In the Global Market for Justice:
Who is Paying the Highest Price for Judicial Independence?

The greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary.\(^1\)

Chief Justice John Marshall
Virginia State Convention in 1829

**TABLE OF CONTENTS**

I. FOUNDATIONS .................................................................449
II. STATE SELECTION METHODS AND THEIR REGULATION ..........456
III. THREATS TO JUDICIAL IMPARTIALITY AND THEIR SOLUTIONS .....469
IV. GLOBAL SELECTION METHODS ...........................................476
V. SOLUTIONS ........................................................................489
VI. CONCLUSION ......................................................................491

APPENDIX ONE: VARIATIONS ON STATE SELECTION METHODS ..........492
APPENDIX TWO: WORLD SELECTION METHODS ..............................494

Judicial elections are becoming “nastier, noisier, and costlier,”\(^2\) the very thing Chief Justice John Marshall feared when he warned colonialists of an “ignorant,” “corrupt,” or “dependent” judiciary. As many states elect their judges, they continually make the judiciary dependent on public opinion. This dependence on public opinion is not without its costs, as elected judiciaries are becoming subject to highly politicized and expensive campaigns, heightened scrutiny, and an unpredictable public that can rain down their wrath at any moment.

Examples of “nastier, noisier, and costlier” elections can be seen at every turn. For example, noisier elections are evidenced by the increased politicization of the courts.\(^3\) In the new age of endless media, the public has taken an increased interest in the judiciary, and especially its decisions. In

---

the areas of criminal justice and tort reform, for example, the public not only scrutinizes the judiciary, but also reports (and sometimes skews) its decisions in order to support or oppose a judicial candidate in the next election. Other areas of law have also caused judicial elections to be "noisier" as courts continue to adjudicate heavily politicized social issues. Courts regularly decide issues with regard to abortion, criminal defendant rights, toxic tort litigation, environmental policy, and civil rights, all bringing out strong emotions in the public, with stronger reactions from special interest groups.

In addition to being "noisier," judicial campaigns have also gotten much "costlier." The first million-dollar election was seen in the mid-1980s and since then costs have continued to skyrocket. The cost of running for state supreme court has increased from $237,281 in 1986 in Alabama to $2,080,000 in 1996, while in Ohio costs "rose from $100,000 in 1980 to over $2.7 million in 1986." Pennsylvania has seen parallel increases: a campaign in 1987 cost $523,000, but reached $2.8 million in 1995. These costs of judicial races are borne not only by the candidates themselves, but also by lawyers, business interests, and political parties as

4. In California, three justices were opposed in their retention elections because of their stand on the death penalty. Kyle D. Cheek & Anthony Champagne, Partisan Judicial Elections: Lessons from a Bellwether State, 39 WILLAMETTE L. REV. 1357, 1365 (2003). The three justices spent over $4 million in connection with the election, but were opposed by over $6 million from special interest groups, eventually causing all three justices to lose their positions. Erwin Chemerinsky, Preserving an Independent Judiciary: The Need for Contribution and Expenditure Limits in Judicial Elections, 74 CHI.-KENT. L. REV. 133, 136 (1998). Many judges continue to run these "tough on crime" campaigns, trying to appease the demanding public, which led one Nevada justice to comment: "judges are supposed to be judging crimes not fighting it." Schotland, Judicial Independence and Accountability, supra note 2, at 150.

5. One example was Ohio Supreme Court Justice Alice Resnick, who was opposed by the U.S. Chamber of Commerce in a multi-million dollar campaign. Judge Resnick had earlier taken part in a decision that overturned tort-reform legislation as being unconstitutional. The U.S. Chamber of Commerce has continued to get involved in many judicial elections, supporting those candidates that are sympathetic to pro-business interests and favorable to tort-reform. The Ohio Chamber of Commerce spent about $4 million on issue advertisements opposing Justice Resnick. The United States Chamber of Commerce spent another $1-2 million on the anti-Resnick campaign. To counter the Chamber ads, a coalition of trial lawyers and unions spent another $1,524,000. Roy A. Schotland, Financing Judicial Elections, 2000: Change and Challenge, 2001 L. REV. M.S.U.-D.C.L. 849, 875-76 (2001).

6. Id.


9. Id.

10. Id.
the primary contributors to judicial campaigns. The threats to independence and impartiality are pervasive from these "costlier" elections as one can easily imagine how likely it is that the same lawyer will appear in front of the judge to whose campaign he contributed. Business interests and activist groups are just as likely to threaten independence as they will also appear before the very judges that received their campaign contributions.

Finally, judicial elections have become "nastier," often leading the American public to lose faith in its court system. Campaigns are no longer based on judicial qualifications, but rather on smear campaigns that often distort a judge's record. A national survey conducted in 1999 found that public trust and confidence in the judiciary fell below the confidence people had in other government institutions. The same survey also found that eighty-one percent (81%) of respondents believed judges were influenced by politics, and that eighty percent (80%) believed wealthy people were treated better than others by the courts. Nearly fifty percent (50%) of respondents believed that minorities receive worse treatment than others from the courts.

With these problems continually plaguing judicial elections, it is remarkable that states chose to elect their judges in the first place. An examination of the historical debate over judicial selection provides a foundation for examining the competing interests inherent in selecting judges. The colonists were first introduced to judicial selection through King George II. He appointed judges to serve during his pleasure, leading to a sort of "telephone justice" where the King dictated the outcome he desired in any given case and removed those judges who did not rule in his favor. The colonists were so angered by this system and its offense to justice that they listed the judiciary's lack of independence with the complaints contained in the Declaration of Independence. As a result, the

---

13. Id.
14. For an extensive history of judicial selection development, see F. Andrew Hanssen, Learning About Judicial Independence: Institutional Change in the State Courts, 33 J. LEGAL STUD. 431, 440-53 (2004).
15. "Telephone justice" is often described as "taking instructions from the party boss" who simply makes a call to the judge in charge and orders his desired result. David Tolbert & Andrew Solomon, United Nations Reform and Supporting the Rule of Law in Post-Conflict Societies, 19 HARV. HUM. RTS. J. 29, 53 (2006).
17. Kote, supra note 11, at 600 (stating that King George III "has made judges dependent on his will alone, for tenure of their offices, and the amount and payment of their salaries . . ." citing THE DECLARATION OF INDEPENDENCE para. 11 (U.S. 1776)).
Founding Fathers had to look somewhere other than their motherland for a model of judicial selection that would ensure the independence of the judiciary.

