

Journal of the Senate

FIRST REGULAR SESSION

EIGHTEENTH DAY—WEDNESDAY, FEBRUARY 9, 2011

The Senate met pursuant to adjournment.

President Kinder in the Chair.

Reverend Carl Gauck offered the following prayer:

“He has told you, O mortal, what is good and what does the Lord require of you but to do justice, and to love kindness and to walk humbly with your God.” (Micah 6:8)

Almighty God, You have required us to make sure justice is practiced in our land and to do all we are capable to assure our people the right to seek protection under the law. So guide us to understand what is needed and that all our bills are the best suited to fulfill Your will. In Your Holy Name we pray. Amen.

The Pledge of Allegiance to the Flag was recited.

A quorum being established, the Senate proceeded with its business.

The Journal of the previous day was read and approved.

The following Senators were present during the day’s proceedings:

Present—Senators

Brown	Callahan	Chappelle-Nadal	Crowell	Cunningham	Dempsey	Dixon	Engler
Goodman	Green	Justus	Keaveny	Kehoe	Kraus	Lager	Lamping
Lembke	Mayer	McKenna	Munzlinger	Nieves	Parson	Pearce	Purgason
Richard	Ridgeway	Rupp	Schaaf	Schaefer	Schmitt	Stouffer	Wasson

Wright-Jones—33

Absent—Senators—None

Absent with leave—Senators—None

Vacancies—1

The Lieutenant Governor was present.

Senator Pearce assumed the Chair.

RESOLUTIONS

Senator Parson offered Senate Resolution No. 214, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Ralph Buckner, Bolivar, which was adopted.

Senator Stouffer offered Senate Resolution No. 215, regarding James Perkins, Marshall, which was adopted.

Senator Nieves offered Senate Resolution No. 216, regarding Ethan Ben Goforth, St. Clair, which was adopted.

Senator Keaveny offered Senate Resolution No. 217, regarding the Missouri Dermatological Society Association, which was adopted.

Senator Kehoe offered Senate Resolution No. 218, regarding George Paul White, Jefferson City, which was adopted.

Senator Kehoe offered Senate Resolution No. 219, regarding Alvina Collins, Jefferson City, which was adopted.

Senator Munzlinger offered Senate Resolution No. 220, regarding the Fortieth Wedding Anniversary of Mr. and Mrs. Robert Ebeling, Wyaconda, which was adopted.

Senator Munzlinger offered Senate Resolution No. 221, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Gerald Thomas, Taylor, which was adopted.

Senator Munzlinger offered Senate Resolution No. 222, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Albert Barnard, Hannibal, which was adopted.

Senator Munzlinger offered Senate Resolution No. 223, regarding the Fortieth Wedding Anniversary of Mr. and Mrs. Stephen Wilson, Kahoka, which was adopted.

Senator Schaaf offered Senate Resolution No. 224, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Jack Gibbons, which was adopted.

Senator Schaaf offered Senate Resolution No. 225, regarding the Fiftieth Wedding Anniversary of Mr. and Mrs. Fred L. Organ, which was adopted.

Senator Richard offered Senate Resolution No. 226, regarding Daniel E. “Dan” Scorse, which was adopted.

INTRODUCTION OF BILLS

The following Bills were read the 1st time and ordered printed:

SB 235—By Schaefer.

An Act to repeal sections 190.839, 198.439, 208.437, 208.480, 338.550, and 633.401, RSMo, and to enact in lieu thereof six new sections relating to certain provider taxes.

SB 236—By Schaefer.

An Act to amend chapters 338 and 376, RSMo, by adding thereto six new sections relating to pharmacy services, with penalty provisions.

SB 237—By Schaefer and Justus.

An Act to repeal section 484.350, RSMo, and to enact in lieu thereof one new section relating to standards for representation of children by guardians ad litem.

SB 238—By Schmitt, McKenna, Nieves, Goodman, Kehoe, Lamping, Cunningham, Wright-Jones, Engler, Lembke, Richard, Chappelle-Nadal, Callahan, Parson, Justus and Schaefer.

An Act to repeal sections 87.005 and 87.006, RSMo, and to enact in lieu thereof two new sections relating to diseases presumed incurred in the line of duty by firefighters.

SB 239—By Justus, Keaveny, Engler, Wright-Jones and Green.

An Act to repeal sections 213.010, 213.030, 213.040, 213.045, 213.050, 213.055, 213.065, 213.070, and 213.101, RSMo, and to enact in lieu thereof nine new sections relating to human rights.

SB 240—By Justus, Keaveny, Wright-Jones and Green.

An Act to repeal section 160.775, RSMo, and to enact in lieu thereof one new section relating to school safety.

SB 241—By Brown and Wasson.

An Act to repeal sections 144.010, 144.020, 144.030, and 144.070, RSMo, and to enact in lieu thereof four new sections relating to sales tax exemptions for captive wildlife.

SB 242—By Cunningham.

An Act to amend chapter 167, RSMo, by adding thereto one new section relating to school enrollment.

SB 243—By Cunningham.

An Act to repeal section 177.088, RSMo, and to enact in lieu thereof two new sections relating to the utilization of resources and services.

SB 244—By Green.

An Act to repeal sections 192.735, 192.737, 192.739, 192.742, 192.745, 199.001, 199.003, 199.007, 199.009, 199.010, 199.029, 199.031, 199.037, 199.039, 199.041, 199.043, and 199.051, RSMo, and to enact in lieu thereof eleven new sections relating to the brain injury advisory council.

