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## WSJ EDITORIAL:

### **Show Me the Judges**

For the latest proof that you can't get politics out of politics, see the battle in Missouri over how the state selects its judges. All three branches of that state's government are arguing over a system that was designed to protect judicial independence from the rowdier environs of democratic elections. What it now has is worse.

Launched in 1940, the so-called "Missouri Plan" was once considered state of the art and imitated by many other states. An ostensibly non-partisan seven-member commission chooses a slate of three nominees and the Governor chooses among them. The idea was to produce candidates based on merit while diluting political influence over courts.

But that was then. Anybody with the power to choose judicial candidates was also destined to become a political actor. And that's exactly what has happened to the Appellate Judicial Commission, made up of three members chosen by the Missouri Bar Association, three picked by current and past Governors, and the chief justice of the state supreme court. Now Republican Governor Matt Blunt finds himself battling the Missouri bar over the commission's latest panel of candidates to fill the seat of retiring state Supreme Court Justice Ronnie White.

From a list of some 30 applicants, the commission offered Mr. Blunt three nominees. One, Nannette Baker, is a former TV reporter who practiced law for three years before taking her current seat on the bench. Her inclusion allows the commission to take credit for proposing an African American to fill a seat being vacated by an African American. Yet the original list of 30 had other, more impressive black candidates, including Appellate Judge Lisa Hardwick, who had apparently not been deferential enough to the bar association.

The second option is Ron Holliger, a trial lawyer known for personal injury and product liability suits. He's the choice of those lawyers who hope to preserve a permissive judicial environment. Behind door No. 3 is the nominally "conservative" option, Judge Patricia Breckenridge.

How the commission arrived at this roster has its own hazy backroom quality, an issue that has become part of the controversy. What is clear is that over the decades the state bar has increasingly dominated the selection of finalists. Each applicant was required to fill out a form asking such non-probing questions as where they live and whether they have children. The real decision-making was conducted in interviews, where commission members got into weightier matters of politics and judicial philosophy.

Missourians surely would benefit from a fuller picture of what goes on in these sessions, whose upshot seems designed to steer Mr. Blunt toward appointing a favorite of the legal guild. In a Federalist Society poll done in March, 87% of state residents were unaware even of the make-up of

the nominating commission. Various state politicians have called on the commission to open its records and transcripts to the public -- which it has so far refused to do.

Meanwhile, the Governor is unhappy with the options, taking the unusual step of asking each of the three candidates to fill out his own 111 question survey. Mr. Blunt has not ruled out rejecting all three as a kind of protest, but under the Missouri Plan that would leave the commission making the pick.

All this comes amid increased scrutiny of the Missouri court system, as well as a period of high stakes for the Missouri trial bar in upcoming cases on tort reform and workers compensation. Several controversial court decisions earlier this year laid the groundwork for the current battle -- highlighting a growing pattern of judicial overreach. The court overturned 60 years of legal precedent to give collective bargaining rights to public employees and issued a ruling that effectively imposed new taxes.

The Missouri plan was originally seen as preferable to a system directly electing judges, which in other states has left sitting judges beholden to the wealthy trial lawyers who are their biggest campaign donors. But as the current case has shown, special interests are no less involved in the state's selection process -- the only difference is that this now happens behind closed doors.

Missouri's moment may also have national repercussions. Some 35 other states adopted some version of its plan, though many have since made their methods more representative. Trying to get politics out of politics is a fantasy exercise. The success of the American system is rooted in checks and balances and the accountability that comes from public scrutiny. Keeping judicial selection democratically accountable is the best insurance for choosing the best judges, and ensuring that they are serving the interests of all citizens.