In the theoretical battle that ensued over judicial selection, Charles de Secondat Baron de Montesquieu, one of the original designers of the American government's system of checks and balances and tripartite government, joined William Blackstone in arguing that judges should be elected. Thomas Jefferson also argued for some form of accountability, arguing that judges should be appointed for limited terms and then subject to reappointment or retention elections. Alexander Hamilton, on the other hand, pursued a judiciary that was completely independent from the will of the majority. He stated that placing the power to select the judiciary with the people would be problematic because there would be "too great a disposition to consult the popularity."

Hamilton won the intellectual battle when the federal government decided to appoint judges with life tenure and protected salaries. Five of the original states followed the federal government by giving the governor the power to appoint and the legislative body the power to approve. The other eight original states gave appointment power exclusively to the legislative body. Approval of the appointment process did not last long, however, as people grew dissatisfied with the judiciary. In the early 1800's people grew dissatisfied with federal judges such as John Marshall, who was a Federalist in the midst of dominating Jeffersonians. President Jackson himself disliked the judiciary, whom he called "politicians who hide their politics under their robes." The rise of "Jacksonian democracy" led to cries for a more accountable judiciary. The states met this cry for accountability by making the judiciary directly dependent on the public through judicial elections.

21. Id.
22. See U.S. CONST. art. III, §1, for life tenure and salary provisions. For federal judicial appointment, see U.S. CONST. art. II, §2, cl. 2.
25. Cheek & Champagne, supra note 4, at 1358.
26. Eid, supra note 19, at 71.
27. Ifill, supra note 7, at 73.
Mississippi became the first state to elect all of its judges by popular election.\textsuperscript{28} Within fourteen years of New York and Iowa switching to the popular election of judges, twenty more states moved from appointment to election.\textsuperscript{29} As the Civil War began, twenty-four of thirty-four states were selecting their judges through popular elections.\textsuperscript{30} In the late 19\textsuperscript{th} Century, developments in selection systems led to the adoption of non-partisan elections, where the judicial candidate was not identified by party affiliation on the ballot.\textsuperscript{31} Twelve states were choosing their judges using non-partisan elections by 1927,\textsuperscript{32} although three states tried non-partisan elections and rejected them.\textsuperscript{33} States continued to try variations of selection systems, combining popular elections with appointments to form “merit selection.”\textsuperscript{34}

Although states have continued to adapt their selection systems, as long as they rely on some form of election, the contests will continue to get “nastier, nosier, and costlier,” showing the need for reform. This comment will survey foreign countries and their judicial selection systems to examine alternatives to the current selection methods utilized by the states. Part I lays a foundation with which to examine judicial selection systems by defining independence, impartiality, and their intersection with accountability, along with examining constitutionalism concerns and diversity issues. Part II surveys the current selection methods used by the states and the various regulations in place concerning judicial selection. Part III examines the problems created by the various selection systems and proposed solutions to those problems. Judicial selection methods used by foreign countries are categorized and explored in Part IV, with an alternative selection method for the judiciary proposed in Part V.

I. FOUNDATIONS

In order to properly analyze the judicial selection methods of foreign states, it is necessary to understand the concepts that drive each country in

\begin{enumerate}
\item[28.] Cheek & Champagne, \textit{supra} note 4, at 1359; Eid, \textit{supra} note 19, at 71; \textit{but see} Olszewski, \textit{supra} note 18, at 3-4. ("In 1812, Georgia went beyond simply granting the legislature the right to select judges, becoming the first state to adopt popular elections as a means of choosing judges.").
\item[30.] \textit{Id.} at 207.
\item[31.] Cheek & Champagne, \textit{supra} note 4, at 1359.
\item[32.] \textit{Id.}
\item[33.] The states rejected non-partisan elections because politics were still involved in elections, only hidden now from voters’ eyes, making the voters even less knowledgeable about the candidates. \textit{Id.}
\item[34.] Discussed \textit{infra} at pp. 460-62.
\end{enumerate}
choosing its judges. Countries have consistently tried to balance two main concepts—accountability and independence—in selecting judges. Additionally, states consider whether judges are impartial, whether the public has confidence in its courts, and whether individual rights are being protected. These concepts are not only the foundation for judicial selection systems; they also differentiate judicial elections from those of the other branches, demonstrating the need for a unique selection system for judges.

Generally, judicial independence is about connections—or lack thereof—between the judiciary and other influences, both political and social.35 Most scholars divide judicial independence into two concepts: decisional independence and institutional independence.36 Institutional independence can best be described as insularity from the other political branches of government; judges being free to decide cases without fear of retribution from the executive or legislative branches.37 Institutional independence is the essential feature of the checks and balances designed by the Founding Fathers to ensure that the judiciary would be able to exercise its power in overturning legislative or executive acts that were unconstitutional.38 Institutional independence was established firmly in this country by Chief Justice John Marshall in Marbury v. Madison39 when Marshall established the judiciary as a co-equal branch of the federal government that was independent from the other branches.40

Institutional independence is extremely important to a functioning judiciary; however, decisional independence may be more important to a rule of law society.41 Decisional independence is the judge’s ability to decide each case free from improper influences, based solely on the law and

38. Id.
39. 5 U.S. (1 Cranch) 137 (1803).
41. Ihekwumere, supra note 37, at 380.
the applicable facts. It is decisional independence that one would equate more with impartiality or neutrality, an essential promise of the law. Improper influences that would diminish decisional independence if used in a judge's determination of the outcome include the identity of the litigants, popularity of the issues presented, and repercussions for the judge, personally and professionally.

It is easy to see that judicial impartiality flows directly from judicial independence; some even say judicial independence is judicial impartiality. Impartiality is considered such a necessary precondition to the administration of justice that it has been a primary concern from the writing of the Bible to the founding of the United Nations. The United Nations considers impartiality so fundamental that they list it as a basic human right. In the Old Testament, Moses commanded his people: “Appoint judges and officials for each of your tribes... and they shall judge the people fairly. Do not pervert justice or show partiality.” Americans have not missed the importance of impartiality either, as the Supreme Court has held that impartiality is so important that even an appearance of bias violates a litigant’s due process rights.

