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Missouri Bar President Disregards the Facts

By [Carrie Severino](#)

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John Johnston, president of the Missouri Bar, has responded to the recent *Wall Street Journal* editorial in which the *Journal* made the indisputable observation that the Missouri Plan is basically a tool for trial lawyers to hand-pick judges. (See here for my previous post on the topic.) In his response, he made several factual assertions that I am fairly certain any lawyer would be unwilling to make on behalf of a client in front of a judge.

First, he claims that “merit selection works to remove politics from the selection of judges.” False! As I wrote in August, Prof. Brian Fitzpatrick’s empirical study of all appellate nominees in Tennessee and Missouri since 1995 (the most comprehensive on this issue) makes this claim of non-partisanship specious.

In Tennessee, his data showed that 67 percent of appellate nominees had voted in Democratic primaries, compared to only 33 percent in Republican primaries, even though the state’s voters were split evenly between the two parties. In Missouri, the data were even more stark: For the nominees for whom campaign donation data was available, 87 percent donated primarily to Democrats, while only 13 percent gave primarily to Republicans. The amount of money contributed by judicial nominees was skewed 93 percent to Democrats and only 7 percent to Republicans.

Second, he claims that “the citizens of Missouri are pleased with the Missouri Plan.” False! In 2009, the Missouri House of Representatives approved a constitutional amendment that would have made Missouri’s judicial selection system more like the federal method enshrined in the U.S. Constitution. The measure failed in the state senate only after trial lawyers organized a filibuster, a fact that even the Soros-funded American Judicature Society acknowledges.

Beyond legislative efforts to abolish the Missouri Plan — which are intensifying in Missouri and across the nation — we can also measure public approval/disapproval by consulting public-opinion surveys.

According to two separate surveys conducted by The Polling Company on behalf of The Federalist Society, the vast majority of Missourians would prefer a different method of selection. Those results are consistent with a national survey conducted by Harris Interactive on behalf of the American Bar Association, finding that less than 20 percent of citizens prefer a Missouri Plan method of selecting judges.

Johnston ends his letter with a platitudinous request that the *Journal* stop criticizing the Missouri Plan and instead lobby “to keep judges impartial, separate from political fund raising and the biases of party politics.” Apparently no one ever taught him the old adage about throwing stones from glass houses.

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