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Where do judges come from?

By [Paul Jacob](#)

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Patricia Breckenridge was sworn in this past week as Missouri's newest supreme court justice. It was a pleasant event, even a bit ho-hum, considering it culminated months of bitter disagreement over the method of choosing state court judges under a system known as the Missouri Plan.

No one questions [Mrs. Breckenridge's qualifications](#). She has been serving as an appellate court justice for the last 17 years and sat at a lower perch for nine years before that. It's the process by which she found herself on the state's supreme court that is at issue.

Breckenridge was [appointed by Governor Matt Blunt](#).

Well, that's not *entirely* accurate. The governor chose Breckenridge from a list of three judges chosen by the state's Appellate Judicial Commission. He is required to pick one of the three — or instead, to have this powerful commission do the picking for him.

You see, [as I wrote in August](#), the commission handed the governor three nominees, all unacceptable to him. He wanted non-activist, conservative judges.

[Conservatives urged](#) Governor Blunt to fight the commission, but the governor eventually caved. He nominated Breckenridge from the commission's menu, tepidly stating that he would "accept Judge Breckenridge's statement that she will not seek to legislate from the bench."

So, just who makes up the Appellate Judicial Commission? How are *they* chosen?

Good questions. The commission is made up of three members elected by the Missouri Bar Association and three members selected by the governor — each serving six-year terms. The seventh member? The sitting chief justice of the Missouri Supreme Court.

Is it a good idea to have our most powerful judges determined largely by a private organization? Shouldn't we at least alternate the private group doing the choosing? One year it could be the state bar, another year Wal-Mart stockholders in the state, another year the Rolla Bowling League. In leap years, a statewide group of local bar owners might do the selecting.

And why have the governor appoint people to a commission which appoints people for the governor to appoint? A tad circuitous, no? And why have someone on the current court deciding who sits on the future court?

You can see what this seems like: an insider game, a stacked deck.

How to reform? By what process can we acquire justice, that is, justices in sympathy with the people, respectful of the law, and independent of the other political branches of government, as well as any special interest?

Start with principles, and go from there.



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First, let the voters into the process. Elect the Appellate Judicial Commission in Missouri. And, of course, elect similar commissions in others states. That would end domination of the judicial selection process by the state's Bar Association, or any private interest group.

The bar would fight this, of course. The assumption (common amongst supporters of the Missouri Plan) that the Bar Association is a public service group with a disinterested agenda, unaffected by biases, and exempt from corrupting influences, is hard to maintain with a straight face. Lawyers present a faction. They have an interest in keeping the law complicated, and expanding state involvement so to require suit and countersuit and consultation and a hundred other ways to put numbers into a billable hours column. It is far more reasonable to argue that the Bar is the *last* group one wants in charge of a judicial selection process, rather than the primary group. It is a guild, and its interests can be as antagonistic to the public interest as any group's can possibly be.

Second, why not take résumés from anyone who wants to apply for the position? That seems not only modernly egalitarian, but also smart. We might find a really good person who would otherwise be overlooked by the legal and political insiders.

Third, judges should be chosen from geographic districts, not statewide. Smaller districts allow a closer connection between the people and the judge working on their behalf. With districts, when people have had enough of any certain judge, they can more easily campaign to defeat that judge at a future retention vote.

Fourth, more checks, even political checks, are better than fewer. Why? Well, we don't want the nominee to be "politicized." So, if the governor nominates, the legislature or just the Senate should then approve or reject that nominee.

Fifth, the entire process — including all resumes submitted and all deliberations by any commissions or legislative committees — must be open and transparent.

So a better system might look like this: The public elects a seven member commission from as many regions in the state, each commissioner serving a four-year term. When a vacancy occurs in the state appellate courts, this commission would take resumes for a period of time. Those resumes would be discussed both by the public and the commission. The commission would nominate three people for the governor to choose from. The governor's choice would then require approval from the legislative branch. Then, once confirmed, the justices would face the voters in a retention election.

More voter control. A more open process. More checks and balances. Less control by the legal community.

[Missourians](#) — and all Americans — need their judges selected in such a way as to avoid the undue influence of factions as well as politicians.

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