Although considered a fundamental right, defining “impartiality” in the judicial context has often been difficult. The dictionary defines

---

43. “The law makes a promise – neutrality. If the promise gets broken, the law as we know it ceases to exist.” Id. (quoting Anthony M. Kennedy, Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice. Address at the ABA Symposium (Dec. 4-5, 1998)).
44. Souders, supra note 36, at 534.
45. Eveleth, supra note 40, at 60.
49. Ifill, supra note 7, at 76. See e.g., In re Murchinson, 349 U.S. 133, 136 (1955) (holding that disqualification of judges is sometimes necessary in order to preserve the appearance of justice where no actual bias is present).
50. The American Bar Association and most state codes do not define impartiality. This came to be one of Justice Scalia's complaints in his analysis of judicial conduct codes in Republican Party of Minnesota v. White. In the absence of an adequate definition he proposed three: (1) lack of bias for or against either party to the proceeding; (2) lack of preconception in favor of or against a particular legal view or issue; (3) open-mindedness. Republican Party of Minnesota v. White, 536 U.S. 770, 775-78 (2002).
"impartial" as "not partial or biased; unprejudiced." One author defines impartiality as ensuring that "legal cases are decided on the facts and the law, without influence from such outside forces as public opinion, politics, or special interest groups." Another defines it as the ability of any litigant, regardless of race, gender, age, creed, or national origin, to obtain fair and impartial justice.

Several factors need to be considered when trying to ensure judicial impartiality. The first is providing judges with both decisional and institutional independence so that they can adjudicate impartially without the fear of retribution. Additionally, judges need to be open-minded and committed to the rule of law. A final consideration is the role of diversity in the judiciary. Judicial impartiality is more than just a lack of bias toward a litigant; it is a structural dimension affecting the bench as a whole. Racial and gender diversity on the bench ensures that competing perspectives of a community are represented. An analogy can be drawn to the petit jury: defendants do not have a right to a jury made up of people with the same race or gender, but they do have a right to a pool of jurors that is diverse. Similarly, parties before the bench have a right to a pool of judges that is diverse, like the jury venire, but not necessarily a right to a judge of a specific race or gender. Because a diverse bench is a fundamental right and thus one of "constitutional dimension," every jurisdiction that rethinks its judicial selection method needs to consider the effects the change will have on the diversity of the bench.

If judicial independence and impartiality are on one side of the scale, then the accountability of the judiciary is on the other side. The debate ensuing since the early 19th century has been how to effectively balance both the accountability and independence of the judiciary. The ideas of accountability and independence are directly at odds with each other because an independent judiciary is accountable to no one. People argue that there can be too much judicial independence; since judges are government officials who exercise plenary power, they should be account-

52. Eveleth, supra note 40, at 59.
53. Ihekwumere, supra note 37, at 379.
54. Ifill, supra note 7, at 81.
55. Id. at 82.
56. Id.
57. Id.
58. Id. at 90.
59. Id. at 84. Those states subject to section four of the Voting Rights Act also need prior approval in order to change their judicial selection method. See infra notes 152-156 and accompanying text.
60. Russell, supra note 35, at 2; Souders, supra note 36, at 531.
able to the public. Although it can be argued that judges are accountable to one another through appellate courts, some will say that this is not enough; judges must also be accountable to the public.

Pivotal in the early development of the American judiciary, accountability has continued to be the motivating factor for many changes to the selection of the judiciary. One such change that has been proposed in South Dakota and Montana is a constitutional amendment providing for the recall of judges for any reason. The amendment, named “JAIL” for “Judicial Accountability Initiative Law,” allows people to file a recall petition for any reason, without regard to the judge’s good-faith efforts to perform their office in accordance with the law. The proposed Montana amendment reads, “The justification statement is sufficient if it sets forth any reason acknowledging electoral dissatisfaction with a judge or justice notwithstanding good faith attempts to perform the duties of office.”

The supporters of these constitutional amendments forget that accountability is already built into our system in many ways. A recall option to remove judges is unnecessary and superfluous because judges can already be removed through impeachment. Additionally, a judge who violates principles of independence by taking bribes or promising to exchange favors can be reprimanded through both criminal and impeachment processes. Other accountability measures are also already in place, such as when a judge is overruled by an appellate court for applying the law incorrectly. Another example is the recusal remedies for when a judge is biased or appears to be biased. Additionally, if the public is unhappy with the law judges are making or the way they are interpreting the law, the public can exercise their rights through the political process and change the current law. If the constitution is flawed, the public can petition the


64. Id. These amendments were successfully defeated in all states where they were on the November 2006 ballot. Molly McDonough and Debra Cassens Weiss, Huge Defeat for ‘JAIL 4 Judges:’ Female Judicial Candidates Win Big, A.B.A. J., November 9, 2006.

65. Id.

66. Norman, supra note 63, at 239.

67. Id.

68. JUSTICE IN JEOPARDY, supra note 3, at 12.

69. Id.

70. Id. at 2.
legislature to amend it, without any review by the judiciary.\footnote{Id.} The federal government and its Founding Fathers did not grant federal judges unlimited independence; they built in their own methods of accountability, thereby making additional measures of accountability unnecessary.

The concepts of independence, impartiality, and accountability need a final dimension added before the judiciary can be fully analyzed, constitutionalism. In our unique system of government, democracy is not absolute; it is balanced by concerns of constitutionalism.\footnote{Id.} Constitutionalism is the tempering of the will of the majority in order to protect the rights of minorities.\footnote{Id.} These rights are contained in the federal Constitution and the various state constitutions. The rights are meaningless, however, unless an independent judiciary upholds them.\footnote{Id.}

Just as independence can go too far, too much accountability can be dangerous as it is the role of the judiciary to protect individual rights for which independence is necessary. In Alexander Hamilton’s famous work of the judiciary, The Federalist No. 78, one of our Founding Fathers stated: “This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which . . . have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.”\footnote{THE FEDERALIST No. 78, at 103 (Alexander Hamilton) (Tudor Publishing ed., 1937).} The protection of individuals, minorities, and groups lacking political or financial power goes to the very core of the judiciary’s obligations as a branch of government.\footnote{Webster, supra note 62, at 27.} They are the branch that is not fully accountable to the majority’s will, as opposed to the other branches, because of their responsibility to protect our “sacred rights.” As the public clamors for more accountability, it is essential to consider what effect increased accountability will have on the judiciary’s ability to protect minority rights. Current selection methods beg the question: can justices elected by the majority successfully protect minority rights, which are often unpopular?\footnote{Newman & Isaacs, supra note 23, at 16-17.} When examining alternative judicial selection methods it is imperative to consider whether the judiciary we select can, and will, protect minority rights.