SB 245—By Lembke.

An Act to repeal section 208.152, RSMo, and to enact in lieu thereof one new section relating to the inclusion of chiropractic services in the MO HealthNet program.

SB 246—By Lamping and Schmitt.

An Act to amend chapter 348, RSMo, by adding thereto two new sections relating to a tax credit for equity investments in technology-based early stage Missouri companies.

SB 247—By Pearce.

An Act to repeal sections 163.011, 163.031, and 163.037, RSMo, and to enact in lieu thereof two new sections relating to state funding for elementary and secondary education, with an emergency clause.

REPORTS OF STANDING COMMITTEES

Senator Dempsey, Chairman of the Committee on Rules, Joint Rules, Resolutions and Ethics, submitted the following report:

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SB 33**, begs leave to report that it has examined the same and finds that the bill has been truly perfected and that the printed copies furnished the Senators are correct.

REFERRALS

President Pro Tem Mayer referred **SCR 8** to the Committee on Rules, Joint Rules, Resolutions and Ethics.

**SECOND READING OF
CONCURRENT RESOLUTIONS**

The following Concurrent Resolution was read the 2nd time and referred to the Committee indicated:

SCR 9—Rules, Joint Rules, Resolutions and Ethics.

REFERRALS

President Pro Tem Mayer referred **SCS** for **SB 19** and **SB 33** to the Committee on Ways and Means and Fiscal Oversight.

COMMITTEE APPOINTMENTS

President Pro Tem Mayer appointed the following escort committee pursuant to **HCR 24**: Schmitt, Ridgeway, Chappelle-Nadal, Goodman, Schaefer, McKenna, Wright-Jones, Justus and Keaveny.

SENATE BILLS FOR PERFECTION

Senator Goodman moved that **SB 8**, with **SCS**, be called from the Informal Calendar and taken up for perfection, which motion prevailed.

SCS for **SB 8**, entitled:

**SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 8**

An Act to repeal section 287.120, RSMo, and to enact in lieu thereof one new section relating to workers' compensation.

Was taken up.

Senator Goodman moved that **SCS** for **SB 8** be adopted.

Senator Goodman offered **SS** for **SCS** for **SB 8**, entitled:

**SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 8**

An Act to repeal sections 287.020, 287.067, and 287.120, RSMo, and to enact in lieu thereof three new sections relating to workers' compensation.

Senator Goodman moved that **SS** for **SCS** for **SB 8** be adopted.

Senator Schmitt assumed the Chair.

Senator Goodman offered **SA 1**, which was read:

SENATE AMENDMENT NO. 1

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 8, Page 7, Section 287.067, Line 23 of said page, by inserting immediately after “chemical” the following: “, **substance, or material**”; and further amend line 25 of said page, by inserting immediately after the word “consumed” the following: “, **inhaled, or absorbed**”.

Senator Goodman moved that the above amendment be adopted, which motion prevailed.

Senator Schaaf offered **SA 2**, which was read:

SENATE AMENDMENT NO. 2

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 8, Page 8, Section 287.067, Line 1, by inserting after the word “section”, the following:

“**or a disease caused by exposure to cigarette smoke**”.

Senator Schaaf moved that the above amendment be adopted, which motion prevailed.

Senator Goodman moved that **SS** for **SCS** for **SB 8**, as amended, be adopted, which motion prevailed.

On motion of Senator Goodman, **SS** for **SCS** for **SB 8**, as amended, was declared perfected and ordered printed.

RESOLUTIONS

Senator Kraus offered Senate Resolution No. 227, regarding Andrew Gregory Swetnam, Lee’s Summit, which was adopted.

Senator Kraus offered Senate Resolution No. 228, regarding David James Andreasen, Lee’s Summit, which was adopted.

Senator Kraus offered Senate Resolution No. 229, regarding Dominick Joseph Fiorello, Lee’s Summit, which was adopted.

Senator Kraus offered Senate Resolution No. 230, regarding Arthur Sabin Davis, Lee’s Summit, which was adopted.

Senator Kraus offered Senate Resolution No. 231, regarding William Dean Rogers, Lee’s Summit, which was adopted.

Senator Kraus offered Senate Resolution No. 232, regarding the Seventieth Wedding Anniversary of Mr. and Mrs. William E. Evans, which was adopted.

Senator Kraus offered Senate Resolution No. 233, regarding Alan Lloyd Preston, Lee’s Summit, which was adopted.

On motion of Senator Dempsey, the Senate recessed until 1:40 p.m.

RECESS

The time of recess having expired, the Senate was called to order by Senator Pearce.

REPORTS OF STANDING COMMITTEES

Senator Dempsey, Chairman of the Committee on Rules, Joint Rules, Resolutions and Ethics, submitted the following report:

Mr. President: Your Committee on Rules, Joint Rules, Resolutions and Ethics, to which was referred **SS** for **SCS** for **SB 8**, begs leave to report that it has examined the same and finds that the bill has been truly perfected and that the printed copies furnished the Senators are correct.

Senator Dempsey moved that the Senate recess to repair to the House of Representatives to receive the State of the Judiciary Address from the Chief Justice of the Supreme Court, the Honorable William Ray Price, Jr., which motion prevailed.

