

THE WALL STREET JOURNAL

September 15, 2011

Missouri Compromised

Judicial selection the trial lawyer way.

The so-called Missouri Plan for judicial selection has become controversial in dozens of states that use it for giving disproportionate influence to liberals and trial lawyers. Now Missouri itself is again illustrating why. To fill a vacancy on the state supreme court, Missouri's judicial nominating commission has chosen a slate of three candidates that would make George Soros blush.

Leading the trio sent to Governor Jay Nixon is Joe Jacobson, a trial lawyer whose firm, Green Jacobson, is known for its work in securities fraud, lender liability and consumer class actions. A second nominee, County Circuit Judge Michael Manners, spent two decades as a trial lawyer himself, eventually serving as president of the Missouri Association of Trial Lawyers. Rounding out the trio is George Draper III, a state appeals-court judge and African-American who received the fewest votes (four) from the seven nominators.

The Missouri Plan was intended to get politics out of the courtroom but has instead handed disproportionate power to trial lawyers and state bar associations. The effect has been to insulate the backroom-dealing from public scrutiny while stocking state courts with liberal judges. At a recent summit defending such "merit" selection plans in St. Louis, the Iowa Lawyer Weekly reported that in 2011 26 states considered legislation to ditch or revise their method of choosing judges.

And no wonder. Of the seven Missouri nominators, one is a current member of the Missouri Association of Trial Lawyers Board of Governors, while another previously served on that board. Another is married to a local trial attorney who is a member of the Million Dollar Advocates Forum, a group limited to attorneys who have won "million and multi-million dollar verdicts and settlements," according to the group's website. Also on the commission is state Supreme Court Chief Justice Richard Teitelman, who moonlights as a board member of the American Judicature Society, a George Soros-funded group that pushes the Missouri Plan nationwide.

Missourians have been unhappy with the system and recent reforms partly opened the selection process for the first time, making public the formerly secret interview process for applicants for the three slots. Too bad the commission's deliberations are still under lock and key.

Governor Nixon, a Democrat, has 60 days to make his selection and some think he will select Judge Draper to avoid poking the hornet's nest of voters upset about the lawyer-dominated nominating commission and who know trial lawyers are among his biggest campaign contributors. While that may be politically wise, it won't diminish the corruption of a process that elevates nominating-commission cronies and forces the Governor's hand. It's the furthest thing from "merit" selection we can think of.