THE CASE FOR ADOPTING APPOINTIVE JUDICIAL SELECTION SYSTEMS FOR STATE COURT JUDGES

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> Under some [state] constitutions the judges are elected and subject to frequent reelection. I venture to predict that sooner or later these innovations will have dire results and that one day it will be seen that by diminishing the magistrates' independence, not judicial power only but the democratic republic itself has been attacked.
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> —Alexis de Tocqueville[1]

I. INTRODUCTION

Some might say that Alexis de Tocqueville's insightful prediction has finally come true. Spending in judicial campaigns has, and continues to, increase at an exponential rate. As competition and special interest group participation increases, judicial elections are getting "noisier, nas-

[1] ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 269 (J.P. Mayer ed. & George Lawrence trans., Harper & Row 1969) (1835).

tier and costlier."[2] Together, these circumstances are severely undermining the moral authority of the courts.[3]

The increasing flow of money into judicial campaigns is staggering. In 2000, candidates spent more than $45 million on state supreme court campaigns – a 61% increase from 1998.[4] This enormous sum was in addition to the millions of dollars spent on "issue" advertising by various interest groups. For instance, interest groups spent $8.7 million on campaign advertisements for two seats on the Ohio Supreme Court in 2000, while the five candidates together spent another $3.3 million.[5] In Michigan, a contentious race for three supreme court seats cost at least $16 million.[6] Experts already predict costly judicial elections in 2002.[7]

The tone of judicial elections also has substantially deteriorated. In 2000, a Michigan GOP television ad attacked a court of appeals judge for upholding a light sentence for a pedophile – with the word "pedophile" in huge type flashed close to the judge's name, while the Michigan Democratic Party featured an ad that declared that incumbent justices had 'ruled against families and for corporations 82% of the time' – a claim the Detroit Free Press observed "borders on bogus."[8]

In a 2001 California election, a challenger who served as a public defender was characterized as someone "who cares about the rights of violent criminals," and was attacked by a sitting judge for representing a "cop killer," a "child molester," and an "armed robber."[9]

Given these disturbing developments, it should come as no surprise that surveys consistently show that an overwhelming majority of the pub-

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[2] David B. Rottman & Roy A. Schotland, *What Makes Judicial Elections Unique?*, 34 LOY. L.A. L. REV. 1369, 1373 n.5 (2001) (quoting Richard Woodbury, *Is Texas Justice For Sale?*, TIME, Jan. 11, 1988, at 74).

[3] *See* Hon. Hugh Maddox, *Taking Politics Out of Judicial Elections*, 23 AM. J. TRIAL ADVOC. 329, 335 (1999) (stating that failure to address the problems of judicial elections has "caused a dangerous decline in the public's faith in impartiality of the judicial branch of government" in Alabama); Nancy Perry Graham, *The Best Judges Money Can Buy*, GEORGE, December/January 2001, at 74 (asserting that "[b]usinesses, unions, and lawyers are pouring millions into state supreme court races-and may walk off with the judicial system's integrity.").

[4] *See* Neil A. Lewis, *Gifts in State Judicial Races Are Up Sharply*, N.Y. TIMES, Feb. 14, 2002, at A27.

[5] *See* ILL. STATE BD. OF ELECTIONS, MONEY AND ELECTIONS IN ILLINOIS 2000, at 7, 11 (2001).

[6] *See* William Glaberson, *States Taking Steps to Rein in Excesses of Judicial Politicking*, N.Y. TIMES, June 15, 2001, at A1.

[7] *See, e.g.*, Pete Slover, *Pricey Battles Predicted in Judicial Races: Democrats to Challenge GOP's Grip on Supreme, Criminal Appeals Courts*, DALLAS MORNING NEWS, Jan. 3, 2002 (reporting competition for several seats on the Texas Supreme Court).

[8] Thomas A. Gottschalk, *Justice Reform – To What End? By What Means?*, 9 METROPOLITAN CORP. COUNS., No. 11, at 1, 6-8 (Nov. 2001) (quoting Roy Schotland, *Financing Judicial Elections, 2000: Change and Challenge* (2001) (unpublished)).

[9] Mark Hansen, *When Is Speech Too Free?*, 87 A.B.A. J. 20 (May 2001).

lic believe that many state courts are influenced by money and politics. For example, a recent national poll found that 81 percent of Americans believe that judges are influenced by campaign contributions and politics.[10] Surveys in several states yield similarly disturbing results.[11] Even court personnel, attorneys, and judges share this belief.[12]

Campaign finance reform and tinkering with judicial codes of conduct to regulate speech in judicial campaigns do not offer a comprehensive solution to the systemic problems inherent in judicial elections. Such changes not only face significant constitutional hurdles, but also come with their own set of problems.

Appointive judicial selection systems may provide the best remedy for the damage elections are causing to the state judicial system. Appointive systems are not subject to the problems inherent to an elected judiciary: the appearance of impropriety caused by judges taking money from those who appear before them, the threat to judicial independence resulting from a judge's dependence on campaign contributions and party support, the reduced perception of impartiality caused by statements of judicial candidates on political or social issues, the elimination of qualified lawyers who would otherwise be willing to serve as jurists, and the loss of public confidence caused by the vile rhetoric of judicial campaigns. Moreover, there are numerous appointive systems currently in use that states can draw upon to formulate their own plans. These factors all help to explain why momentum is building in this country for adoption of appointive judicial selection systems.

This article will discuss the problematic state of elective systems, including the flow of money and unhealthy rhetoric in recent judicial campaigns. The article then reviews recent surveys evaluating the impact of judicial campaigns on public confidence in the courts. Next, the article demonstrates why elections are incompatible with proper judicial function. The article also provides some alternatives for states seeking to move from an elected to an appointive system. The article concludes that the goal of a truly independent judiciary requires states to adopt an appointive system for selecting state court judges.

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[10] Anthony Champagne, *Interest Groups and Judicial Elections*, 34 LOY. L.A. L. REV. 1391, 1407-08 (2001). State polls have produced similar results. Eighty-three percent of Texans, 88% of Pennsylvanians, and 90% of Ohioans also believe that campaign contributions influence judges' decisions. Charles Gardner Geyh, *Publicly Financed Judicial Elections: An Overview*, 34 LOY. L.A. L. REV. 1467, 1470-71 (2001).

[11] *See, e.g.*, Geyh, *supra* note 10, at 1470-71; *see also* Champagne, *supra* note 10, at 1407-08.

[12] *See* Geyh, *supra* note 10, at 1470-71 (discussing findings of a 1998 survey sponsored by the Texas Supreme Court).

II. JUDICIAL ELECTIONS CREATE SERIOUS PROBLEMS

A majority of states currently use some form of election for selecting their judges at the appellate or trial level.[13] Fourteen states elect their judges at some level through partisan elections.[14] Eighteen states use a nonpartisan election system.[15] Overall, approximately 34% of state court judges obtained their initial term through a partisan election and 14% obtained their initial terms through a nonpartisan election.[16]

Whether partisan or nonpartisan, judicial elections create serious problems.[17] As this article will show, elections threaten judicial independence by pressuring judges to follow the will of the majority, which may run counter to the rule of law. The public's confidence in the judiciary also suffers as tremendous sums of money are poured into state judicial campaigns and political mud-slinging becomes commonplace. Furthermore, elections may cause qualified candidates to shy away from office, or may result in their removal from office, for reasons irrelevant to the person's ability to thoughtfully apply the law in a fair and impartial manner.

Overall, the role of the judiciary is fundamentally at odds with the practical implications of elective politics. As former Pennsylvania Governor (now Director of the United States Office of Homeland Security) Tom Ridge recently said in accepting the American Bar Association's John Marshall Award: "The restraint, temperament and detachment that we rightly demand from our judges is fundamentally incongruous with

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13 *See* Appendix A.

14 States using partisan elections include Alabama, Illinois, Indiana (certain trial courts), Kansas (certain trial courts), Louisiana, Michigan (nominated at party conventions, but affiliation does not appear on general election ballot), Missouri (certain trial courts), New Mexico (after initial gubernatorial appointment), New York (trial courts), North Carolina, Ohio (partisan primary only), Pennsylvania, Texas, and West Virginia. *See id.*

15 States using nonpartisan elections include Arizona (certain trial court judges), Arkansas, California (trial court), Florida (trial court), Georgia, Idaho, Indiana (certain trial courts), Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, North Dakota, Oregon, South Dakota (trial court), Washington, and Wisconsin. *See id:*

16 *See* U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, STATE COURT ORGANIZATION 1998, NCJ 178932, at 19 (2000).

17 Some commentators argue that nonpartisan elections are inferior to partisan elections because they are subject to all the vices of partisan elections, but not their virtues. *See generally* PHILIP L. DUBOIS, FROM BALLOT TO BENCH (1980) (providing an empirical study of several state supreme courts demonstrating that party membership reliably correlates with judicial behavior); *see also* Brent N. Bateman, *Partisanship on the Michigan Supreme Court: The Search for a Reliable Predictor of Judicial Behavior,* 45 WAYNE L. REV. 357 (1999) (adopting Dubois's conclusion and advocating for change from nonpartisan to partisan elections in Michigan). Contested nonpartisan races can be as expensive and cutthroat as partisan elections and still subject the judiciary to majoritarian influence. Nonpartisan elections, however, provide less information for the voter by removing a label that provides a helpful indication of a judge's philosophy in a campaign otherwise void of information. *See id.* For a discussion of the reasons for the lack of information in judicial elections, *see infra* section II. D.

partisan, statewide political campaigns. In my opinion, campaigning is precisely the wrong thing to ask our judges to do!"[18]

A. POPULAR ELECTION OF JUDGES THREATENS JUDICIAL INDEPENDENCE AND IMPARTIALITY

Judicial candidates who are subject to popular election, and reelection, face substantial threats to their independence and impartiality. As the need to raise large amounts of money to fund elections escalates, candidates must seek the support of those who appear before them, namely, lawyers and litigants. Elected judges may feel pressured to reward their supporters or be tempted to rule against those who do not support them. Likewise, the growing involvement of special interest groups in judicial campaigns may pressure a candidate to adopt the political or social agenda that arrives tied to a stack of cash. Candidates who are elected along party lines may also feel the need to be responsive to the party establishment in order to obtain and retain their position. These characteristics of judicial elections substantially impede both judicial independence and impartiality.

1. *Rising Campaign Expenditures Place a Heavy Burden on State Court Judges*

The enormous sums spent in the 2000 judicial elections do not represent an aberration, rather, they demonstrate a nationwide trend that has progressed undisturbed over the past twenty years. For example, over the past decade, the cost of running a supreme court race in Alabama increased from approximately $237,000 to $2 million.[19] In Ohio, the cost of a campaign for the Chief Justice's seat increased from $100,000 in 1980 to $2.7 million in 1986.[20] In Pennsylvania, the cost of the average supreme court race increased from $523,000 in 1987 to $2.8 million in 1995.[21] In 1986, with five seats up for election, candidates for the North Carolina Supreme Court spent a total of $368,000.[22] Eight years later, with only two seats up for election, candidates spent nearly $600,000. Comparable spending increases have occurred in races for

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18 Governor Tom Ridge, Address, *American Bar Association's John Marshall Award* (Aug. 5, 2001), *at* http://www.pmconline.org (last visited Feb. 15, 2002).

19 *See* Scott William Faulkner, *Still on the Backburner: Reforming the Judicial Selection Process,* 52 ALA. L. REV. 1269, 1277 (2001); *see also* Hon. Pamela Willis Baschab, *Putting the Cash Cow Out to Pasture: A Call to Arms for Campaign Finance Reform in the Alabama Judiciary*, 30 CUMB. L. REV. 11, 28 (1999) (discussing the impact of big money on the Alabama judiciary).

20 *See* Mark Hansen, *A Run for the Bench*, 84 A.B.A. J. 68, 69 (Oct. 1998).

21 *See id.*

22 *See* Samuel L. Grimes, Comment, *"Without Favor, Denial, or Delay": Will North Carolina Finally Adopt the Merit Selection of Judges?*, 76 N.C. L. REV. 2266, 2294 (1998).

state trial court seats.[23] The amounts of money spent on judicial elections strongly suggest that campaign contributors are hoping to influence a judicial philosophy through their giving.

2. *"Begging for Campaign Contributions from the Very Lawyers Who Appear Before Them."*

The threat to judicial independence, or at least the appearance thereof, caused by the increased level of spending in judicial campaigns is exacerbated by the fact that a substantial portion of a judge's campaign contributions come from those who seek favorable decisions from him or her. Unlike those running for legislative or executive office, judicial candidates generally receive campaign contributions from a narrower set of interests.[24] A large portion of donations to judicial campaigns is contributed by parties and lawyers with cases before the court.[25]

For example, more than 40% of the nearly $9.2 million contributed to seven winning candidates for the Texas Supreme Court between 1994 and 1997 was contributed by parties or lawyers with cases before the court or from contributors linked to those parties.[26] Likewise, five out of seven members of the Illinois Supreme Court received 29% to 47% of their contributions from lawyers.[27] A 1995 report found that 45% of contributions to Los Angeles County superior court races came from attorneys.[28] In 1998, the *Miami Herald* reported that lawyers contributed most of the more than $5 million contributed to judicial campaigns in Miami-Dade County.[29]

There is at least some empirical evidence that the threat to judicial impartiality caused by campaign contributions is more than mere perception – lawyer contributions may in fact influence court decisions. A

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23 *See* Champagne, *supra* note 10, at 1403. For example, the median expenditure by a candidate for the California Superior Court increased from $3,000 in 1976 to $70,000 in 1994. *Id.*

24 *See* AM. BAR ASS'N, STANDING COMM. ON JUDICIAL INDEPENDENCE, COMM'N ON PUBLIC FINANCING OF JUDICIAL CAMPAIGNS, REPORT, at 11 (July 2001) [hereinafter ABA REPORT]. *See also* Rob Christensen, *Judicial Reform Stalls Out*, THE RALEIGH NEWS & OBSERVER, Feb. 12, 1999, at A3 (explaining that "[j]udges are spending more of their time begging for campaign contributions from the very lawyers who appear before them.").

25 *See* ABA REPORT, *supra* note 24, at 11.

26 *See id.* at 14 (citing Janet Elliot, *"60 Minutes" Visit Finds Court's Defenders in Hiding*, TEX. LAW., Aug. 24, 1998, at 1).

27 *See* Jackson Williams, *Irreconcilable Principles: Law, Politics, and the Illinois Supreme Court*, 18 N. ILL. U. L. REV. 267, 306 (1998) ("[T]he [other] two members of the present court . . . raised no donations from lawyers and funded their campaigns mostly with their own money.").

28 *See* ABA REPORT, *supra* note 24, at 12-13 (citing *The Price of Justice: A Los Angeles Area Case Study in Judicial Campaign Financing* 67 (1995)).

29 *See* Scott Silverman, *Merit Selection: Best System for Choosing Judges*, MIAMI HERALD, July 23, 1999, at A27.

2001 Texans for Public Justice study compared contributions by attorneys and law firms to Texas Supreme Court campaigns and the Texas Supreme Court's rate of accepting petitions for appeal between 1994 and 1998.[30] The study suggested a correlation between lawyer giving and judicial decisionmaking. It concluded:

> While the average overall petition-acceptance rate was 11 percent, this rate leapt to an astonishing 56 percent for petitioners who contributed more than $250,000 to the justices. In contrast, non-contributing petitioners enjoyed an acceptance rate of just 5.5 percent. For every contribution level studied, there was a direct correlation between the amount of money contributed and the court's petition-acceptance rate.[31]

This report demonstrates that campaign contributions may influence justice at its most basic level – in determining whether a person will get his or her appeal heard in court.

The damage to the judicial system is not limited to overtones of a quid pro quo. Individual lawyers feel the pinch. While it is simple for a randomly called member of the public to say no to a campaign volunteer calling on behalf of a statewide candidate, it is much more difficult for a lawyer to avoid giving to a judicial candidate, especially at the trial court level. As one Wichita, Kansas, attorney explained:

> There was no hiding from the fund raisers. They e-mailed you, wrote you letters, phoned you and dropped by your office unannounced; they grabbed you in the halls of the courthouse, slapped you on the back in restaurants during lunch, strong armed you during depositions and pounced on you at social events . . . . To the lawyers being solicited, this was more than just an expensive inconvenience. Judicial elections are a minefield for lawyers. Whatever you do in responding to fund raising requests, you stand a good chance of offending someone you can't afford to offend; and you will spend a small fortune doing it.[32]

Lawyers, and the public that employs them, should not fear losing a case because they did not give enough money to the right candidate. The public expects justice to be "blind," and not influenced by campaign con-

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30 *See* TEXANS FOR PUB. JUST., PAY TO PLAY, at III (2001), *at* http://www.tpj.org/reports/paytoplay/ (last visited Jan. 15, 2002).

31 *Id.* at V.D.

32 Steven Day, *Objection, Your Honor! I Didn't Vote for You!*, TomPaine.common sense, *at* http://www.tompaine.com/opinion/2001/02/01/2.html (last visited Dec. 10, 2001).

tributions. Citizens want to know that when they walk into court, they will win or lose based solely on the merits of their case. The amount of money spent in judicial races, however, could lead some in the public to question whether justice in this country is for sale. This is not the type of situation that promotes public confidence in the courts.

3. *Growing Special Interest Group Involvement on Judicial Politics*

The growing involvement of special interest groups in judicial politics further pressures judicial candidates who are strapped for cash. University of Texas Professor Anthony Champagne has observed that "[t]he result [of elections] can be an unhealthy dependence between the judicial candidates and interest groups where interest groups back judicial candidates to secure their political agendas and candidates rely on interest group backing to achieve and retain judicial office."[33] To some analysts of the judicial system, the increasing involvement of interest groups in judicial elections challenges the appearance of impartiality.[34] Some have gone so far as to suggest that judges "are becoming 'captives' of influential interest groups."[35]

4. *Judges Elected on Partisan Ballots May Buckle to Party Pressure*

Seventeen states select at least some portion of their judges through partisan elections.[36] In these states, reliance on political parties for support may make judges and candidates especially vulnerable to political influences. At the outset of the election process, potential candidates must curry favor with party leaders to gain their party's nomination.[37] After election, the judge may feel indebted to the party for his or her election and remain reliant on the party for reelection. Those who have the power of the purse may pull the strings.

Studies have demonstrated that partisan elections may influence judicial decisions. One study which examined partisan voting in eight state courts concluded: "Where judges are selected in highly partisan circum-

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33 Champagne, *supra* note 10, at 1393.

34 *See id.*

35 *Id.*

36 States with partisan elections include Alabama, Illinois, Indiana, Kansas, Louisiana, Missouri, New Mexico (after initial gubernatorial appointment), New York, North Carolina, Pennsylvania, Texas, and West Virginia. While Michigan and Ohio have a nonpartisan ballot, judicial candidates are nominated through the political parties. *See* Appendix A.

37 Stephen Shapiro, *The Judiciary in the United States: A Search for Fairness, Independence, and Competence*, 14 GEO. J. LEGAL ETHICS 667, 672 (2001) (citing Robert Jerome Glennon, *The Jurisdictional Legacy of the Civil Rights Movement*, 61 TENN. L. REV. 869, 879-84 (1994)).

stances and depend upon a highly partisan constituency for continuance in office, they may act in ways which will cultivate support for that constituency, that is, exhibit partisan voting tendencies in their judicial decision making."[38] A judge's partisan backing may be especially influential in deciding political disputes.[39]

While party labels may have some benefits, such as providing a general indicator to the public on the judge's beliefs,[40] there is a new and detrimental level of partisanship in many judicial races.[41] According to Professor Anthony Champagne, increased competitiveness between the parties, greater reliance on mass media, and alignment between the parties and ideological groups, may result in more judicial candidates "adopt[ing] ideologically extreme positions to appeal to the strong partisans and the interest groups allied with that party."[42]

B. ELECTIONS UNDERMINE PUBLIC CONFIDENCE IN THE JUDICIARY

United States Supreme Court Justice Anthony Kennedy has remarked that "the law commands allegiance only if it commands respect. It commands respect only if the public thinks the judges are neutral."[43] Whether or not the influx of money and partisanship actually impact the impartiality of the judiciary, judicial elections are undermining the public's respect for judges and the judicial system. As Chief Justice Thomas Phillips of the Texas Supreme Court has observed, campaign contributions and party labels "compromise the appearance of fairness."[44] Justice Phillips has questioned, "When judges are labeled as Democrats or Republicans, how can you convince the public that the law is a judge's only constituency? And when a winning litigant has contributed thousands of dollars to the judge's campaign, how do you ever persuade the losing party that only the facts of the case were considered?"[45]

The public believes that campaign contributions are made to influence a result; campaign contributors are not benevolent donors. A recent national poll indicates that four out of five Americans believe that "elected judges are influenced by having to raise campaign funds" and that "[j]udges' decisions are influenced by political considerations."[46]

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38 Champagne, *supra* note 10, at 1413-14 (quoting DUBOIS, *supra* note 17, at 148).

39 *See* Williams, *supra* note 27, at 283-89 (discussing eight political disputes decided along partisan lines by the Illinois Supreme Court).

40 *See generally* DUBOIS, *supra* note 17; Bateman, *supra* note 17, at 357.

41 *See* Champagne, *supra* note 10, at 1426.

42 *Id.* at 1426-27.

43 Peter A. Joy, *Insulation Needed for Elected Judges*, NAT'L L.J., Jan. 10, 2000, at A19 (quoting Kennedy, J.).

44 The Federalist Soc'y, *Judicial Selection White Papers: The Case for Judicial Appointments, at* http://www.fed-soc.org/judicialappointments.htm (last visited Dec. 3, 2001).

45 *Id.*

46 Champagne, *supra* note 10, at 1407-08.

State polls have produced similar, alarming results. A 1998 study sponsored by the Texas Supreme Court found that 83% of Texas adults, 69% of court personnel, and 79% of Texas attorneys believed that campaign contributions influenced judicial decisions "very significantly" or "fairly significantly."[47] Even 48% of Texas judges confessed that they believed money had an impact on judicial decisions.[48] That same year, a poll sponsored by a special commission appointed by the Pennsylvania Supreme Court found that nine out of ten voters believed that judicial decisions were influenced by large campaign contributions.[49] In recent polls, 57% of North Dakota residents and 56% of Louisiana voters agreed.[50] An earlier study ordered by the Ohio Supreme Court found that 58% of voters believed contributions affected judicial decisionmaking.[51] These polls suggest that voter attitudes in these states are not unique, but are shared by voters nationwide.

To make matters worse, the increasing fierceness of judicial campaigns is generating nasty rhetoric and partisanship that no lawyer or judge can feel good about. "Attack advertising, the use of aggressive political consultants and what are often only thinly veiled promises to sustain or overturn controversial decisions are now established parts of campaigns for seats on state courts."[52]

Little, if anything, now separates the tone of judicial campaigns from other elected offices. For instance, supreme court races in 2000 included "accusations of race baiting, dirty politics, catering to rich trial lawyers and abdication to business interests."[53] One advertisement in 2000 "showed the scales of justice increasingly weighed down by cash as a narrator suggested that a sitting [Ohio] Supreme Court justice had sold her vote."[54] Another ad in Ohio proclaimed that a judge ruled in favor of an employer in a case of a factory worker dismembered and killed by an unsafe machine.[55] In Illinois, a supreme court candidate accused an opponent of sending "innocent men to death row while killers walk the street."[56] In Michigan, a Republican state supreme court justice facing

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47 Geyh, *supra* note 10, at 1470-71.