JOINT SESSION

The Joint Session was called to order by President Pro Tem Mayer.

On roll call the following Senators were present:

Present—Senators

Brown	Callahan	Chappelle-Nadal	Cunningham	Dempsey	Dixon	Engler	Goodman
Green	Justus	Keaveny	Kehoe	Kraus	Lager	Lamping	Lembke
Mayer	McKenna	Munzlinger	Nieves	Parson	Pearce	Richard	Ridgeway
Schaaf	Schaefer	Schmitt	Stouffer	Wasson	Wright-Jones—30		

Absent—Senators

Purgason Rupp—2

Absent with leave—Senator Crowell—1

Vacancies—1

On roll call the following Representatives were present:

Present—Representatives

Allen	Anders	Asbury	Atkins	Aull	Bahr	Barnes	Bernskoetter
Berry	Black	Brandom	Brattin	Brown 85	Burlison	Carlson	Casey
Cauthorn	Cierpiot	Colona	Conway 14	Conway 27	Cookson	Cox	Crawford
Curtman	Davis	Day	Denison	Dieckhaus	Dugger	Ellinger	Elmer
Entlicher	Faith	Fallert	Fisher	Fitzwater	Flanigan	Fraker	Franklin
Frederick	Fuhr	Gatschenberger	Gosen	Grisamore	Guernsey	Haefner	Hampton
Higdon	Hinson	Hoskins	Hough	Houghton	Hubbard	Hughes	Hummel
Johnson	Jones 63	Jones 89	Jones 117	Kander	Keeney	Kelley 126	Kelly 24
Kirkton	Klippenstein	Koenig	Kratky	Lair	Lampe	Lant	Largent
Lasater	Lauer	Leach	Leara	Lichtenegger	Loehner	Long	Marshall
May	McCaherty	McCann Beatty	McDonald	McGeoghegan	McGhee	McManus	McNeil

Meadows	Molendorp	Montecillo	Nance	Nasheed	Neth	Nichols	Oxford
Peters-Baker	Phillips	Pierson	Pollock	Quinn	Redmon	Reiboldt	Richardson
Riddle	Rowland	Ruzicka	Sater	Schad	Schatz	Schieber	Schieffer
Schneider	Schoeller	Schupp	Shively	Shumake	Sifton	Silvey	Smith 71
Smith 150	Solon	Spreng	Still	Stream	Swearingen	Swinger	Talboy
Taylor	Thomson	Torpey	Wallingford	Walton Gray	Webber	Wells	Weter
White	Wieland	Wright	Wyatt	Zerr	Mr Speaker—142		

Absent and Absent with Leave—Representatives

Brown 50	Brown 116	Carter	Cross	Curls	Diehl	Franz	Funderburk
Harris	Hodges	Holsman	Korman	McNary	Newman	Nolte	Pace
Parkinson	Rizzo	Scharnhorst	Webb	Zimmerman—21			

Vacancies—None

The Joint Committee appointed to wait upon the Chief Justice of the Supreme Court, William Ray Price, Jr., escorted the Chief Justice to the dais where he delivered the State of the Judiciary Address to the Joint Assembly:

2011 State of the Judiciary Address
Chief Justice William Ray Price, Jr.

Mr. Speaker, Mr. President, Mr. President pro tem, members of the General Assembly: It is my honor to deliver this 38th State of the Judiciary Address.

I never have seen a more challenging time for our state. Regardless of political philosophy, one thing is clear. Significant cuts have been made and will be made to Missouri's budget. To the extent necessary and possible, the courts have shared and will continue to share in budget withholdings without complaint.

The Missouri court system, the third separate but equal constitutional branch of government, operates on less than 2 percent of the state budget. Yet in 2010 we heard more than 171,000 contract cases, 42,000 landlord tenant cases, 17,000 juvenile cases, 12,000 probate cases, 110,000 family and domestic cases, 41,000 felony cases and 115,000 misdemeanor cases. Despite the state's economic condition, whether dipping or hopefully recovering, our work load does not diminish. The court system is a core function of government that must perform, and perform well, for our state to function and thrive.

Don't overlook the obvious. Even in this time of economic challenge, we are still the greatest civilization in the history of human kind; supported by a free market economy that can exist only within the certainty of law. Goods and services can be bought and sold, money can be exchanged, people can plan for the future, but only because they can trust in a fair and impartial court system to protect their property and their rights.

There are two specific concerns I want to talk with you about. I spoke about them last year, and they are still the two most important issues that we face together for the future of Missouri. One calls for action; one does not.

First, we continue to over-incarcerate nonviolent offenders, while we have failed to expand drug courts and other diversionary and reentry programs to capacity. The result is a state that is not as safe as we want it to be and a waste of tax dollars.

From the 1980s, in Missouri and across the nation, we attempted to incarcerate our way out of crime and illegal drug use. We thought just putting people in prison would make them better. We spent billions of dollars and it did not work. We were tough on crime, but we were not smart on crime. Consider these numbers.

