



ADVANCING LIBERTY  
WITH RESPONSIBILITY  
BY PROMOTING  
MARKET SOLUTIONS  
FOR MISSOURI  
PUBLIC POLICY

# POLICY

## BRIEFING

NUMBER 15

MAY 21, 2008

### IS THE 'MISSOURI PLAN' GOOD FOR MISSOURI? THE ECONOMICS OF JUDICIAL SELECTION

*By Joshua C. Hall and Russell S. Sobel*

In 1940, Missouri amended its state Constitution to allow for the merit selection of Supreme Court judges. Before then, Missouri — like many states — had used partisan elections to select justices for its highest court.

The reasons for the change were many, but public concern about the involvement of political parties in the election of judges played a large role. Many felt that elected judges were too partisan and too influenced by political pressures to apply the law in a fair and even-handed manner. Frequently referred to as the “Missouri Plan,” the merit system of judicial appointment to state supreme courts can today be found, in some form, in 26 states.

Debates about recent judicial appointments in Missouri have intensified calls for reform of Missouri’s judicial selection process. While these debates can seem like mere partisan bickering, judicial independence is critical to a well-functioning legal system — and the quality of a state’s judicial system is a major determinant of economic growth.

A growing literature in economics has found that judicial independence and

quality matter for economic growth across countries and states. Several economists have found correlation between the quality of a country’s judicial system and its economic growth. This evidence leads us to take as given the existence of a positive relationship between legal quality and growth.

Because there is only weak evidence that the method of judicial selection results in different kinds of people becoming judges, economic research on judicial selection typically focuses on how judicial selection affects incentives. Studies have also shown that there are differences in judicial and legal outcomes between states that elect their judges and states that appoint their judges. A previous paper by the authors of the present study concluded that judicial quality is lowest in states with partisan judicial elections.

This study compares states grouped together by the types of judicial selection plans they use: (1) nonpartisan elections; (2) partisan elections; (3) legislative elections; (4) gubernatorial appointment with a nominating commission; (5) gubernatorial appointment with a

*Joshua C. Hall is an assistant professor of economics in the Department of Economics & Management at Beloit College in Wisconsin.*

*Russell S. Sobel is a professor of economics and the James Clark Coffman Distinguished Chair in the Department of Economics at West Virginia University.*

***It is imperative that policymakers and voters have accurate evidence about the relationship between different mechanisms of judicial selection and the quality of a state's legal system.***

nominating commission and legislative confirmation; (6) gubernatorial appointment with legislative confirmation only; (7) gubernatorial appointment with approval by an executive council.

Almost no empirical research looks at whether there are any differences among all types of judicial selection mechanisms, from partisan elections to different versions of the Missouri Plan of appointment. However, it is imperative that policymakers and voters have accurate evidence about the relationship between different mechanisms of judicial selection and the quality of a state's legal system. To this end, we provide a closer look at how different features of judicial selection mechanisms affect the quality of legal systems across the states.

The Institute for Legal Reform conducts an annual survey that provides an empirical framework for judicial quality. It focuses on: (1) overall treatment of tort and contract litigation; (2) having and enforcing meaningful venue requirements; (3) treatment of class action suits and mass

consolidation suits; (4) punitive damages; (5) timeliness of summary judgment/dismissal; (6) discovery; (7) scientific and technical evidence; (8) non-economic damages; (9) impartiality and competence of judges; and, (10) predictability and fairness of juries.

There are potential problems with any measure of legal system quality, but this survey is the only empirically based index that exists across states and through time. Admittedly, the index has a bias in that it attempts to gauge how the state legal systems are viewed by large public corporations. But this bias is also one of its advantages — most legal reforms are enacted with an eye toward promoting economic growth and development. Other research examining this index has found that it is significantly correlated with per-capita income and other measures of economic performance across states (like poverty and unemployment rates). Therefore, we can be reasonably certain that states scoring better in this index do indeed enjoy a legal climate more conducive to economic growth and prosperity.