48 *See id.*

49 *See id.*

50 Dale Wetzel, *North Dakota Residents Support Courts, But with Reservations*, BISMARCK TRIB., Nov. 17, 1999, at 6C; Michelle Millhollon, *Poll: Funds Can Sway Louisiana Judges*, ADVOCATE (Baton Rouge, La.), Jan. 10, 2000, at 1-A.

51 Suster v. Marshall, 149 F.3d 523, 531 (6th Cir. 1998) (discussing the Ohio Supreme Court's implementation of expenditure and contribution limits).

52 William Glaberson, *Fierce Campaigns Signal a New Era for State Courts*, N.Y. TIMES, June 5, 2000, at A1.

53 *Id.*

54 Glaberson, *supra* note 6, at A1.

55 *See* Spencer Hunt, *Chief Justice: Appoint Judges*, ENQUIRER COLUMBUS BUREAU, Nov. 10, 2000.

56 Glaberson, *supra* note 52, at A1.

reelection was the subject of a flier distributed by the National Association for the Advancement of Colored People ("NAACP") proclaiming that the justice was a "staunch believer that Brown v. Board of Education was wrong."[57] The targeted justice, Robert P. Young, Jr., who is African-American, argued that he had long publicly supported the *Brown v. Board of Education* decision and accused the NAACP of race baiting.[58] In Idaho, a supporter of an opponent to an incumbent justice placed a newspaper advertisement stating, in large type, "Will partial-birth abortion and same-sex marriage become legal in Idaho? Perhaps so, if liberal Supreme Court Judge Cathy Silak remains on the Idaho Supreme Court."[59] Justice Silak describes herself as a moderate who has never expressed views on either subject.[60] In the 1996 campaign, Alabama Supreme Court Justice Kenneth Ingram aired commercials portraying his opponent, Harold See, as a fast-walking skunk with the message, "You can smell what Harold See is up to."[61]

The influence of special interest groups in judicial races also adds to the potential for invidious attacks against candidates for the bench. Special interest groups, unlike judicial candidates, have the luxury of attacking candidates without the limitations imposed by judicial codes of conduct.[62] In what was characterized as "the most bitter election in [North Carolina] Supreme Court history," a special interest group attacked Justice James Exum's record on the death penalty by featuring "families of murder victims in news conferences in which they criticized the justice's decisions."[63] Justice Exum's opponent responded by renouncing the group's tactics, but noted that the state's judicial code bars Justice Exum from defending himself.[64]

One must question whether the public will continue to hold judges in high esteem when they see judicial candidates engaged in or subject to such smear campaigns and character assassinations. Michigan Governor John Engler, a proponent of replacing elections for state supreme court

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57 *Id.*

58 *See id.*

59 *Id.*

60 *See id.*

61 Bill Poovey, *State Supreme Court Justice Compares GOP Opponent to a Skunk*, ASSOC. PRESS, Oct. 9, 1996.

62 *See* discussion *infra* Part II.A.3.

63 Grimes, *supra* note 22, at 2288-89 (describing the race for Chief Justice between two sitting members of the North Carolina Supreme Court) (internal citations omitted).

64 *Id.* The commentary to the Model Code of Judicial Conduct explains that a candidate may respond to an attack, but only so long as the candidate's response does not appear to commit the candidate to a decision in a case that might come before him or involve a pledge other than to faithfully and impartially perform his duties. *See* AM. BAR ASS'N, MODEL CODE OF JUDICIAL CONDUCT Canon 5A(3)(d) (commentary) & Canon 5A(3)(e) (1990). A response by Justice Exum that he is "tough on criminals" or "in favor of the death penalty in certain circumstances" could run afoul of the judicial code.

justices with appointments, summed up the prevailing opinion on the subject of judicial elections when he recently stated that "[t]he campaigns have a less than helpful effect in terms of the image of the judiciary."[65]

C. ELECTIONS MAY DISCOURAGE SERVICE BY QUALIFIED JURISTS

Most people agree that the principal qualifications for a judge are "a competent mastery of the law, good moral character, intelligence, impartiality, emotional stability, courtesy, decisiveness, and administrative ability," plus a high level of education and experience.[66] While the ability to raise money, contacts in the political establishment, and charisma may be somewhat appropriate traits for selection of candidates for legislative or executive office, they have no relevance to the qualifications of a judge. As Former Wisconsin Supreme Court Justice Nathan Heffernan observed:

> [I]n the 1996 election for the [Wisconsin] Supreme Court, newspapers complained that one of the candidates for the Supreme Court was "flamboyant" and the other "boring." The adjectives are for the media to choose. They could just as well have typified the candidates as "flaky" and "thoughtful" or "inspirational" and "dull." These adjectives are not helpful touchstones for the selection of a judge whose job it is to find and construe the law, not on the basis of idiosyncratic surface characteristics, but on the basis of scholarship, integrity, and jurisprudential principles of the common law.[67]

A recent *Arizona Republic* editorial advocating for the extension of that state's merit selection system to elected judges in rural counties critiqued elective systems as those in which "the woman or man who can raise the most money, make the best-sounding campaign slogans and back-slap most effectively gets the black robe."[68] While this may be an overly cynical viewpoint, these types of skills do not appear most pertinent to the bench.

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65 Glaberson, *supra* note 6, at A1.

66 Judith L. Maute, *Selection Justice in State Courts: The Ballot Box or the Backroom?*, 41 S. TEX. L. REV. 1197, 1225 (2000) (citing Jona Goldschmidt, *Selection and Retention of Judges: Is Florida's Present System Still the Best Compromise?: Merit Selection: Current Status, Procedures, and Issues*, 49 U. MIAMI L. REV. 1, 29-31 (1994) (stating the criteria that most nominating commissioners list in their rules for evaluating judicial applicants)).

67 Nathan S. Heffernan, *Judicial Responsibility, Judicial Independence and the Election of Judges*, 80 MARQ. L. REV. 1031, 1043 (1997).

68 Editorial, *Picking JPs on Merit is Only Sane Approach*, ARIZ. REPUBLIC, Nov. 26, 2001.

The mere requirement of participating in a contested judicial election and the necessity of raising large amounts of cash may cause qualified candidates to opt out of public service.[69] This problem will worsen as the cost of judicial campaigns continues to rise and candidates are forced to spend more of their own money on elections. Positions on the bench may become limited to those who can purchase them or are willing to take out personal loans to finance their campaigns.[70] Successful practitioners may not be able to afford the time away from their jobs or the resulting decrease in income.[71] Government attorneys, who might make excellent judges, may not be able to campaign for office because they must be physically present at their jobs and may lack the personal finances to launch a campaign.[72] Those who run face uncertainty in attaining the position and financial risk in financing the campaign.[73] If they are fortunate enough to win, they may be forced to trade a more lucrative salary for campaign debt.[74]

The reelection process also fails to promote a qualified judiciary. Experienced judges may be defeated not because of a lack of judicial competence, but due to poor campaigning skills or a simple shift in the political wind.[75] Former Wisconsin Supreme Court Justice Heffernan noted that in one election, three Wisconsin Supreme Court justices were defeated at the polls because "[t]hey were rather shy and retiring and lacked the presumptuous ego that a candidate for public office seems to need. In short, they were not politicians. They . . . were 'charismatically impaired.'"[76] Likewise, an incumbent judge with twelve years of experience on the Texas Court of Criminal Appeals was defeated by a challenger that had been found to have misrepresented his record before the election, had virtually no criminal law experience, and had been fined for

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69 *See* Shapiro, *supra* note 37, at 672; Ty Meighan, *Judicial Reform Problems Aired: Politics, Fund Raising Keep Qualified Candidates Off Ballot*, CORPUS CHRISTI CALLER-TIMES, Sept. 3, 1999, at B8.

70 *See* Hon. Shirley S. Abrahamson, *Speech: The Ballot and the Bench*, 76 N.Y.U. L. REV. 973, 995 (2001). A recent study found that 6.4% of the funding for state supreme court races came from the candidate's personal finances or loans. *See* ABA REPORT, *supra* note 24, at 15 (citing Samantha Sanchez, *Money in Judicial Politics*, Mar. 21, 2001, at 7). The need to pay off personal loans further strains a judge's ability to remain independent as he or she is forced to solicit contributions even after winning election. *Id.* at 15-16.

71 The Federalist Soc'y, *Judicial Selection White Papers: The Case for Judicial Appointments, at* http://www.fed-soc.org/judicialappointments.htm (last visited Dec. 3, 2001).

72 *See id.*

73 *See* Maute, *supra* note 66, at 1205.

74 *See* Shapiro, *supra* note 37, at 671.

75 *See* Editorial, *Courting Disaster; Partisan Elections Almost Guarantee Some Poor Judges*, HOUSTON CHRON., July 27, 2001, at A34 (urging adoption of merit selection system).

76 Heffernan, *supra* note 67, at 1036-37.

practicing law without a license in another state.[77] According to Texas Supreme Court Chief Justice Tom Phillips, since 1980, "207 district and appellate judges have been tossed out of office, often simply because of their party label."[78] Furthermore, aspiring judges may hire skilled political consultants to assist them in defeating qualified incumbents.[79] These political consultants are not driven by the legal competence of a candidate, but simply by the desire to win the election for a client that can afford to pay for their services.[80]

D. ELECTIONS ARE INCOMPATIBLE WITH JUDICIAL SELECTION

The heart of the problem with judicial elections is that the popular election of judges is fundamentally at odds with the concept of an impartial judiciary. The United States has two political branches: the legislative and executive. Members of the judicial branch, however, are not direct representatives of the people, but are expected to act as impartial arbiters of cases and controversies. This impartiality is lost when judicial candidates indicate how they might decide political, legal, or social issues that are likely to come before them. On the other hand, without such information, voters have little basis to make an informed choice between candidates; judicial election becomes an exercise in futility. Money raising and mud-throwing in judicial races further damages the public's confidence in the courts. Although public participation in the judicial system may be useful for educating people on the role of the courts and building a level of accountability into the system, the best way to accomplish these goals is not by means of elections, but through the public's role as a juror, litigant, and witness.

1. *Judges are Not Representatives of the Majority*

The cornerstone of democratic governance is the election of public officers from among the citizenry. Popular election dictates that officers of the government represent the people and the reelection process assures that they are held accountable for their responsiveness. As de Toc-

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77 *See* Jeffrey D. Jackson, *The Selection of Judges in Kansas: A Comparison of Systems*, 69 J. KAN. B.A. 32, 39-40 (2000) (citing Stephen B. Bright, *Political Attacks on the Judiciary*, 80 JUDICATURE 165, 171 (1997)).

78 Hon. Tom Phillips, *State's Top Judge Says Change Need to be Made*, ABILENE REPORTER-NEWS, Feb. 25, 2001 (excerpt from Chief Justice Phillips' address to the legislature on February 13, 2001).

79 *See* Mary Hladky, *About-Face: Campaign Consultant on Stump Against Election of Judges*, PALM BEACH DAILY BUS. REV., Sept. 11, 1998, at A3.

80 Gerald Schwartz, a judicial campaign consultant of 40-years who recently made a 180-degree turn in support of appointive systems, has candidly stated that political consultants "take on both unqualified and underqualified candidates against judges who have superb records." Mary Hladky, *About-Face: Campaign Consultant on Stump Against Election of Judges*, PALM BEACH DAILY BUS. REV., Sept. 11, 1998, at A3 (quoting Mr. Schwartz).

queville observed, "The Americans determined that the members of the legislature should be elected by the people immediately, and for a very brief term, in order to subject them, not only to the general convictions, but even to the daily passions, of their constituents."[81] The same can be said of our elected governors, mayors, and other executive officers.

Most will agree that judges should not be subject to the daily passions of their "constituents," to political parties, or to campaign contributors. Judges have a different role in the American political system than legislative or executive officers.[82] Unlike their non-judicial colleagues, judges decide specific cases or controversies. It is not within the judicial authority to formulate broad public policy. Judges are supposed to reach their decisions based not on the wishes of those who selected them, but impartially on the basis of statutes, case precedent, and constitutional protections.[83]

The late California Supreme Court Justice Otto Kaus observed that "ignoring the political consequences of visible decisions is 'like ignoring a crocodile in your bathtub.'"[84] Judges who are subject to popular election are under pressure to be responsive to the same popular and political forces as legislators and executive officers.[85] As Professor Steven Croley of the University of Michigan Law School has recognized, "Where the judiciary as well as the legislature and executive is elected, no branch remains to safeguard constitutionalism against majoritarian excesses."[86] For example, the southern states still face the challenge of overcoming the long history of elected judges tolerating or participating in racial discrimination.[87]

The safeguarding of minority rights does not provide the only demonstration of the need for an independent judiciary. Judges may be con-

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81 DE TOCQUEVILLE, *supra* note 1, at 246.

82 *See* Rottman & Schotland, *supra* note 2, at 1370.

83 *See* AM. BAR ASS'N, MODEL CODE OF JUDICIAL CONDUCT preamble (2000) [hereinafter ABA MODEL CODE].

84 Richard L. Hasen, *"High Court Wrongly Elected": A Public Choice Model of Judging and Its Implications for the Voting Rights Act*, 75 N.C. L. REV. 1305, 1320 (1997) (citing Julian N. Eule, *Judicial Review of Direct Democracy*, 99 YALE L.J. 1503, 1583 (1990) (quoting Paul Reidinger, *The Politics of Judging*, A.B.A. J., Apr. 1987, at 52, 58)).

85 *See* Marty Trillhaase, Editorial, *Judicial Race Standards Needed*, IDAHO FALLS POST REGISTER, Oct. 31, 2000, at A6 (discussing the perception that Idaho Chief Justice Linda Copple Trout reversed herself and formed a new 3-2 majority in a controversial case due to her impending 2002 election).

86 Steven P. Croley, *The Majoritarian Difficulty: Elective Judiciaries and the Rule of Law*, 62 U. CHI. L. REV. 689, 780 (1995).

87 *See generally* Stephen B. Bright, *Can Judicial Independence be Attained in the South? Overcoming History, Elections, and Misperceptions About the Role of the Judiciary*, 14 GA. ST. U. L. REV. 817 (1998) (detailing the shocking history of civil rights abuses of southern courts and advocating adoption of the merit system to replace elective systems of judicial selection). African-Americans came to rely on the federal courts, whose judges are insulated from majority pressure by lifetime appointment, to protect their rights. *See id.*

fronted with cases in which the law supports a decision that will be unpopular with the voters – decisions that could cost judges their jobs if they are subject to reelection.[88] The pressure on elected judges may be particularly strong in visible cases when an election looms near.

There are many classes of unpopular defendants with a common right to a fair trial. For example, elected judges may be tempted to compromise the procedural rights of criminal defendants lest they appear soft on crime.[89] Most disturbing are several studies by Melinda Gann Hall, Professor of Judicial Politics and Behavior at Michigan State University, which found that state supreme court justices facing reelection in states where the death penalty is particularly popular are reluctant to cast dissenting votes in death penalty cases – even if they believe the sentence should be overturned.[90] In fact, judges in these states may scramble to be assigned to death penalty cases to obtain favorable press coverage, and may even be more likely in an election year to ignore a jury recommendation for a life sentence and impose the death penalty where state law permits.[91]

Likewise, unpopular civil defendants, such as large, out-of-state corporations, might not receive as fair a trial in front of an elected judge as an appointed judge. For example, an elected judge may rationally favor in-state plaintiffs, who vote and have friends and relatives who vote, over out-of-state corporations.[92]

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88 *See* Croley, *supra* note 86, at 727.

89 *See id.*

90 *See* Scott D. Wiener, Note, *Popular Justice: State Elections and Procedural Due Process*, 31 HARV. C.R.-C.L. L. REV. 187, 200 (1996) (citing Melinda Gann Hall, *Electoral Politics and Strategic Voting in State Supreme Courts*, 54 J. POL. 427 (1992); Paul Brace & Melinda Gann Hall, *Neo-Institutionalism and Dissent in State Supreme Courts*, 52 J. POL. 54 (1990); Melinda Gann Hall, *Constituent Influence in State Supreme Courts: Conceptual Notes and a Case Study*, 49 J. POL. 1117 (1987)).

91 *See* Wiener, *supra* note 90, at 200 (citing Stephen B. Bright & Patrick J. Keenan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, 75 B.U. L. REV. 759, 793-94 (1995)). For example, Justice Stevens has observed that in states in which judges may override a jury's sentence of life imprisonment and impose the death penalty that "[e]lected judges often appear to listen [to] the many voters who generally favor capital punishment but who have far less information about a particular trial than the jurors who have sifted patiently through details of the relevant and admissible evidence. How else do we account for the disturbing propensity of elected judges to impose the death sentence time after time notwithstanding a jury's recommendation of life?" Bright and Kennan, *supra*, at 794 (quoting Walton v. Arizona, 497 U.S. 639, 713 n.4 (1990) (Stevens, J., dissenting)).

92 *See* The Federalist Soc'y, *Judicial Selection White Papers: The Case for Judicial Appointments, at* http://www.fed-soc.org/judicialappointments.htm (last visited Dec. 3, 2001). One reason for the bias against out-of-state businesses was stated by elected-Justice Richard Neely of the West Virginia Supreme Court of Appeals. He explained, "As long as I am allowed to redistribute wealth from out-of-state companies to injured in-state plaintiffs, I shall continue to do so. Not only is my sleep enhanced when I give someone else's money away, but so is my job security, because the in-state plaintiffs, their families, and their friends will

2. *The Public Lacks the Information and Motivation to Make an Informed Decision*

Voter turnout repeatedly demonstrates the public's lack of interest in judicial elections. For example, only three out of ten registered voters statewide came to the polls in Pennsylvania's 1997 judicial elections.[93] In Wisconsin, a state with one of the highest presidential election turnouts in the nation, less than one in four registered voters participate in judicial elections on average.[94] In many elections, the voters often cannot even name the sitting incumbent.[95] For example, one survey of New York voters revealed 75% could not recall the name of the judicial candidate they had voted for minutes earlier.[96] The case of a Superior Court Judge in California recently made national headlines.[97] Just two days after Superior Court Judge Robert C. Kline filed unopposed candidacy papers for reelection, a federal grand jury returned an indictment charging him with child molestation and possession of child pornography.[98] Maintaining his innocence, Judge Kline was placed under house arrest and required to wear an electronic bracelet after posting a $50,000 bond.[99] Experts warned that Judge Kline would be difficult to unseat in the March primary because his name alone would appear on the ballot

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reelect me." *Id.* at 18 (quoting Justice Neely in *The Product Liability Mess*); *see also* Garnes v. Fleming Landfill, Inc., 413 S.E.2d 897, 905 (W.Va. 1991) ("State courts have adopted standards that are, for the most part, not predictable, not consistent and not uniform. Such fuzzy standards inevitably are most likely to be applied arbitrarily against out-of-state defendants."); Blankenship v. Gen. Motors Corp., 406 S.E.2d 781, 786 (W. Va. 1991) ("[W]e do not claim that our adoption of rules liberal to plaintiffs comports, necessarily, with some Platonic ideal of perfect justice. Rather, for a tiny state incapable of controlling the direction of the national law in terms of appropriate trade-offs among employment, research, development, and compensation for the injured users of products, the adoption of rules liberal to plaintiffs is simple self-defense."). There is evidence to support bias of elected judges against out-of-state corporations, a category of defendants already unpopular with juries. A recent study found that tort awards against out-of-state defendants were $364,950 above average, while awards in states with appointed judiciaries were $219,980 above average. *See* The Federalist Soc'y, *Judicial Selection White Papers: The Case for Judicial Appointments, at* http://www.fedsoc.org/judicialappointments.htm (last visited Dec. 3, 2001).

93 *See* Lynn A. Marks & Ellen Mattleman Kaplan, *Guest Commentary: Appellate Judges Should Be Appointed, Not Elected*, PA. L. WEEKLY, Dec. 8, 1997, at 4. The authors write that due to the public's lack of information on judicial candidates, some candidates that, according to the Pennsylvania Judicial Evaluation Commission, were less qualified defeated more highly rated opponents. *Id.* Likewise, an evaluation by the Chicago Council of Lawyers found no qualified candidates in 11 out of 38 contests in the 1997 Cook County primary. Tim Novak & Mark Brown, *Many Candidates for Judge Unqualified, Lawyers Say*, CHICAGO SUN-TIMES, Mar. 6, 1997, at 4.

94 *See* Abrahamson, *supra* note 70, at 992.

95 *See* Shapiro, *supra* note 37, at 672.

96 *See* Heffernan, supra note 67, at 1045.

97 *See* Barbara Whitaker, *Judge Facing Pornography Charges is Unopposed on Ballot*, N.Y. TIMES, Mar. 2, 2002, at A10.

98 *Id.*

99 *Id.*

and due to the public's general lack of awareness and interest in judicial races.[100] Due to high media publicity of the allegations, Judge Kline did not win the primary election, but still received enough votes to place second and force a run-off election in November.[101] This is just one real example of how the lack of interest in running for the bench combined with the public's lack of information or awareness of judicial races can have dire consequences. Those who reach the polls may be motivated by other races on the ballot and then choose between judicial candidates on a whim, or simply based on ballot placement or party affiliation.[102]

The public's lack of interest may not be as much due to general voter apathy as an understandable result of the nature of the judicial system. The reason for the public's lack of interest is two-fold. First, limits on judicial speech in many states guarantee that the public does not have relevant information to make an informed decision. Second, the public may feel that it does not have much at stake in judicial elections, especially in the selection of trial court judges.

a. Limits on Speech in Judicial Campaigns Keep Information from the Public

Campaigns in legislative and executive races are characterized by dialogue on topics of public interest such as school funding, reproductive rights, civil rights and liberties, tort reform, gun control, crime, and numerous others. Ethics rules, however, largely prevent judicial candidates from indicating their position on these issues.[103] That is because the American Bar Association's Model Code of Judicial Conduct (hereinafter "Judicial Code"),[104] prohibits judicial candidates from indicating how they might rule on issues that might come before them.[105] Candidates

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100 *Id.*

101 *See California's Election; Indicted Judge In A Runoff*, N.Y. TIMES, Mar. 7, 2002, at A21. Judge Kline's attempt to remove his name from the runoff ballot was opposed by county officials because it would create a precedent permitting candidates to withdraw at any point rather than win or lose at the ballot box. *See* Jean O. Pasco, *Board to Fight Kline's Pullout*, L.A. TIMES, Mar. 26, 2002.

102 *See* Heffernan, *supra* note 67, at 1044-45.

103 *See, e.g.*, Berger v. Sup. Ct. of Ohio, 598 F. Supp. 69, 76 (S.D. Ohio 1984), *aff'd*, 861 F.2d 719 (6th Cir. 1988), *cert. denied*, 490 U.S. 1108 (1989) (in upholding a judicial canon restricting a judicial candidate's campaign activities, the trial court noted that "[t]he very purpose of the judicial function makes inappropriate the same kind of particularized pledges and predetermined commitments that mark campaigns for legislative and executive office. A judge acts on individual cases, not broad programs.").

104 *See* ABA MODEL CODE *supra* note 83.

105 *See* Hon. Mary Libby Payne, *Mississippi Judicial Elections: A Problem Without a Solution?*, 67 MISS. L.J. 1, 10-11 (1997). Judge Libby Payne of the Mississippi Court of Appeals, a proponent of speech restrictions on judicial candidates, acknowledges that according to the judicial code, judicial candidates can do little more in their campaigns than "promise to perform faithfully and impartially the duties of one's office." *Id.* at 10.

who break these rules can face sanctions ranging from removal from office, suspension, or loss of their license to practice law.