In 1982, 612,000 people were behind bars in state prisons across the country. By 2008, that number had risen almost fourfold to 2.3 million people. In 2010, the United States incarcerated a higher share of its population than any other country in the world. The cost has been staggering. State correctional spending, across our country increased from \$11.7 billion, in 1988, to \$47.3 billion in 2008. (*One in 31 The Long Reach of American Corrections*, The Pew Center on the States, www.pewcenteronthestates.org; *The High Budgetary Cost of Incarceration*, Center for Economic and Policy Research, June 2010, www.cepr.net)

In an article published just this January, Stanford law professor Joan Petersilia noted,

What we are seeing today is a growing recognition that our approach to dealing with convicted criminals is simply too costly. Not only is the price too high, but the benefits are too low. The states now spend an estimated \$50 billion on corrections annually, and the growth of these outlays over the past 20 years has outpaced budget increases of nearly all other essential government services, including transportation, higher education, and public assistance. (Beyond the Prison Bubble, *The Wilson Quarterly*, Winter 2011, p.52)

Missouri had 5,953 individuals in state prison in 1982; by 2009 the number had grown fivefold to 30,432, while the population of our state grew only by 21 percent. In that same time period, from 1982 until 2009, our Department of Corrections budget rose from \$55 million to \$665 million.

It costs more than \$16,400 per year to incarcerate an individual, without counting the cost of the prison itself. The cost of building a prison is, at least, \$100 million. For violent criminals, who endanger innocent men, women, and children, there may be little choice. But for many of the 14,700 nonviolent offenders, this prison-based strategy is not working and it is costing us an arm and a leg.

The key measurement of the failure of this strategy is the recidivism rate. That is the number of people who are returned to prison after they have been released. In Missouri, 44.6 percent of nonviolent offenders are reincarcerated within two years of release; 52 percent of nonviolent offenders are reincarcerated within three years; and 58.5 percent of non violent offenders are reincarcerated within five years of release. More than one half of the people released from our penitentiaries are returned within five years.

A real life example of recidivism was the 35-year-old St. Joseph man who was arrested for drunk driving on June 16, 2010, just three hours after he was released from prison. (*The Kansas City Star*, July 17, 2010)

Punishment is a necessary part of our criminal justice system. But our real goal for nonviolent offenders is to teach them their lesson so they can become productive law abiding members of our society. The goal is not to lock them into a life of crime, to make them permanent wards of the state on an installment program of incarceration after incarceration, at \$16,400 per year. Newt Gingrich wrote this:

The key to public safety and fiscal sanity is not just getting dangerous people off the streets but also making sure that men and women who eventually leave prison have changed and can stay crime-free on the outside. (*Atlanta Journal Constitution*, March 23, 2010)

Governor Rick Perry of Texas said it this way,

I believe we can take an approach that is both tough and smart ... [T]here are thousands of non-violent offenders in the system whose future we cannot ignore. Let's focus more resources on rehabilitating those offenders so we can ultimately spend less money locking them up again. (www.rightoncrime.com)

It should be absolutely clear that when half of the nonviolent offenders are returned to prison after release, we have not taught them the right lesson. And, the danger of crime – the millions of dollars of cost to the Missouri taxpayer – goes on and on and on.

Over-incarceration of nonviolent offenders has been a big-government, throw-money-at-the-problem strategy that simply did not and does not work. Despite our tough-on-crime rhetoric, it is time we face reality. Prison is the most expensive and least effective strategy for a significant number of nonviolent offenders. All it does is house them in expensive buildings, guard them with state workers, feed and give them health care paid for with precious state dollars and force them to associate with criminals more dangerous than they are. By spending all of our money on prison, there is not enough left to spend on the alcohol and drug treatment and the education and job training, necessary to break their cycle of crime. Proof is in the numbers: 44.6 percent are back in two years, 58.5 percent are back in five years.

A group called Right on Crime; whose members include Grover Norquist, Edwin Meese and William Bennett, said this:

... the corrections system must align incentives with our goals of public safety, victim restitution and satisfaction, and cost-effectiveness, thereby moving from a system that grows when it fails to one that rewards results. (www.rightoncrime.com)

Professor Petersilia said it this way:

It should not come as a surprise to learn that we have a corrections system that does not correct Former prisoners account for an estimated 15 to 20 percent of all arrests among adults. That means thousands of Americans are being victimized every year by criminals who have already done time without experiencing "correction." (Beyond the Prison Bubble, *The Wilson Quarterly*, Winter 2011, p.53)

There is a better way. All across the country, states are turning to cheaper and more effective alternative sanctions than prison for nonviolent offenders.

Drug courts are one of the best examples of tough, effective, local alternatives to prisons. Depending on the study, between 60 and 80 percent of people in prison are there for drug related crimes or have drug or alcohol issues. Study after study, nationally and in Missouri, show

that drug courts are the most effective way to deal with drug and alcohol addicted people at a fraction of the cost of prison. Missouri has more than 9,700 drug court graduates with a minimal recidivism rate.

There are other evidence-based criminal sanction strategies, each matched to the particular risks and characteristics of the offender that also work far less expensively and far more effectively than prison. We need to move from anger-based, prison-focused sentencing that ignores cost and effectiveness to evidence-based alternative sanctions that change troubled lives and focus on results.

With your help, we have expanded drug courts and DWI courts across Missouri. Unfortunately, they are still underfunded by half. We barely have scratched the surface with family drug courts and reentry courts. But I especially want to tell you about two new pilot programs. First, in Jackson, Greene and St. Louis counties and in St. Louis City, we tested a program to divert juveniles from detention facilities. The program reduced detention admissions by approximately 50 percent with better results from the juveniles. The savings from this program will be substantial. We are expanding this program into five additional circuits.

