you are for or against any of the other rulings made by this Supreme Court, we must agree that the current selection process controlled by the Kansas Bar Association must be changed. Otherwise, there is no connection to *We The People*...no accountability.

Stephen Ware, a professor of law at the University of Kansas, submitted testimony to the Kansas Legislature on this topic. He published articles that researched how all 50 states select their supreme court justices. His research shows that the Kansas Supreme Court selection process is undemocratic, extreme, and secretive. [His testimony then elaborated on those three areas.](#)

The Kansas Supreme Court will never be pro-life, the Kansas Supreme Court will never be wholly supportive of religious freedom and most importantly it will never represent Kansans or their values under the current selection scheme.

What will it take to change? Look here again next month for how this state could act to remedy this difficult reality.