

## Without Judicial Merit

August 23, 2008; Page A10

Several readers sounded off yesterday on our August 14 editorial on the American Bar Association's new proposal on judicial selection. We especially liked the rejoinders from ABA President Thomas Wells and Bert Brandenburg of Justice at Stake, claiming that their idea for lawyer-led commissions is nothing but high-minded, nonpartisan, good government that is already working beautifully in many states.

Those two aren't lawyers for nothing. For a reality check, we'd direct readers to Missouri and Florida, where judicial selection commissions have recently teed up nominees designed to force Republican Governors to choose the commissions' own favored picks. These states show how "merit selection" really works.

In Missouri, the nominees to fill the seat of conservative Justice Stephen Limbaugh were announced on Thursday, with the commission presenting Governor Matt Blunt with three undesirable candidates: left-leaning Appeals Court Judge Lisa White Hardwick, former trial lawyer and Appeals Court Judge Ronald Holliger (who was nominated by the commission last time) and Atchison County Associate Circuit Judge Zel Fischer, a conservative who the Governor already rejected for a lower court vacancy. The game is rigged to favor Judge Hardwick, a favorite of Missouri Chief Justice (and commission member) Laura Denvir Stith.

Though the Missouri Plan is supposed to keep politics out of the process, it has instead transferred power from voters to state bar associations and legal groups that control the judicial commission. The result is a system that's contentious and opaque -- and has tipped the state courts steadily to the left. The commission presented Governor Blunt with a similarly rigged panel last year. At the time, he briefly considered rejecting the whole slate to send a message, but ultimately backed off and appointed one of the commission's choices. Now that he's not running for re-election, the coast is clear for him to take a principled stand.

Mr. Blunt has said he's committed to filling the open seat with a judge "who will faithfully interpret our constitution and not legislate from the bench." That's a request the commission could easily have met with such highly qualified options as former U.S. Attorney Stephen Easton or well-respected lawyer Brenda Talent. Instead, the commission opted for a game of chicken with the Governor. By nominating Zel Fischer as the conservative option, it dares Mr. Blunt to either select the less-qualified conservative judge, elevate Ms. Hardwick, or send the whole slate back, which means the commission then gets to make the pick.

A similar political game is playing out in Florida, where the judicial selection commission has presented Governor Charlie Crist with a slate of five nominees to replace departing Florida Supreme Court Justice Raoul Cantero. Amid pressure to appoint a Hispanic jurist, the commission nominated Palm Beach Circuit Judge Jorge LaBarga, a darling of the criminal defense bar, and lawyer Edward Guedes as the Hispanics on the panel. The top conservative option, highly qualified former Congressman Charles Canady, would force Governor Crist to risk offending Hispanic voters by choosing a non-Hispanic nominee. Notably missing was a conservative Hispanic like Frank Jimenez, general counsel of the Navy.

Governors Crist and Blunt now have opportunities to take a stand against a process that has allowed bar associations to manipulate the selection of judges. Mr. Crist could select Mr. Canady and request more diverse panels in the future. Mr. Blunt can reject the whole slate, which would jumpstart a debate on reforming the system and bringing deliberations over judges out of the backrooms.

Merit selection states have already proven you can't get politics out of the court system. The real issue is who does the choosing -- voters through elections or their elected representatives, or lawyers working to help their own.