The other pilot program is veterans court. Veterans court focuses on returning veterans whose psychological scars from service lead them to drugs and trouble and sometimes violence when they get home. In St. Louis City, Drug Court Commissioner Jim Sullivan has established a veterans court with 12 participants. Drug Court Commissioner Phil Britt is in the process of establishing a rural veterans court in Butler, Carter, Dunklin, Ripley, Stoddard and Wayne counties with a target population of 20 to 25 veterans. We owe our veterans this kind of help when they need it. But our resources are already stretched thin.

From a moral, a fiscal and a law-and-order perspective, drug courts, DWI courts, juvenile diversion programs, veterans courts, reentry courts and community supervision strategies are better investments of taxpayer money, for their target populations, than prisons.

I want to be absolutely clear. I am not advocating that we reduce prison populations just to save money. Nonviolent offenders are still law breakers, and they will break laws until they learn their lesson. What I am saying is that we need to do a better job teaching nonviolent offenders the right lessons. That takes more than prison, more than slap-on-the-wrist-probation. Drug and alcohol addiction must be broken; discipline and job skills must be learned. When that can be done better, outside of expensive prison walls, that is what we should do. Results matter, public safety matters, taxpayer dollars matter, saving lives and restoring families matter.

I also want to make clear that this is not a management problem at the Department of Corrections. Director Lombardi, his staff, and the probation and parole officers of this state, are excellent and dedicated public servants. Because of their leadership and because of the nearly 3,000 drug court diversions each year, we have avoided building at least two new prisons. That is, at least, \$200 million of avoided costs, just for the buildings; let alone the tens of millions of dollars of operational costs. Missouri has started in the right direction. But we need to go farther and to do better.

The people of America are ready for a change. A poll taken last September showed that 86 percent of Americans agreed that “We have too many low risk, nonviolent offenders in prison. We need alternatives to incarceration that cost less and save our expensive prison space for violent and career criminals.” Eighty-nine percent of Americans agreed that “Ninety-five percent of people in prison will be released. If we are serious about public safety, we must increase access to treatment and job training programs so they can become productive citizens once they are back in the community.” And 84 percent of Americans agreed that “Prisons are a government program, and just like any other government program they need to be put to the cost-benefit test to make sure taxpayers are getting the best bang for their buck.” (*Public Attitudes on Crime and Punishment*, The Pew Center on the States, www.pewcenteronthestates.org)

We need to expand our existing diversionary treatment court programs. We need to require as a condition for early release from prison, education or job training and drug treatment, if needed. We need to establish a more robust program for reentry supervision for those who are released. The reduction in the number of nonviolent offenders in our prisons will more than fund these efforts. We need to be tough and smart on crime.

The second major issue that I want to talk with you about is a fair and impartial judiciary. Solomon is the example of the greatest judge. When he first became King of Israel, the Revised Standard Version of the Bible says he asked the Lord for “an understanding mind to govern thy people, that I may discern between good and evil.” The New Jerusalem Bible and most other translations have Solomon asking for an understanding “heart,” instead.

I never have worried about this difference in translation, because both are true. A good judge needs an understanding mind and an understanding heart to find justice.

It is not easy finding justice. Justice isn't a physical thing that you can touch or hold or measure. Often it is shaped by the eye of the beholder and, often, relative to the beholder's particular point of view. What seems just to one may seem unjust to another.

A good judge must have the courage to accept that not all people will see justice as he or she does. Sometimes, a good judge must have the courage to risk the anger of the majority, to protect the rights of the individual – rights that we prize and that are guaranteed by our national

and state constitutions. That is why Alexander Hamilton said the “independence of the judges is ... requisite to guard the Constitution and the rights of individuals.” (The Federalist #78)

Our job is different than yours. You serve the majority. You make broad policy decisions that apply to everyone. You make campaign promises and are expected to uphold them. If something does not work, if it is worded incorrectly, or if the will of the majority changes, you can change your laws year by year.

Our job is more limited. We rule individual case by individual case. Whether it is a case for a business fighting for its economic life, a crippled plaintiff who no longer can support himself, parents fighting for the custody of a loved child, or a person accused of a crime with his liberty or life at stake, we rule individual case by individual case, with each individual having only that one chance for justice. In every case, someone loses. Fairness, impartiality, and a level playing field, not subject to outside influence or manipulation, not dependent upon a preexisting promise, are the absolute necessity.

With this in mind, we need to talk about the Missouri Plan for selecting judges. The plan was adopted by the people of Missouri by initiative petition in 1940. It was in response to the Pendergast political machine’s attempt to control the Supreme Court of Missouri. It was a plan established by the people to protect their courts from political manipulation and control.

For those of you who are new to the legislature, let me explain how the Missouri Plan works. For vacancies on the Supreme Court and the Court of Appeals, there is a seven-member commission. The commission is made up of three lawyers elected by lawyers from the eastern, western and southern districts of the state. The lawyers’ role is to safeguard the professional quality of the candidates. The lawyers serve staggered six-year terms. The commission also has three members who cannot be lawyers, appointed by the governor, again for staggered six-year terms. They evaluate the candidates from the point of view of regular citizens of Missouri. To the extent these commissioners are appointed by the governor, they reflect the political mood of the state. Finally the chief justice of the Supreme Court serves on the commission. In my experience, the chief justice functions neither as a lawyer, nor as a lay person, but as a representative of the judicial system as a whole. The nominating commission for trial judges in Jackson, Clay, Platte, Greene and St. Louis counties and St. Louis City has one fewer lawyer and non-lawyer, and the presiding judge of the local court of appeals replaces the chief justice.