Canon 5 of the Judicial Code provides that "a judge or judicial candidate shall refrain from inappropriate political activity."[106] Examples include "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office."[107] Judges are prohibited from "mak[ing] statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court."[108] The purpose of these "gag rules" is to ensure that judges feel free to reach decisions based on the unique facts of each case instead of feeling compelled to rule in a manner that satisfies a campaign promise. Columnist George F. Will, in discussing Minnesota's Judicial Code, a portion of which currently faces review in the United States Supreme Court,[109] made the following astute observation:

> The "announce" clause prohibits judicial candidates from announcing "their views on disputed legal or political issues." The "endorsement" clause forbids candidates "to seek, accept or use" an endorsement from any political party organization. The "attend or speak" clauses prohibit candidates from "attending political gatherings" or speaking at political party gatherings . . . . What, you may wonder, is the point of conducting elections if candidates are forbidden to say anything that might enable voters to make informed choices?[110]

Not only does the Judicial Code prohibit a candidate from making statements on his or her own views, it also discourages candidates from commenting on the views or qualifications of an opponent. The Judicial Code provides that a judicial candidate may not "knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent."[111] Candidates that run "false or misleading" campaign advertisements may face sanctions under some state judicial codes.[112] While limits on false or misleading statements or advertisements appear to rest on sound public policy, the truth, if it exists, is often difficult to ascertain. Ethical candidates may not risk challenging an opponent's qualifications, or responding to an attack, if there is a risk of

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106 ABA MODEL CODE, *supra* note 83, Canon 5.

107 ABA MODEL CODE, *supra* note 83, Canon 5A(3)(d)(i).

108 ABA MODEL CODE, *supra* note 83, Canon 5A(3)(d)(ii).

109 *See* Republican Party of Minn. v. Kelly, 247 F.3d 854 (8th Cir. 2001), *cert. granted*, 122 S. Ct. 643 (2001).

110 George F. Will, *Minnesota Speech Police*, WASH. POST., Jan. 3, 2002, at A17.

111 ABA MODEL CODE, *supra* note 83, Canon 5A(3)(d)(iii).

112 *See, e.g.*, ALA. CANONS OF JUDICIAL ETHICS Canon 7B(2) (2001); OHIO CODE OF JUDICIAL CONDUCT Canon 7(E)(1) (2001).

sanctions. Less ethical candidates, as has been shown, often ignore the rules and rarely face substantial sanctions for their conduct.[113]

The jury is out on whether the judiciary would be better off with more speech or less speech. Even those who fall on the side of speech favor some restriction. As Judge Richard Posner of the United States Court of Appeals for the Seventh Circuit recognized in striking down Illinois' version of Canon 7B(1)(c) as overbroad, "Judges remain different from legislators and executive officials, even when all are elected, in ways that bear on the strength of the state's interest in restricting their freedom of speech."[114] Strong proponents of the rigid restrictions of the Judicial Code realize that attack ads and partisan bickering have real effects on the public perception of the judiciary. They are aware that far-reaching statements by judicial candidates, such as "I'm tough on crime" and "I support workers' rights," or more targeted statements such as "I am pro-life," damage the concept of an impartial judiciary and may cause certain defendants (civil or criminal) to conclude, quite rationally, that they will not receive justice from that particular judge.

On the other hand, many commentators who oppose campaign speech restrictions argue that the public needs information about a person's viewpoint in order to cast an informed vote. These commentators sometimes oppose the election of judges, but argue that if a state chooses to elect its judges and force them to become politicians, the state must allow candidates to make their case and provide the voters with the tools to make an informed choice.[115] These commentators also reason that judicial candidates, like everyone else in America, have a First Amendment right to express their opinions.[116] For this reason, many states have found the breadth of their restrictions on judicial campaign speech challenged in court as unconstitutional,[117] and some states have dropped the "gag rule" all together.[118] In fact, this year, the United States Supreme Court will decide whether to reverse a decision of the United States Court of Appeals for the Eighth Circuit upholding ethics rules in Minne-

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113 *See* section II.B.

114 Buckley v. Ill. Judicial Inquiry Bd., 997 F.2d 224, 228 (7th Cir. 1993).

115 *See* Will, *supra* note 110, at A17.

116 Government-imposed restrictions on speech must be justified by a compelling interest. In cases challenging judicial speech restrictions, the courts must determine whether the restriction is narrowly tailored to address the state's interest in protecting the independence, impartiality and integrity of the judiciary. *See, e.g.*, J.C.J.D. v. R.J.C.R., 803 S.W.2d 953, 955-56 (Ky. 1991).

117 *See* Richard A. Dove, *Judicial Campaign Conduct: Rules, Education, and Enforcement*, 34 LOY. L.A. L. REV. 1447, 1453-58 (2001) (discussing recent cases involving judicial candidate speech); *see also* Abrahamson, *supra* note 70, at 1001-03.

118 *See* Grimes, *supra* note 22, at 2290-93 (discussing the North Carolina Supreme Court's decision to amend its judicial code to eliminate the prohibition on candidates against stating their opinions on "disputed legal or political issues" following imposition of a temporary restraining order by a federal court).

sota which prohibit judicial candidates from "announc[ing] their views on disputed legal or political issues."[119]

The ultimate outcome of constitutional challenges and the philosophical debate surrounding restrictions on judicial speech is uncertain. What is clear from this debate is that the fundamental conflict between the judicial role and popular elections will continue as long as states must choose between hollow elections or undermining judicial integrity.

b. The Public is Not Interested in Judicial Elections

Judges, especially trial judges, do not generally have as broad an impact on people's lives as executives or legislators. Unlike the broad public policies espoused by governors and legislators, judges make decisions affecting individual litigants in cases that come before them. For instance, the public has an incentive to familiarize itself with legislative candidates that will decide how much they will pay in taxes, whether potholes will get filled, and how much they will need to pay for their children's public college tuition.[120] The likelihood that a judge, especially at the trial court level, will directly affect a particular citizen is remote.[121] Without this self-interest, voters lose an incentive to invest the time needed to familiarize themselves with judicial candidates.[122]

c. Elections Without Substance

Since there is little substantive information available to make an informed decision between judicial candidates, the public is often forced to rely on surface characteristics. As a recent editorial in *Newsday* observed, "elections where candidates are muzzled are a sham. Voters are left to make choices based on minutiae, such as the apparent ethnicity of a name, a candidate's gender or party affiliation."[123] For example, voters elected Robert Pineiro as a Circuit Judge in Florida's heavily Hispanic Dade County in 1997. After his election, Judge Pineiro found that he was "congratulated on having the foresight and judicial acumen of having the right name."[124] Name recognition, of course, is best promoted

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119 Republican Party of Minn. v. Kelly, 247 F.3d 854, 857 (8th Cir. 2001), *cert. granted*,122 S. Ct. 643 (2001). *See generally* Charles Lane, *High Court to Review Curbs on Judicial Candidates*, WASH. POST, Dec. 4, 2001, at A5.

120 *See* Croley, *supra* note 86, at 731-32.

121 *See id.* at 732.

122 *See id.* at 731-32.

123 *See* Abdon M. Pallasch, *Woman's Place is on Bench*, CHICAGO SUN-TIMES, Mar. 25, 2002, at 2 (discussing voter's selection of female, Irish-sounding, and familiar names without regard to qualifications); *see also* Editorial, *Limits on Campaigning Show Flaw in Electing Judges*, NEWSDAY, Dec. 10, 2001, at A26.

124 Martin Wisckol, *Judge Wants His Job Appointed Not Elected Constitutional Commission Urged to Change Rule*, FORT LAUDERDALE SUN-SENTINEL, Aug. 21, 1997. Judge Pineiro admits that the reason for his election had little to do with his qualifications and he is now

through advertising. This promotes "competence-neutral" judicial elections where the candidate who can raise and spend the most money stands the best chance of winning.[125]

The lack of information about judicial candidates also causes campaigns to focus on petty issues in comparison to those that reflect the importance of the judiciary. For example, Chief Justice Shirley Abrahamson of the Wisconsin Supreme Court laments that her 1999 election "involved such lofty issues as the appropriateness of my sponsoring a staff aerobic class in the courtroom after hours, my decision to hang a portrait of the first woman to be admitted to the Wisconsin Supreme Court bar, and the removal of computer games from justices' computers."[126]

3. *The Public Already Participates in the Judicial System: As Juror, Litigant, and Witness*

Advocates of judicial elections usually emphasize the importance of public participation in the judicial system. Judicial elections, say these advocates, provide the public with an education on the judicial role and process. Although elections provide one means of public participation, the judicial system already provides more appropriate means for involving people in the courts: through the public's role as juror, litigant, and witness.

The Sixth and Seventh Amendments to the United States Constitution safeguard the right to trial by jury of one's peers in criminal and civil cases.[127] Citizens have the right, responsibility, and duty of serving as members of a jury. As jurors, people have the opportunity to directly participate in the judicial process. Jurors are granted the ability to decide the outcome of a case that may take away someone's life, liberty, or property. The right to trial by jury places limits on the power and discretion of judges. It provides criminal defendants and civil litigants with the means to remove a case from the judge's complete discretion and place at least some decisions in the hands of his or her fellow citizens. Jurors may even balance the power of the legislature by refusing to apply the law in cases where they feel an unjust outcome would result – a concept known as "jury nullification."[128] Through periodically serving as a juror, citizens receive the ultimate education in how the judicial process

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supporting a movement in Florida toward adoption of an appointive system of judicial selection. *See id.*

125 Steven Day, *Objection, Your Honor! I Didn't Vote for You!*, TomPaine.common sense, *at* http://www.tompaine.com/opinion/2001/02/01/2.html (last visited Dec. 10, 2001).

126 Abrahamson, *supra* note 70, at 975.

127 *See* U.S. CONST. amends. VI, VII.

128 *See, e.g.*, Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677 (1995).

works.[129] They also have the power to shape the outcome of a case. These lessons are not learned through punching a hole on a ballot based on several months of listening to attack ads of little substance.

A less frequent means through which the public participates in the judicial process is either as a litigant, criminal defendant, or a witness. As litigants or criminal defendants, people have a concrete stake in the fairness of the courts. Witnesses also gain first-hand knowledge of the judicial process through their own involvement in a case.

III. PROPOSED SOLUTIONS TO JUDICIAL ELECTIONS FAIL TO SOLVE CORE PROBLEMS

Several commentators recognize that the increasing money, vile rhetoric, and increasing partisanship in judicial campaigns is a serious problem that affects the public's confidence in the judiciary, but they stop short of calling for a move to an appointive system. Instead, they advocate for minute changes to the electoral system, such as public financing of elections, contribution limits, restrictions on the speech of judicial candidates, or moving from partisan to nonpartisan elections. Although these reforms may ameliorate some of the damage that elections are causing to the judicial system, they cannot alter the structural and philosophical contradiction between the concepts of political accountability and judicial independence.

A. PUBLIC FINANCING IS INEFFECTIVE

Recognizing that the United States Supreme Court has ruled that spending limits may violate the First Amendment,[130] the American Bar Association (which has long been a strong proponent of merit selection) and others such as Wisconsin Supreme Court Justice Shirley Abrahamson and Indiana University Law Professor Charles Gardner Geyh suggest that campaign finance reform is the answer to the ever-increasing flow of money into judicial campaigns.[131] Public financing programs, however, often depend upon the willingness of taxpayers to check a box on their

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[129] The authors note that jury reform efforts, which are proceeding in many states, are crucial to providing jurors with a rewarding and productive jury experience, as well as the means to reach well-reasoned decisions. *See, e.g.*, AM. JUDICATURE SOC'Y, ENHANCING THE JURY SYSTEM: A GUIDEBOOK FOR JURY REFORM (1999) (providing an overview of the recent jury reform movement and detailed descriptions of comprehensive jury reform efforts in Arizona, California, Colorado, the District of Columbia and New York).

[130] *See* Buckley v. Valeo, 424 U.S. 1, 51 (1976).

[131] *See* Abrahamson, *supra* note 70, at 999; *see also* Geyh, *supra* note 10, at 1467; *see also* Scott William Faulkner, *Still on the Backburner: Reforming the Judicial Selection Process in Alabama*, 52 ALA. L. REV. 1269, 1288-99 (2001) (advocating for public financing of judicial campaigns in Alabama). Although public financing legislation has been introduced in over twenty states, only Wisconsin has enacted a partial public financing system for supreme court races and its program is nearing financial failure. *See* Geyh, *supra* note 10, at 1476-81.

tax form to contribute to the public financing fund and upon providing judicial candidates an incentive to accept a small amount of public money in exchange for agreeing to campaign spending limitations.[132] Partial public funding however, can be a drop in the bucket when an effective campaign requires millions of dollars to be raised and spent.[133] Moreover, public funding for judicial candidates has no impact whatsoever on independent campaign expenditures by special interest groups.[134] Interest groups will gain further power as judicial candidates, who already face restrictions on speech, are also limited in their spending and will not be adequately able to respond to campaign attacks.

B. CONTRIBUTION LIMITS PLACE ADDITIONAL STRAINS ON JUDICIAL CANDIDATES

Contribution limits provide another method for reducing the influence of money in judicial campaigns.[135] Thirty-nine states impose contribution limits in judicial campaigns,[136] a method of campaign finance reform permitted by the United States Supreme Court.[137] Such restrictions seek to remove the suggestion that a judge can be paid off through a large campaign contribution from a special interest group or a party that is likely to come before the court.[138]

One of the problems with contribution limits, however, is that they may place additional pressure on judicial candidates to solicit contributions from the lawyers who appear before them and require that sitting judges who are up for reelection spend more time soliciting contributions and less time on the bench. The burden imposed by contribution limits may also make it easier for those who can afford to simply purchase the robe with their own personal finances to do so while those who are not independently wealthy must go door to door to mount an effective campaign.

C. RESTRICTIONS ON JUDICIAL SPEECH LEAD TO ELECTIONS DOMINATED BY SPECIAL INTERESTS

Others who seek to retain an elected system of judicial selection address the degradation of the judiciary through repulsive campaign advertisements and attacks by arguing for strict enforcement of the speech limitations imposed by judicial codes of conduct. As discussed earlier,

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132 *See* Geyh, *supra* note 10, at 1478-79.
133 *See id.* at 1479.
134 *See id.* at 1479-80.
135 *See, e.g.*, Faulkner, *supra* note 131, at 1281-88.
136 *Id.* at 1281.
137 *See* Buckley v. Valeo, 424 U.S. 1, 35 (1976).
138 *See* Faulkner, *supra* note 131, at 1281.

not only does this approach face constitutional First Amendment challenge, it also discourages candidates from providing voters with information in what is already by design an informational void. In any event, judicial codes of conduct have no force over special interest groups that can say whatever they want. The unfortunate result is that judicial candidates are reluctant to defend their record when they are attacked by a special interest group out of fear of being sanctioned.[139] Judges should not be politicians, but if the public is to choose its judges through elections, then judicial candidates must be given the ability to express their views.[140]

D. MOVING FROM PARTISAN TO NONPARTISAN ELECTIONS SOLVES NOTHING

In those states with partisan elections, reformers have suggested moving to nonpartisan elections as a way of reducing the influence of politics over the courts. But political parties, whether reflected on the ballot or not, will still continue to impact judicial campaigns. Candidates will simply seek to align themselves with interest groups with the strong backing of a political party. Voters will also lose a valuable piece of information that may help them to determine a candidate's philosophy and make an informed decision, while not indicating how the candidate would vote in a particular case. Furthermore, the use of partisan versus nonpartisan elections does not appear to affect the troubling amount of money spent on political campaigns.[141]

IV. APPOINTIVE JUDICIAL SELECTION SYSTEMS OFFER A SOLUTION

Judicial selection through appointment may provide a solution to the various problems associated with judicial elections. This section de-

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[139] Mississippi Court of Appeals Judge Libby Payne's solution to this problem is that the public should be wary of candidates that take positions on controversial issues as promoted by special interests and that the public should be educated to select candidates that are only "pro-law." *See* Payne, *supra* note 105, at 40-41 (approving of statement made in a newspaper editorial urging for adoption of an appointive system, *Supreme Court, Vote for Independence and Dignity*, CLARION-LEDGER (Jackson, Miss.), Nov. 3, 1996, at G4). It is difficult, however, to understand how the public can make an informed decision at the polls based solely on which candidate is more "pro-law."

[140] *See, e.g.*, Editorial, *Give Judges Chance to Speak on Issues; An Appointive System Would be Better. But If They Must Campaign, Judges Should Speak Their Minds*, SAN ANTONIO EXPRESS-NEWS, Dec. 10, 2001, at 4B; Editorial, *How Can Voters Judge*, PLAIN DEALER (Cleveland, Ohio), Dec. 5, 2001, at B8; Editorial, *Judges 'Gag Rules' Extreme*, SOUTH FLORIDA SUN-SENTINEL, Dec. 16, 2001, at 4F.

[141] For example, Wisconsin Supreme Court Justice Nathan Heffernan spent $1.2 million on his nonpartisan reelection campaign in 1999, while candidates for two Alabama Supreme Court seats spent $2 million in 1996 in a partisan election. *See* ABA REPORT, *supra* note 24, at 9-11.

scribes the different variants of appointive systems. Recognizing that appointive systems do not completely remove political influence from judicial selection, the article recommends that states avoid adopting a method that provides too much influence to any particular segment of society. Finally, the article describes the likely challenges to enacting meaningful reform and provides several examples of success. It concludes that in many of the states that elect their judges, the time is right for moving to an appointive system.

A. APPOINTIVE SYSTEMS PROVIDE THE APPROPRIATE BALANCE OF INDEPENDENCE AND ACCOUNTABILITY

Proponents of judicial elections often argue that judges ought to be held publicly accountable. In order to preserve an independent and impartial judiciary, yet ensure some public accountability, a balance must be struck between these conflicting, but not mutually exclusive, principles. Appointive judicial selection systems strike this balance through means that hold judges publicly accountable without unduly influencing their day-to-day decisions.

In virtually all appointive systems, judges are nominated by a governor who must be responsive to the public. Judges are then subject to Senate confirmation, a process that allows additional public input and helps ensure that those appointed do not hold extreme views. In the rare situation that an appointed judge's opinions appear wholly at odds with the law, impeachment provides yet one more, though infrequently used, method for the public to hold a judge accountable for his or her decisions.

Many states with appointive systems, particularly those using merit selection, build an additional layer of accountability into the selection of judges through the use of "retention elections." Such elections allow voters to decide whether or not to retain an appointed judge at the conclusion of an initial term of office. Retention elections, however, may tip the balance between independence and impartiality, and public accountability. As further explained below, retention elections can be subject to many of the same problems of ordinary contested elections, including the inordinate influence of money and special interest groups, and the problem of nasty rhetoric that undermines the moral authority of the courts.

B. OVERVIEW OF APPOINTIVE SYSTEMS

Appointive systems can generally be grouped in two categories: pure appointive systems and merit selection. The states employ numerous variations of these systems to reflect their unique political structures, histories, and values.

1. *The Pure Appointive System*

The method of judicial selection most familiar to the American public is that used at the federal level. This method, a pure appointive system, has been unaltered since the founding of our nation. Under this process, the President appoints judges subject to the advice and consent of the Senate.[142] The United States Constitution provides that federal judges "shall hold their Offices during good Behaviour" and does not permit a reduction in their salary during their tenure.[143] These time-tested provisions help insulate the federal judiciary from undue political influence.

Despite the success of the federal structure,[144] not a single state employs the precise method of judicial selection used for the federal bench. Several states, however, have adopted a method that resembles the federal system. In Maine, for example, the governor appoints judges subject to confirmation by a legislative committee whose decision is reviewable by the senate.[145] At the conclusion of a seven-year term, the governor may reappoint the judge. In New Jersey, the governor appoints judges subject to senate confirmation.[146] New Jersey judges serve an initial seven-year term and then may be granted life tenure by the governor.[147] Virginia appoints its judges for 12-year terms through a majority vote of the members of each house of its General Assembly.[148]

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142 *See* U.S. CONST. art. II, § 2.

143 U.S. CONST. art. III, § 1. Alexander Hamilton was a strong advocate of appointed judges with lifetime tenure. Hamilton cautioned,

> That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the executive or legislature there would be danger of an improper complaisance to the branch which possessed it; if to both, there would be an unwillingness to hazard the displeasure of either; *if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity to justify a reliance that nothing would be consulted but the Constitution and the laws.*

ALEXANDER HAMILTON, THE FEDERALIST NO. 78, at 441 (Isaac Kramnick ed., 1987) (emphasis added).

144 Of course, the federal system of judicial selection is not without its problems, such as the number of unfilled vacancies due to conflicts between the parties. *See The Chief Justice Speaks*, WASH. POST., Jan. 4, 2002, at A26; *see also* Alberto Gonzales, *The Crisis in Our Courts*, WALL ST. J., Jan. 25, 2002, at A18. There has been little criticism of the federal system, however, in terms of judicial independence and impartiality.

145 *See* ME. CONST. art. V, § 8.

146 *See* N.J. CONST. art. VI, § 1.

147 *See* N.J. CONST. art. VI, § 3.

148 *See* VA. CONST. art. VI, § 7. *See generally* Victor E. Schwartz et al., *Fostering Mutual Respect and Cooperation Between State Courts and State Legislatures: A Sound Alternative to*

Several states that elect their judges fill judicial vacancies by gubernatorial appointment until the next election. Only four states, Massachusetts, New Hampshire, New Jersey, and Rhode Island grant their judges lifetime tenure.[149]

2. *Merit Selection*

Merit selection is a variant of the appointive system. Merit selection systems have three basic components: (1) selection of a nonpartisan judicial nominating commission; (2) a list of judicial nominees compiled by the commission and presented to the appointing authority, who is usually the governor;[150] and (3) the selection and appointment of a nominee. Typically, judges appointed through merit selection serve an initial term, usually one or two years, before they are subject to a nonpartisan "retention election." In a retention election, voters vote either yes or no as to whether the judge should continue serving on the bench for a full term. At the conclusion of a full term, the judge is subject to another retention election if he or she seeks to remain on the bench.

The American Bar Association endorsed the merit selection system in 1937.[151] Missouri became the first state to adopt the plan in 1940,[152] hence, the merit selection system is sometimes referred to as the "Missouri Plan," although, as we will show, there is great variance between the merit selection systems of the states. Currently, twenty-five states and the District of Columbia use some form of merit selection system to appoint judges to an initial term.[153] Additionally, several states that ordi-

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a Tort Tug of War, 103 W.VA. L. REV. 1 (2000) (stating that this structure has promoted a cooperative atmosphere between the legislature and the Virginia Supreme Court).

149 *See* Appendix A.

150 In Connecticut and South Carolina, the judicial nominating committee submits its recommendations directly to the legislature, which fills the position through election. *See* Appendix A. *See generally* Martin Scott Driggers, Jr., *South Carolina's Experiment: Legislative Control of Judicial Merit Selection*, 49 S.C. L. Rev. 1217, 1217-18 (1998) (stating that South Carolina recently incorporated merit selection into its legislative process after one of its most partisan races in history).

151 *See* KEVIN C. MANNIX, JUDICIAL SELECTION IN THE UNITED STATES 5 (2000).

152 *See id.* at 4.

153 States employing some form of merit selection for initial terms include Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Hawaii, Indiana, Iowa, Kansas, Maryland, Massachusetts, Missouri, Nebraska, New Hampshire, New Mexico, New York, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, and Wyoming. California has a hybrid method of judicial selection featuring some characteristics of a pure appointive system and others of a merit system. In California, the governor appoints judges after submitting the names of nominees to a state bar commission for evaluation of their qualifications. After receiving a confidential report from the commission, the governor has complete discretion to appoint a judge. California judges, unlike those in a pure appointive system, are subject to retention elections at the first general election after appointment and every twelve years thereafter. *See* Appendix A.

narily select judges through elections, employ a merit selection system to fill judicial vacancies.[154]

States seeking to adopt a merit selection system have many important decisions to make. These decisions include: (1) the composition of the nominating commission; (2) the term of commission members; (3) who will chair the commission; (4) whether the commission must provide the governor with a minimum number of nominees; (5) whether the governor can view the list as a mere recommendation, must choose off the list, or may reject the list and request a new list; and (6) whether appointees will be subject to an initial term and retention elections, and, if so, the length of the initial and subsequent terms.

