

[« BACK](#)

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Sides brace for battle over judge selections

By SARAH D. WIRE

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JEFFERSON CITY — Missouri's nonpartisan court plan was created almost 70 years ago and now serves as the model for the way many states pick judges.

But after Republicans criticized the process during this summer's selection of Missouri's newest Supreme Court judge, groups on both sides began gearing up for a fight over the idea of changing the system.

The most direct challenge to Missouri's nonpartisan court plan comes from the Federalist Society, a conservative activist group that is seeking signatures to put repeal of the system on the 2008 statewide ballot. Two lawmakers also say they plan to pursue changes during the next legislative session. Meanwhile, six former Supreme Court justices have created a group that seeks to protect the existing process.

Under the current system, appellate-level judges and circuit court judges in St. Louis and Kansas City are selected through a nonpartisan process and run for retention as nonpartisan candidates. That system has been hailed by political scientists for removing partisan politics from the courts.

Some opponents of the plan, however, want the governor or the General Assembly to have a larger role.

"That's what we had in Missouri in 1820, and it didn't work," said former Chief Justice Chip Robertson, who is now co-chairman of Missourians for Fair and Impartial Courts, the group of former justices championing Missouri's current method.

Group seeks ballot issue

Bill Placke, president of the St. Louis chapter of the Federalist Society, has drafted a constitutional amendment that would modify the current system for selecting judges. To place it on the November 2008 ballot, he'll have to gather 140,000 to 150,000 signatures from registered Missouri voters and submit his initiative petition to the Secretary of State's Office by May 2008. Placke said he's confident he can do that.

"The groundswell that comes from the average person on the street, it's just amazing," Placke said. "The current plan is a relic."

Placke can also get the petition on the ballot if he persuades the General Assembly to agree to it in 2008.

"We believe we've got enough votes in the House," Placke said. "But we do not believe the Senate appreciates what we've done."

The existing nonpartisan court plan requires the governor to choose a judge for a particular post from among three people recommended by the seven-member Appellate Judicial Commission. If the governor fails to do so within 60 days, the commission decides. The Missouri Bar picks three lawyers to serve on the commission, while the governor chooses three nonlawyers. The chief justice of the Supreme Court is the seventh member.

Critics argue the 67-year-old method allows no public scrutiny and fails to keep politics out of the process. Thirty states follow some version of the Missouri system but most of those modified their methods during the 1970s and 1980s, Placke said.

"It's time to update," he said. "We're being left behind."

Placke's plan would instead have the governor select a person from a list of five chosen by a 10-member commission. And the governor's pick would be subject to Senate confirmation. The 10-member commission would be composed of five Republicans and five Democrats chosen by the governor, the attorney general, the House speaker, the Senate president pro tem and the minority leaders of both the House and Senate. Four members would have to be lawyers and two chosen by the governor would have to be nonlawyers.

"What we're proposing here I don't think is nutty at all; it melds the plans from other states and is in the middle,"

Placke said.

Lawmakers intervene

During the 2007 legislative session, Rep. Jim Lembke, R-St. Louis County, sponsored a constitutional amendment that would make Missouri's system for picking judges similar to the federal approach, in which the president makes a nomination subject to U.S. Senate confirmation.

Under Lembke's plan, the governor would nominate someone for the bench, and the Senate would either confirm or reject the choice. And the judges would still be subject to nonpartisan retention votes.

He plans to introduce the bill again in 2008.

"That way all three branches would be involved," he said, adding that he thinks the Missouri Bar has too much power now.

Rep. Ed Emery, R-Lamar, also introduced legislation last session that would have flipped the selection process by allowing the governor to select an appointee who would be reviewed by the Appellate Judicial Commission in hearings that would be open to the public.

Emery said that he, too, plans to try again in 2008.

"What we have now has showed that it is impure and hard to clean up," Emery said. "This doesn't throw the baby out with the bath water; it reverses the process so the public has more access to the chooser."

Judicial Commission hearings under the current system are closed to the public, a situation that spawned much of the criticism from Gov. Matt Blunt and his administration. The commission relays only some of its findings to the governor and has repeatedly rejected requests from Blunt for more information, saying Supreme Court rules prohibit that.

Still, the governor is allowed to investigate the candidates in any way he sees fit. Blunt had nominees for the previous Supreme Court justice appointment fill out his own 111-question survey and meet with his staff.

Eventually, he met with each nominee.

Supreme Court Chief Justice Laura Stith said a closed selection process encourages more applicants.

Defending the status quo

Blunt has spoken out for changes to the Missouri selection process plan several times within the past year, including in speeches to a group of Republican Kansas City lawyers and to the St. Louis chapter of the Federalist Society. He has not, however, unveiled a specific plan.

It was in the aftermath of the administration's criticisms that the Missouri Bar and former Supreme Court chief justices mounted their full-bore campaign to defend the existing system with radio advertisements and public education initiatives.

Missouri Bar President Charlie Harris said the threat to the current system is "real and concrete."

"There is a wave throughout the country to remove fair and impartial courts," he said.

Because the Missouri system has become widespread, Harris said many observers across the country states are watching the state closely to see what happens.

"Many commentators have surmised that if you can bring down the leader, it can create a domino effect," Harris said. "I don't personally know if that can happen."

Supporters of the current plan say its basic nonpolitical model should remain the same, but they acknowledge it could be improved to give citizens more information.

Stith, for example, said it's important to ensure voters know about the judges who come up on retention ballots. She said retention elections different from normal elections because judges don't campaign.

"As judges we should not be judging cases based on political ramifications," Stith said. "The point of a judge is to make sure the judgment is fair. A good judge knows they are not there to give their personal views."

MU political science professor David Valentine said that because judges do not campaign most voters know little about them.

"You can use that to justify that judges are doing a good job, while the other side uses it to say voters don't know what they are doing," Valentine said.

Valentine said that although voters get mailings with information about judges up for new terms, they get most of their information from the media.

“The only time people say no is when a judge does something so outrageous that they draw attention,” Valentine said. “So the only thing you have is what you see in the newspapers.”

Since 1940 only two circuit court judges have been removed through the retention vote.

“That doesn’t convince me that we’re putting good judges on the bench,” Lembke said. “It shows me that people don’t know who these judges are. ... The problem with the current system is even though there’s a retention vote, the system lends itself to lifetime appointments,” Lembke said.