The commission evaluates the applicants. It screens out those who from a legal or any other point of view might not be the best choice to serve as a judge and selects the three candidates the commission believes would be best. The governor may appoint any of the three individuals submitted to him, for any reason. The governor’s appointee begins to serve immediately but is subject to a retention vote of the people at the next general election after a year of service, and again, every 12 years thereafter. Missouri Plan judges are accountable directly to the people.

The brilliance of the Missouri Plan is that it balances the need for legal ability, everyday common sense and responsibility to the people, in a way that preserves the integrity, fairness and impartiality of the judge. We do not campaign. We do not raise money. It also checks the power of all concerned, the lawyers, the citizens, the chief justice, the governor, and most importantly, it allows a very real check and balance to the people by the retention vote.

But, in some ways, the quality of a judge is like the quality of justice. It is perceived in the eye of the beholder, colored by the beholder’s interests and desires. What one person sees as a great appointment may be criticized by another; perhaps not relative to ability, integrity, or fairness, but by a desire for a particular ideological viewpoint and the expectation of a particular type of ruling. The Missouri Plan was created to seek judges of ability, integrity and fairness; not to lock in any particular viewpoint.

There are two alternatives that have been suggested by critics of the Missouri Plan. I am certain that those who suggest these alternatives are sincere in their concerns, but I do not believe that they understand the dangers inherent in their suggested alternatives.

The worst alternative is direct elections of judges. The reason is simple. Money. The amount of money involved in conducting statewide races will destroy the public’s perception, and perhaps the actual integrity, of our judicial system.

As special interest politics have increased, the amount of money directed to judicial elections has skyrocketed. For the 10- year period from 1990 to 1999, \$83.3 million was spent on judicial elections. For the 10-year period from 2000 to 2009, that amount more than doubled to \$206.9 million. (*The New Politics of Judicial Elections: 2000-2009*, The Brennan Center for Justice, www.brennancenter.org)

It is even more shocking that most of this money comes from a small group of big spenders. A study of 29 elections in the nation’s 10 most costly states from 2000 to 2009 showed that the top five contributors in each race invested an average of \$473,000, while the remaining 116,000 contributors averaged just \$850 each. (*The New Politics of Judicial Elections: 2000-2009*, The Brennan Center for Justice, www.brennancenter.org)

There can be no way that this much money from so few people can be good. In fact, a Harris poll released this past September revealed that 70 percent of Americans, both democrats and republicans, believed that campaign contributions have had a significant impact on courtroom

decisions. (The Birmingham News, September 11, 2010)

Remember the *Avery* case from Illinois in which an Illinois Supreme Court justice cast the deciding vote in a \$450 million lawsuit in favor of a company after receiving more than \$1 million in campaign contributions from those connected to the company. Remember the *Massey* case from West Virginia in which a new West Virginia Supreme Court justice cast the deciding vote in a \$50 million lawsuit after the CEO of that company spent approximately \$3 million of independent expenditures to defeat the new judge's opponent.

Big money in judicial elections is a scandal.

I am not naive. There are political and ideological issues that divide our nation and that divide our state. It is our strength as a democracy to allow the full debate and resolution of those issues by and before the people. But that is a process for you to conduct here in the legislative chambers of government. It is not a process to be confused with the fair and just resolution of individual disputes, each case according to its evidence, each case according to the law, each case with fairness and impartiality. Most importantly, each case as the only opportunity for justice for the Missouri citizens involved.

Whether rich, poor, black, white, plaintiff, defendant, individual, corporation, prosecutor, accused, republican, democrat or independent, the people of Missouri deserve justice when they come to court. They deserve a level playing field and a fair chance. They deserve judges who make decisions on evidence and law, not judges who have been influenced by big money contributions from special interests.

Judges who have been bought and paid for have not been the Missouri way since 1940, and they should not be the Missouri way of the future.

Another suggestion is to adopt a plan modeled after the federal system. That, too, is problematic. Federal judges have life tenure and are not subject to retention votes. The federal plan has no commission of lawyers or lay people to filter the candidates regarding legal ability, reputation or simple common sense. It would be a purely political system where only, the governor and senators, are included. I am sure you can imagine the bargaining that might take place, perhaps involving issues wholly unrelated to the nominee. You don't have to imagine the gridlock that takes place when the senate is controlled by one party and the governor is of the other party. In a 2002 speech then attorney general John Ashcroft declared that the federal system "has broken down" because the United States Senate would not act on President Bush's nominees for judges. That may well happen again with President Obama's nominees. Modifications to the federal system might attempt to solve these problems, but they would only increase the uncertainty and risk about how a federal plan might work in Missouri, with untested modifications.

Other, more measured, changes also might be proposed to the Missouri Plan; changes that preserve the structure of the plan, but focus on the political balance of the commissioners, the timing of the commissioners' terms, or the number of nominees on the panel submitted to the governor. Such changes might be less dangerous, but they are still fraught with the risk of unintended consequences. The greater the change, the greater the number of changes, the greater the risk.