Assembling a commission that is truly nonpartisan and representative of various interests is both challenging and crucial for obtaining an impartial, moderate judiciary. Therefore, determining the composition of the nominating commission is a particularly delicate decision with significant implications.[155] Typically, some portion of the membership is made up of attorneys, while others are selected from the general public. In most systems, the governor, legislature, state bar association, and, sometimes, the chief justice appoint some proportion of the nominating commission's membership. The diversity of state laws on this issue is illustrated by that of Colorado, where attorney members of the Supreme Court Nominating Committee are appointed by the governor, attorney general, and the chief justice of the state's supreme court.[156] Some states have put in place fairly intricate systems for selecting the membership of nominating commissions in order to ensure nonpartisanship and impartiality through the participation of many groups.[157] In addition, several

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154 States employing merit selection to fill judicial vacancies states include Georgia, Idaho, Kentucky, Minnesota (trial court), Montana, Nevada, New Mexico, North Dakota, Oklahoma (the trial court is the only level ordinarily filled through elections), South Dakota (trial court), and Wisconsin. *See* Appendix A.

155 *See* Maute, *supra* note 66, at 1234-35 (arguing that judicial nominating commissions are often composed of those active in politics, lack minority representation, are dominated by lawyers and business interests, and that commission decisions can reflect backroom political deals).

156 *See* COLO. CONST. art. VI, § 24(4).

157 Tennessee provides the best example of a complex appointment process for its judicial selection commission. The Tennessee commission is composed of 15 members who serve six-year terms. The Speaker of the Senate appoints three members from a list submitted by the Tennessee Trial Lawyers Association, three members from a list submitted by the District Attorney General Conference, and one non-attorney. The Speaker of the House appoints two members from a list submitted by the Tennessee Bar Association, one member from a list submitted by the Tennessee Defense Lawyers Association, three members from a list submitted by the Tennessee Association of Criminal Defense Lawyers, and one non-attorney. Jointly, the speakers appoint one non-attorney member. Each group must submit three nominees for each position. The Tennessee Bar Association list cannot contain attorneys whose principal practice area is plaintiffs' personal injury or criminal defense. *See* TENN. CODE ANN. §§ 17-4-102, 17-4-106 (2001).

states require a balance, or near balance, of the political party affiliation of commission members.[158]

Another important distinction between systems is the extent of the governor's power over the commission. In systems that most strongly protect the commission from political influence, members are appointed for fixed, staggered terms. In those systems in which the executive has greatest control, all members are appointed and serve at the pleasure of the governor.[159]

The governor's power over judicial appointments also varies based on the method of choosing a chairperson for the nominating commission. Most states have adopted one of three methods in equal amounts. In states such as Maryland, New Hampshire, and Utah, the governor is granted a great deal of control over the commission through his or her appointment of its chairperson.[160] Other states, such as Alaska, Colorado, and Wyoming place the power in the judicial branch itself and designate the chief justice of the state supreme court as chairperson.[161] Several other states, such as Missouri, New York (a state that changed from an elected to appointive system for its highest court), and Oklahoma seek to balance the interests already present on the commission by having the commission choose its own chairperson.[162] The New Mexico Constitution designates the Dean of the University of New Mexico Law School as an ex-officio member and chairperson of the state's judicial nominating commission.[163]

Governors may also be limited in their appointments to those candidates whom the commission puts forward. In most states, the commission must provide the governor with a minimum number of candidates.[164] This minimum number of candidates varies from two in Alaska[165] to five in Maryland.[166] States also provide the governor with different options should he or she not favor any of the nominating committee's recommendations. For instance, in most states the governor must select a name off the list provided by the committee. In the few states that grant the governor greater discretion, such as Florida and Ten-

158 *See* Appendix A (showing that such states include Arizona, Colorado, Connecticut, Delaware, Idaho, Nebraska, New Mexico, New York, Oklahoma, Utah, and Vermont).

159 These states include Delaware (3-year terms at pleasure of governor), Georgia (to fill vacancies), Massachusetts, and Wisconsin (to fill vacancies). In each of these states, the governor established the merit selection process through executive order. *See id.*

160 *See id.*

161 *See id.*

162 *See id.*

163 *See* N.M. CONST. art VI, § 35.

164 *See* Appendix A.

165 *See* ALASKA CONST. art. IV, § 5.

166 *See* MD. EXEC. ORDER 01.01.1999.08 (2001).

nessee, the governor may reject the list and ask for a new list, or request additional names.[167]

Finally, states considering adoption of a merit selection system need to decide whether to subject their judges to an initial term in order to evaluate their performance and build in a measure of accountability. States could avoid the initial term and provide judges with immediate lifetime tenure, as does Rhode Island.[168] If the state chooses to use an initial term, as most states do, it must choose the length of the term and how the judge might obtain a full term. Upon conclusion of the initial term, the state may choose to extend the term through a retention election, reappointment through the same merit selection process, or simple reappointment by the governor.

C. RECOMMENDATIONS FOR REFORM

Appointive systems, especially if they have a merit selection component, are a major improvement over the pure elective system for selecting state judges. As stated, appointive systems are not subject to the problems inherent to an elected judiciary: the appearance of impropriety caused by judges taking money from those who appear before them, the threat to judicial independence resulting from a judge's dependence on campaign contributions and party support, the reduced perception of impartiality caused by statements of judicial candidates on political or social issues, the elimination of qualified lawyers who would otherwise be willing to serve as jurists, and the loss of public confidence caused by the vile rhetoric of judicial campaigns. Appointive systems come in many forms. Each has certain strengths and can be tailored to satisfy the needs of the particular state.

The best known and most straightforward approach is the federal, pure appointive system. This approach has served the country well for over two centuries. The federal system does not remove all money and politics from the selection of judges, but it substantially lessens their influence by requiring Senate confirmation of judges and spacing appointments out over several years (which often span administrations). For this reason, Michigan Supreme Court Chief Justice Elizabeth Weaver has proposed that Michigan change its method of selecting supreme court justices from partisan nominations and election on a nonpartisan ballot to a "modified federal plan."[169] Under this plan, justices would be ap-

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167 *See, e.g.*, FLA CONST. art. V, § 11 (may reject list); TENN. CODE ANN. § 17-4-112 (2001) (may reject list); MASS. EXEC. ORDER 420 (may request additional names); N.H. EXEC. ORDER 2000-9 (2000) (may request additional names).

168 R.I. CONST. Art. X, §5.

169 Hon. Elizabeth A. Weaver, *A New Proposal for Improving Michigan's Method of Selecting Supreme Court Justices*, 4 MICH. S. CT. REP. (Dec. 2000).

pointed by the governor for a non-renewable 14-year term, subject to Senate confirmation, and one seat would come up for appointment every two years.[170] Such a system, advocates Chief Justice Weaver, "move[s] the selection of Justices from a battleground funded by special interests to an arena of representative democracy."[171]

Properly developed and balanced merit selection systems may offer an added benefit over pure appointive systems. Judges appointed through gubernatorial appointment and Senate confirmation "exclude every lawyer except those who have some connection to their party."[172] The use of a nonpartisan judicial nominating commission, however, alleviates the need for strong party ties. In states considering use of a judicial nominating commission to select judges, it is essential that the composition of the commission not be skewed to any one interest group, party, or profession. For example, in several states, all of the attorney members of the commission are appointed by the state bar association,[173] which is often dominated by personal injury lawyers. This lends results akin to "buy me" elections. Of importance too is the unfortunate situation that some states do not require a balance between the two major political parties.[174]

The length of a judge's term is another important consideration in promoting judicial independence. Life tenure, as Alexander Hamilton recognized,[175] is the best means of assuring judicial independence. Short of life tenure, the longer the term, the greater the potential for judicial independence. The public's desire for accountability, however, necessitates some checks on appointed judges. Few states opt for a lifetime appointment system because the people or the political establishment want to be able to remove judges who lose sight of society's values. For this reason, most states with appointive systems set a full term of between four and twelve years.[176]

Those states that use merit selection provide for nonpartisan retention elections that usually occur within one to two years of appointment and after each full term. Although retention elections are simple nonpartisan, up-down votes, experience demonstrates that they are still subject to some of the problems of contested elections. For example, California

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170 *Id.*

171 *Id.*; *see also* Dawson Bell, *Engler to Ask for Appointed High Court*, DETROIT FREE PRESS, Jan. 27, 2001 (reporting Michigan Governor John Engler's support for the Weaver plan for an appointed Supreme Court).

172 Howard Wilkinson, *Choices Rare in Judge Races*, CINCINNATI ENQUIRER, Mar. 23, 2001 (quoting Bruce I. Petrie Sr., a Cincinnati lawyer and advocate for adoption of merit selection in Ohio).

173 *See* Appendix A.

174 *See id.*

175 *See* HAMILTON, *supra* note 143, at 437.

176 *See* Appendix A.

and Tennessee have hosted particularly fierce and partisan retention battles.[177] States can escape this dilemma and dispense with elections by adopting the method used in Connecticut, Delaware, Hawaii, and New York, in which judges are re-evaluated and re-appointed by the judicial selection commission at the expiration of their terms.[178] Similarly, in Vermont, after appointment through merit selection, a judge receives an additional term so long as the General Assembly does not vote against continuance in office.[179]

While there may not be one best appointive system, the appropriate balance between judicial independence and impartiality, and public accountability may be most closely reached through a system with the following components: (1) appointment of a judicial nominating commission that is not skewed toward any one political party, interest group, or school of legal thought; (2) gubernatorial appointment from a minimum number of candidates presented by the judicial nominating commission subject to senate confirmation; (3) staggered appointment of judges to appellate courts; (4) terms of at least eight years;[180] (5) an impeachment process; (6) filling of judicial vacancies through the same method for the remainder of the departing judge's term; and (7) at the conclusion of a term, a re-appointment process by which the judicial nominating commission evaluates and may re-appoint the judge for an additional term.

If the appointment process proceeds as Arizona Supreme Court Justice Stanley Feldman has described, the public should embrace it as a sound way of promoting judicial independence:

> When I was interviewed by Governor Bruce Babbitt for appointment to the Arizona Supreme Court, he proceeded to give me a ten-minute lecture on the proper function of judges, which, in his opinion, was to stay out of the way of governors, and not to interfere with the accomplishments of any program that the governor had managed to get through the legislature. After about six or seven minutes, he looked at me. I was sitting there trying not to smile. While looking at me, he said, "You

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177 *See* Hon. Harold See, *Comment: Judicial Selection and Decisional Independence*, 61 LAW & CONTEMP. PROBS. 141, 146-47 (1998); Anthony Champagne, *National Summit on Improving Judicial Selection: Political Parties and Judicial Elections*, 34 LOY. L.A. L. REV. 1411, 1420-21 (2001).

178 *See* CONN. GEN. STAT. § 51-44a(e)-(h); DEL. EXEC. ORDER 4 (2001); HAW. CONST. art. IV, § 3; N.Y. CONST. art. VI, § 2(d).

179 *See* VT. CONST. § 34.

180 *See* THE CONSTITUTION PROJECT, UNCERTAIN JUSTICE: POLITICS AND AMERICA'S COURTS 90-92 (2000) (discussing how longer terms promote judicial independence and recommending adoption of 8-year terms).

> don't believe a word I'm saying, do you?" And I answered, "Well, I wouldn't put it that way, Governor, but . . . ." He stopped me, and said, "You're not going to do what I'm telling you, you're going to do what you think is right." I replied, "Yes, I am."[181]

D. CHALLENGES OF MOVING FROM AN ELECTED TO APPOINTIVE SYSTEM

Despite the many problems of elective judicial systems, states seeking to make changes may face difficult challenges, including: significant cultural and constitutional hurdles to reform.[182] Both history and the recent experiences of Missouri, Rhode Island and New York, however, provide confidence that meaningful reform can become a reality. A state need not wait until its next judicial scandal. The strong public policy favoring appointive systems and negative public reaction to judicial campaigns may provide the impetus for change.

1. *Cultural Impediments to Reform*

One impediment to states wishing to move from an elected to an appointive system is the ingrained belief among many in the public that elections are simply the best method of selecting public officials.[183] Lawrence Landskroner, an Ohio attorney, exemplified this conviction when he stated that "Proponents of [merit selection] assume that the voting public is incapable of selecting qualified judges . . . . This is a dangerous and undemocratic premise that would place the selection of judges in the hands of a privileged few."[184] Americans regard elections

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181 Hon. Stanley Feldman, *Does Tort Reform Threaten Judicial Independence?*, 31 SETON HALL L. REV. 666, 668 (2001).

182 Judicial reform efforts have failed in several states. *See, e.g.*, Wilkinson, *supra* note 172 (noting that 65 percent of Ohio voters voted against a constitutional amendment for merit selection in 1987); Maddox, *supra* note 3, at 335-41 (detailing several failed attempts at judicial selection reform over the past century in Alabama); *See* Grimes, *supra* note 22, at 2304-08 (discussing failed attempt to move from partisan elections to merit selection in North Carolina since 1991); Howard Troxler, *Merit-based Selections Didn't Fly, Rightly So*, ST. PETERSBURG TIMES, Nov. 20, 2000, at 1B (reporting that voters in each judicial circuit in Florida overwhelmingly voted to reject changing from an elective to an appointive system of judicial elections in November of 2000); Lawrence Landskroner, *An Unmeritorious Way to Select Judges*, PLAIN DEALER (Cleveland, Ohio), Jan. 29, 1994, at 7B (arguing in opposition to appointive systems and noting that voters twice rejected a constitutional amendment to move to merit selection).

183 *See, e.g.*, Jeffrey D. Jackson, *The Selection of Judges in Kansas: A Comparison of Systems*, 69 J. JAN. B.A. 32, 32 (2000) (noting that a recent survey found that approximately 63% of Kansas citizens favored election of trial judges and 54% favored election of appellate court judges over gubernatorial appointment). More than three quarters of judges and lawyers, however, favored gubernatorial appointment over elections. *See id.* at n.4.

184 Landskroner, *supra* note 182, at 7B.

as a critical part of the democracy that they hold dear and they are not willing to sacrifice their "right to vote" without a fight.[185] If one asks a random member of the public whether judges should be elected or appointed, the default answer is probably "elected, of course." The public may also feel that selecting judges via appointment rather than elections will simply shift the politics of judicial selection from an open process to a smoky backroom.[186] Overcoming this attitude will be especially difficult because the selection system of most of these states has been in place for the past 150 years. Simple inertia may supply the greatest enemy of meaningful change.

2. *Constitutional Hurdles*

Abandoning the elected system of judicial selection also will require more than a simple act of a state legislature in most states. The method of judicial selection is specified in many state constitutions. Constitutional change frequently requires the support of a super-majority of the legislature and direct public approval through a ballot initiative. For example, constitutional change in Texas, a state that selects its judges through partisan elections, requires that the legislature approve a proposed amendment by a two-thirds majority of all members elected to each house and a majority of the public vote to effectuate the change.[187]

E. EXPERIENCE PROVES THAT THE CHALLENGE CAN BE OVERCOME

1. *Historically, Appointive Systems are the Norm*

Contrary to popular belief, judicial elections are not firmly rooted in our nation's history. Indeed, judicial elections were "virtually unheard of" until the early nineteenth century.[188] In fact, all of the original thirteen states appointed members of the judiciary.[189] At the time de Tocqueville observed our government systems elected judiciaries were a recent innovation in the trial courts arising out of the wildfire spread of Jacksonian democracy.[190] Prior to New York's adoption of an elected

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185 On June 27, 2000, voters in the District of Columbia, narrowly approved a referendum to replace an 11-member elected school board with a board composed of five elected and four appointed members. Approval of this referendum demonstrates that even a city determined to obtain elected representation is willing to sacrifice elected offices for higher quality government. The divisiveness of the election, which pitted residents along racial, geographical, and political lines, also demonstrates the challenge of obtaining such reform. *See* Justin Blum & Michael H. Cottman, *D.C. School Referendum Splits Voters; Board Makeup Hinges on Uncounted Ballots*, WASH. POST, June 28, 2000, at A1.

186 *See* Maute, *supra* note 66, at 1234-35.

187 *See* TEX. CONST. art. XVII, § 1.

188 Maute, *supra* note 66, at 1201.

189 *See* Shapiro, *supra* note 37, at 671.

190 *See* KEVIN C. MANNIX, *supra* note 151, at 4. The appointive system came under attack in the mid-nineteenth century because the public felt that property owners controlled the

system in 1846, the Governor appointed nearly all state court judges.[191] Between 1846 and 1860, 19 of the 21 states approved constitutions providing for the election of judges,[192] and all of the states admitted to the union thereafter provided for judicial elections.[193] Today, seven states retain partisan elections and thirteen states retain nonpartisan elections for selecting judges for their courts of appellate and general jurisdiction.[194]

2. *Reform in Missouri, New York and Rhode Island Prove That Change is Possible*

Voters in Missouri, New York, and Rhode Island have chosen to eliminate the negative aspects of judicial elections through adoption of merit selection systems. Their experience demonstrates that judicial selection reform can occur in other states.

Ironically, Missouri, one of the few states to elect its judges prior to the Jacksonian populist movement, was the first state to replace judicial elections with an appointive selection system.[195] In 1940, Missouri voters were fed up with the perceived hijacking of the judiciary by the political parties, particularly by the Pendergast machine. In that year, voters adopted a constitutional amendment providing for merit appointment of judges in Kansas City, St. Louis, and the Missouri appellate courts.[196]

In 1977, New York, the state that instigated the nationwide movement from appointive to elected systems 150 years earlier, returned to an appointive system for selecting judges for its highest court.[197] New York voters adopted a constitutional amendment eliminating judicial elections for the Court of Appeals of New York for the precise reasons that support reform in other states: increasingly expensive elections and the recognition that the electorate lacked adequate knowledge to make an informed decision due to limitations placed on judicial speech.[198] New

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judiciary. *See id.* The movement to elective systems may have also resulted from the public's discontent with the perceived elitism of judges. *See* Maute, *supra* note 66, at 1203-04.

191 *See* ROBERT W. BOATRIGHT, AM. JUDICATURE SOC., THE CONTINUING EFFORT TO CREATE A NONPARTISAN JUDICIARY IN THE STATE COURTS 12 (2001). Mississippi became the first state to provide for direct election of appellate judges in 1832.

192 *See* Kermit L. Hall, *The Judiciary on Trial: Constitutional Reform and the Rise of an Elected Judiciary 1846-1860*, 46 THE HISTORIAN 337 (1983).

193 *See* Croley, *supra* note 86, at 716-17.

194 *See* Appendix A.

195 *See* BOATRIGHT, *supra* note 191, at 13.

196 *See id*, at 14.

197 *See* N.Y. CONST. art. VI, § 2.

198 *See* George Bundy Smith, *Choosing Judges for a State's Highest Court*, 48 SYRACUSE L. REV. 1493, 1494 (1998).

York voters chose to adopt a merit selection system to eliminate politics from the selection process and preserve judicial independence.[199]

Most recently, Rhode Island completely abandoned its elective system and replaced it with a merit system.[200] Prior to 1994, Rhode Island Supreme Court justices were elected by the state's General Assembly in Grand Committee.[201] The governor appointed lower court judges subject to Senate confirmation.[202] In 1994, Rhode Island voters approved a constitutional amendment authorizing the Governor to appoint supreme court justices from a list of names submitted by a nonpartisan nominating committee.[203] The legislature adopted an identical process by statute for selection of lower court judges.[204] Reform in Rhode Island was preceded by a newspaper investigation into the court system that alleged "the disappearance of money from a court fund and the growth of patronage and cronyism within the court."[205]

3. *Momentum is Building for Change*

Momentum for reform is building in several states. For example, the nonprofit organization Pennsylvanians for Modern Courts is actively promoting reform of Pennsylvania's judicial system.[206] The group's efforts recently received a boost when departing Pennsylvania Governor (now Director of the United States Office of Homeland Security) Tom Ridge, in his farewell address to the general assembly, stated: "I am proud to stand with those who believe that our court system can be made even better if we change the way we select our judges. And I think most people agree. But to those who do not, I say—live up to your words. If

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199 *See id.*

200 *See generally* Michael J. Yelnosky, *Rhode Island's Judicial Nominating Commission: Can "Reform" Become Reality?*, 1 ROGER WILLIAMS U. L. REV. 87, 89 (1996); Barton P. Jenks, III, *Rhode Island's New Judicial Merit Selection Law*, 1 ROGER WILLIAMS U. L. REV. 63, 64 (1996). In 1998, Florida voters overwhelmingly approved an amendment to the state's constitution to provide voters in each county the option of replacing the nonpartisan election of trial court judges with a merit selection system. *See* Martha W. Barnett, *The 1997-98 Florida Constitution Revision Commission: Judicial Election or Merit Selection*, 52 FLA. L. REV. 411, 412 (2000). The Florida Constitution already provided for the appointment of appellate court judges. *See id.* at 413.

201 *See* Jenks, *supra* note 200, at 65.

202 *See id.* (citing repealed statutory provisions).

203 *See* R.I. CONST. art. X, § 5.

204 *See* R.I. GEN. LAWS § 8-16.1-7.

205 Scott Lindlaw, *Ocean State Trying to Shed Reputation for Political Sleaze*, ASSOC. PRESS, Apr. 16, 1994. The scandal ultimately ended in the resignation of Rhode Island Supreme Court Chief Justice Thomas Fay. *See id*; *see also* Yelnosky, *supra* note 200, at 89 ("[Justice Fay] was the second consecutive chief justice of the Supreme Court of Rhode Island to resign in the face of allegations of official misconduct.").

206 *See* Ellen Mattleman Kaplan, *Blueprint for the Future of Judicial Selection Reform*, (Pennsylvanians for Modern Courts, July 1999) *at* http://www.pmconline.org (last visited Jan. 15, 2002).

you truly believe in the voters—let them decide! Approve a referendum on merit selection."[207] Nonprofit organizations in Texas and Ohio have mounted strong campaigns based on empirical research suggesting that judicial elections influence decisionmaking.[208] In Arizona, a state that adopted a merit selection system for most of its judges in 1974,[209] support is building to extend the plan to trial courts in rural counties.[210]

In addition, several prominent editorial boards have strongly advocated for a change from an elected to appointive system.[211] Law journals also are replete with articles condemning various state systems of judicial elections and stressing the need for a change to an appointive system.[212] Other advocates for change include prominent members of the judiciary who have elections to thank for their own positions.[213] For example, in Michigan, a proposal by the Chief Justice of the Supreme Court to move

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207 Address by Governor Tom Ridge, *Farewell Speech to the General Assembly*, Oct. 2, 2001 *available at* http://sites.state.pa.us/PA_Exec/Governor/Speeches/011002.htm (last visited Jan. 15, 2002).

208 *See* TEXANS FOR PUB. JUST., PAY TO PLAY, (2001) *at* http://www.tpj.org/reports/paytoplay/ (last visited January 15, 2002); N.E. OHIO AM. FRIENDS SERV. COMM., OHIO SUPREME COURT JUSTICE FOR SALE (1999), *available at* http://www.afsc.net/1_b_5.htm (last visited Jan. 15, 2002).