The independence and accountability of the judiciary, which is directly affected by its selection system, directly affects the public confidence in the courts. Public confidence in the judiciary is vital to its functioning as it

\footnotesize{\begin{itemize}
\item 71. Id.
\item 72. Newman & Isaacs, supra note 23, at 16.
\item 73. Id.
\item 74. Eveleth, supra note 40, at 58-59.
\item 75. THE FEDERALIST No. 78, at 103 (Alexander Hamilton) (Tudor Publishing ed., 1937).
\item 76. Webster, supra note 62, at 27.
\item 77. Newman & Isaacs, supra note 23, at 16-17.
\end{itemize}}
controls neither "the purse" nor "the sword." The judiciary cannot levy taxes, it cannot maintain armed forces, and it cannot coerce obedience to its holdings, and so the very existence of the rule of law is dependent on public confidence because the public will not support institutions in which they have no confidence. The effects on public confidence in the judiciary need to be considered with every selection system because if large segments of the population lose faith in the judiciary, "justice is in very serious trouble." Accordingly, another consideration of any selection system is its effect on diversity because public confidence in the judiciary is not only affected by the judiciary's independence and accountability, but also by its diversity. Especially within communities of color, the diversity of the judiciary is important, otherwise the legitimacy of the courts is undermined.

Finally, it is important to remember that judges are fundamentally different from other government officials and therefore their respective selection should reflect those differences. At the 1846 Constitutional Convention, a delegate who would later become Chief Justice stated that the judiciary "represents no man, no majority, no people. It represents the written law of the land ...." The fundamental difference between the judiciary and other political actors is that judges are not representatives. They do not serve any constituency or advance the interests of any particular community. In fact, judges are supposed to insulate themselves from outside influences such as political action groups and campaign money. Political actors on the other hand are expected to represent the people. Governors and legislators are advocates and are rewarded for advancing a particular interest throughout their work. Instead of insulating themselves from public opinion, legislators are expected to let public opinion dictate their decisions. Because of the differences between the judiciary and other government officials, their respective selection

---

78. Id. at 2; see also THE FEDERALIST No. 78 (Alexander Hamilton) ("Courts have neither Force nor Will, but merely judgment. If the public does not have confidence in courts' judgment, then the legitimacy of courts as a democratic institution is endangered.").
80. JUSTICE IN JEOPARDY, supra note 3, at 10.
81. Id. at 2.
82. Id. at 12.
83. Id. at 1.
84. Schotland, Financing Judicial Elections, supra note 5, at 851.
86. See MODEL CODE OF JUDICIAL CONDUCT Canon 5(C)(2) (2004).
systems should be fundamentally different; however, the current trend is toward symmetry.\textsuperscript{88}

\section*{II. \textsc{State Selection Methods and Their Regulation}}

Throughout history, states have experimented with a variety of selection methods; however, five selection methods have since emerged and continue to dominate state selection systems, although some states tailor each selection method to their individual needs.\textsuperscript{89} Currently, states employ two types of appointment: legislative and gubernatorial; and two types of elective systems: partisan and non-partisan.\textsuperscript{90} Additionally, several states select their judges using a "merit plan" that has two key components: a judicial nominating commission and retention elections where candidates run unopposed.\textsuperscript{91} Using these five selection systems, states use components from each to create their own unique selection systems.\textsuperscript{92}

\begin{tabular}{|c|c|c|c|c|c|}
\hline
\textbf{Appointment} & \textbf{Election} & \textbf{Non-Partisan Elections} & \textbf{Missouri Plan} & \textbf{Variations} \\
\hline
Governor & Legislature & Partisan Elections & & & \\
\hline
\text{Delaware*} & Rhode Island* & Alabama & Georgia & Alaska & California* \\
\hline
\text{Maine} & South Carolina & Arkansas & Idaho & Arizona & Connecticut* \\
\hline
\end{tabular}

\footnotesize{\textsuperscript{93}This table is compiled from information provided in the appendix of LYLE WARRICK, \textsc{Judicial Selection in the United States: A Compendium of Provisions}, (American Judicature Society 2d ed. 1993). Those states with an (*) next to them have their own variation on the selection method listed; more information on these states is provided in Appendix One at pp. 492-94.}

\textsuperscript{88} After the Supreme Court's decision in \textit{Republic Party of Minnesota v. White}, which overturned the ABA Model Code's announce clause, judicial elections are becoming more and more like the elections of other political branches. Discussed \textit{infra} pp. 464-67 and accompanying notes.


\textsuperscript{90} Hanssen, \textit{supra} note 14, at 431-32.

\textsuperscript{91} Cheek & Champagne, \textit{supra} note 4, at 1359.

\textsuperscript{92} MCFADDEN, \textit{supra} note 61, at 5-6. It is important to keep in mind that many judges are appointed using vacancy provisions. One study reported that nationally, one-third of judges are appointed to fill vacancies. Schotland, \textit{Financing Judicial Elections}, \textit{supra} note 5, at 853.
The president appoints all federal judges; however, few states follow the federal trend and use a purely appointive selection system. As discussed supra, all the original states began by appointing their judges, but during the unrest of the Jacksonian period of popular democracy, many states began electing their judges. Currently only eight states employ some kind of appointive selection system. Three states appoint judges after the

<table>
<thead>
<tr>
<th></th>
<th>Appointment</th>
<th>Election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor</td>
<td>Legislature</td>
<td>Partisan Elections</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Virginia</td>
<td>Illinois*</td>
</tr>
<tr>
<td>South Dakota*</td>
<td>Louisiana</td>
<td>Michigan</td>
</tr>
<tr>
<td>Vermont*</td>
<td>Mississippi</td>
<td>Minnesota</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Montana</td>
<td>Indiana*</td>
</tr>
<tr>
<td>Pennsylvania*</td>
<td>Nevada</td>
<td>Iowa</td>
</tr>
<tr>
<td>Tennessee*</td>
<td>North Dakota</td>
<td>Kansas</td>
</tr>
<tr>
<td>Texas</td>
<td>Ohio</td>
<td>Maryland</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Oregon</td>
<td>Missouri</td>
</tr>
<tr>
<td></td>
<td>Washington</td>
<td>Nebraska</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Oklahoma*</td>
<td>Utah</td>
</tr>
<tr>
<td></td>
<td>Wyoming</td>
<td></td>
</tr>
</tbody>
</table>

94. Discussed supra pp. 447-49.
95. See Table 1, supra pp. 456-57.
legislature votes on them: Rhode Island, South Carolina, and Virginia; nine states use gubernatorial appointment: Delaware, Maine, New Jersey, South Dakota, and Vermont. Those states appointing their judges generally believe the only way to ensure judicial independence is through appointment. This way judges will not be prone to the pressures of a changing electorate’s opinion. Although appointment ensures judicial independence, many people associate appointment with a lack of accountability.