In the past two years, the Court has taken great strides to increase the transparency of the Missouri Plan to make it more open to the people. Last year, we amended the rules to release the names of the applicants. This year, we amended the rules to open the interview process to the public, to release the final vote for the panel of nominees and to encourage nominations directly from the public. These changes will allow the people of Missouri to see for themselves how the Missouri Plan works and to see the choices it makes when presenting a panel of nominees to the governor. These are significant and good changes. Both Kansas and Iowa have followed our lead and opened their interviews to the public.

A detailed study published in May 2008 titled, *Is The 'Missouri Plan' Good for Missouri? The Economics of Judicial Selection*, authored by professors Joshua Hall and Russell Sobel, noted:

"A growing literature in economics has found that judicial independence and quality matter for economic growth across countries and states.

Most significantly, they concluded:

"Based on our analysis Missouri's current system is far superior to several of the alternatives such as partisan elections, nonpartisan elections, and gubernatorial appointment with the approval only of some type of executive council." (Policy Study No. 15, Show-Me Institute, May 21, 2008)

Justice is sacred but fragile. It belongs to the people, not to either political party, not to any special interest. A system of justice is necessary to support our economy and to preserve our individual rights and freedoms. A system of justice can exist only so long as the people have trust and confidence that it is fair and impartial. Any proposed change to the Missouri Plan should be considered only with the greatest care and caution. I am afraid that it is more likely that any change may result in more harm than good.

Each of you has been chosen by your fellow citizens to come here and represent them in our government. It is a great honor that they have

bestowed upon you. It is an honor that comes with great responsibility. Do not take for granted your individual importance. What you do will make a difference, not in theory, not in political sound bytes, but in the real lives of real Missourians now and for years to come.

Having served here for nearly 18 years, I understand your sacrifices. I understand some of your pressures. I understand your best intentions. I respect you for your willingness to serve.

I know that each of you want to do your best. I know that each of you want to do what is right and good. It is not my place to advise you on most matters. But preserving a system of justice in Missouri that our people can have faith and confidence in, that cannot be bought, is something right and good; reforming our criminal sentencing practices to save millions and millions of dollars, to break the cycle of addiction and crime, and to make Missouri a safer place is something right and good. It is what should be done. It is something you and your families and all of the people of Missouri can be proud of.

On motion of Senator Dempsey, the Joint Session was dissolved and the Senators returned to the Chamber where they were called to order by Senator Goodman.

MESSAGES FROM THE HOUSE

The following message was received from the House of Representatives through its Chief Clerk:

Mr. President: I am instructed by the House of Representatives to inform the Senate that the Speaker has appointed the following escort committee to act with a like committee from the Senate pursuant to **HCR 24**. Representatives: Jones (117), Barnes, Elmer, Marshall, Richardson, Sifton, Carlson, Ellinger, Peters-Baker and McManus.

On motion of Senator Dempsey, the Senate recessed until 4:00 p.m.

RECESS

The time of recess having expired, the Senate was called to order by Senator Schmitt.

SENATE BILLS FOR PERFECTION

PRIVILEGED MOTIONS

Having voted on the prevailing side, Senator Goodman moved that the vote by which **SS** for **SCS** for **SB 8**, as amended was declared perfected and ordered printed be reconsidered, which motion prevailed by the following vote:

YEAS—Senators

Brown	Callahan	Chappelle-Nadal	Cunningham	Dempsey	Dixon	Engler	Goodman
Green	Justus	Keaveny	Kehoe	Kraus	Lager	Lamping	Lembke
Mayer	McKenna	Nieves	Parson	Pearce	Purgason	Richard	Ridgeway
Schaaf	Schaefer	Schmitt	Stouffer	Wasson	Wright-Jones—30		

NAYS—Senators—None

Absent—Senator Rupp—1

Absent with leave—Senators

Crowell Munzlinger—2

Vacancies—1

Having voted on the prevailing side, Senator Goodman moved that the vote by which **SS** for **SCS** for

SB 8, as amended, was adopted be reconsidered, which motion prevailed by the following vote:

YEAS—Senators

Brown	Callahan	Chappelle-Nadal	Cunningham	Dempsey	Dixon	Engler	Goodman
Green	Justus	Keaveny	Kehoe	Kraus	Lager	Lamping	Lembke
Mayer	McKenna	Nieves	Parson	Pearce	Purgason	Richard	Ridgeway
Rupp	Schaaf	Schaefer	Schmitt	Stouffer	Wasson	Wright-Jones—31	

NAYS—Senators—None

Absent—Senators—None

Absent with leave—Senators

Crowell Munzlinger—2

Vacancies—1

SS for **SCS** for **SB 8**, as amended, was again taken up.

Senator Goodman offered **SA 3**:

SENATE AMENDMENT NO. 3

Amend Senate Substitute for Senate Committee Substitute for Senate Bill No. 8, Page 8, Section 287.120, Line 5 of said page, by inserting immediately after the word “accident” the following: “**or by occupational disease**”; and further amend line 23 of said page, by striking the word “accidental”; and further amend said line by inserting after the word “death” the following: “**by accident or occupational disease**”.

Senator Goodman moved that the above amendment be adopted, which motion prevailed.

At the request of Senator Goodman, **SB 8**, with **SCS** and **SS** for **SCS**, as amended (pending), was placed on the Informal Calendar.

INTRODUCTION OF BILLS

The following Bills were read the 1st time and ordered printed:

SB 248—By Parson.