From 2002 through 2007, Missouri earned an average ranking of 35 out of 50 — the best in 2002 when the state ranked 29th, and the worst in 2004 when it ranked 41st. In 2007, Missouri ranked 34th with an overall index score of 60 out of 100. The main question of interest is whether there is a clear correlation between these scores (or rankings) and the method of judicial selection used by states.

Using the groups described above, we calculated the average index scores and average rankings by judicial selection method. The index scores tend to provide more information because the rankings do not accurately reflect the magnitude of the differences in the underlying data. On

**Table 1: Average State Legal System Quality Score by Method of Judicial Selection**

METHOD OF JUDICIAL SELECTION	2002	2003	2004	2005	2006	2007	2002–07 FULL PANEL
Nonpartisan elections	56.0	55.1	56.9	57.8	58.9	61.8	61.2
Partisan elections	50.4	47.3	48.7	47.8	51.3	54.2	53.4
Elected by legislature	59.4	56.0	60.9	60.7	62.5	62.5	63.8
Gubernatorial appointment from nominating commission	60.8	60.2	61.8	61.1	63.0	64.4	65.3
Gubernatorial appointment from nominating commission with legislative confirmation	61.7	59.5	62.1	60.9	63.0	64.3	65.3
Gubernatorial appointment with legislative confirmation	58.2	58.5	62.2	61.0	63.5	66.2	65.0
Gubernatorial appointment with council approval	54.8	56.0	56.0	55.8	58.3	62.5	60.7

Notes: In this table, higher numbers indicate "better" legal systems (i.e., in the underlying data, a score of 100 is best, while 0 is worst). Full-panel averages use regression methodology to adjust for the differing mean values of the index across years.



the other hand, because the underlying questions in the survey have changed over time, the index numbers may not be directly comparable across years, whereas the rankings would be. Fortunately, both measures lead to the same conclusions.

In order to facilitate testing whether there are statistically significant differences among the groups, we obtain our averages and statistical confidence intervals by estimating an ordinary least-squares regression, in which the index score (or rank) is used as the dependent variable and a set of indicator (0/1) variables are used for each different method of judicial selection. We perform this analysis for each year's data individually, and also for the pooled cross-section of data for the full 2002–07 period. The analysis of annual data simply asks whether there are differences across states in each particular year's index score or rank, while the full period analysis asks whether these differences are consistently present during the entire period of data, from 2002 through 2007. The results of our analysis are presented in Table 1 (scores) and Table 2 (rankings).

The first row of data in Table 1 shows that states using nonpartisan elections to elect supreme court justices had an average score of 56.0 in the index in 2002, an average score of 55.1 in 2003, and so forth, on the 0- to 100-point index scale. The first row of Table 2 shows that during 2002, states using nonpartisan elections had an average ranking in the index of 26.4 (interpreted as an average rank of 26th out of the 50 states), and average ranking of 25.4 in 2003, and so forth.

Perhaps the most illuminating set of columns in the tables are the final two, showing the averages for the 2002–07 full panel of data. For states using nonpartisan elections, the average index score over

entire sample was 61.2 (see Table 1), which resulted in an average ranking of 26.2 during the entire period. Using this information, it is now fairly easy to compare nonpartisan selection to the alternatives. For example, the first two rows show that states using nonpartisan elections had higher index scores than those with partisan elections, and thus also better average rankings.