While the minority of states appoint their judges, the vast majority of states elect their judges. Nationally, over eighty-seven percent (87%) of all judges face some kind of election in thirty-nine states. States generally employ three different types of elections: partisan elections, non-partisan elections, and uncontested retention elections (as part of the Missouri Plan). As Table 1 shows, ten states use partisan elections for most or all of their judiciary while twelve states use non-partisan elections to elect part or all of their judiciary. Even in states that employ elections, however, most judges still reach the bench by appointment in order to fill vacancies during midterm elections.

States initially used partisan elections, where a judicial candidate’s party affiliation is listed on the ballot. To curb voters from voting strictly based on party affiliation, states introduced non-partisan elections where the

---

96. See Rhode Island, South Carolina, and Virginia in WARRICK, supra note 93; see also Chief Justice Joseph E. Lambert, Contestable Judicial Elections: Maintaining Respectability in the Pose-White Era, 94 KY. L. J. 1, 2 (2005).
97. WARRICK, supra note 93.
98. Jason J. Czarnezki, A Call for Change: Improving Judicial Selection Methods, 89 MARQ. L. REV. 169, 176 (2005). In fact, because empirical evidence shows that judges change their voting patterns when elections near, some commentators argue that all judges should be appointed. Id. at 176-77. Appointed judges have been shown to rule more consistently, which is a behavior that elected judges do not exhibit. Id. at 172.
99. See Table 1 pp. 456-57. For a clear overview of the percentage of judges that are elected and by which method, see Schotland, Financing Judicial Elections, supra note 5, at 853.
100. Abrahamson, Judicial Independence as a Campaign Platform, supra note 36, at 41.
101. One study found that eighty-five percent (85%) of California trial court judges were initially appointed to fill vacancies. SUSAN B. CARBON & LARRY C. BERKSON, JUDICIAL RETENTION ELECTIONS IN THE UNITED STATES 14 (American Judicature Society 1980).
102. Some believe that partisan elections are merely a chance for voters to ratify the decisions made by the party leadership because interested judicial candidates cannot even obtain a place on the ballot without the endorsement of the party. CARBON & BERKSON, supra note 101, at 14 ("The notion of direct popular expression of choice is, in effect, a mirage.")
IN THE GLOBAL MARKET FOR JUSTICE

ballot is silent on the candidate’s party affiliation. A few states have experimented with “semi-partisan” election systems where candidates run in extremely competitive partisan primary races, and then are listed on the final ballot absent their party affiliation. Michigan and Ohio both follow this model and conduct non-partisan elections, but judicial candidates are elected through highly partisan primaries. Even though candidates themselves are not supposed to announce their party affiliation, both the Democratic and Republican parties mobilize on behalf of their judicial candidates, ensuring that every voter knows the party affiliation of each candidate. Studies have shown that party affiliation is the best predictor of outcome, and while states have tried to remove the intense political campaigning from judicial elections, it still infects all judicial races.

People argue for judicial elections as being the most “democratic,” “representative,” and “efficient” method of selecting judges. Others argue that judges should be elected instead of appointed because of the “plenary power” that judges possess. Additionally, others argue that the judiciary should be independent from other political branches but not the public. Clearly these ideas conflict with the ideas of impartiality and independence because if judges fear public recourse for their decisions, they will not be adjudicating based on the law, but rather public opinion. Proponents of elections also claim that popular elections of judges makes courts more accessible to the public and that elections keep the public from becoming disengaged with their legal system. Although the election of judges is the most democratic form of selecting judges, proponents concede that judicial elections will “not be foolproof, nor will it be perfect . . . [because] the democratic process by its very nature, is anything but perfect.”


104. Ohio is the prime example of this where candidates cannot even announce their party affiliation until after the primaries are over. Nancy Marion et al., Financing Ohio Supreme Court Elections 1992-2002: Campaign Finance and Judicial Selection, 38 AKRON L. REV. 567, 568 (2005).


106. Id.

107. Marion, supra note 104, at 573.

108. Olszewski, supra note 18, at 12. Justice Olszewski in fact argues for the adoption of elections for all states, including those that currently appoint their judges.


110. Souders, supra note 36, at 548; Olszewski, supra note 18, at 15.

111. Olszewski, supra note 18, at 12.
In order to balance independence and accountability better, states developed the “merit” or “Missouri” plan as a way to select judges. The typical merit selection system involves two components: a judicial nominating commission and retention elections. The main idea of merit selection is that a non-partisan judicial nominating commission recruits and evaluates judicial candidates. The commission then submits a list of candidates to the governor, who appoints a judge from that list. The entire process is supposed to take place without regard to political considerations or personal ideologies; the commission is supposed to consider only abilities and qualifications. At the end of a judge’s term, he or she then runs in an uncontested race where the only question on the ballot is “should Judge X be retained in office?”

California was the first state to adopt retention elections, but it did not adopt a nominating commission for judges, the other component of the traditional merit plan. In 1934, California introduced retention elections, but a Commission confirmed gubernatorial appointments, versus submitting a list of nominees; a sort of “reverse-merit” plan. Missouri was the first state to adopt a true merit selection system, leading some commentators to refer to the merit plan as the “Missouri Plan.” In 1937, the ABA recommended that all states adopt the merit plan, but left the specific details of the merit plan to each individual state. After Missouri adopted the merit plan, other states followed suit, with twenty states adopting merit selection by 1979. The states adopting merit selection seem satisfied with their choice because no state that has adopted merit selections has abandoned it.

The benefit advanced by many advocates of merit selection is that independence and accountability are adequately balanced. Independence is preserved because judges are appointed and therefore do not have to cater to public opinion. The judiciary is still accountable to the public through retention elections, however, where the public can exercise its dissatisfaction for a particular judge. Additionally, because judges are rarely defeated in retention elections, the incentive for special interest groups to spend large

112. Cheek & Champagne, supra note 4, at 1359.
113. Id.
114. Id.
115. Carbon & Berkson, supra note 101, at v.
116. Id. at 11.
117. Id.
118. Id.
119. Id. at 4. The ABA continues to recommend the merit plan as the preferred selection method for state judiciaries. Ifill, supra note 7, at 84.
120. Carbon & Berkson, supra note 101, at 11-12.
121. Eid, supra note 19, at 72.
122. Souders, supra note 36, at 570.
amounts of money opposing a judge is reduced.\textsuperscript{123} Another benefit of merit selection is the increase in the pool of competent candidates from which the nominating commission can choose.\textsuperscript{124} More judges will consider office if they do not have to sacrifice huge amounts of time and money to be elected. Finally, merit selection avoids the problems created by an uninformed electorate who may be tempted to elect judges based on political or social issues rather than qualifications.\textsuperscript{125}

Several people criticize merit selection for removing politics from the view of the public to behind closed doors. Members of the nominating commission will only obtain their positions through some political process, whether it be through election or appointment.\textsuperscript{126} Obtaining membership on these nominating commissions usually involves heavy campaigning between opposing segments of the state's bar.\textsuperscript{127} Once membership on the commission is obtained, committee members have been known to fix their list of nominees to ensure that their candidate has a chance for the judicial office.\textsuperscript{128} One tactic for fixing nominee lists is called “log-rolling” where individual commission members make deals with other commission members to support their choice of judicial nominee.\textsuperscript{129} Another tactic is “panel stacking” where the commission members choose their nominees in a way that the governor has no real option in appointing a candidate he or she desires.\textsuperscript{130} It is clear from these tactics that politics still infuse the selection of the judiciary under the merit selection plan.

