

April 18, 2009 – page A12

Missouri Brakes

The Sue Me State reconsiders judicial selection.

The Missouri plan for choosing judges may be the law of the land in some two dozen states, but its home court is having second thoughts. Last week, the Missouri House of Representatives approved a ballot measure that would modify the state's namesake selection process. The measure is one step toward junking a system that has made state courts less accountable.

Under the Missouri plan, state judges are chosen from a limited panel of nominees presented to the governor; he must make a selection from that list. Ostensibly nonpartisan, the judicial nominating commissions have given disproportionate influence to lawyers groups, which tend to favor elite fellow lawyers, the tort bar and liberal candidates. Because the selection is conducted behind closed doors, voters have little say-so in a process conducted in their name. One result is that in its most recent report, the American Tort Reform Association called Missouri the "Show Me (Your Lawsuits) State."

If reformers have their way, the new Missouri plan would bring more transparency and reduce the power of the trial lawyers while expanding the range of candidates presented to the governor. But if that sounds uncontroversial, don't tell Missouri's Democratic Governor and plaintiffs-lawyer pal Jay Nixon. In a press release in March about a panel of nominees, Mr. Nixon heaped praise on the process, saying the status quo had "stood the test of time," and that the panel he received was a "testament to the fact that the Missouri plan has produced courts that have served the state well for decades, and which should be protected in the future."

Even supporters of merit selection recognize Governor Nixon's line as wishful thinking. At a University of Missouri symposium last month, former Supreme Court Justice Sandra Day O'Connor -- a proponent of merit selection -- acknowledged that the process "might benefit from a little bit of perfecting." Reforms to the process, she noted, should aim to decrease the influence of lawyers on the selection commission.

Doing so will help make Missouri-plan judges more closely reflect the state's voters. According to research done for a Missouri Law Review symposium by Vanderbilt University Law School Professor Brian Fitzpatrick, judges picked by so-called nonpartisan selection commissions overwhelmingly leaned Democrat. Since 1995 in Tennessee, 67% of appellate nominees more often voted in Democratic primaries, compared to 33% who voted more often in Republican primaries. Similar research in

Missouri found that of roughly half of appellate nominees who made campaign contributions, some 88% donated to Democrats while only 12% went to Republicans.

Tennessee's version of the Missouri plan is also in the throes of reform, as lawmakers consider ways to modify the selection process or let the system revert back to direct elections. That's the nightmare scenario of liberal court groups like the George Soros-funded Justice at Stake. They know that voters in states such as Missouri and Tennessee, which split fairly evenly along party lines, would choose more conservative judges than do the so-called merit selection commissions.

The continued reign of a judiciary chosen by trial lawyers and Democratic partisans is showing signs that its time has passed. For states looking to save their economies from tort-lawyer pillage, reducing the power of lawyers to dictate judicial selection would be a start.

Source:

http://online.wsj.com/article/SB124000908903430593.html#mod=rss_opinion_main