209 In 1992, Arizona voters approved an amendment to its constitution revising its merit selection system. The changes expanded the membership of the judicial nominating commissions, added requirements that the commissions hear public testimony and vote in public before making recommendations to the Governor, and mandated that the commissions and the Governor consider the diversity of the state or county's population in making nominations and appointments. *See* Ariz. Prop. 109 (1992).

210 *See* Editorial, *Picking JPs on Merit is Only Sane Approach,* ARIZ. REPUBLIC, Nov. 26, 2001.

211 *See, e.g.*, Editorial, *Limits on Campaigning Show Flaw in Electing Judges*, NEWSDAY, Dec. 10, 2001, at A26; Editorial, *Give Judges Chance to Speak on Issues; An Appointive System Would be Better. Bu If They Must Campaign, Judges Should Speak Their Minds*, SAN ANTONIO EXPRESS-NEWS, Dec. 10, 2001, at 4B; Editorial, *How Can Voters Judge?*, PLAIN DEALER (Cleveland, Ohio), Dec. 5, 2001, at B8; *Courting Disaster; Partisan Elections Almost Guarantee Some Poor Judges*, HOUSTON CHRON., July 27, 2001, at A34; Editorial, *Once More, With Feeling*, CINCINNATI POST, Nov. 13, 2000, at 10A; *Corrupting Influences Grow in Contests for Judgeships*, USA TODAY, Nov. 2, 2000, at 16A (discussing judicial elections in Michigan, Ohio, North Carolina, and Alabama); Marty Trillhaase, Editorial, *Judicial Race Standards Needed*, IDAHO FALLS POST REGISTER, Oct. 31, 2000, at A6; Editorial, *Judicial Races*, MISSISSIPPI CLARION-LEDGER, Oct. 13, 2000; *Higher Ground Group Wants Better Conduct from Judicial Candidates*, BIRMINGHAM NEWS, Sept. 21, 2000.

212 *See, e.g.*, Barnett, *supra* note 200; Grimes, *supra* note 22; Croley, *supra* note 86.

213 *See, e.g.*, Hon. Thomas J. Moyer, Address at the State of the Judiciary for the 124th Sess. of the Ohio Gen. Assembly (Mar. 20, 2001) *available at* http://www.sconet.state.oh.us/Communications_office/Speeches/2001/2001soj.asp (last visited Dec. 24, 2001); Doug Oplinger, *Top Ohio Jurist Backs Election Reforms*, AKRON BEACON J., Jan. 2, 2001 (reporting that Supreme Court Chief Justice Thomas Moyer held a press conference to announce his support for placing a constitutional amendment on the ballot to allow for appointment of judges rather than election); Weaver, *supra* note 169; Maddox, *supra* note 3; Hon. Thomas R. Phillips, Comment, *Judicial Independence and Accountability*, 61 LAW & CONTEMP. PROBS. 127 (1998); Hon. Clifford W. Taylor, *Who's In Charge: A Traditional View of Separation of Powers*, 1997 DETROIT C.L. MICH. ST. U. L. REV. 769, 774 (1997).

to an appointive system received the support of the governor and has been introduced as a constitutional amendment in the state senate.[214] A similar proposal was passed by the Texas Senate with the support of the Chief Justice of the Texas Supreme Court in 2001.[215]

The United States Supreme Court's expected ruling in *Republican Party of Minnesota v. Kelly*[216] may also build momentum for change from elective to appointive systems. On March 26, 2002, members of the Court expressed skepticism of restrictions on judicial candidate speech and suggested that judicial elections "may be a very bad idea."[217] Justice Scalia commented that he was "befuddled that Minnesota wants its judges elected but then enacts a provision intended to prevent voters from knowing how they'll behave on the bench."[218] Should the court strike down Minnesota's restrictions on the speech of judicial candidates, some previous advocates of judicial "elections" may find that they cannot stomach true, free judicial elections on par with the competitiveness, rhetoric, attacks, partisanship, and promises of other political campaigns. As Professor John Echeverria of the Georgetown University Law Center recognized, the case provides the justices with the opportunity to encourage merit selection by telling Minnesota, "You can't restrict judicial speech of candidates in order to preserve judicial independence because you can achieve the same objective without infringing the First Amendment."[219]

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214 *See* Mich. S.J.R. F, Reg. Session (Introduced Feb. 1, 2001) *available at* http://198.109.173.12/mileg.asp?page=getobject&objname=2001-SJ-o2-004; Press Release, Senator Ken Sikkema, *Sen. Sikkema Calls for Appointment of Supreme Court Justices* (Jan. 30, 2001) (on file with author), *available at* http://www.senate.state.mi.us/gop/news/sikkema/releases/13001.pdf; Bell, *supra* note 171 (reporting Michigan Governor John Engler's support for the Supreme Court Chief Justice Weaver's plan for an appointed Supreme Court); Weaver, *supra* note 169. As of April 1, 2002, no action has been taken on the joint resolution. It has eleven co-sponsors and has been referred to the Senate Committee on Government Operations.

215 *See* Tex. S.J.R. 3 (Introduced Feb. 26, 2001), *available at* http://www.capitol.state.tx.us/sjrnl/77r/html/2-26.htm. As introduced, the Texas proposal provided for gubernatorial appointment with Senate confirmation of appellate court justices and judges for 6-year terms followed by a non-partisan retention election. The substitute bill approved by the Senate on April 25, 2001, eliminated retention elections in favor of gubernatorial re-appointment. In the Texas House of Representatives, the bill was reported favorably out of the Judicial Affairs Committee, but was not considered on the floor before the end of the session.

216 247 F.3d 854 (8th Cir. 2001), *cert. granted*, 122 S. Ct. 643 (2001); Charles Lane, *Supreme Court to Review Campaign Rules*, WASH. POST, Dec. 3, 2001, at A5.

217 Linda Greenhouse, *Supreme Court Weighs Rule Limiting Judicial Candidates' Speech*, N.Y. TIMES, Mar. 27, 2002, at A20 (quoting Justice Antonin Scalia).

218 Charles Lane, *Justices Wary of State Judge Election Rules*, WASH. POST, Mar. 27, 2002, at A04.

219 Marcia Coyle, *U.S. Supreme Court Eyes Limits in State Judicial Races*, NAT'L L. J., Mar. 25, 2002, at A1. Professor Echeverria filed an amicus brief on behalf of environmental groups in support of neither party emphasizing the growing conflict between judicial independence and popular election of judges and requesting that the Court decide the case "in light of the broader problem of the politicization of the state court systems, including the serious ques-

V. CONCLUSION

The method of judicial selection used by a majority of states at some level is in dire need of reform. All evidence suggests that the money and rhetoric involved in judicial campaigns is spiraling out of control. With each passing election, public confidence in the integrity and impartiality of the courts falls lower. Quick fixes, such as contribution limits and restrictions on freedom of speech, are not the answer. Rather, they serve to illustrate the fundamental conflict between popular elections and the role of the judiciary as an impartial arbiter of individual cases and controversies. The founding fathers got it right the first time – judges should be appointed, not elected. A few states have returned to appointive systems and, whether they adopted pure appointive or merit selection systems, they have not changed their view that appointive judicial selection systems provide the best means of ensuring judicial independence. Other states should follow this path to sounder, fairer justice.

We appreciate that cultural and other hurdles may make the change to appointive judicial selection systems difficult to achieve. People may decide they prefer the public accountability that comes with judicial elections, despite the threat elective systems pose to judicial independence, among other serious problems. Nevertheless, reform is worth pursuing in order to improve the public's perception of the nation's judiciary and maintain the moral authority of the courts. At a minimum, states should put the issue to voters and let them decide.

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tions about whether litigants are being denied their due process rights to fair and impartial courts." *See* Brief Amicus Curiae of the Idaho Conservation League and the Louisiana Environmental Action Network in Support of Neither Side, Republican Party of Minnesota v. Kelly, 2002 WL 100586 (U.S. Jan. 17, 2002) (No. 01-521).

APPENDIX: STATE JUDICIAL SELECTION LAWS

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
ALABAMA						
Supreme Court	*Partisan Election* Ala. Const. §§ 152, 156; Ala. Code § 12-2-1.	6 years Ala. Const. § 155; Ala. Code § 12-2-1.	Re-Election	Gubernatorial Appointment until the next general election for any state officer. Ala. Const. § 158.	Statewide. Ala. Const. § 152; Ala. Code § 12-2-1.	N/A
Court of Civil Appeals	*Partisan Election* Ala. Const. § 152; Ala. Code § 12-3-3.	6 years Ala. Const. § 155; Ala. Code § 12-3-3.	Re-Election	Gubernatorial Appointment until the next general election for any state officer. Ala. Const. § 158.	Statewide. Ala. Const. § 152; Ala. Code § 12-3-3.	N/A
Circuit Court	*Partisan Election* Ala. Const. § 152; Ala. Code § 12-17-21.	6 years Ala. Const. § 155.	Re-Election	Gubernatorial Appointment until the next general election for any state officer. Ala. Const. § 158.	Circuit. Ala. Const. § 152; Ala. Code § 12-17-21.	N/A
ALASKA						
Supreme Court	*Merit Selection*: Gubernatorial appointment from list of 2 or more persons submitted by Judicial Council. Alaska Const. art. IV, § 5; Alaska Stat. § 22.05.080.	3 years Alaska Const. art. IV, § 6; Alaska Stat. § 15.35.030.	Retention Election (10-year term) Alaska Const. art. IV, §§ 6-7; Alaska Stat. §§ 15.35.030; 22.05.100.	Same as full term.	Statewide. Alaska Stat. § 15.35.030.	*Judicial Council* (7 members): 3 attorney members appointed by the state bar association. 3 non-attorney members appointed by the governor subject to confirmation by a majority of the members of the legislature in joint session. Appointments made with consideration to area representation and without regard to political affiliation. Chief justice of the Supreme Court is an ex-officio member and chairman. 6-year term. Also conducts an evaluation of candidates for retention election and provides a public report.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
						Alaska Const. art. IV, § 8; Alaska Stat. § 22.05.100.
Court of Appeals	*Merit Selection*: Gubernatorial appointment from list of 2 or more persons submitted by Judicial Council. Alaska Stat. § 22.07.070.	3 years Alaska Stat. § 15.35.053.	Retention Election (8-year term) Alaska Stat. §§ 15.35.053; 22.07.060.	Same as full term.	Statewide. Alaska Stat. § 15.35.053.	*Judicial Council*: above. Alaska Stat. § 22.05.060.
Superior Court	*Merit Selection*: Gubernatorial appointment from list of 2 or more persons submitted by Judicial Council. Alaska Const. art. IV, § 4; Alaska Stat. § 22.10.100.	3 years Alaska Const. art. IV, § 6 Alaska Stat. § 15.35.060.	Retention Election (6-year term) Alaska Const. art. IV, §§ 6-7; Alaska Stat. § 15.35.060.	Same as full term.	District. Alaska Stat. § 15.35.080.	*Judicial Council*: above. Alaska Stat. § 22.10.100.
ARIZONA						
Supreme Court	*Merit Selection*: Gubernatorial appointment from list of 3 or more names submitted by Commission on Appellate Court Appointments. Not more than 2 nominees may be from the same political party. Must appoint without regard to political affiliation. Ariz. Const. art. 6, § 37.	2 years Ariz. Const. art. 6, § 37.	Retention Election (6-year term) Ariz. Const. art. 6, §§ 4, 38. Ariz. Rev. Stat. § 12-101.	Same as full term.	Statewide.	*Commission on Appellate Court Appointments* (16 members): Chief Justice of the Supreme Court, 5 attorney members nominated by state bar association and appointed by the Governor with Senate consent, 10 non-attorneys appointed by the Governor with Senate consent. Not more than 3 attorney members and 5 non-attorney members may be of the same political party. Not more than 2 attorney members and 2 non-attorney members may be residents of the same county. Governor appointed nominating committee evaluates applicants for Commission membership and provides recommend-

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
						ation to Governor. 4-year terms. Ariz. Const. art. 6, § 36.
Court of Appeals	*Merit Selection*: Gubernatorial appointment from list of 3 or more names submitted by Commission on Appellate Court Appointments. Not more than 2 nominees may be from the same political party. Must appoint without regard to political affiliation, Ariz. Const. art. 6, § 37.	2 years Ariz. Const. art. 6, § 37.	Retention Election (6-year term) Ariz. Const. art. 6, § 38.	Same as full term.	County/Region.	*Commission on Appellate Court Appointments*: above.
Superior Court pop > 250k	*Merit Selection*: Gubernatorial appointment from list of 3 or more names submitted by Commission on Trial Court Appointments for the county in which the vacancy occurs, no more than 2 nominees may be from the same political party. Ariz. Const. art. 6, § 37.	2 years Ariz. Const. art. 6, § 37.	Retention Election (4-year term) Ariz. Const. art. 6, §§ 12, 38, 41.	Same as full term.	County. Ariz. Rev. Stat. § 12-121.	*Commission on Trial Court Appointments*: One for each county having a population of 250k or more. Chief Justice of the Supreme Court is chairperson. 5 attorney members, not more than 3 of same political party, nominated by state bar and appointed by the Governor with Senate consent. 10 non-attorney members, no more than 2 in the same district. Governor appoints non-attorney members from applications reviewed by the district's nominating committee subject to Senate consent (appointed by the district's board of supervisors). 4-year terms. Ariz. Const. art. 6, § 41.
Superior Court pop < 250k	*Non-Partisan Election*, but voters may choose the above Merit Selection system by countywide election, Ariz. Const. art. 6, §§ 12, 40.	4 years Ariz. Const. art. 6, § 12.	Re-Election Ariz. Const. art. 6, § 12.	Gubernatorial appointment. Ariz. Const. art. 6, § 12.	County. Ariz. Const. art. 6, § 12.	N/A unless elect merit system (then above).

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
ARKANSAS						
Supreme Court	*Non-Partisan Election* Ark. Const. Amend. 80, § 18(A) (approved Nov. 2000).	8 years Ark. Const. Amend. 80, § 16(A).	Re-Election	Gubernatorial appointment. Ark. Const. Amend. 80, § 18(B).	Statewide.	N/A
Court of Appeals	*Non-Partisan Election* Ark. Const. Amend. 80, § 18(A) (approved Nov. 2000).	8 years Ark. Const. Amend. 80, § 16(A).	Re-Election	Gubernatorial appointment. Ark. Const. Amend. 80, § 18(B).	Statewide.	N/A
Circuit Court	*Non-Partisan Election* Ark. Const. Amend. 80, § 17(A) (approved Nov. 2000).	6 years Ark. Const. Amend. 80, § 16(B).	Re-Election	Non-Partisan Election. Ark. Const. Amend. 80, § 17(B).	Circuit. Ark. Const. Amend. 80, § 16(D).	N/A
CALIFORNIA						
Supreme Court	Governor submits nominee to the *California State Bar's Commission on Judicial Nominees Evaluation*. Within 90 days of submission by the Governor of the name of a potential appointee, the Commission reports in confidence to the Governor its recommendation whether the candidate is exceptionally well-qualified, well-qualified, qualified, or not qualified and the reasons therefor. Cal. Gov't Code § 12011.5; Cal. Election Code § 9083. *Gubernatorial appointment* subject to confirmation by the *Commission on Judicial Appointments*. Cal. Const. art. 6, § 16.	Until first general election at which the appointee had the right to become a candidate. Cal. Const. art. 6, § 16.	Retention Election (12-year term) Cal. Const. art. 6, § 16; Cal. Election Code § 9083.	Same as full term. Cal. Const. art. 6, § 16.	Statewide. Cal. Const. art. 6, § 16.	*California State Bar's Commission on Judicial Nominees Evaluation* (22 members): 15 attorney members elected from state bar districts, 1 member from Young Lawyers Association, 4 non-attorney members appointed by the Governor subject to senate confirmation, 1 non-attorney member appointed by Senate Committee on Rules, 1 non-attorney member appointed by the Speaker of the Assembly. Committee shall be broadly representative of the ethnic, sexual, and racial diversity of the population. Cal. Gov't Code § 12011.5; Cal. Bus. & Prof. Code § 6013. *Commission on Judicial Appointments*: Chief Justice, Attorney General, and presiding judge of the court of appeals of the affected district. Cal. Const. art. 6, § 7.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Court of Appeals (Superior Court Appellate Division)	*Gubernatorial appointment*: as above.	Until first general election at which the appointee had the right to become a candidate. Cal. Const. art. 6, § 16.	Retention Election (12-year term) Cal. Const. art. 6, § 16; Cal. Election Code § 9083.	Same as full term. Cal. Const. art. 6, § 16.	District. Cal. Const. art. 6, § 16.	
Superior Court	*Non-Partisan Election* Cal. Const. art. 6, § 16.	Until first general election at which the appointee had the right to become a candidate. Cal. Const. art. 6, § 16.	Retention Election (6-year term) Cal. Const. art. 6, § 16.	Vacancies filled temporarily by the Governor until next election. Cal. Const. art. 6, § 16.	County.	
COLORADO						
Supreme Court	*Merit Selection*: Governor appoints from list of 3 nominees of the Supreme Court Nominating Committee. Colo. Const. art. VI, § 20.	2 years Colo. Const. art. VI, § 20.	Retention Election (10-year term) Colo. Const. art. VI, §§ 7, 25.	Same as full term.	Statewide.	*Supreme Court Nominating Committee*: Chief Justice of the Supreme Court is ex officio member and chairman. 1 attorney and 1 non-attorney for each congressional district, plus 1 additional non-attorney. No more than half of members from the same political party. 6-year terms. Attorney members are appointed by majority action of the Governor, Attorney General, and Chief Justice. Non-attorney members appointed by Governor. Colo. Const. art. VI, § 24.
Court of Appeals	*Merit Selection*: Governor appoints from list of 3 nominees of the Supreme Court Nominating Committee. Colo. Const. art. VI § 20; Colo. Rev. Stat. § 13-4-104.	2 years Colo. Const. art. VI, § 20.	Retention Election (8-year term) Colo. Const. art. VI, § 25; Colo. Rev. Stat. § 13-4-104.	Same as full term.	Statewide	*Supreme Court Nominating Committee*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
District Court	*Merit Selection*: Governor appoints from list of 2-3 nominees of the Judicial District Nominating Commission. Colo. Const. art. VI, § 20.	2 years Colo. Const. art. VI, § 20.	Retention Election (6-year term) Colo. Const. art. VI, §§ 10, 25.	Same as full term.	District. Colo. Const. art. VI, § 11.	*Judicial District Nominating Commission*: Justice of the Supreme Court designated by the Chief Justice is chairman ex officio. 7 citizens from each judicial district, no more than 4 from same political party, and at least 1 from each county in the district. 4 attorneys and 3 non-attorneys unless population of district is less than 35k. 6-year terms. Attorney members are appointed by majority action of the Governor, Attorney General, and Chief Justice. Non-attorney members appointed by Governor. Colo. Const. art. VI, § 24.
CONNECTICUT						
Supreme Court	*Merit Selection*: Candidates identified by Judicial Nominating Commission, nominated by Governor, and appointed by the General Assembly. Conn. Art. Fifth § 2; Conn Stat. § 51-44a.	8 years Conn. Const. Art. Fifth § 2. Conn. Gen. Stat. § 51-44a.	Same after evaluation by Judicial Selection Commission. Conn. Gen. Stat. § 51-44a.	Same as full term.	Statewide	*Judicial Selection Commission* (12 members): 2 from each congressional district (1 attorney and 1 non-attorney), with not more than 6 from same political party. Governor appoints 6 attorneys, one from each congressional district. President Pro Tempore of the Senate and Speaker of the House each appoint one non-attorney. Majority leader of the House and Senate each appoint 1 non-attorney. Minority leader of the House and Senate each appoint 1 non-attorney. Commission selects its own chairperson. 3-year terms. Conn. Gen. Stat. § 51-44a.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Appellate Court	*Merit Selection*: Candidates identified by Judicial Nominating Commission, nominated by Governor, and appointed by the General Assembly. Conn. Gen. Stat. §§ 51-44a; 51-197c.	8 years Conn. Gen. Stat. §§ 51-44a; 51-197c.	Same after evaluation by Judicial Selection Commission Conn. Gen. Stat. § 51-44a.	Same as full term.	Statewide	*Judicial Selection Commission*: above.
Superior Court	*Merit Selection*: Candidates identified by Judicial Nominating Commission, nominated by Governor, and appointed by the General Assembly. Conn. Const. art. Fifth § 2 ; Conn. Gen. Stat. §§ 51-44a; 51-165.	8 years Conn. Const. art. Fifth § 2; Conn. Gen. Stat. § 51-44a.	Same after evaluation by Judicial Selection Commission Conn. Gen. Stat. § 51-44a.	Same as full term.	Statewide	*Judicial Selection Commission*: above.
DELAWARE						
Supreme Court	*Merit Selection*: Governor appoints from list of 3 nominees of the Judicial Nominating Commission with Senate consent. Governor may refuse to nominate from the list and request one supplementary list. Del. Const. art. IV, § 3; Gov. Ruth Ann Minner, Exec. Order No. 4 (2001).	12 years Del. Const. art. IV, § 3.	*Merit Selection*: Incumbent reapplies by same method for competitive reappointment. Governor appoints subject to Senate confirmation; 12-year term. Exec. Order. No. 4.	Same as full term.	Statewide.	*Judicial Nominating Committee* (9 members): 8 members appointed by the Governor (4 attorneys, 4 non-attorneys), 1 member appointed by the President of the Delaware State Bar Association with the consent of the Governor. 3-year terms at the pleasure of the Governor. Governor designates Chairperson. No more than 5 members of the Commission may be from the same political party. Gov. Ruth Ann Minner, Exec. Order No. 4 (2001).

