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Analysis: Missouri lawmakers may target judiciary

By DAVID A. LIEB | Posted: Sunday, January 15, 2012 1:17 pm

An agitated state Sen. Kevin Engler pulled a reporter into his Capitol office, laid out a large color-coded map of the new House districts in eastern Missouri, and directed a staff member to grab a laptop computer and zoom in on street-by-street photos of the area.

The corners of House districts 115, 116 and 117 all converge near his hometown of Farmington. In fact, some of the boundaries cut right across the golf course on which Engler's home is built. Engler wants to run in the 116th District this year as he attempts to make the unusual transition from the Senate back to the House of Representatives, where his career in Jefferson City began.

"That house is in, that house is out," Engler said while following the red boundary lines of the district. Then he points toward another neighbor's home: "It cuts right across the center part of the house."

"Who would do that?" Engler asked.

The answer is the Appellate Apportionment Commission, a panel of six appeals court judges that drew Missouri's new state House and Senate districts based on the 2010 census after bipartisan citizens' committees appointed by the governor failed to get the job done.

Upset about both the map and the process that produced it, Engler is out to extract some revenge from the judiciary.

"If we have appellate judges that have such a casual disregard for the election process, we need to change the way that judges are selected," Engler said.

Although perhaps more fired up than most lawmakers, Engler is not alone in his frustration with the judiciary and his desire to alter the way in which appellate judges are selected for their jobs.

Senate President Pro Tem Rob Mayer, R-Dexter, included a call to revamp the judicial nomination process in his opening day remarks to the chamber. He said lawmakers would work "to make sure Missourians are better represented when it comes to the select few who ultimately interview and choose the appellate judges" and to bring "more transparency and accountability" to the process.

Some Republican lawmakers have tried for years to change Missouri's nonpartisan court plan adopted by voters in 1940. That plan uses special commissions _ consisting of a judge, three citizens appointed by the governor and three attorneys elected by members of The Missouri Bar _ to screen applicants and submit three nominees to the governor when vacancies arise on the Supreme Court, appeals courts and urban trial courts. Judges appointed by the governor then stand for periodic retention elections.

Among other complaints, certain Republicans claim the process is titled toward trial attorneys, whom they say tend to dominate The Missouri Bar elections. A proposed constitutional amendment to change the judicial nominating process was defeated 83-69 in the House in 2008. The next year, a measure passed the House 85-72, but never came to a vote in the Senate.

But some senators gained a newfound interest in changing the judiciary after its role in last fall's redistricting process. The judicial redistricting panel was roundly criticized for producing a Senate map that appeared to disregard constitutional instructions to avoid splitting counties into multiple districts whenever possible. The panel then released a revised Senate map, which is being challenged before the state Supreme Court. Also frustrating to many lawmakers was the fact that the judicial panel deliberated in secret, insisting it wasn't subject to the state Sunshine Law.

"The actions by the judges appointed to that process _ the redistricting process _ definitely strengthened the argument and gave fuel to the initiative to bring reasonable reform to the nonpartisan court plan," said state Sen. Brad Lager, R-Savannah.

The proposed change most commonly cited by lawmakers would add more citizens to the panels that provide judicial nominations to the governor. Some lawmakers also want to prohibit judges from serving on selection panels.

The Missouri Bar opposes both proposals. St. Louis attorney Lynn Ann Vogel, who is president of the group, said judges bring a valuable perspective to the selection process because they know what the job requires. She said if residents appointed by the governor outnumbered attorneys on the selection panels, it could give the governor too much power.

"It would insert politics directly into the process," she said.

Some attorneys who are lawmakers are hesitant to change Missouri's judicial selection process.

"I don't think we need to go hammering away at the court plan based upon what happened with the redistricting process. I think those are two separate things," said House Minority Leader Mike Talboy, a Democratic attorney from Kansas City.

Republican Sen. Jack Goodman, an attorney from Mount Vernon, agreed that proposed changes to the redistricting and judicial nomination processes should be handled separately.

The Legislature "should not be a place where retribution is the motivation," Goodman said. But he added: "The citizens should have more of a voice in the process than they do today."

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EDITOR'S NOTE: David A. Lieb has covered state government and politics for The Associated Press since 1995. He can be reached at http://twitter.com/DavidALieb.