

Missouri's Non-Partisan Court Plan

(In conjunction with the Judicial Track of the Checks and Balances Project)

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Objectives:

1. To learn about Missouri's Non-Partisan Court Plan.
2. To explore how Missouri's Non-Partisan Court Plan aids the court in its role in a system of separation of powers and checks and balances.
3. To explore how Missouri's Non-Partisan Court Plan promotes the principle of judicial impartiality.
4. To compare and contrast the federal and state methods of selecting judges.

Suggested grade levels: 9-12

Materials needed: Handouts for and access to either a writing board or a flip chart.

Procedures:

1. Distribute the student handout—*Missouri's Non-Partisan Court Plan*. (Most of this material was reprinted from www.courts.mo.gov with additions and edits by The Missouri Bar.) Have the students read it silently or read it together as a class.
2. Distribute the student handout—Federal Judicial Selection. (Most of this material was reprinted from www.crf-usa.org with edits and additions by The Missouri Bar.)
3. After reading both handouts, distribute student handout—*Comparing and Contrasting Missouri's Nonpartisan Court Plan and Federal Selection of Judges*. Do it as a class project or in groups of 3-4.
4. After completing the comparison and contrast charts, discuss the questions.

Possible answers:

	Missouri	United States
Role of the Executive	Appoints the judge from three chosen by the Nonpartisan Panel.	Nominates a candidate.
Role of the Legislature	None. Can call for impeachment of a judge.	Has hearings and rejects or approves the nominee. Can call for impeachment of a judge.

How are politics minimized?	No direct elections. The Nonpartisan Panel has members of both parties. The candidates must apply to be considered.	No direct elections of the judges.
Role of the people	Retention elections. Elects the governor who makes the appointment.	Elects the president and the Senators who make the selection.
Term limits?	Retention elections are 12 years for appellate judges and 6 for circuit judges. Mandatory retirement at age 70.	Serve for life as long as they have good behavior.

Missouri Nonpartisan Court Plan

Missouri's method for selecting some circuit court judges and all appellate judges is known as the Missouri Nonpartisan Court Plan and has been called A Model for the Nation. The evolution of this plan is an interesting history lesson.

Partisan Elections

In the first 30 years of Missouri's statehood, the governor appointed the judges of the Supreme Court and circuit courts with the advice and consent of the senate. After much public discussion, voters amended the Missouri Constitution in 1850 to provide for the popular election of judges. This system continues in effect for most Missouri courts today. In most areas of Missouri, voters elect judges in partisan elections.

During the 1930s, the public became increasingly dissatisfied with the increasing role of politics in judicial selection and judicial decision-making. Judges were plagued by outside influences due to the political aspects of the election process, and dockets were congested due to time the judges spent campaigning.

Then, in November 1940, voters amended the Missouri Constitution by adopting the "Nonpartisan Selection of Judges Court Plan," which was placed on the ballot by initiative petition. The adoption of the plan by initiative referendum resulted from a public backlash against the widespread abuses of the judicial system by the Pendergast political machine in Kansas City and by the political control exhibited by ward bosses in St. Louis.

The nonpartisan plan provides for the selection of judges based on merit rather than on political affiliation. Initially, the nonpartisan plan applied to judges of the Supreme Court; the court of appeals; the circuit, criminal corrections and probate courts of St. Louis city; and the circuit and probate courts of Jackson County. In 1970, voters extended the nonpartisan plan to judges in St. Louis County, and three years later, voters extended the nonpartisan plan to judges in Clay and Platte counties. These changes are reflected in the Missouri Constitution, as amended in 1976. The Kansas City Charter extends the nonpartisan selection plan to Kansas City municipal court judges as well. Under the constitution, other judicial circuits may adopt the plan upon approval by a majority of voters in the circuit.

A Supreme Court judge must be at least 30 years of age, licensed to practice law in Missouri, a United States citizen for at least 15 years, and a qualified voter of the state for nine years preceding selection. Judges may serve until the age of 70.

Operation of the Plan

Under the Missouri nonpartisan court plan, a nonpartisan judicial commission reviews applications, interviews candidates and selects a judicial panel. For the Supreme Court and court of appeals, the appellate judicial commission is composed of the chief justice of the Supreme Court, three lawyers elected by The Missouri Bar (the organization of all lawyers licensed in this state) and three citizens selected by the governor. Each of the circuit courts in Clay, Jackson, Platte and St. Louis counties and St. Louis city has its own circuit judicial commission. These commissions are composed of the chief judge of the court of appeals district in which the circuit is located, plus two lawyers elected by the bar and two citizens selected by the governor. All of the lawyers and citizens must live within the circuit for which they serve the judicial commission.

Once the judicial commission meets, it selects a panel of the three most qualified applicants and submits that three-person panel to the governor. The governor has 60 days in which to appoint one of these three panelists to fill the vacancy. If the governor does not select one of these three panelists within the 60-day timeline, then the selection of the new judge goes back to the judicial commission.