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Court of Chancery	*Merit Selection*: Governor appoints from list of 3 nominees of the Judicial Nominating Commission with Senate consent. Governor may refuse to nominate from the list and request one supplementary list. Del. Const. art. IV, § 3; Gov. Ruth Ann Minner, Exec. Order No. 4 (2001).	12 years Del. Const. art. IV, § 3.	*Merit Selection*: Incumbent reapplies by same method for competitive reappointment. Governor appoints subject to Senate confirmation; 12-year term. Exec. Order. No. 4 (2001).	Same as full term.	Statewide.	*Judicial Nominating Committee*: above.
Superior Court	*Merit Selection*: Governor appoints from list of 3 nominees of the Judicial Nominating Commission with Senate consent. Governor may refuse to nominate from the list and request one supplementary list. Del. Const. art. IV, § 3; Gov. Ruth Ann Minner, Exec. Order No. 4 (2001).	12 years Del. Const. art. IV, § 3.	*Merit Selection*: Incumbent reapplies by same method for competitive reappointment. Governor appoints subject to Senate confirmation; 12-year term. Exec. Order. No. 4 (2001).	Same as full term.	County.	*Judicial Nominating Committee*: above.
DISTRICT OF COLUMBIA						
Court of Appeals	*Merit Selection*: President appoints with Senate confirmation from list of 3 nominees submitted by the Judicial Nominating Commission. D.C. Code § 11-1501.	15 years D.C. Code § 11-1502.	Judicial Disabilities and Tenure District Commission: Evaluates judge's performance and fitness for reappointment 3 months prior to end of term. If		Must reside within DC or certain counties of MD or VA. D.C. Code § 11-1501.	*Judicial Nominating Commission* (7 members): 1 appointed by the President, 2 appointed by District of Columbia bar, 2 appointed by the mayor (1 attorney/1 non-attorney), 1 appointed by Chief Judge of the U.S. District Court for District of Columbia who is an active or retired federal judge serving District of Columbia. Commission selects its own chairperson.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
			"well qualified" the judge is automatically reappointed; if "qualified" then President may renominate subject to Senate confirmation; if "unqualified," the judge is ineligible for reappointment.			*Judicial Disabilities and Tenure District Commission* (7 members): 1 appointed by the President, 2 appointed by DC bar, 2 appointed by the mayor (1 attorney/1 non-attorney), 1 appointed by Chief Judge of the U.S. District Court for DC who is an active or retired federal judge serving DC. 6-year terms. Commission selects its own chairperson. D.C. Code § 11-1523.
Superior Court	President appoints with Senate confirmation. D.C. Code § 11-1501.	15 years D.C. Code § 11-1502.	Same as above.		Must reside within DC or certain counties of MD or VA. D.C. Code § 11-1501.	
FLORIDA						
Supreme Court	*Merit Selection*: Gubernatorial appointment from list of between 3-6 nominees submitted by Judicial Nominating Commission. Fla. Const. art. V, § 11. The Governor may reject all of the nominees recommended for a position and request that the Board of Governors submit a new list of three different nominees.	1 year Fla. Const. art. V, § 11.	Retention Election (6-year term) Fla. Const. art. V, § 10.	Same a full term.	At least 1 judge from each appellate district. Fla. Const. art. V, § 3.	Separate *judicial nominating commission* for the Supreme Court, each district court of appeal, and each judicial circuit for all trial courts within the circuit. Each judicial nominating committee is composed of 4 attorney members, appointed by the Governor, each of whom is a resident of the territorial jurisdiction served by the commission to which the member is appointed. The Florida Bar submits to the Governor 3 nominees for each position. 5 members appointed by the Governor, each of whom is a resident of the territorial jurisdiction served by the commission to which the member is appointed, of which at least two are attorneys. 4-year terms.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
						Fla. Const. art. V, § 11, 20; Fla. Stat. § 43.291.
District Court of Appeal	*Merit Selection*: Gubernatorial appointment from list of between 3-6 nominees submitted by Judicial Nominating Commission. Fla. Const. art. V, § 11.	1 year Fla. Const. art. V, § 11.	Retention Election (6-year term) Fla. Const. art. V, § 10.	Same as full term.	District.	See above.
Circuit Court	*Non-Partisan Election* unless voters opt for merit selection Fla. Const. art. V, §§ 10-11.	6 years (if election).	Re-election (or Retention Election if Merit Selection) Fla. Const. art. V, § 10.	Same as full term.	Circuit.	See above.
GEORGIA						
Supreme Court	*Non-Partisan Election* Ga. Const. art. VI, § VII pI.	6 years Ga. Const. art. VI, § VII pI.	Re-Election	Gubernatorial Appointment Ga. Const. art. VI, § VII pIII, IV; Ga. Code Ann. § 15-7-23. *Merit Selection* established by Exec. Order (Apr. 19, 1999): Judicial Nominating Committee recommends 5 nominees to the Governor. May nominate less if fewer than 5 are qualified.	Statewide.	*Judicial Nominating Committee* (18 members): 15 attorneys and 3 non-attorneys appointed by the Governor through Executive Order. Governor designated chairperson and vice chairpersons. Members serve at pleasure of the Governor. Exec. Order (Apr. 19, 1999).

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Court of Appeals	*Non-Partisan Election* Ga. Const. art. VI, § VII pI; Ga. Code Ann. § 15-3-4.	6 years Ga. Const. art. VI, § VII pI; Ga. Code Ann. § 15-3-4.	Re-Election	Same as above.	Statewide	*Judicial Nominating Committee*: above.
Superior Court	*Non-Partisan Election* Ga. Const. art. VI, § VII pI; Ga. Code Ann. § 15-6-4.1.	4 years Ga. Const. art. VI, § VII pI.	Re-Election	Same as above.	Circuit. Ga. Code Ann. § 15-6-4.1.	*Judicial Nominating Committee*: above.
HAWAII						
Supreme Court	*Merit Selection*: Gubernatorial appointment with Senate consent from list of 4-6 nominees presented by Judicial Nominating Commission. Haw. Const. art. VI, § 3.	10 years Haw. Const. art. VI, § 3.	Petition for Retention to Judicial Selection Commission. Haw. Const. art. VI, § 3.	Same as full term.	Statewide	*Judicial Selection Commission* (9 members): Governor appoints 2 members (1 attorney, 1 non-attorney), President of Senate and Speaker of the House each appoint 2 members, Chief Justice of the Supreme Court appoints 1 member, bar members select 2 attorneys in election conducted by Supreme Court. No more than 4 members may be attorneys. Commission selects its own chairperson. Must operate in a nonpartisan manner. 6-year terms. Haw. Const. art. VI, § 4.
Intermediate Court of Appeals	*Merit Selection*: Gubernatorial appointment with Senate consent from list of 4-6 nominees presented by Judicial Nominating Commission. Haw. Const. art. VI, § 3.	10 years Haw. Const. art. VI, § 3.	Petition for Retention to Judicial Selection Commission. Haw. Const. art. VI, § 3.	Same as full term.	Statewide	*Judicial Selection Commission*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Circuit Court	*Merit Selection*: Gubernatorial appointment with Senate consent from list of 4-6 nominees presented by Judicial Nominating Commission. Haw. Const. art. VI, § 3.	10 years Haw. Const. art. VI, § 3.	Petition for Retention to Judicial Selection Commission. Haw. Const. art. VI, § 3.	Same as full term.	Circuit.	*Judicial Selection Commission*: above.
District Court	*Merit Selection*: Chief Justice appoints with Senate consent from list of not less than 6 nominees presented by Judicial Nominating Commission. Haw. Const. art. VI, § 3.	6 years Haw. Rev. Stat. § 604-2.	Petition for Retention to Judicial Selection Commission. Haw. Const. art. VI, § 3.	Same as full term.	District.	*Judicial Selection Commission*: above.
IDAHO						
Supreme Court	*Non-Partisan Election* Idaho Const. art. V, § 6; Const. art. VII, § 7; Idaho Code § 1-201.	6 years Idaho Const. art. V, § 6; Idaho Code § 1-201.	Re-Election	*Merit Selection*: Governor appoints from list of 2-4 nominees for each vacancy. Submitted by the Judicial Council. Idaho Code § 1-2102.	Statewide Idaho Const. art. V, § 6; Idaho Code § 1-201	*Judicial Council* (7 permanent members and 1 adjunct member): 3 permanent members, including 1 district court judge appointed by state bar with Senate consent. 3 permanent non-attorney members appointed by Governor with Senate consent. 6 year terms. Not more than 3 permanent members may be from the same political party. Chief Justice of Supreme Court is the 7th member and chairman. Idaho Code § 1-2101.
Court of Appeals	*Non-Partisan Election* Idaho Code § 1-2404.	6 years Idaho Code § 1-2404.	Re-Election	*Merit Selection*: Governor appoints from list of 2-4 nominees for each vacancy. Submitted by the Judicial Council. Idaho Code § 1-2102.	Statewide	*Judicial Council*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
District Court	*Non-Partisan Election* Idaho Const. art. V, § 11, art. VII, § 7. Idaho Code §§ 1-702, 34-616.	4 years Idaho Const. art. V, § 11; Idaho Code § 1-702.	Re-Election	*Merit Selection*: Governor appoints from list of 2-4 nominees for each vacancy. Submitted by the Judicial Council. Idaho Code § 1-2102.	District. Idaho Const. art. V, § 11; Idaho Code § 1-702.	*Judicial Council*: above.
ILLINOIS						
Supreme Court	*Partisan Election* Ill. Const. art. VI, § 12.	10 years Ill. Const. art. VI, § 10.	Retention Election requiring 60% majority. Ill. Const. art. VI, §§ 10, 12.	Appointed by the Supreme Court until the next Election Ill. Const. art. VI, § 12.	District. Ill. Const. art. VI, §§ 2-3.	N/A
Appellate Court	*Partisan Election* Ill. Const. art. VI, § 12.	10 years Ill. Const. art. VI, § 10.	Retention Election requiring 60% majority. Ill. Const. art. VI, §§ 10, 12.	Appointed by the Supreme Court until the next election. Ill. Const. art. VI, § 12.	District. Ill. Const. art. VI, §§ 2-5.	N/A
Circuit Court – Circuit Court Judge	*Partisan Election* Ill. Const. art. VI, § 12; Ill. Comp. Stat. § 35/2.	6 years Ill. Const. art. VI, § 10.	Retention Election requiring 60% majority. Ill. Const. art. VI, §§ 10, 12.	Appointed by the Supreme Court until the next election. Ill. Const. art. VI, § 12.	Circuit. Ill. Const. art. VI, § 7.	N/A
INDIANA						
Supreme Court	*Merit Selection*: Gubernatorial appointment from list of 3 nominees submitted by the Judicial Nominating Commission without regard to political affiliation. Ind. Const. art. 7, § 10; Ind. Code §§ 33-2.1-4-6 to –7.	2 years Ind. Const. art. 7, § 11; Ind. Code § 3-10-2-8.	Retention Election (10-year term) Ind. Const. art. 7, § 11; Ind. Code §§ 33-2.1-2-6, 3-10-2-8.	Same as full term.	Statewide	*Judicial Nominating Committee*: (7 members): Chief Justice is chairman, members of the bar elect 3 attorney members (1 per district), Governor appoints 3 non-attorneys (1 per district). 3-year terms. Note: Commission selects the Chief Justice of the Supreme Court. Ind. Const. art. 7, §§ 3, 9; Ind. Code §§ 33-2.1-4-1. to –3.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Court of Appeals	*Merit Selection*: Gubernatorial appointment from list of 3 nominees submitted by the Judicial Nominating Commission without regard to political affiliation. Ind. Const. art. 7, § 10; Ind. Code §§ 33-2.1-4-6 to -7.	2 years Ind. Const. art. 7, § 11; Ind. Code § 3-10-2-8.	Retention Election (10-year term) Ind. Const. art. 7, § 11; Ind. Code §§ 33-2.1-2-6, 3-10-2-8.	Same as fill term.	District. Ind. Const. art. 7, § 5.	*Judicial Nominating Committee*: above.
Circuit Court	*Partisan / Non-Partisan Election* – depends on county. Ind. Code §§ 33-4-4-1, 3-10-2-11.	6 years Ind. Const. art. 7, § 7; Ind. Code § 3-10-2-11.	Re-Election Ind. Code § 3-10-2-11.	Gubernatorial appointment until end of unexpired term or successor elected and qualified at the next general election. Ind. Code § 3-13-6-1.	Circuit. Ind. Const. art. 7, § 7.	N/A
Superior Court	*Partisan / Non-Partisan Election* – depends on county. Ind. Code tit. 33 Art. 5.	6 years	Re-Election Ind. Code tit. 33 Art. 5.	Gubernatorial appointment until end of unexpired term or successor elected and qualified at the next general election. Ind. Code § 3-13-6-1.	Circuit. Ind. Code § 33-5-3.5-7.	N/A
IOWA						
Supreme Court	*Merit Selection*: Gubernatorial appointment from list of 3 nominees submitted by Judicial Nominating Commission. Iowa Const. art. 5, § 15; Iowa Code §§ 46.14, 46.15.	1 year Iowa Const. art. V, § 17; Iowa Code § 46.16	Retention Election (8-year term) Iowa Const. art. V, § 17; Iowa Code §§ 46.16, 46.21.	Same as full term.	Statewide	*State Judicial Nominating Commission* (1 member from each congressional district): All members appointed by Governor subject to Senate confirmation. 1 from each congressional district. No more than simple majority of one gender. Equal number members elected by bar members by district. Alternates between men and women. Senior justice of Supreme Court is a member and chairperson. 6-year terms.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
						Iowa Const. art. V, § 16; Iowa Code §§ 46.1, 46.2, 46.5, 46.7, 46.9.
Court of Appeals	*Merit Selection*: Gubernatorial appointment from list of 3 submitted by Judicial Nominating Commission. Iowa Code §§ 46.14, 46.15.	1 year Iowa Const. art. V, § 17; Iowa Code §§ 46.16	Retention Election (6-year term) Iowa Code §§ 46.16, 46.21.	Same as full term.	Statewide.	*State Judicial Nominating Commission*: above.
District Court	*Merit Selection*: Gubernatorial appointment from list of 2 nominees submitted by Judicial Nominating Commission. Iowa Const. art. 5, § 15; Iowa Code §§ 46.14, 46.15.	1 year Iowa Const. art. V, § 17; Iowa Code § 46.16	Retention Election (6-year term) Iowa Const. art. V, § 17; Iowa Code §§ 46.16, 46.21.	Same as full term.	District.	*District Judicial Nominating Commission* (5 electors from each judicial election district): Appointed by Governor subject to Senate confirmation. No more than simple majority of one gender. Equal number members elected by bar member by judicial district. Alternates between men and women. 6-year term. Senior judge of District Court is a member and chairperson. Iowa Const. art. V, § 16; Iowa Code §§ 46.3, 46.4, 46.5, 46.7, 46.9.
KANSAS						
Supreme Court	*Merit Selection*: Gubernatorial appointment from list of 3 from Supreme Court Nominating Commission. Kan. Const. art. 3, § 5; Kan. Stat. Ann. § 20-132.	1 year Kan. Const. art. 3, § 5.	Retention Election (6-year term) Kan. Const. art. 3, §§ 2, 5.	Same as full term.	Statewide.	*Supreme Court Nominating Commission*: Members of Kansas bar who are residents of Kansas chose chairman. 1 member is elected from each congressional district by members of the bar in that district. Governor appoints 1 non-attorney member from each congressional district without regard to political affiliation. Kan. Const. art. 3, § 5; Kan. Stat. Ann. § 20-119 *et seq.* Term is for as many years as there are Congressional districts in the statewide election. Kan. Stat. Ann. § 20-125.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Court of Appeals	*Merit Selection*: Gubernatorial appointment from list of 3 from Supreme Court Nominating Commission. Kan. Stat. Ann. §§ 20-3004, 3005, 3007.	1 year Kan. Stat. Ann. § 20-3010.	Retention Election (4-year term) Kan. Stat. Ann. §§ 20-3006, 3010.	Same as full term.	Statewide	*Supreme Court Nominating Commission*: above. Kan. Stat. Ann. §§ 20-3004, 3005.
District Court	Districts may choose through referendum to use partisan elected system or merit selection through district nominating commission. If merit system, Governor appoints from list of 3 from district nominating commission. Kan. Const. art. 3, § 6; Kan. Stat. Ann. §§ 20-2901, 2902, 2909.	1 year Kan. Const. art. 3, § 6.	Retention Election or Re-Election (4-year term) Kan. Const. art. 3, § 6; Kan. Stat. Ann. § 2-327.	If choose to elect judges, governor fills vacancy until the next election; otherwise merit selection Kan. Const. art. 3, § 6; Kan. Stat. Ann. § 20-2908.	District.	If district elects merit system: *District Judicial Nominating Commission* with an equal number of attorneys and non-attorneys. Attorney members elected by bar members in district. Number depends on country. Non-attorneys are appointed by board of county commissioners. Chairperson is a Justice of Supreme Court or a district judge in that district appointed by Supreme Court Chief Justice. 4-year terms. Kan. Stat. Ann. §§ 20-2903 to 2906.
KENTUCKY						
Supreme Court	*Non-Partisan Election* Ky. Const. § 117; Ky. Rev. Stat. Ann. § 118A.060.	8 years Ky. Const. § 119; Ky. Rev. Stat. Ann. § 21A.020	Re-Election	*Merit Selection*: Governor appoints from list of 3 nominees submitted by the judicial nominating committee. Ky. Const. § 118; Ky. Rev. Stat. Ann. § 118A.100.	Supreme Court Districts. Ky. Rev. Stat. Ann. §§ 21A.020; 118A.020.	*Judicial Nominating Commission for Supreme Court and Court of Appeals* (7 members): Chief Justice of the Supreme Court is chairman, bar members elect 2 attorney members, Governor appoints 4 non-attorney members. (2 members from each party). 4-year terms. Ky. Const. § 118; Ky. Rev. Stat. Ann. § 34.010.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Court of Appeals	*Non-Partisan Election* Ky. Const. § 117; Ky. Rev. Stat. Ann. § 118A.060.	8 years Ky. Const. § 119.	Re-Election	*Merit Selection*: Governor appoints from list of 3 nominees submitted by the judicial nominating committee. Ky. Const. § 118; Ky. Rev. Stat. Ann. § 118A.100.	Supreme Court Districts. Ky. Rev. Stat. Ann. §§ 22A.010, 118A.030.	*Judicial Nominating Commission for Supreme Court and Court of Appeals*: above. Ky. Const. § 118; Ky. Rev. Stat. Ann. § 34.010.
Circuit Court	*Non-Partisan Election* Ky. Const. § 117. Ky. Rev. Stat. Ann. § 118A.060.	8 years Ky. Const. § 119.	Re-Election	*Merit Selection*: Governor appoints from list of 3 nominees submitted by the judicial nominating committee. Ky. Const. § 118; Ky. Rev. Stat. Ann. § 118A.100.	Circuits. Ky. Rev. Stat. Ann. § 118A.040.	*Judicial Nominating Commission for judicial circuit.* Same composition and method of selection. Members must reside within circuit. Ky. Const. § 118; Ky. Rev. Stat. Ann. § 34.010.
District Court	*Non-Partisan Election* Ky. Const. § 117; Ky. Rev. Stat. Ann. § 118A.060.	4 years Ky. Const. § 119.	Re-Election	*Merit Selection*: Governor appoints from list of 3 nominees submitted by the judicial nominating committee. Ky. Const. § 118; Ky. Rev. Stat. Ann. § 118A.100.	Districts. Ky. Rev. Stat. Ann. § 118A.050.	*Judicial Nominating Commission for each judicial district.* Same composition and method of selection. Members must reside within district. Ky. Const. § 118; Ky. Rev. Stat. Ann. § 34.010.
LOUISIANA						
Supreme Court	*Partisan Election* La. Const. art. 5, § 22.	10 years La. Const. art. 5, § 3.	Re-Election	Special election unless within 12 months of end of term.	District. La. Const. art. 5, § 4.	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
				La. Const. art. 5, § 22; La. Rev. Stat. Ann. § 18:621.		
Court of Appeals	*Partisan Election* La. Const. art. 5, § 22.	10 years La. Const. art. 5, § 8.	Re-Election	Special election unless within 12 months of end of term. La. Const. art. 5, § 22; La. Rev. Stat. Ann. § 18:621.	District. La. Const. art. 5, § 9.	N/A
District Court	*Partisan Election* La. Const. art. 5, § 22.	6 years La. Const. art. 5. § 15.	Re-Election	Special election unless within 12 months of end of term. La. Const. art. 5, § 22; La. Rev. Stat. Ann. § 18:621.	District. La. Const. art. 5, § 14.	N/A
MAINE						
Supreme Judicial Court	*Gubernatorial appointment* subject to legislative committee confirmation recommendation reviewable by the Senate. Maine Const. art. V, § 8.	7 years Maine Const. art. VI, § 4.	Re-appointment by same method.	Same as full term.	Statewide	N/A
Superior Court	*Gubernatorial appointment* subject to legislative committee confirmation recommendation reviewable by the Senate. Maine Const. art. V, § 8.	7 years Maine Const. art. VI, § 4.	Re-appointment by same method.	Same as full term.	Statewide	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
District Court	*Gubernatorial appointment* subject to legislative committee confirmation recommendation reviewable by the Senate. Maine Const. art. V, § 8; Maine Rev. Stat. Ann. tit. 4 § 157.	7 years Maine Const. a; VI § 4.	Re-appointment by same method.	Same as full term.	District. Maine Rev. Stat. Ann. tit. 4 § 157	N/A
MARYLAND						
Court of Appeals	*Merit Selection*: Governor appoints subject to Senate confirmation. Md. Const. art. IV, § 5A. Governor appoints from list of 5-7 nominees submitted by the Appellate Judicial Nominating Commission. Exec. Order No. 01.01.1999.08.	1 year Md. Const. art. IV, § 5A.	Retention Election (10-year term) Md. Const. art. IV, § 5A.	Same as full term.	Circuit.	*Appellate Court Nominating Commission* (17 members): chairperson appointed by Governor may be attorney or non-attorney, 8 non-attorney members appointed by Governor (1 from each of 7 appellate judicial circuits, and 1 from state at-large), 7 attorney members elected by state bar members (1 from each of 7 judicial circuits), 1 at-large attorney member appointed by the Governor. 4-year terms. Exec. Order No. 01.01.1999.08.
Court of Special Appeals	*Merit Selection*: Governor appoints subject to Senate confirmation. Md. Const. art. IV, § 5A. Governor appoints from list of 5-7 nominees submitted by the Appellate Judicial Nominating Commission. Governor can also appoint from previous lists submitted for same office by the Commission.	1 year Md. Const. art. IV, § 5A.	Retention Election (10-year term) Md. Const. art. IV, § 5A.	Same as full term.	Circuit.	*Appellate Court Nominating Commission*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
	Exec. Order No. 01.01.1999.08.					
Circuit Court	*Merit Selection*: Governor appoints from list of up to 7 nominees submitted by the district's Trial Court Judicial Nominating Commission. Governor can also appoint from previous lists submitted for same office by the Commission. Exec. Order No. 01.01.1999.08.	1 year	Non-Partisan Election (15-year term) Md. Const. art. IV, § 3.	Same as full term.	Circuit.	*Trial Courts Judicial Nominating Commissions* (1 for each commission district, each has 13 members): Chairperson appointed by the Governor can be an attorney or non-attorney, 6 non-attorneys appointed by the Governor from the district, 4 attorney members elected by state bar members who maintain their office in the district, 2 attorney members appointed by the Governor with recommendation of bar association leadership. 4-year terms. Exec. Order No. 01.01.1999.08.
District Court	Gubernatorial appointment subject to Senate confirmation. Md. Const. art. IV, § 41D. *Merit Selection*: Governor appoints from list of up to 7 nominees submitted by the district's Trial Court Judicial Nominating Commission. . Governor can also appoint from previous lists submitted for same office by the Commission. Exec. Order No. 01.01.1999.08.	10 years	Mandatory Re-Appointment with Senate consent.	Same as full term.	District.	*Trial Courts Judicial Nominating Commission*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
MASSACHUSETTS						
Supreme Judicial Court	*Merit System*: Governor appoints from slate of candidates submitted by the Special Nominating Committee and approved by the Executive Committee of the Judicial Nominating Council. Governor may request additional names if not satisfied. Exec. Order No. 420.	During Good Behavior Mass. Const. Ch. III Art. I	N/A	Same as full term.	Statewide	*Special Nominating Committee* of the Judicial Nominating Council (9 members): All members selected by the Governor and serve at Governor's pleasure. Governor appoints a chairperson. Exec. Order 420.
Appeals Court	*Merit System*: Governor appoints from slate of candidates submitted by the Regional Committee of the Judicial Nominating Council and approved by the Executive Committee. Governor may request additional names if not satisfied. Exec. Order No. 420.	During Good Behavior Mass. Const. Ch. III Art. I.	N/A	Same as full term.	Statewide	*Judicial Nominating Council*: 25 member executive committee including a chairperson and 4 regional committees with all members appointed by the Governor and serving at the pleasure of the Governor. Each of the regional committees has 11-15 members. Exec. Order 420.
Trial Court of the Commonwealth	*Merit System*: Governor appoints from slate of candidates submitted by the Regional Committee of the Judicial Nominating Council and approved by the Executive Committee. Governor may request additional names if not satisfied. Exec. Order No. 420.	During Good Behavior Mass. Const. Ch. III Art. I.	N/A	Same as full term.	Statewide.	*Judicial Nominating Council*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Superior Court	*Merit System*: Governor appoints from slate of candidates submitted by the Regional Committee of the Judicial Nominating Council and approved by the Executive Committee. Governor may request additional names if not satisfied. Exec. Order No. 420.	During Good Behavior Mass. Const. Ch. III Art. I.	N/A	Same as full term.	Statewide.	*Judicial Nominating Council*: above.
MICHIGAN						
Supreme Court	*Non-Partisan Election* Mich. Const. art. VI, § 2. *Although party affiliation is not listed on the ballot, Supreme Court candidates are nominated at party conventions.	8 years Mich. Const. art. VI, § 2; Mich. Comp. Laws § 168.399.	Re-Election Mich. Const. art. VI, §§ 2, 24 Mich. Comp. Laws § 168.392a.	Gubernatorial appointment. Mich. Const. art. VI, § 23; Mich. Comp. Laws § 168.404.	Statewide.	N/A
Court of Appeals	*Non-Partisan Election* Mich. Const. art. VI, § 8; Mich. Comp. Laws § 168.409a. *Although party affiliation is not listed on the ballot, Supreme Court candidates are nominated at party conventions.		Re-Election Mich. Const. art. VI, § 24.	Gubernatorial appointment. Mich. Const. art. VI, § 23; Mich. Comp. Laws § 168.409l.	County. Mich. Const. art. VI, § 2.	N/A
Circuit Court	*Non-Partisan Election* Mich. Const. art. VI, § 12; Mich. Comp. Laws §§ 168.412.; 168.416. *Although party affiliation is not listed on the ballot, Supreme Court candidates are nominated at party conventions.	6 years Mich. Const. art. VI, § 12; Mich. Comp. Laws § 168.419.	Re-election Mich. Const. art. VI, § 24.	Gubernatorial appointment. Mich. Const. art. VI, § 23; Mich. Comp. Laws § 168.424	Circuit. Mich. Const. art. VI, § 12.	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
MINNESOTA						
Supreme Court	*Non-Partisan Election* Minn. Const. art. VI, § 7; Minn. Stat. §§ 204D.08, 480A.02.	6 years Minn. Const. art. VI, § 7; Minn. Stat. § 480A.02.	Re-Election	Gubernatorial appointment. Minn. Const. art. VI, § 8; Minn Stat. § 480A.02.	Statewide Minn. Stat. § 480A.02.	N/A
Court of Appeals	*Non-Partisan Election* Minn. Const. art. VI, § 7; Minn. Stat. §§ 204D.08, 480A.02.	6 years Minn. Const. art. VI, § 7; Minn. Stat. § 480A.02.	Re-Election	Gubernatorial appointment. Minn. Const. art. VI, § 8; Minn. Stat. § 480A.02.	Statewide. Minn. Stat. § 480A.02.	N/A
District Court	*Non-Partisan Election* Minn. Const. art. VI, § 7; Minn. Stat. §§ 204D.08, 480A.02.	6 years Minn. Const. art. VI, § 7; Minn. Stat. § 480A.02.	Re-Election	*Merit Selection*: Gubernatorial appointment from list of 3-5 nominees submitted by Commission on Judicial Selection Governor is not required to select from the list. Minn. Const. art. VI, § 8; Minn. Stat. §§ 480A.02, 480B.01.	Statewide. Minn. Stat. § 480A.02.	*Commission on Judicial Selection* (13 members): Governor appoints 7 at large members who serve at pleasure including the chairperson. Up to 4 of the 6 non-chair positions may be attorneys. The chair may or may not be an attorney. The Justices of the Supreme Court appoint 2 at-large members to serve a 4 year term (1 attorney, 1 non-attorney). Governor appoints 2 district members for each district (1 attorney, 1 non-attorney). Justices of the Supreme Court appoint two district members from each district for 4-year terms (1 attorney, 1 non-attorney). Minn. Stat. § 480B.01.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
MISSOURI						
Supreme Court	*Merit Selection*: Gubernatorial appointment from list of 3 persons nominated by the Nonpartisan Judicial Commission. Mo. Const. art. V, § 25(a).	1 year. Mo. Const. art. V, § 25(c)(1).	Retention Election (12-year term) Mo. Const. art. V, §§ 19, 25(c)(1).	Same as full term. Mo. Const. art. V, § 25(a).	Statewide.	*Appellate Judicial Commission*: Supreme Court selects 1 of its judges as a member, members of the bar elect 1 member for each appellate district, governor appoints 1 non-attorney from each appellate district. Commission members select own chair. Mo. Const. art. V, § 25(d).
Court of Appeals	*Merit Selection*: Gubernatorial appointment from list of 3 persons nominated by the Nonpartisan Judicial Commission. Mo. Const. art. V, § 25(a).	1 year. Mo. Const. art. V, § 25(c)(1).	Retention Election (12-year term) art. V, §§ 19, 25(c)(1).	Same as full term. Mo. Const. art. V, § 25(a).	District. Mo. Const. art. V, § 13.	*Appellate Judicial Commission*: Supreme Court selects 1 of its judges as a member, members of the bar elect 1 member for each appellate district, governor appoints 1 non-attorney from each appellate district. Commission members select own chair. Mo. Const. art. V, § 25(d).
Circuit Court	In St. Louis and Jackson counties: *Merit Selection*: Gubernatorial appointment from list of 3 persons nominated by the Nonpartisan Judicial Commission. Mo. Const. art. V, § 25(a). Other counties may keep *partisan elections* or opt for *merit selection* for their circuit courts. Mo. Const. art. V, § 25(b).	Where merit selection, 1 year. Mo. Const. art. V, § 25(c)(1).	Where merit selection, Retention Election (6-year term) Mo. Const. art. V, §§ 19, 25(c)(1); Mo. Rev. Stat. § 478.010.	Where merit selection, same as full term. Mo. Const. art. V, § 25(a).	Circuit. Mo. Const. art. V, § 15	*Circuit Judicial Commissions* (each has 5 members): Chief judge of the district of the court of appeals within the judicial circuit of that commission, bar members within circuit elect 2, governor appoints 2 non-attorneys from circuit. Commission members select own chair. Mo. Const. art. V, § 25(d).

