



# Is the 'Missouri Plan' Good for Missouri?

Published on *Show-Me Institute* (<https://showmeinstitute.org>)



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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, which is an important factor in economic growth. Research has found that judicial independence and legal system quality matter for economic growth, and that the outcomes of a state's legal system depend in part on how its judges are selected. Although the General Assembly decided not to pursue legislation that might alter the "Missouri Plan" during this past legislative session, the quality of the state's legal system and its potential effect on economic growth is an issue worthy of ongoing attention.

Policymakers need evidence about the relationship between judicial selection and legal system quality. Our recent Show-Me Institute study analyzed how judicial selection methods affect the quality of state legal systems. We looked at seven general methods used across states: (1) nonpartisan elections; (2) partisan elections; (3) legislative elections; (4) gubernatorial appointment with a nominating commission; (5) gubernatorial appointment with a nominating commission and legislative confirmation; (6) gubernatorial appointment with legislative confirmation only; (7) gubernatorial appointment with approval by an

executive council.

To measure legal system quality, we used a study of state legal systems by the Institute for Legal Reform. Based on a survey of corporate lawyers, this study admittedly 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 to promote economic growth and development, and it is precisely the perception of the state's legal climate toward business that is being measured by this index. The study scores each state on a scale from zero to 100, with higher scores representing higher levels of legal quality. For each of the seven methods of judicial selection we calculated the average index score of each group from 2002–07.

We find that two methods of judicial selection tied for the highest average index scores during this period: gubernatorial appointment from a nominating commission both with and without legislative confirmation (both averaged a score of 65.3). Gubernatorial appointment with legislative confirmation came in third (65.0), followed by election by legislature (63.8), nonpartisan elections (61.2), and gubernatorial appointment with council approval (60.7). States using partisan elections handily received the worst average index score for judicial system quality during the period (53.4).

Based on conventional techniques for measuring statistical significance, we find that Missouri's current method of judicial selection is statistically superior to judicial elections (either partisan or nonpartisan) and also to gubernatorial appointment with council approval alone. Based on our analysis, we conclude that Missouri could well err by moving to one of these three other methods.

We find that no other method of judicial selection results in average scores or rankings that are statistically better than Missouri's current system. Thus, we cannot say that a switch to another type of system would result in an improved legal system. 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.

Thus, our findings 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. We note, however, that for all three of these alternative methods, there are states using them that both score both better and worse than Missouri. Based on our analysis, Missouri's current system appears to be far superior in promoting economic growth than some of the alternatives — most notably judicial elections.

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## About the Author



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