

# COLUMBIA DAILY TRIBUNE

## Missouri Plan is no way to judge

**Current process is hardly ‘nonpartisan.’**

By JAMES HARRIS

Tuesday, April 21, 2009

The Missouri General Assembly is considering two proposals that would give Missourians the ability to vote on improving the way judges are selected in Missouri — House Joint Resolution 10 and Senate Joint Resolution 9.

When a vacancy occurs on the Supreme Court of Missouri, a commission dominated by liberal trial attorneys meets and selects a panel of three candidates. This panel is then submitted to the governor, who must select one of the three. The vast majority of trial judges in Missouri do not undergo this process, as the people elect them.

Why is the Missouri Plan for choosing judges in need of reform?

First, the current process takes place in almost absolute secrecy. The public has no access to the list of applicants, their qualifications, their backgrounds or the discussions that lead the nominating commission to choose certain nominees and reject others. However, politically connected attorneys have privileged access to lists of applicants and potential appointees as members of the nominating commission share this information among an elite group of attorneys.

Without a constitutional amendment, this selective sharing of information will continue indefinitely. During her recent visit to Columbia, even moderate former Supreme Court Justice Sandra Day O’Connor agreed such secrecy is bad for judicial selection.

Second, special-interest trial lawyers dominate the process. The seven-member commission that nominates judges for the state Supreme Court comprises three commissioners who are or were members of the Missouri Association of Trial Attorneys’ Board of Governors. Additionally, one of the non-lawyer members is the spouse of a powerful plaintiff attorney who is in one of the most elite trial attorney associations in America — one that even John Edwards has been unable to join. As the Missouri Association of Trial Attorneys (MATA) controls four out of the seven commission members, we have returned to the era of boss Tom Pendergast by allowing an elite group with a financial interest to handpick judges. Moreover, the chief justice of the Supreme Court chairs the commission, so she can personally guarantee that only judges who share her political ideology outlook will join her court.

Who belongs to the MATA? They are a small group of attorneys who contribute millions of dollars to Democrat candidates to buy power and handpick our judges. This organization opposes tort reform and supports jamming our courts with frivolous lawsuits. Consider this: If one of these powerful attorneys sues you in a Missouri court, you are likely to be at a disadvantage because that lawyer's friends helped pick the judge.

The results of this secretive, lawyer-dominated system have been bad for maintaining an impartial judiciary. In fact, 20 of the past 21 nominees to fill Supreme Court vacancies have been trial lawyers, Democrat legislators or Democrat donors and supporters. Vanderbilt law professor Brian Fitzpatrick recently presented an independent study of the Missouri Plan and noted 89 percent of the 117 nominees to appellate courts since 1994 have been Democrats. Is that nonpartisan? Is that the kind of selection process anyone, even a Democrat, should want?

We propose a few modest tweaks to the Missouri Plan to remove the power of special interests and return control of the selection process to the people. These reforms would subject the process to the Open Meetings and Records Law, allow a governor to return a panel of nominees if he or she felt the commission did not base its selections on merit, add one citizen to the commission to ensure the majority is held by Missouri residents instead of lawyers and require gubernatorial appointees to be confirmed by the Senate.

Most attorneys oppose these modest steps because they believe attorneys are more capable of selecting judges than residents and because they like controlling a process that greatly affects their financial well-being. Last year, MATA lobbyists killed a simple measure to require judicial selection commissions to follow the Sunshine Law. It should be of grave concern to all Missourians when any special-interest group fights so hard to keep public activities behind closed doors. If the current process is fair and impartial, why are they so afraid of letting the people peek inside those doors?

For too long, greedy trial lawyers have dominated Missouri's judicial selection process. They found a way to pick the kind of judges who will rule in their favor and have spent millions of dollars to elect politicians who will protect the current judicial selection process for them. Trial attorneys have manipulated the Missouri Plan — once a model of judicial fairness and impartiality — back into a “boss” system that is motivated by money, power and serving special interests. Missouri voters threw special interest out of their courts in 1940, and the time has come to give voters the opportunity to do so once again. Please urge your local state senator to support Missouri Plan reform.

Please take time to learn more about our effort by visiting [www.NewMoPlan.com](http://www.NewMoPlan.com).

James Harris is executive director of Better Courts for Missouri.

<http://www.columbiatribune.com/news/2009/apr/21/missouri-plan-is-no-way-to-judge/?commentary>