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
MISSISSIPPI						
Supreme Court	*Non-Partisan Election* Miss. Const. § 145; Miss. Code Ann. § 23-15-976.	8 years Miss. Const. § 149; Miss. Code Ann. § 23-15-991.	Re-Election	Gubernatorial appointment. Miss. Const. § 177; Miss. Code Ann. § 23-15-849.	Supreme Court District. Miss. Const. § 145; Miss. Code Ann. § 9-3-1.	N/A
Court of Appeals	*Non-Partisan Election* Miss. Code Ann. §§ 9-4-5; 23-15-976.	8 years Miss. Code Ann. § 9-4-5.	Re-Election	Gubernatorial appointment. Miss. Code Ann. § 23-15-849.	Congressional Districts. Miss. Code Ann. § 9-4-1.	N/A
Circuit Court	*Non-Partisan Election* Miss. Const. § 153; Miss. Code Ann. §§ 9-7-1; 23-15-976.	4 years Miss. Const. § 153; Miss. Code Ann. § 9-7-1, 23-15-1015	Re-Election	Gubernatorial appointment. Miss. Const. § 177; Miss. Code Ann. § 23-15-849.	Circuit Court District. Miss. Code Ann. § 9-7-1.	N/A
Chancery Court	*Non-Partisan Election* Miss. Const. § 153; Miss. Code Ann. §§ 9-5-1; 23-15-976.	4 years Miss. Const. § 153; Miss. Code Ann. §§ 9-5-1, 23-15-1015.	Re-Election	Gubernatorial appointment Miss. Const. § 177; Miss. Code Ann. § 23-15-849.	Chancery Court Districts. Miss. Code Ann. § 9-5-1.	N/A
MONTANA						
Supreme Court	*Non-Partisan Election* Mont. Const. art. VII, § 8; Mont. Code Ann. §§ 3-2-101; 13-14-211.	8 years Mont. Const. art. VII, § 7; Mont. Code Ann. § 3-2-101.	Re-Election If unopposed, retention election Mont. Code Ann. § 13-14-212.	*Merit Selection*: Gubernatorial appointment from 3-5 nominees from Judicial Nominating Commission subject to Senate confirmation. Mont. Const. art. VII § 8; Mont. Code Ann. §§ 3-1-1010 to 1013.	Statewide.	*Judicial Nominating Commission* (7 members): Governor appoints 4 non-attorneys from different geographical areas each representing a different industry, business or profession; Supreme Court appoints 2 attorneys from different judicial districts; District judges elect a district judge. 4-year terms. Mont. Code Ann. § 3-1-1001.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF *RETENTION/FULL* TERM	METHOD OF *SELECTION FOR* UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
District Court	*Non-Partisan Election* Mont. Const. art. VII, § 8; Mont. Code Ann. § 13-14-211.	6 years Mont. Const. art. VII, § 7.	Re-Election If unopposed, retention election Mont. Code Ann. § 13-14-212.	*Merit Selection*: Gubernatorial appointment from 3-5 nominees from Judicial Nominating Commission subject to Senate confirmation. Mont. Const. art. VII, § 8; Mont. Code Ann. §§ 3-1-1010 to 1013.	Statewide.	*Judicial Nominating Commission*: above.
NEBRASKA						
Supreme Court	*Merit System*: Gubernatorial appointment from list of at least 3 nominees presented by a judicial nominating commission. Neb. Const. art. V, § 21; Neb. Rev. Stat. § 24-811.01.	3 years Neb. Const. art. V, § 21.	Retention Election (6-year term) Neb. Const. art. V, § 21; Neb. Rev. Stat. § 24-814, -815.	Same as full term.	Supreme Court Districts. Neb. Const. art. V, § 5; Neb. Rev. Stat. § 24-202.	*Judicial Nominating Commissions* (9 members each; there is a JNC for the Chief Justice of the Supreme Court and for each judicial district of the Supreme Court and the district court): Judge of the Supreme Court appointed by Governor is non-voting chairperson, members of the state bar from the district served elect 4 attorney members, Governor appoints 4 non-attorney members from the district served. Not more than 4 voting members may be from the same political party. Neb. Const. art. V, § 21; Neb. Rev. Stat. § 24-801 *et seq.*
Appellate Court	*Merit System*: Gubernatorial appointment from list of at least 3 nominees presented by a judicial nominating commission. Neb. Const. art. V, § 21; Neb. Rev. Stat. § 24-811.01.	3 years Neb. Const. art. V, § 21.	Retention Election (6-year term) Neb. Const. art. V, § 21.	Same as full term.	District.	*Judicial Nominating Commissions*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
District Court	*Merit System*: Gubernatorial appointment from list of at least 3 nominees presented by a judicial nominating commission. Neb. Const. art. V, § 21; Neb. Rev. Stat. § 24-811.01.	3 years Neb. Const. art. V, § 21.	Retention Election (6-year term) Neb. Const. art. V, § 21.	Same as full term.	District Court Districts. Neb. Const. art. V, § 10; Neb. Rev. Stat. § 24-301.	*Judicial Nominating Commissions*: above.
NEVADA						
Supreme Court	*Non-Partisan Election* Nev. Const. art. 6, § 3; Nev. Rev. Stat. §§ 2.030; 293.195.	6 years Nev. Const. art. 6, § 3; Nev. Rev. Stat. § 2.030.	Re-Election	*Merit Selection*: Governor appoints from list of 3 nominees submitted by Commission on Judicial Selection. Nev. Const. art. VI, § 20; Nev. Rev. Stat. § 2.040.	Statewide. Nev. Const. art. 6, § 3.	*Permanent Commission on Judicial Selection* (7 members): Chief Justice or an associate justice designated by the Chief Justice; 3 attorney members appointed by the state bar; 3 non-attorney members appointed by the Governor. Nev. Const. art. VI, § 20.
District Court	*Non-Partisan Election* Nev. Const. art. 6, § 5; Nev. Rev. Stat. § 293.195.	6 years Nev. Const. art. 6, § 5.	Re-Election	*Merit Selection*: Governor appoints from list of 3 nominees submitted by Commission on Judicial Selection. Nev. Const. art. VI, § 20; Nev. Rev. Stat. § 3.080.	District. Nev. Const. art. 6, § 5.	*Temporary Commission on Judicial Selection* (10 members): Includes the permanent commission plus 1 attorney member from the district in which the vacancy occurs appointed by the state bar; 1 non-attorney member from the district appointed by the Governor. Nev. Const. art. VI § 20.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
NEW HAMPSHIRE						
Supreme Court	Gubernatorial Appointment. N.H. Const. art. 46, 73. *Merit Selection*: Governor selects from list of nominees submitted by the Judicial Selection Commission. Governor may ask for additional nominees. Exec. Order No. 2000-9.	Good Behavior. N.H. Const. art. 73.	N/A	Same as full term.	Statewide.	*Judicial Selection Commission* (11 members): 7 attorney members and 4 non-attorney members appointed by the Governor. 3-year terms. Must represent each executive council district. Governor selects chairperson. Exec. Order 2000-9.
Superior Court	Gubernatorial Appointment. N.H. Const. art. 46, 73. *Merit Selection*: Governor selects from list of nominees submitted by the Judicial Selection Commission. Governor may ask for additional nominees. Exec. Order No. 2000-9.	Good Behavior. N.H. Const. art. 73.	N/A	Same as full term.	Statewide.	*Judicial Selection Commission*: above.
District Court	Gubernatorial Appointment. N.H. Const. art. 46, 73. *Merit Selection*: Governor selects from list of nominees submitted by the Judicial Selection Commission. Governor may ask for additional nominees. Exec. Order No. 2000-9.	Good Behavior. N.H. Const. art. 73; N.H. Rev. Stat. Ann. § 502-A:3.	N/A	Same as full term.	District.	*Judicial Selection Commission*: above.
NEW JERSEY						
Supreme Court	*Gubernatorial appointment* with Senate consent. N.J. Const. art. VI, § VI.	7 years N.J. Const. art. VI, § VI.3	Re-Appointment Good Behavior. N.J. Const. art. VI, § VI.3	Same as full term.	Statewide.	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Superior Court	*Gubernatorial appointment* with Senate consent. N.J. Const. art. VI, § VI.	7 years N.J. Const. art. VI, § VI.3	Re-Appointment Good Behavior. N.J.Const. art. VI, § VI.3	Same as full term.	Statewide.	N/A
NEW MEXICO						
Supreme Court	*Merit Selection*: Governor appoints from list of nominees submitted by Appellate Judges Nominating Commission. May make one request for new list of names. N.M. Const. § 35. Appointee serves until next general election. *Partisan Election* N.M. Const. § 33. Appointee must run in partisan election following gubernatorial appointment.	8 years N.M. Const. § 33.	Retention Election: After completion of term after a partisan election, candidate must receive 57% of vote for retention. N.M. Const. § 33.	*Merit Selection*: Governor appoints from list of nominees submitted by Appellate Judges Nominating Commission. May make one request for new list of names. N.M. Const. § 35.	Statewide.	*Appellate Judges Nominating Commission*: Chief Justice of the Supreme Court or designee; 2 court of appeals judges appointed by the Chief Judge of the Court of Appeals; Governor, Speaker of the House, and President Pro Tempore of the Senate each appoint 2 members (1 attorney, 1 non-attorney), Dean of the Univ. of Mexico Law School is Chair of the Commission and votes only in case of a tie; 4 attorneys appointed by the state bar. Two political parties should be equally represented. N.M. Const. § 35.
Court of Appeals	*Merit Selection*: Governor appoints from list of nominees submitted by Appellate Judges Nominating Commission. May make one request for new list of names. N.M. Const. § 35. Appointee serves until next general election. *Partisan Election* N.M. Const. § 33. Appointee must run in partisan election following gubernatorial appointment.	8 years N.M. Const. § 33.	Retention Election: After completion of term after a partisan election, candidate must receive 57% of vote for retention. N.M. Const. § 33.	*Merit Selection*: Governor appoints from list of nominees submitted by Appellate Judges Nominating Commission. May make one request for new list of names. N.M. Const. § 35.	Statewide.	*Appellate Judges Nominating Commission*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
District Court	*Merit Selection*: Governor appoints from list of nominees submitted by Appellate Judges Nominating Commission. May make one request for new list of names. N.M. Const. § 35. Appointee serves until next general election. *Partisan Election* N.M. Const. § 33. Appointee must run in partisan election following gubernatorial appointment.	6 years N.M. Const. § 33.	Retention Election: After completion of term after a partisan election, candidate must receive 57% of vote for retention. N.M. Const. § 33.	*Merit Selection*: Governor appoints from list of nominees submitted by Appellate Judges Nominating Commission. May make one request for new list of names. N.M. Const. § 35.	District.	*District Judges Nominating Committee* (13 members): same as above except that the chief judge of the district court of that judicial district or his designee sits on the committee, there is only 1 appointment from the court of appeals, and the citizen members and state bar members reside in that judicial district. N.M. Const. § 36.
NEW YORK						
Court of Appeals	*Merit Selection*: Governor appoints with Senate consent from list of 3-7 recommendations submitted by the Commission on Judicial Nomination. 7 recommendations required for chief judge. Recommendations to the Governor require the concurrence of at least 8 members of the Commission. N.Y. Const. art. VI, § 2; N.Y. Judiciary Laws § 61-68.	14 years N.Y. Const. art. VI, § 2.	Incumbent reapplies to Judicial Nominating Commission and competes with other applicants for nomination to the Governor.	Same as full term.	Statewide.	*Commission on Judicial Nomination* (12 members): 4 appointed by the Governor (no more than two from same party, 2 attorneys/2 non-attorneys), 4 appointed by the chief judge of the court of appeals (no more than two from same party, 2 attorneys/2 non-attorneys), 1 each appointed by the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, and the minority leader of the assembly. 4-year terms. Commission chooses own chairperson. N.Y. Const. art. VI, § 2; N.Y. Judiciary Laws § 62.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Supreme Court Appellate Division	The Governor designates justices of the appellate divisions from all the justices elected to the supreme court. N.Y. Const. art. VI, § 4.	5 years or unexpired term of their Supreme Court term if less than 5 years N.Y. Const. art. VI, § 4.	Judicial Nominating Commission reviews performance and recommends for or against reappointment.	Same as full term.	Division. N.Y. Const. art. VI, § 2.	N/A
Supreme Court	*Partisan Election* N.Y. Const. art. VI, § 6.	14 years N.Y. Const. art. VI, § 6.	Re-Election	Gubernatorial appointment with senate consent. N.Y. Const. art. VI, § 21.	District. N.Y. Const. art. VI, § 6.	N/A
NORTH CAROLINA						
Supreme Court	*Partisan Election* N.C. Const. art. IV, § 16; N.C. Gen. Stat. § 7A-10.	8 years N.C. Const. art. IV, § 16; N.C. Gen. Stat. § 7A-10.	Re-Election	Gubernatorial appointment. N.C. Const. art. IV, § 19.	Statewide. N.C. Const. art. IV, § 16.	N/A
Court of Appeals	*Partisan Election* N.C. Const. art. IV, § 16; N.C. Gen. Stat. § 7A-16.	8 years N.C. Const. art. IV, § 16; N.C. Gen. Stat. § 7A-16.	Re-Election	Gubernatorial appointment. N.C. Const. art. IV, § 19.	Statewide. N.C. Const. art. IV, § 16.	N/A
Superior Court	*Partisan Election* N.C. Const. art. IV, § 16; N.C. Gen. Stat. § 7A-41.2.	8 years N.C. Const. art. IV, § 16; N.C. Gen. Stat. § 7A-41.2.	Re-Election	Gubernatorial appointment. N.C. Const. art. IV, § 19.	District. N.C. Const. art. IV, § 16; N.C. Gen. Stat. § 7A-41.2.	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
District Court	*Partisan Election* N.C. Const. art. IV, § 10; N.C. Gen. Stat. § 7A-140.	4 years N.C. Const. art. IV § 10; N.C. Gen. Stat. § 7A-140.	Re-Election	Gubernatorial appointment, N.C. Const. art. IV, § 19, *Merit Selection*: Gubernatorial appointment from list of 3 nominees submitted by the bar of the judicial district. If the vacating judge was elected on a party ballot, then the nominees must be from the same political party. N.C. Gen. Stat. § 7A-142.	District. N.C. Const. art. IV, § 10; N.C. Gen. Stat. § 7A-140.	N/A
NORTH DAKOTA						
Supreme Court	*Non-Partisan Election* N.D. Const. art. VI, § 7; N.D. Cent. Code § 16.1-11-08.	10 years N.D. Const. art. VI, § 7.	Re-Election	*Merit Selection*: Gubernatorial appointment from list of 2-7 candidates nominated by the Judicial Nominating Committee: Governor can return the list and ask for a new list. N.D. Const. art. VI, § 13; N.D. Cent. Code §§ 27-25-03 to -04.	Statewide N.D. Const. Art. VI § 7.	*Judicial Nominating Committee* (9 members): 6 permanent members: Governor, Chief Justice, and President of State Bar Association each appoint 2 members (1 attorney/1 non-attorney); 3 temporary members: 1 from each authority from the district in which the vacancy occurs. 3-year terms. N.D. Const. art. VI § 13; N.D. Cent. Code § 27-25-01.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Temporary Court of Appeals (expires January 1, 2004) N.D. Cent. Code § 27-01-01.	Supreme Court may assign district court judges if Supreme Court has disposed of 250 cases in the preceding year. N.D. Cent. Code § 27-02.1-02.		Re-Election		Statewide.	N/A
District Court	*Non-Partisan Election* N.D. Const. art. VI, § 9; N.D. Cent. Code §§ 16.1-11-08; 27-05-02.	6 years N.D. Const. art. VI, § 9; N.D. Cent. Code § 27-05-02.	Re-Election	*Merit Selection*: Gubernatorial appointment from list of candidates nominated by the Judicial Nominating Committee: Governor can return the list an ask for a new list. N.D. Const. art. VI, § 13; N.D. Cent. Code §§ 27-25-03 to –04.	District. N.D. Const. art. VI, § 9.	*Judicial Nominating Committee*: above.
OHIO						
Supreme Court	*Partisan Election* Ohio Const. art. 4, § 6. Ohio Rev. Code Ann. § 2503.03. *Note: primary is partisan, but party affiliations do not appear on general election ballot. Ohio Rev. Code Ann. § 3505.04*	6 years Ohio Const. art. 4, § 6; Ohio Rev. Code Ann. § 2503.03.	Re-Election	Gubernatorial appointment. Ohio Const. art. 4, § 13.	Statewide. Ohio Const. art. 4, § 6.	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Court of Appeals	*Partisan Election* Ohio Const. art. 4, § 6. *Note: primary is partisan, but party affiliations do not appear on general election ballot. Ohio Rev. Code Ann. § 3505.04*	6 years Ohio Const. art. 4, § 6.	Re-Election	Gubernatorial appointment. Ohio Const. art. 4, § 13.	District. Ohio Const. Art. 4 § 6.	N/A
Court of Common Pleas	*Partisan Election* Ohio Rev. Code Ann. § 2301.01. *Note: primary is partisan, but party affiliations do not appear on general election ballot. Ohio Rev. Code Ann. § 3505.04*	6 years Ohio Rev. Code Ann. § 2503.03.	Re-Election	Gubernatorial appointment. Ohio Const. art. 4, § 13.	County. Ohio Rev. Code Ann. § 2503.03.	N/A
OKLAHOMA						
Supreme Court	*Merit Selection*: Governor appoints in a non-partisan manner from list of 3 nominees presented by Judicial Nominating Commission. Okla. Const. art. 7B, § 4.	1 year. Okla. Const. art. 7B, § 5.	Retention Election (6-year term) Okla. Const. art. 7B, § 5; Okla. Stat. Tit. 20, § 3.	Same as full term.	District. Okla. Stat. tit. 20, § 3.	*Judicial Nominating Commission* (13 members): 6 non-attorney members appointed by Governor (1 from each Congressional district and no more than 3 from same political party), 6 attorney members appointed by state bar association, 1 non-attorney member selected by the nominating commission (or, if they cannot reach an agreement, the Governor appoints). Commission selects its own chairperson. Okla. Const. art. 7B, § 3.
Court of Civil Appeals	*Merit Selection*: Governor appoints in a non-partisan manner from list of 3 nominees presented by Judicial Nominating Commission. Okla. Const. art. 7B, § 4.	1 year. Okla. Const. art. 7B, § 5.	Retention Election (6-year term) Okla. Const. art. 7B, § 5; Okla. Stat. Tit. 20 § 30.16, 30.18.	Same as full term.	District.	*Judicial Nominating Commission*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
District Court	*Non-Partisan Election* Okla. Const. art. 7, § 9.	4 years Okla. Const. art. 7, § 8.	Re-Election	*Merit Selection*: Governor appoints in a non-partisan manner from list of 3 nominees presented by Judicial Nominating Commission. Okla. Const. art. 7B, § 4.	District or County. Okla. Const. art. 7, § 9.	*Judicial Nominating Commission*: above.
OREGON						
Supreme Court	*Non-Partisan Election* Or. Const. art. VII, § 1; Or. Rev. Stat. §§ 249.002, 249.016-.205	6 years Or. Const. art. VII, § 1.	Re-Election	Supreme Court appointment of Supreme Court judge, circuit judge or tax court judge as judge pro tempore. Or. Const. Art. VII, § 2a.	Statewide.	N/A
Court of Appeals	*Non-Partisan Election* Or. Const. art. VII, § 1; Or. Rev. Stat. §§ 249.002, 249.016-.205;	6 years Or. Const. art. VII, § 1.	Re-Election	Supreme Court appointment of Supreme Court judge, circuit judge or tax court judge as judge pro tempore. Or. Const. Art. VII, § 2a.	Statewide.	N/A
Circuit Court	*Non-Partisan Election* Or. Const. art. VII, § 1; Or. Rev. Stat. §§ 249.002, 249.016-.205.	6 years Or. Const. art. VII, § 1.	Re-Election	Supreme Court appointment of any elected judge or eligible person to serve as judge pro tempore. Or. Const. Art. VII, § 2a.	Circuit.	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
PENNSYLVANIA						
Supreme Court	*Partisan Election* Pa. Const. art. 2, § 12. *Note: Voters had option in 1969 to adopt a merit system under Penn. Const. art. 2, § 13(d).*	10 years Pa. Const. art. 2, § 13.	Retention Election Pa. Const. art. 2, § 15.	General Counsel accepts applications and makes recommend-ation to the Governor. Pa. Cons. Stat. § 7.111.	Statewide.	N/A
				Governor appoints with 2/3 consent of Senate. Pa. Const. art. 2, § 13.		
Superior Court	*Partisan Election* Pa. Const. art. 2, § 12. *Note: Voters had option in 1969 to adopt a merit system under Penn. Const. art. 2, § 13(d).*	10 years Pa. Const. art. 2, § 13.	Retention Election Pa. Const. Art. 2 § 15.	General Counsel accepts applications and makes recommend-ation to the Governor. Pa. Cons. Stat. § 7.111. Governor appoints with 2/3 consent of Senate. Pa. Const. art. 2, § 13.	Statewide.	N/A
Commonwealth Court	*Partisan Election* Pa. Const. Art. 2 § 12. *Note: Voters had option in 1969 to adopt a merit system under Penn. Const. art. 2, § 13(d).*	10 years Pa. Const. art. 2, § 13.	Retention Election Pa. Const. art. 2, § 15.	General Counsel accepts applications and makes recommendation to the Governor. Pa. Cons. Stat. § 7.111. Governor appoints with 2/3 consent of Senate. Pa. Const. art. 2, § 13.	Statewide.	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Court of Common Pleas	*Partisan Election* Pa. Const. art. 2, § 12.	10 years Pa. Const. art. 2, § 13.	Retention Election Pa. Const. art. 2, § 15.	*Merit Selection*: Judicial Advisory Commissions evaluates candidates and makes recommendations to the Governor. Pa. Cons. Stat. § 7.112.		*Judicial Advisory Commissions* (7 members): General Counsel is ex officio member and chairperson, 4 attorney members residing in district appointed by Governor, 2 non-attorney members residing in district appointed by the Governor. 1-year term. Pa. Cons. Stat. § 7.112.
RHODE ISLAND						
Supreme Court	*Merit Selection*: Gubernatorial appointment with separate consent of both Senate and House from list of 3 to 5 nominees submitted by an independent non-partisan judicial nominating commission. R.I. Const. art. X, § 4; R.I. Gen. Laws § 8-16.1-5.	Good behavior. R.I. Const. art. X, § 5.	N/A	Same as full term.	Statewide.	*Judicial Nominating Commission* (9 members): Speaker of the House submits list of 3 attorneys to Governor, Majority leader of the Senate submits 3 attorneys or non-attorneys to Governor, Speaker of the House and Majority Leader of the Senate jointly submit 4 non-attorneys to Governor, Minority Leader of the House submits list of 3 non-attorney members to the Governor, Minority Leader of the House submits list of 3 non-attorney members to the Governor. Governor appoints 1 person from each list including 3 attorneys, 1 non-attorney. 4-year terms. R.I. Gen. Laws § 8-16.1-2.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Superior Court	*Merit Selection*: Gubernatorial appointment with consent of Senate from list of 3 to 5 nominees submitted by an independent non-partisan judicial nominating commission. R.I. Gen. Laws § 8-16.1-6.	Good behavior. R.I. Gen. Laws § 8-16.1-7.	N/A	Same as full term.	Statewide.	*Judicial Nominating Commission*: above.
District Court	*Merit Selection*: Gubernatorial appointment with consent of Senate from list of 3 to 5 nominees submitted by an independent non-partisan judicial nominating commission. R.I. Gen. Laws § 8-16.1-6.	Good behavior. R.I. Gen. Laws § 8-16.1-7.	N/A	Same as full term.	Statewide.	*Judicial Nominating Commission*: above.
SOUTH CAROLINA						
Supreme Court	*Legislative Election*: Elected by joint vote of the General Assembly. S.C. Const. art. V, § 3. *Merit Selection*: Judicial Selection Commission evaluates applicants, has public hearing, must solicit comments of state bar. Selects best qualified and should submit at least 3 names to *General Assembly* (unless less than 3 people apply). S.C. Const. art. V, § 27; S.C. Code Ann. §§ 2-19-25, -30, -80.	10 years S.C. Const. art. V, § 3.	Legislative Re-Election	Filled in same manner as full term except that Governor appoints if the unexpired term is less than 1 year. S.C. Const. art. V, § 18.	Statewide.	*Judicial Merit Selection Commission* (10 members): 5 members appointed by Speaker of the House (3 General Assembly members plus 2 members of the public), 3 members appointed by the Chair of the Senate Judiciary Committee and 2 members appointed by the President Pro Tempore of the Senate (3 members of General Assembly and 2 members of the public). Term for public members is 4 years General Assembly members serve for their term in office. Elects its own chairman. S.C. Const. art. V, § 27; S.C. Code Ann. § 2-19-10.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Court of Appeals	Same as above.	6 years S.C. Const. art. V, § 8.	Legislative Re-Election	Filled in same manner as full term except that Governor appoints if the unexpired term is less than 1 year. S.C. Const. art. V, § 18.	Statewide.	*Judicial Merit Selection Commission*: above.
Circuit Court	Same as above.	6 years S.C. Const. art. V, § 13.	Legislative Re-Election	Filled in same way as full term except that Governor appoints if the unexpired term is less than 1 year. S.C. Const. art. V, § 18.	Circuit.	*Judicial Merit Selection Commission*: above.
SOUTH DAKOTA						
Supreme Court	*Merit Selection*: Gubernatorial appointment from 1 or more persons nominated by the judicial qualifications committee. S.D. Const. art. V, § 7.	3 years S.D. Const. art. V, § 7; S.D. Codified Laws § 16-1-2.	Retention Election (8 year term) S.D. Const. art. V, § 7; S.D. Codified Laws § 16-1-2.	Same as full term.	District. S.D. Const. art. V, § 2.	*Judicial Qualifications Committee*: (7 members): 2 judges of the circuit court elected by the judicial conference, 3 attorney members (no more than 2 from same political party) appointed by President of the state bar, 2 non-attorneys appointed by the Governor. 4-year term. Commission elects its own chairperson. S.D. Const. art. V, § 7. S.D. Codified Laws §§ 16-1A-2, -5.
Circuit Court	*Non-Partisan Election* S.D. Const. art. V, § 7; S.D. Codified Laws §§ 12-9-1, 12-9-2, 12-9-12; 16-6-3.	8 years S.D. Const. art. V, § 7; S.D. Codified Laws § 16-6-3.	Re-Election	*Merit Selection*: Governor appoints from 1 or more persons nominated by the judicial qualifications committee. S.D. Const. art. V, § 7.	Circuit. S.D. Const. Art. V § 7.	*Judicial Qualifications Committee*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
TENNESSEE						
Supreme Court	*Merit Selection*: Governor appoints from list of 3 submitted by Judicial Selection Commission or may require submission of another list. Tenn. Code Ann. § 17-4-112.	Until next biennial election Tenn. Code Ann. § 17-4-112.	Retention Election (8-year term) Tenn. Const. art. VI, § 3; Tenn. Code Ann. §§ 16-3-101; 17-4-114; 17-5-115;	Same as for full term. Tenn. Code Ann. § 17-4-109.	1 from each of 3 grand divisions, 2 at large. Tenn. Const. art. VI, § 2; Tenn. Code Ann. § 16-3-101.	*Judicial Selection Commission* (17 members): 2 members from each grand division from list submitted by Tennessee Bar Association (may not include attorneys whose principal practice area is plaintiff's personal injury work or criminal defense), 1 member from list from Tennessee Defense Lawyers Association., 3 members from list submitted by Tennessee Trial Lawyers Association, 3 members from list submitted by Tennessee District Attorneys General Conference, 3 members from list submitted by Tennessee Association of Criminal Defense Lawyers. 3 members non-attorneys. Speaker of the Senate appoints 3 members from lists of Tennessee Trial Lawyers Association and 3 members from District Attorney General Conference and 1 non-attorney. Speaker of House appoints 2 members from Tennessee Bar Association List, 1 from Defense Lawyers Association list, 3 from Association of Criminal Defense Lawyers, and 1 non-attorney. Jointly, speakers appoint 1 non-lawyer member. Each group must submit 3 nominees for each position. 6-year term. Tenn. Code Ann. §§ 17-4-102; 17-4-106.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Court of Appeals	*Merit Selection*: Governor appoints from list of 3 submitted by Judicial Selection Commission or may require submission of another list. Tenn. Code Ann. § 17-4-112.	8 years Tenn. Code Ann. § 16-24-505.	Retention Election (8-year term) Tenn. Code Ann. §§ 16-4-102, 16-4-103; 17-4-114; 17-5-115.	Same as for full term. Tenn. Code Ann. § 17-4-109.	Of 12 judges, not more than 4 may reside in 1 grand division. Tenn. Code Ann. § 16-4-102.	*Judicial Selection Commission*: above.
Circuit Court	*Partisan Election* Tenn. Code Ann. § 16-2-505.	8 years Tenn. Code Ann. § 16-2-505.	Re-Election	Merit Selection: Governor appoints from 1 of 3 submitted by Judicial Selection Commission. Tenn. Code Ann. § 17-4-118.	District.	*Judicial Selection Commission*: above.
Chancery Court	Tenn. Code Ann. § 16-2-505.	Until next biennial election. Tenn. Code Ann. § 17-4-118.	Re-Election	Same as for full term.	District.	*Judicial Selection Commission*: above.
TEXAS						
Supreme Court	*Partisan Election* Tex. Const. art. 5, § 2.	6 years Tex. Const. art. 5, § 2.	Re-Election	Gubernatorial appointment. Tex. Const. art. 5, § 2.	Statewide. Tex. Const. art. 5, § 2.	N/A
Court of Appeals	*Partisan Election* Tex. Const. art. 5, § 6.	6 years Tex. Const. art. 5, § 2.	Re-Election	Gubernatorial appointment.	District. Tex. Const. art. 5, § 6.	N/A
District Court	*Partisan Election* Tex. Const. art. 5, § 7	4 years Tex. Const. art. 5, § 7.	Re-Election	Gubernatorial appointment.	District. Tex. Const. art. 5, § 7.	N/A
County Court	*Partisan Election* Tex. Const. art. 5, § 15.	4 years Tex. Const. art. 5, § 15.	Re-Election	Gubernatorial appointment.	County. Tex. Const. art. 5, § 15.	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
UTAH						
Supreme Court	*Merit Selection*: Gubernatorial appointment with Senate consent from list of at least 3 nominees from Judicial Nominating Commission No set number for list. No consideration of partisanship. Utah Const. art. VIII, § 8; Utah Code Ann. § 20A-12-101.	Until first general election more than 3 years after appointment. Utah Const. art. VIII, § 9; Utah Code Ann § 78-2-1.	Retention Election (10-year term) Utah Const. art. VIII, § 9; Utah Code Ann § 20A-12-201.	Statewide	Statewide. Utah Const. art. VIII, § 9.	*Appellate Court Nominating Commission* (7 members): All 7 members appointed by the Governor to serve a 4 year term. No more than 4 members from the same political party. State bar submits a list of 6 nominees to the Governor and Governor must choose 2 commissioners from bar list, but may reject the list and as for a new list. No more than 4 attorney members. Chief Justice of the Supreme Court is an ex officio, non-voting member. Governor appoints chairperson from membership. Utah Code Ann. § 20A-12-102.
Court of Appeals	*Merit Selection*: Gubernatorial appointment with Senate consent from list of at least 3 nominees from Judicial Nominating Commission No set number for list. No consideration of partisanship. Utah Const. art. VIII, § 8; Utah Code Ann. § 20A-12-101.	Until first general election more than 3 years after appointment. Utah Code Ann § 78-2-2.	Retention Election (6-year term) Utah Const. art. VIII, § 9; Utah Code Ann § 20A-12-201	Statewide	Statewide. Utah Const. art. VIII, § 9.	*Appellate Court Nominating Commission*: above.
District Court	*Merit Selection*: Gubernatorial appointment with Senate consent from list of at least 3 nominees from Judicial Nominating Commission No set number for list. No consideration of partisanship.	Until first general election more than 3 years after appointment. Utah Code Ann. § 78-2-3.	Retention Election (6-year term) Utah Const. art. VIII, § 9; Utah Code Ann. § 20A-12-201	District	District. Utah Const. art. VIII, § 9.	*Trial Court Nominating Commission* for each geographical division of the trial courts of record (each with 7 members): All 7 members appointed by the Governor to a single 4-year term. Same general composition as procedure as above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
	Utah Const. art. VIII, § 8; Utah Code Ann. § 20A-12-101.					Utah Code Ann. § 20A-12-103.
VERMONT						
Supreme Court	*Merit Selection*: Gubernatorial appointment with Senate consent from list of nominees presented by judicial selection commission. No set number for list. Vt. Const. §§ 32-33; Vt. Stat. Ann. tit. 4 §§ 602-03.	6 years Vt. Const. § 34; Vt. Stat. Ann. tit. 4 § 5.	Continues for additional 6 years unless a majority of the General Assembly votes against continuance. Vt. Const. § 34.	Same as full term.	Statewide.	*Judicial Nominating Board* (11 members): Governor appoints two non-attorneys. Senate elects 3 of its members, not all of same party and only one whom may be an attorney. House elects 3 of its members, not all of same party, only one of whom may be an attorney. Attorneys elect 3 members of the bar. 2-year terms, maximum of 3 consecutive terms. Vt. Stat. Ann. tit. 4 § 601.
District Court	*Merit Selection*: Gubernatorial appointment with Senate consent from list of nominees presented by judicial selection commission. No set number for list. Vt. Const. §§ 32-33; Vt. Stat. Ann. tit. 4 §§ 602-03.	6 years Vt. Const. § 34; Vt. Stat. Ann. tit. 4 § 444.	Continues for additional 6 years unless a majority of the General Assembly votes against continuance. Vt. Const. § 34; Vt. Stat. Ann. tit. 4 § 604.	Same as full term.	Statewide.	*Judicial Nominating Board*: above.
Superior Court	*Merit Selection*: Gubernatorial appointment with Senate consent from list of nominees presented by judicial selection commission. No set number for list. Vt. Const. §§ 32-33; Vt. Stat. Ann. tit. 4 §§ 602-03.	6 years Vt. Const. § 34; Vt. Stat. Ann. tit. 4 § 71.	Continues for additional 6 years unless a majority of the General Assembly votes against continuance. Vt. Const. § 34; Vt. Stat. Ann. tit. 4 § 71.	Same as full term.	Statewide.	*Judicial Nominating Board*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
VIRGINIA						
Supreme Court	*Legislative Election*: Vote of a majority of the members elected to each house of the General Assembly. Va. Const. art. VI, § 7.	12 years Va. Const. art. VI, § 7.	Reappointment by same method.	Governor may appoint when Assembly is not in session to serve until 30 days after commencement of next session. Va. Const. art. VI, § 7; Va. Code Ann. § 17.1-303.	Statewide.	N/A
Court of Appeals	*Legislative Election*: Vote of a majority of the members elected to each house of the General Assembly. Va. Const. art. VI, § 7; Va. Code Ann. § 17.1-400.	8 years Va. Const. art. VI, § 7; Va. Code Ann. § 17.1-400.	Reappointment by same method.	Governor may appoint when Assembly is not in session to serve until 30 days after commencement of next session. Va. Const. art. VI, § 7; Va. Code Ann. § 17.1-303.	Statewide.	N/A
Circuit Court	*Legislative Election*: Vote of a majority of the members elected to each house of the General Assembly. Va. Const. art. VI, § 7.	8 years Va. Const. art. VI, § 7.	Reappointment by same method.	Governor may appoint when Assembly is not in session to serve until 30 days after commencement of next session. Va. Const. art. VI, § 7; Va. Code Ann. §§ 17.1-303, 17.1-509.	Circuit.	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
WASHINGTON						
Supreme Court	*Non-Partisan Election* Wash. Const. art. IV, § 3. Wash. Rev. Code §§ 2.04.071, 29.21.070.	6 years Wash. Const. art. IV, § 3; Wash. Rev. Code § 2.04.071.	Re-Election	Gubernatorial appointment. Wash. Const. art. IV, § 3; Wash. Rev. Code 2.04.100.	Statewide. Wash. Const. art. IV, § 3.	N/A
Court of Appeals	*Non-Partisan Election* Wash. Rev. Code §§ 2.06.070, 29.21.070.	6 years Wash. Rev. Code § 2.06.070.	Re-Election	Gubernatorial appointment. Wash. Rev. Code §§ 2.06.070, 2.06.080.	District. Wash. Rev. Code § 2.06.070.	N/A
Superior Court	*Non-Partisan Election* Wash. Const. art. IV, § 5. Wash. Rev. Code §§ 2.08.060, 29.21.070.	4 years Wash. Const. art. IV, § 5; Wash. Rev. Code § 2.08.070.	Re-Election	Gubernatorial appointment. Wash. Const. art. IV, § 5; Wash. Rev. Code § 2.08.120.	County. Wash. Const. art. IV, § 5.	N/A
WEST VIRGINIA						
Supreme Court of Appeals	*Partisan Election* W. Va. Const. § 8-2.	12 years W. Va. Const. § 8-2.	Re-Election	Governor must issue a directive for Election. Governor appoints judge to serve until the Election. Then state holds an election for the unexpired term. If unexpired term is less than 2 years, Governor appoints for remainder of term. W. Va. Const. § 8-7; W. Va. Code § 3-10-3.	Statewide. W. Va. Code § 51-2-1.	N/A

