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Hulshof suggests changing judicial selection process

By DAVID A. LIEB/The Associated Press

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JEFFERSON CITY — Republican gubernatorial candidate Kenny Hulshof proposed Tuesday to revamp the way appellate judges are selected in Missouri by giving the governor greater leeway in making appointments.

Hulshof said there is "disorder in our court system," asserting that personal injury attorneys are exerting an inordinate amount of influence over the nomination of appeals judges.

Missouri's nonpartisan judicial selection method for certain judges was approved by voters in 1940 and has been used as a model in other states.

But Republicans have increasingly been critical of it, saying it has resulted in too many left-leaning nominees who haven't matched the conservative philosophy of GOP Gov. Matt Blunt.

"The nonpartisan plan has become partisan," Hulshof said in a conference call with reporters.

His Democratic gubernatorial opponent, Attorney General Jay Nixon, countered that Hulshof's proposal actually would make the court selection process more political.

Under Missouri's plan, a nominating commission consists of three attorneys elected by Missouri Bar members, three citizens appointed by the governor, and the presiding appellate judge. The commission submits three nominees to the governor when a vacancy occurs on the Supreme Court or one of the state's three regional appeals courts.

The governor then appoints one of those nominees. If he fails to do so, the commission can make the appointment itself.

A similar process is used for trial courts in the St. Louis and Kansas City areas, though trial judges elsewhere run for election under Democratic and Republican labels.

Hulshof's plan would require a constitutional amendment that would go before voters.

He wants to replace the three attorney members of the commission with two randomly selected appeals court judges and one randomly selected trial judge. He also proposed replacing the chief justice with a randomly selected retired Supreme Court judge.

Currently, all three attorneys on the commission are members of the Missouri Association of Trial Attorneys. Hulshof, a congressman who was a prosecutor and public defender, said that gives one segment of the legal world too much influence.

The Missouri Bar has about 29,000 members, about 20,600 of whom actually practice law in the state. The Missouri Association of Trial Attorneys has about 1,200 members.

Hulshof also said it is inappropriate for a judge — in this case, the chief justice — to be involved in selecting colleagues on the bench.

Hulshof's plan would expand the number of nominees submitted to the governor to five. A governor could twice reject the slate of nominees and appoint his own candidate to the appeals court, subject to Senate confirmation.

Hulshof said governors would be barred from appointing relatives, staff members or political financial contributors.

Nixon generally has defended Missouri's judicial selection process but has proposed tweaking it by making public the full list of applicants, not just the three finalists submitted to the governor.

Nixon spokesman Oren Shur said Hulshof's plan essentially would repeal Missouri's current judicial selection process "and give the governor the full power to appoint judges."

"The congressman's plan would bring more politics into the process, and that's a clear step in the wrong direction," Shur said.

The presidents of The Missouri Bar and the Missouri Association of Trial Attorneys, both of whom are personal injury attorneys, defended the judicial selection process and likewise asserted that Hulshof's plan would inject more politics by allowing governors to appoint their cronies.

"There's no need to fix something that isn't broken," said bar President Tom Burke, a St. Louis attorney.

Trial attorneys President Lynn Henry, a West Plains lawyer, rejected Hulshof's assertion that his members were unduly controlling the nomination process. He noted the attorney members were elected by their peers.

"In winning a bar election, it's because the person who has run for that position has been held in very wide regard and respect by all segments of the bar," he said.

Better Courts for Missouri, a group led by former Blunt staffer James Harris, has criticized the trial attorneys' influence and praised Hulshof for proposing changes to Missouri's court plan. The group has urged Blunt to reject all three nominees submitted to him to replace Supreme Court Judge Stephen Limbaugh Jr., who was appointed to a federal judgeship.

Hulshof also proposed several other changes to the way courts operate. He proposed to tighten eligibility for suing in Missouri, to limit court damages only to those with physical injuries and to prohibit uninsured drivers from seeking punitive damages from others if they are injured in an accident.