While problems can permeate nominating commissions, problems also plague the retention election component of the merit plan. Although it has been shown that judges rarely lose retention elections,\textsuperscript{131} that was not the experience of three California Supreme Court Justices.\textsuperscript{132} In 1986, Chief Justice Rose Bird spent over $1.5 million in her retention election.\textsuperscript{133} Two other Supreme Court justices (Reynoso and Grodin) were subject to retention that year and spent another combined $1.5 million on their elections.\textsuperscript{134} Despite the large amount of money that was spent, all three
justices lost their retention election. The loss, in large part, can be attributed to special interest groups that opposed the justices, most notably the group "Crime Victims for Court Reform," who spent over $7 million. The huge amounts of money spent in these retention elections shows that justice can still be bought.

In each state's attempt to tailor judicial selection systems to their own needs, many states have created variations on the primary selection systems. Illinois and Pennsylvania put their own spin on partisan elections: both states require judges to be elected in partisan elections, but after initial selection judges are only subjected to retention elections. New Hampshire puts its own variation on appointive selection. Judges in New Hampshire are nominated by the governor and approved by a five-member executive council; however, the general population elects the executive council. When a judge's term expires, the judge must be nominated by the governor again and approved again by the executive council.

Most variations on selection systems, however, occur in the context of merit systems. California uses a "reverse merit" system where the governor recommends candidates to the Commission on Judicial Nominees Evaluation, comprised of thirty members who are appointed by the California Bar Association. The Commission then rates those candidates who are later confirmed by "the Chief Justice of the California Supreme Court, the Attorney General, and the Senior Presiding Judge of the court where the new judge would serve."

Connecticut also puts its own spin on merit selection through its retention method. In Connecticut, the governor nominates a judge with the help of a judicial selection commission and the general assembly appoints the judge. At the end of the judge's term, the Judicial Review Council submits recommendations on the reappointment of the judge to the (1) governor, (2) judicial selection commission, (3) standing committee on the

135. Id. at 455.
136. Id. Randall T. Shepard, Judicial Independence and the Problem of Elections: "We Have Met the Enemy and He is Us." 20 QUINNIPAC L. REV. 753, 756 (2001) (describing other retention elections that have involved large amounts of money and strong opposition to the judge seeking retention).
137. CARBON & BERKSON, supra note 101, at 21. For a complete list of judges who have not been retained and the reasons why they were not retained, see Id. at 26-27.
138. Id. at 12. See also Appendix One at pp. 492-94.
139. See generally N.H. CONST. pt. 2, art. 46.
140. N.H. CONST. pt. 2, art. 60 (West 1997).
142. Eid, supra note 19, at 71-72.
143. Id. at 72.
144. CONN. CONST. ART. V §2; CONN. GEN. STAT. §2-40 (2007); CONN. GEN. STAT. ANN. §51-44(a) (West 2005).
judiciary of the Senate, and (4) standing committee on the judiciary in the House of Representatives. The judge is presumed to qualify for reappointment, and it is the judicial selection commission who has the burden of rebutting that presumption.

New Mexico goes above and beyond other states and employs different components from all the major selection systems. First, judges are appointed by the governor from a list of names provided by a judicial nominating commission. At the next general election following appointment, the judge runs on a partisan ballot. If the judge is successful, then the judge is subsequently subjected to non-partisan retention ballots. New Mexico’s unique take on judicial selection insulates judges from outside influences at the initial selection period, but then subjects judges to a scrupulous public at the first chance. With a scant record at the time of the first partisan election, the chance of misrepresentation of the judge’s true qualifications is high. While the public may have some information on the judge’s qualifications, the public will be more likely to vote based on party affiliation.

The reality of state judicial selection is that no one system will work for all states. When considering a selection method, a state needs to balance the conflicting ideas of independence and accountability. In addition, the state needs to consider the effect its selection method will have on the diversity of the judiciary, along with the effect the selection method will have on the public’s confidence in the judiciary. Finally, states need to consider their regulation of the judiciary as a supplement to initial selection methods to ensure the independence and integrity of the judiciary is preserved after selection.

No matter the selection system, all judicial candidates and their activities are governed by many different sets of regulations. First, judicial candidates are governed by the general election laws of the state. These laws regulate the due dates for declaring candidacy, the procedure for nominating candidates, and the procedures for voting, in addition to many other important details. Judicial candidates are also subject to the general campaign finance laws of each state. These laws usually require disclosure of the financial sources of a candidate’s election fund. Since nearly all judicial candidates are lawyers, candidates are also subject to the lawyer’s ethical codes of each respective state, which are usually based on the

145. WARRICK, supra note 93 (see “Connecticut” in Part III).
146. Id.
147. WARRICK, supra note 93 (see “New Mexico” in Part III).
148. Id.
149. Id.
150. McFADDEN, supra note 61, at 16.
151. Id. at 43.
ABA's Model Code of Professional Responsibility. 152 Finally, it is important to remember that states are also subject to the Voting Rights Act. 153 Specifically, those states covered by §4 need pre-clearance review for any change in their voting procedure. 154 States subject to §4 also need to pre-approve any changes from electing judges to appointing judges. 155 Additionally, in order for judicial elections to comply with the Voting Rights Act, minority voters must have an equal opportunity of participating in the process to elect the candidates of their choice. 156

Despite all these sources of regulation, the largest source of regulation comes from codes of conduct specifically written to regulate the conduct of judges. The ABA Model Code of Judicial Conduct provides the foundation for the various state codes of judicial conduct. Originally promulgated in 1924, the Code has undergone several revisions with the current edition enacted in 2004. 157 Throughout all the editions, the framers of the ABA stress the importance of judicial impartiality and independence, including the appearance of impartiality. 158