An Act to amend chapter 348, RSMo, by adding thereto one new section relating to business development.

SB 249—By McKenna, Green, Callahan, Richard, Engler and Schmitt.

An Act to amend chapter 67, RSMo, by adding thereto one new section relating to the political subdivision construction bidding standards act.

SB 250—By Kehoe.

An Act to repeal section 589.040, RSMo, and to enact in lieu thereof one new section relating to requirements for persons imprisoned by the department of corrections for sexual assault offenses.

SB 251—By Kehoe.

An Act to repeal sections 137.016 and 137.080, RSMo, and to enact in lieu thereof two new sections relating to watercraft.

SB 252—By Kehoe.

An Act to repeal section 620.1039, RSMo, and to enact in lieu thereof one new section relating to tax credits for qualified research expenses related solely to animal and plant sciences.

RESOLUTIONS

Senator Green offered Senate Resolution No. 234, regarding Samuel G. Boyd IV, Florissant, which was adopted.

Senator Kraus offered Senate Resolution No. 235, regarding Maggie Chase, Raytown, which was adopted.

Senator Justus offered Senate Resolution No. 236, regarding Benjamin Jeffries “Ben” Gallagher, Kansas City, which was adopted.

Senator Justus offered Senate Resolution No. 237, regarding Edward James “Ted” Gallagher, Kansas City, which was adopted.

Senator Justus offered Senate Resolution No. 238, regarding Hunter Michael Redmond, Mission Hills, Kansas, which was adopted.

Senator Justus offered Senate Resolution No. 239, regarding Thatcher Hill Anderson, Kansas City, which was adopted.

Senator Justus offered Senate Resolution No. 240, regarding Nathan Michael Kent, Kansas City, which was adopted.

Senator Schaefer offered Senate Resolution No. 241, regarding John Kadlec, Columbia, which was adopted.

Senator Lamping offered Senate Resolution No. 242, regarding Jacob Alexander Hopcraft, St. Louis, which was adopted.

INTRODUCTIONS OF GUESTS

Senator Richard introduced to the Senate, dental hygienist students and faculty from Missouri Southern University, Joplin.

Senator Wright-Jones introduced to the Senate, Ashley Cook.

Senator Kehoe introduced to the Senate, Matt Alsager, Jefferson City.

Senator Dixon introduced to the Senate, Debra Pascali-Bonaro, New Jersey; Summer Eyberg, Rolla; Jessica Solberg, Rebecca Block and Sarah Greek, Springfield; and Halley Watson, St. Louis.

Senator Dixon introduced to the Senate, the Physician of the Day, Dr. James Wolfe, M.D., Springfield.

Senator Kraus introduced to the Senate, Michelle Miller, Carol Kelly and Annette Phillips, representatives of the Independence School District.

On behalf of Senator Pearce, the President introduced to the Senate, Scott Sommer and Matt

Schmeringer, Nevada.

Senator Justus introduced to the Senate, David Byrd, Dave Thomas and Kevin Hornbeck, Kansas City.

Senator Green introduced to the Senate, Brenda Shields, St. Joseph.

Senator Mayer introduced to the Senate, Dr. Lou Sharp and his wife Martha, Dexter.

Senator Wright-Jones introduced to the Senate, members of 100 Blackmen of Metropolitan St. Louis.

Senator Wright-Jones introduced to the Senate, Dorothy Lockard, Eddie Davis, Lonnie Scott, Janet Poppen, David Steward and Jim Webb, St. Louis.

On motion of Senator Dempsey, the Senate adjourned under the rules.

SENATE CALENDAR

NINETEENTH DAY—THURSDAY, FEBRUARY 10, 2011

FORMAL CALENDAR

SECOND READING OF SENATE BILLS

SB 213-Schaefer	SB 234-Dempsey
SB 214-Schaaf	SB 235-Schaefer
SB 215-Schaaf	SB 236-Schaefer
SB 216-Schaaf	SB 237-Schaefer and Justus
SB 217-Richard and Schmitt	SB 238-Schmitt, et al
SB 218-Wasson	SB 239-Justus, et al
SB 219-Wasson	SB 240-Justus, et al
SB 220-Wasson	SB 241-Brown and Wasson
SB 221-Cunningham	SB 242-Cunningham
SB 222-Cunningham	SB 243-Cunningham
SB 223-Mayer	SB 244-Green
SB 224-Stouffer	SB 245-Lembke
SB 225-Engler	SB 246-Lamping and Schmitt
SB 226-Engler	SB 247-Pearce
SB 227-Engler	SB 248-Parson
SB 228-Pearce	SB 249-McKenna, et al
SB 229-Pearce	SB 250-Kehoe
SB 230-Lager	SB 251-Kehoe
SB 231-Lager, et al	SB 252-Kehoe
SB 232-Crowell	SJR 15-Nieves, et al
SB 233-Parson	

HOUSE BILLS ON SECOND READING

HCS for HB 45
HCS for HBs 73 & 47

HCS for HB 163

THIRD READING OF SENATE BILLS

SCS for SB 11-McKenna (In Fiscal Oversight)
SCS for SB 19-Schmitt (In Fiscal Oversight)

SCS for SB 18-Schmitt
SB 33-Stouffer (In Fiscal Oversight)

INFORMAL CALENDAR

SENATE BILLS FOR PERFECTION

SB 8-Goodman, with SCS & SS for SCS
(pending)

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