For the full panel, states using partisan elections had an index score of 53.4, which is 7.8 points lower than the average index score of 61.2 for states using nonpartisan elections. The average rankings show that the average state using partisan elections ranked 38th in the index over the period, 12 spots below the 26th average ranking for states using nonpartisan elections. Therefore, it appears that using nonpartisan elections to select judges results in a better-quality legal system than using partisan elections. Based on conventional techniques and significance levels, our tests allow us to conclude statistically that

***Our analysis finds no other method of selection resulting in average scores or rankings that are statistically higher than Missouri's current system.***

**Table 2: Average State Legal System Ranking by Method of Judicial Selection**

METHOD OF JUDICIAL SELECTION	2002	2003	2004	2005	2006	2007	2002–07 FULL PANEL
Nonpartisan elections	26.4	25.4	26.3	24.6	27.8	26.3	26.2
Partisan elections	36.4	37.3	39.4	39.6	38.4	39.2	38.4
Elected by legislature	22.0	25.0	21.5	21.5	22.5	24.5	22.9
Gubernatorial appointment from nominating commission	18.3	19.3	19.5	19.0	19.0	19.6	19.2
Gubernatorial appointment from nominating commission with legislative confirmation	20.5	21.8	20.4	22.5	20.0	22.0	21.3
Gubernatorial appointment with legislative confirmation	25.0	23.0	19.0	20.5	17.0	15.5	20.1
Gubernatorial appointment with council approval	32.7	25.3	27.0	29.3	27.3	23.0	27.5

Notes: In this table, lower numbers indicate "higher" ranks, or "better" legal systems (i.e., in the underlying data, being ranked 1st is best, while 50th is worst). Full-panel averages use regression methodology to adjust for the differing mean values of the index across years.



states using nonpartisan elections do tend to score and rank better in this index of legal system quality than do states using partisan elections.

In Table 1, for the full panel of data, two methods of judicial selection tie for having the highest average index scores: gubernatorial appointment from a nominating commission both with and without legislative confirmation. Coming in only slightly below these top two is gubernatorial appointment with legislative confirmation but without a nominating commission. In the individual year analyses, the method receiving the highest average score varies across the years, although it is always one of these three types (gubernatorial appointment with legislative confirmation takes the top spot in three of the six individual years). Partisan elections handily receive the worst scores both in the full panel and in every individual year.

An analysis of the average rankings in Table 2 produces results similar to those using the underlying index scores, as would be expected. For the full panel, gubernatorial appointment from a nominating commission averages the best ranking, with gubernatorial appointment with legislative confirmation and gubernatorial appointment from nominating commission with legislative confirmation following closely behind. At the bottom of the list are partisan elections (which consistently score and rank as the worst by a wide margin), gubernatorial appointment with council approval, and nonpartisan elections.

Our analysis finds no other method of selection resulting in average scores or rankings that are statistically higher than Missouri's current system. The remaining three methods (election by legislature, gubernatorial appointment from a nominating commission with

legislative confirmation, and gubernatorial appointment with legislative confirmation alone), produce, on average, legal scores and rankings statistically equal to Missouri's current system.

Based on our analysis, Missouri could well err by moving to judicial elections (either partisan or nonpartisan), or to gubernatorial appointment with council approval alone. While no other single method statistically improves on Missouri's current system, our results suggest that Missouri would at least be no worse off if it wanted to experiment with selecting judges by either: (a) election by the legislature; (b) adding legislative confirmation to the existing appointment process; or, (c) gubernatorial appointment with legislative confirmation, but without a nominating commission.

It is important to note, however, that for all three of these alternative methods, there are states using them that both score both better and worse than Missouri. That is, there is no other judicial selection method for which all the states using it score better than Missouri in every year.

The data show that states using Missouri's current system, on average, rank significantly higher than states using partisan elections, nonpartisan elections, and gubernatorial appointment with council approval alone. We also find no other method of selection resulting in average scores or rankings that are statistically higher than Missouri's current system. Based on our analysis, Missouri's current system is far superior to several of the alternatives.

---

***For more details, please see Show-Me Policy Study no. 15, which is available at [www.showmeinstitute.org](http://www.showmeinstitute.org).***



7777 BONHOMME AVENUE  
SUITE 2150  
SAINT LOUIS, MO 63105

[WWW.SHOWMEINSTITUTE.ORG](http://WWW.SHOWMEINSTITUTE.ORG)