Two important clauses in the Model Code additionally restrict a judicial candidate's ability to speak on important election issues in order to preserve this appearance of independence, however, one of the clauses was recently overturned by Republican Party of Minnesota v. White. 159 One clause is the "announce clause," which prohibits judicial candidates from announcing how they will rule on an issue. 160 Another clause restricting the speech of judicial candidates is the "Pledges and Promises Clause," which prohibits candidates from making pledges or promises to rule in a specific way once in office. 161 Together the clauses were promulgated with the goal of preventing judicial candidates from making statements that undermine the actual independence of the bench or even the appearance of the bench's independence. 162

152. Id. at 15.
153. Ifill, supra note 7, at 57-58.
154. Id.
155. Id. at 58.
156. Id. at 85.
157. Conser, supra note 103, at 274.
158. MODEL CODE OF JUDICIAL CONDUCT Canon 2 (2004). Canon 2 of the current Model Code of Judicial Conduct is titled: "A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities." Id. This reflects the Supreme Court rulings "that even the appearance of bias may violate the due process rights of litigants." Ifill, supra note 7, at 61.
159. 536 U.S. 765 (2002).
160. White, 536 U.S. at 770.
161. Ifill, supra note 7, at 60.
162. Id. at 60-61.
The announce clause was subjected to strict scrutiny by the Supreme Court as a violation of a judicial candidate’s right to free speech. The text of the announce clause at issue provided: “a candidate for judicial office shall not ‘announce his or her views on disputed legal or political issues.’” The State of Minnesota provided the Court with two compelling interests in order to justify its announce clause, preservation of the impartiality of the judiciary and preservation of the appearance of the impartiality of the judiciary. Justice Scalia began his opinion by supplying several definitions of impartiality because while Minnesota asserted impartiality as their interest, neither the Minnesota Code nor the ABA Model Code supplied a definition of impartiality. Justice Scalia then analyzed whether the announce clause was narrowly tailored to any of these definitions.

The first definition that Justice Scalia analyzed for impartiality was a lack of bias for or against either party. The Court then held that the announce clause was not narrowly tailored to meet this definition of impartiality because the announce clause did not restrict speech as to particular parties, but prohibited speech only regarding specific issues. The second definition the Court proposed for impartiality was lack of bias toward a particular legal issue. The Court held that a judge’s lack of a predisposition toward a particular legal issue is not a prerequisite for equal justice since it is nearly impossible to find a judge who does not have preconceptions about the law. Justice Scalia went on to say that even if you could find judges who did not have preconceived notions about the law, it would not be desirable to do so because lack of bias about the law shows “lack of qualification, not lack of bias.” The third definition of impartiality that the court supplied was general “open-mindedness.” This type of impartiality requires that judges be open to ideas that contradict their own views about the law. The Court did not believe Minnesota adopted the clause for this reason; but held that the clause was so underinclusive that it could not be narrowly tailored regardless of the interest

163. White, 536 U.S. at 774-75.
164. Id. at 770 (quoting Minn. Code of Judicial Conduct Canon 5(A)(3)(d)(i) (2002)).
165. Id. at 775.
166. Id.
167. Id.
168. White, 536 U.S at 776.
169. Id. at 777.
170. Id.
171. Id. at 778.
172. Id.
173. White, 536 U.S. at 778.
asserted. Judges would be able to offer their opinions in speeches, books, and lectures up until the time they declared their candidacy for a judicial position, but would not be able to speak their mind during a campaign. After their candidacy, they would again be able to speak about their biases toward particular legal issues, up until the moment of pending litigation. Because all three definitions failed to provide a compelling interest to which the announce clause was narrowly tailored, the clause was held to be unconstitutional.

Many critics have opposed the Court’s decision in *White* for being “overly simplistic.” The Court’s definitions of impartiality, which distinguish impartiality as lack of bias toward parties, or alternatively, lack of bias toward legal issues, fail to recognize that bias toward a legal issue is bias toward a party. The *White* Court’s analysis is entirely dependent on the way in which one defines the party: the party may be “Jane Doe, but Jane Doe may also be an immigrant, a welfare recipient, an environmentalist, an anti-abortion campaigner, a union organizer, a mother suing for custody, or a doctor sued for malpractice.” Therefore, biases toward a particular legal issue can be, and are in many instances, biases for or against a particular party. Biases against parties and biases against legal issues are “two sides of the same coin.”

In the aftermath of the Court’s ruling in *White*, many state and district courts expanded on the ruling of *White* and overturned provisions of their codes of judicial conduct as being facially unconstitutional. One example is the *Weaver v. Bonner* Court, which struck down a provision of the Georgia judicial conduct code that prohibited candidates from making “false, fraudulent, misleading, or deceptive” statements. The 11th Circuit read the *White* opinion to suggest that the same standards apply for judicial elections as those that apply for legislative and executive elections. In addition to the cases that overturned provisions of judicial conduct codes, the ABA modified its Model Code of Judicial Conduct in August of 2003. The ABA followed right in line with Justice Scalia’s opinion and

174. *Id.* at 780.
175. *Id.*
176. *Id.*
177. *Id.* at 788.
179. *Id.* at 212.
180. *Id.*
181. *Id.*
182. 309 F.3d 1312 (11th Cir. 2002).
183. GA. CODE OF JUDICIAL CONDUCT Canon 7(B)(1)(d) (1994).
184. *Weaver*, 309 F.3d at 1321.
added a definition of impartiality that was lifted directly from the opinion in White. 186

From the White decision and its aftermath, one can easily see that judicial elections are becoming more and more like those of the executive and legislative branches. Even when judicial elections were differentiated with the announce clause in place, it did not cure the fundamental problem with judicial elections. When judges rule in accordance with the public opinion by which they achieved office they violate every litigant’s right to impartiality. 187 Now that courts have held as unconstitutional provisions which restrict a candidate’s speech, judicial elections are threatening the impartiality of the bench more than ever, for elected judges always have the “sword of popular opinion hanging over their necks whether or not they can make controversial public announcements during their campaigns.” 188

Although clauses restricting the speech of judicial candidates have been invalidated, provisions in the codes of judicial conduct still prohibit many different types of political conduct by a judicial candidate. The majority of these provisions are contained in Canon 5, which is named, “A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity.” 189 While the Code does allow a judicial candidate to purchase tickets to political gatherings, identify with a political party, speak on his own behalf, appear in the media, distribute campaign materials, and endorse or oppose other candidates, Canon 5 also places significant restrictions on a judicial candidate’s political conduct. 190