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
Circuit Court	*Partisan Election* W. Va. Const. § 8-5	8 years W. Va. Const. § 8-5	Re-Election	Same as above.	Circuit.	N/A
WISCONSIN						
Supreme Court	*Non-Partisan Election* Wis. Const. art. VII, § 4. Wis. Stat. § 5.60.	10 years; Wis. Const. art. VII, § 4.	Justices limited to one full term. Wis. Const. art. VII.	Gubernatorial appointment until next election Wis. Const. art. VII, § 9. *Merit Selection*: Gubernatorial appointment from list of 3-5 nominees submitted by Governor's Advisory Committee on Judicial Selection Exec. Order No. 6 (2001).	Statewide.	*Governor's Advisory Council on Judicial Selection* (no set number of members): A panel of permanent members that serve at the pleasure of the Governor. In the case of a vacancy on the Supreme Court, the Governor appoints up to two additional members. In the case of a vacancy on the Court of Appeals, the Governor appoints up to two additional members from the Court of Appeals District in which the vacancy occurs. In the case of a vacancy of the Circuit Court, the Chairperson of the Advisory Council appoints up to two additional members who reside in such circuit. Exec. Order. No. 6 (2001).
Court of Appeals	*Non-Partisan Election* Wis. Const. art. VII, § 5; Wis. Stat. § 752.04; Wis. Stat. § 5.60.	6 years Wis. Const. art. VII, § 5; Wis. Stat. § 752.04.	Re-Election	Same as above.	Elected statewide, but must reside within district. Wis. Stat. § 752.04.	*Governor's Advisory Council on Judicial Selection*: above.
Circuit Courts	*Non-Partisan Election* Wis. Const. art. VII, § 7; Wis. Stat. § 753.01; Wis. Stat. § 5.60.	6 years Wis. Const. art. VII, § 7; Wis. Stat. § 753.01.	Re-Election	Same as above.	County.	*Governor's Advisory Council on Judicial Selection*: above.

STATE COURT JURISDICTION:	METHOD OF SELECTION FOR FULL TERM	INITIAL TERM OF OFFICE	METHOD OF RETENTION/FULL TERM	METHOD OF SELECTION FOR UNEXPIRED TERM	GEOGRAPHIC BASIS FOR SELECTION	METHOD OF SELECTION & COMPOSITION OF JUDICIAL NOMINATING COMMITTEE
WYOMING						
Supreme Court	*Merit Selection*: Gubernatorial appointment from list of 3 nominees submitted by judicial nominating committee. Within 60 days of vacancy. If the governor fails to appoint a justice or judge within 30 days of receiving the list, the Chief Justice shall appoint a justice or judge from the list within 15 days. No senate confirmation required. Wyo. Const. art. V, § 4(b).	1 year. Wyo. Const. art. V, § 4(g).	Retention Election (8-year term) Wyo. Const. art. V, § 4(f)(h).	Same as full term.	Statewide.	*Judicial Nominating Commission* (7 members): Chief Justice is chairperson, 3 members of the bar elected by the state bar, 3 non-lawyer electors appointed by the Governor, plus nonvoting advisors for appointment of district judges when members do not reside in district (1 attorney and one non-attorney, both appointed by the Governor). 4-year term. Wyo. Const. Art. V § 4(c); Wyo. Stat. § 5-1-102.
District Court	*Merit Selection*: Gubernatorial appointment from list of 3 nominees submitted by judicial nominating committee. Within 60 days of vacancy. If the governor fails to appoint a justice or judge within 30 days of receiving the list, the Chief Justice shall appoint a justice or judge from the list within 15 days. No senate confirmation required. Wyo. Const. art. V, § 4(b).	1 year. Wyo. Const. art. V, § 4(g).	Retention Election (6-year term) Wyo. Const. art. V, § 4(g).	Same as full term.	District.	*Judicial Nominating Commission*: above.