The nonpartisan plan also gives the voters a chance to have a say in the retention of judges selected under the plan. Once a judge has served in office for at least one year, that judge must stand for a retention election at the next general election. The judge's name is placed on a separate judicial ballot, without political party designation, and voters decide whether to retain the judge based on his or her judicial record. To inform voters about the performance of nonpartisan judges, lawyers participate in a judicial evaluation survey in which they rate those judges about whom they have personal and direct knowledge. They evaluate judges on important characteristics such as fairness, legal analysis skills, diligence and decisiveness. The results of this judicial evaluation survey then are distributed to the public via the media and the League of Women Voters.

How effective has the nonpartisan plan been in preserving judicial independence?

Since adoption of the Missouri nonpartisan court plan in 1940, no appellate judge has been voted out of office, and only two circuit judges have been voted out of office. Judge Marion D. Waltner of Jackson County was voted out in 1942. The other, Judge John R. Hutcherson of Clay County, was voted out in 1992 after receiving failing reviews from lawyers in the judicial evaluation survey. Thus, judges being voted out of office for a way he/she decided a case has been practically non-existent.

Federal Selection of Judges

The president “shall nominate and by and with the Advice and Consent of the Senate, shall appoint . . . judges of the Supreme Court . . . and other officials of the United States.

— U.S. Constitution, Article II, Section 2

This is all that the United States Constitution says about the selection of United States Supreme Court justices as well as federal judges at all levels—both appellate and trial judges. Realizing the importance of an effective judiciary, the framers of the Constitution gave both the president and the Senate a role in selecting judges. This was done to assure that the best people would be picked and that neither the executive nor the legislative branch could control the judiciary. But the Constitution did not define how the Senate should give its “advice and consent” on judicial appointments.

The Constitution also says nothing about the qualifications of federal judges. Over the years, presidents have looked for different qualities in their court nominees. One of the most important has been the nominee’s legal training and experience. Presidents have also made nominations so that the justices do not all come from one part of the country. A candidate’s religion—and more recently race and sex—have been additional factors considered by presidents trying to achieve a balanced court. Finally, most presidents want to put people on the court who share their philosophy about government, the law, and the Constitution. But it is not easy to predict how a person will decide cases once he or she gets on the bench.

The president may nominate a person for the court for many different reasons. But what about the other side of the Constitutional equation? For what reasons may the Senate reject a judicial nominee? Again, the Constitution is silent.

Shortly after the Constitutional Convention, Alexander Hamilton wrote in No. 76 of *The Federalist Papers* that there had to be “special and strong reasons for the refusal” of any presidential nominee. On the other hand, Hamilton recognized that the “advice and consent” requirement “would be an excellent check upon a spirit of favoritism in the President.”

Since 1789, when George Washington made his first Supreme Court appointments, the Senate has rejected 28 out of 139 nominations. Most of these rejections came about because the nominee lacked legal ability, was inexperienced, or had committed some unethical act. Some argue that these should be the only reasons for rejecting a Supreme Court nominee. Others, however, reason that senators should also have the freedom to vote against a nominee because of his or her ideas.

The process of selecting federal judges begins when the president receives recommendations from senators for candidates from their states. The president then makes nominations, which are forwarded to the Senate. The nominations are referred to the Senate Judiciary Committee, chaired by a member of the majority party. Committee members send the nominees questionnaires about their backgrounds and writings, which are scrutinized by the committee. The nominee may go through one or more hearings where they are questioned by the committee. The committee then makes its recommendations to the full Senate, which votes on the appointment.

All federal judges are appointed by the president, confirmed by the U.S. Senate, and serve for life. There is only one way under the Constitution that federal judges can be removed: The U.S. House of Representatives can vote to impeach any federal judge for “treason, bribery or other high crimes or misdemeanors.” The judge is then tried by the Senate. To remove the judge, two-thirds of the Senate must vote to convict. Only 13 federal judges in our history have been impeached by the House and just seven convicted by the Senate. All have been convicted for alleged criminal behavior. None has ever been convicted for making unpopular decisions or for holding an unpopular judicial philosophy.

The founders of our country saw the importance of having judges make decisions about law and the Constitution free from political pressure. Only time will tell if their wisdom will survive.

Comparing and Contrasting Missouri's Nonpartisan Court Plan and Federal Selection of Judges

Fill in the chart below:

	Missouri	United States
Role of the Executive		
Role of the Legislature		
How are politics minimized?		
Role of the people		
Term limits?		

For discussion:

1. Which plan—Missouri or the United States allows for a more independent judiciary? Why?
2. What aspects, if any, of Missouri's Nonpartisan Court Plan would you like to see the federal government adopt? Why?
3. What aspects, if any, of the federal selection plan would you like to see Missouri adopt? Why?
4. Do you think appellate judges at either level should be elected by the people?
5. How do the ways both Missouri and the federal government currently select judges protect the rights of the minority?
6. How do both systems promote an impartial judiciary?