

Proposal to change Missouri court plan floated

Kelly Wiese

A proposal to lessen the Missouri Bar's influence over the selection of judges and require Senate confirmation of nominees is being circulated among leaders in Missouri's legal and political circles.

St. Louis attorney Bill Placke said he wants to get people talking in search of a consensus on how to change the system.

Voters approved the Missouri Nonpartisan Plan in 1940. Under the current system, a panel of lawyers and lay people privately interviews and chooses three candidates to fill vacancies on the Supreme Court, appeals courts and circuit courts in the St. Louis and Kansas City areas. The governor then must choose from that list, or the panel will.

Placke's plan, which he stressed is still open to revision, makes several changes to the current structure.

Key provisions include:

* Commission makeup -- Moving from a seven-member to a 10-member panel. Currently it includes three lawyers elected by members of the Missouri Bar, three people appointed by the governor, all in staggered terms, and the chief justice of the Supreme Court.

The proposal would instead include four members appointed by the governor, two lawyers and two nonlawyers, split between each major political party; two appointed by the attorney general; and one each appointed by the Senate president pro tem and minority leader and the House speaker and minority leader.

The legislative appointees could be lawyers, but wouldn't have to be. That means a panel could result in as many as eight attorneys, or as few as four.

* Senate confirmation -- Under the proposed changes, the panel would require the governor to choose from a recommended list of five candidates within 30 days. If not, the lieutenant governor, and then the attorney general, would pick. The nominee would then be subject to a confirmation vote by the Senate, and the legislative body generally would be required to vote within 60 days. If the Senate rejected the nominee, the selection process could start over, and only two members from the previous finalist panel could be nominated again. The Missouri Bar also would be allowed to state whether it finds a nominee qualified, though the group would hold no veto power.

* Open process -- Placke's proposed amendment also would make the judicial selection process more open. While the panel's applicant interviews and deliberations could still be closed, a list of applicants, along with questions and their responses, and the Senate hearing would be open to the public and news media.

"That will at least provide the press and the public with a certain insight into the person's philosophy," Placke said.

Critics say today's system does not ensure the governor will get someone who shares his philosophy. Leaders on the court and the Missouri Bar have responded that Missouri has the best method to keep politics from influencing the process.

But Placke argues that politics are already at play, and moving to a bipartisan panel would be wise, along with requiring legislative approval and opening more of the process to the public.

"This is not conservative. This is not liberal," said Placke, who also is president of the Federalist Society's St. Louis chapter. "There's Republicans who have gamed the process, there's Democrats who have gamed the process."

Tom Burke, president-elect of the Missouri Bar, said the current plan works. He said Placke's proposal would inject more partisanship into the process, not less -- especially the suggested changes in the makeup of the commission.

"The big issue is ... that completely politicizes the process," Burke said. "It's a nonpartisan plan. It diffuses the influence of politics, and this would completely turn the plan on its head and make it a 100 percent political process."

Placke hopes the issue could go to voters during next year's general election. A constitutional change can be placed on the ballot by the Legislature or through initiative petition, with supporters gathering more than 100,000 signatures.

The issue of judicial selection heated up this summer when the Appellate Judicial Commission considered who should replace Supreme Court Judge Ronnie White.

Some lawmakers have proposed Missouri do away with the plan entirely and move to the federal model, with the governor choosing whomever he likes but requiring Senate confirmation. Critics say that would make the system even more political.

"So much of the acrimony between the Legislature and the judiciary stems from the fact that the Legislature is completely isolated from any real check on the appointment of judges," Placke said. "If you allow that check at the time of the appointment, hopefully some of that acrimony will dissipate."

Bill Eckhardt, a law professor at the University of Missouri- Kansas City, said some change is necessary. He wrote a paper on the plan for the Federalist Society. He noted that many states have used the Missouri plan as a model.

"They've all modernized it and we haven't. It's more a question of modernization and reform than change," he said. "We are the most closed and elitist."

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