

### ***Summary of Bi-Partisan Commission Plan Proposal***

The new proposal is a blend of the Missouri Plan and federal plan following the structure of New York, Delaware and nine other states. The structure is as follows:

- A 10 persons bi-partisan commission issues a public call for applicants.
  - Names of applicants together with responses to a questionnaire are made public.
- The commission selects five qualified persons and submits these to the governor.<sup>1</sup>
- The governor selects one nominee.
- That nominee is subject to senate confirmation in public hearings.
- The Missouri Bar may submit a recommendation as to the qualifications of the nominee.
- All persons (including those in the Bar providing the recommendation) who provide information related to the nominee may be called to testify under oath and subject to cross-examination by counsel to the nominee.

***Legislative Confirmation:*** According to the American Judicature Society, 26 states select high court judges through a merit selection process. Of those 26 states, 12 plus DC include “confirmation” by the senate, the entire legislature, or a commission: Maine, New Jersey, Delaware, D.C., Connecticut, Hawaii, New York, Rhode Island (entire general assembly), Vermont, Maryland and Utah. Massachusetts has approval by a “governor’s council” elected by the Massachusetts legislature. New Hampshire has a five persons executive council elected by the people to approve the nominee.

***Bi-Partisan Commission:*** American Judicature Society research shows that bi-partisan commissions are far better at limiting political selections than Missouri’s current method. See, Malia Reddick, *Merit Selection: A Review of the Social Scientific Literature.*” <http://www.ajs.org/js/LitReview.pdf>.

"Studies have shown that politics not only plays a role in the selection of commissioners but also in their deliberations. Two studies have gauged the opinions of nominating commission members regarding the role of politics in their deliberations. Ashman and Alfini reported that approximately one-third of the commissioners surveyed believed that political considerations were introduced in their deliberations and that they had at least some influence on their decisions.

The commissioner responses from four states, accounting for over 75 percent of the respondents, revealed an interesting distinction. In Colorado, where commissions must be bipartisan, only 15 percent of respondents felt that politics affected their decisions. In Iowa, Florida, and Maryland, where partisan balance is not required, between 37 percent and 41 percent of respondents believed that political considerations influenced their decisions.

In another study, Joanne Martin questioned the chairs of nominating commissions in thirty-four states and the District of Columbia. Slightly more than half indicated that political

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<sup>1</sup> “Five names appears to be the optimum number as it gives the governor a real choice while limiting the governor’s appointing power.” American Judicature Society, Model Merit Selection Plan Commentary to Section 1

considerations entered into their deliberations at least "infrequently" and that they were of at least "some importance."

The studies cited are *The Key to Judicial Merit Selection: The Nominating Process* (1974 )by Allan Ashman & James J. Alfini and *Merit Slection Commissions: What Do They Do? How Effective Are They?* (1993) by Joanne Martin.

***Bi-Partisan Commission Appointed by a Diversity of Elected Officials***

Each Commission shall be comprised of:

- two members of the Missouri Bar appointed by the Governor, each from different political parties represented as the majority and the minority in the House of Representatives;
- two persons who are not members of the Missouri Bar appointed by the Governor, each from different political parties represented as the majority and the minority in the House of Representatives;
- one person who may or may not be a member of the Missouri Bar appointed by the speaker of the House of Representatives;
- one person who may or may not be a member of the Missouri Bar appointed by the minority leader of the House of Representatives;
- one person who may or may not be a member of the Missouri Bar appointed by the president pro tempore of the Senate;
- one person who may or may not be a member of the Missouri Bar appointed by the minority leader of the Senate; and,
- two members of the Missouri Bar appointed by the Attorney General, each from different political parties represented as the majority and the minority in the House of Representatives.

All members of the Commission shall serve two-year terms at the pleasure of the official who appointed the member and may be reappointed but not in excess of three terms.