One important restriction, located in Canon 5(C)(2), prohibits a judicial candidate from personally soliciting or accepting any campaign donations. 191 The candidate must establish a committee through which all campaign funds are channeled. 192 This provision is designed to protect the independence and impartiality of the bench by insulating it from campaign

186. Id. In the “terminology” section of the ABA Code, it defines impartiality as the “absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.” MODEL CODE OF JUDICIAL CONDUCT (2004) at 8. Additionally, it should be noted that the “pledges and promises” clause is still contained in the ABA Code: a candidate for judicial office “shall not with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.” MODEL CODE OF JUDICIAL CONDUCT Canon 5(A)(3)(d)(i) (2004).
187. Raban, supra note 29, at 211.
188. Id. at 211-12.
funds that could potentially affect a judge's decision.\textsuperscript{193} Previously, the ABA Code prohibited the judicial candidate from knowing who contributed to the campaign fund, however, with recent campaign finance laws, disclosure requirements apply to all election candidates.\textsuperscript{194} The ABA Code gave way to this trend in the most recent edition, which requires a candidate's committee to file a report stating all the contributors to the candidate's campaign fund.\textsuperscript{195}

In addition to the prohibition on personal solicitation of funds, the ABA code requires that campaign contributions be "reasonable."\textsuperscript{196} The model code is written to allow states to place their own contribution limits for both aggregate donations and individual donations.\textsuperscript{197} States have not universally accepted this provision; about half of states limit individual contributions.\textsuperscript{198} Finally, the Model Code prohibits both judges and judicial candidates from holding office in a political organization, making speeches on behalf of a political organization, attending political gatherings, or contributing to a political organization.\textsuperscript{199}

The Code of Judicial Conduct also specifically addresses those candidates seeking office through appointment. These candidates seeking appointment for a judicial position or other government office may not accept any funds, through a committee or otherwise, to support his or her candidacy.\textsuperscript{200} There are also prohibitions on political activity by a candidate, except for: (1) communicating with a nominating commission; (2) seeking recommendations from organizations; and (3) providing information about his or her qualifications to the parties in the first two exceptions.\textsuperscript{201} There are fewer restrictions on non-judge candidates as they may hold office in a political organization, attend political gatherings, and continue their dues to a political organization.\textsuperscript{202} The Code thoroughly tries to insulate the judiciary from improper influences in order to preserve

\textsuperscript{193} McFADDEN, supra note 61, at 32. \\
\textsuperscript{194} Id. \\
\textsuperscript{195} MODEL CODE OF JUDICIAL CONDUCT Canon 5(C)(4) (2004). \\
\textsuperscript{196} MODEL CODE OF JUDICIAL CONDUCT Canon 5(C)(2) (2004). \\
\textsuperscript{197} MODEL CODE OF JUDICIAL CONDUCT Canon 5(C)(3) (2004). \\
\textsuperscript{198} McFADDEN, supra note 61, at 29. In Buckley v. Valeo the Supreme Court considered the Federal Election Campaign Act which placed limits on both contributions to a campaign and limits on total campaign expenditures. 424 U.S. 1 (1976). The court held that expenditure limits are a violation of the right to free speech, but upheld the contribution limits imposed by the Act. Id. at 143. The Court also upheld expenditure limits as a condition of receiving public funding. Id. \\
\textsuperscript{199} MODEL CODE OF JUDICIAL CONDUCT Canon 5(A)(1) (2004). \\
\textsuperscript{200} MODEL CODE OF JUDICIAL CONDUCT Canon 5(B)(1) (2004). \\
\textsuperscript{201} MODEL CODE OF JUDICIAL CONDUCT Canon 5(B)(2)(a) (2004). \\
\textsuperscript{202} MODEL CODE OF JUDICIAL CONDUCT Canon 5(B)(2)(b) (2004).
the appearance of impartiality, no matter what judicial selection method is employed.

III. Threats to Judicial Impartiality and Their Solutions

Many problems arise from the election of judges; the vast majority of these problems can be grouped into three categories: voter apathy, campaign finance, and improper influences on a judge’s conduct. Voter apathy is one major problem with judicial elections because voters as a whole have not been provided with information regarding the judicial system or with specific information about the candidates. Voter knowledge, however, is exactly what makes elections work—voters choose the most qualified candidate to serve on the bench. Without an informed electorate, voters will not be able to choose the most qualified candidates and the entire justification for electing judges will be eliminated.

With a lack of voter knowledge, success in a judicial election may depend more on appealing to the electorate and less on the true qualifications of a good judge. If the electorate does not have adequate information regarding the candidates, it will be much more susceptible to “catchy but misleading slogans” and “improperly financed campaign[s].” Because of this, “judges have no choice but to campaign” knowing that their best chance of getting elected rests not on their qualifications, but with their popular appeal. Judicial candidates therefore engage in expensive advertising campaigns in order to best capture the interests of the populace. These campaigns become virtual “arms races” with no “strategic arms limitations.”

Voter apathy is prevalent in contested elections as well as retention elections. Retention elections are consistently characterized by lower voter turnouts. Without any choice on the ballot, voters scrutinize the candidates less and are even less informed about their choice. While contested elections are likely to generate at least some debate about the better of the two candidates, in retention elections a lack of any competition

203. McFadden, supra note 61, at xiv. Some commentators argue that “voters are no less informed in judicial races than they are in legislative or executive election races.” Olszewski, supra note 18, at 11.
204. Czarnecki, supra note 98, at 179.
205. Id.
207. McFadden, supra note 61, at xiv.
211. Id.
stifles interest in the judge's qualifications.\textsuperscript{212} An uninformed electorate plagues both retention elections and contested elections, whether partisan or otherwise.

The solution to this problem requires not only education about the candidates themselves, but also education about the nature of the judiciary. It is important that the concept of judicial independence and its importance be impressed upon the electorate to ensure an understanding of the desirable characteristics in a candidate.\textsuperscript{213} Only after this foundation has been laid can information regarding candidates be useful to the voter. The question arises: on whom should the responsibility fall to educate the populace?\textsuperscript{214} Some answer that it should be "the bar, the bench, and judicial activists."\textsuperscript{215}

Once the electorate understands the necessity of judicial independence, information about a candidate's qualifications can be useful to the voter.\textsuperscript{216} One state has attempted to achieve a more informed electorate. Texas passed a bill in 2001 that required "judicial candidates to file biographical information regarding their educational and professional experience."\textsuperscript{217} The state then made the information available on a website for forty-five days before the election.\textsuperscript{218} Texas' attempt to educate its electorate about candidates' qualifications will help ensure that candidates are chosen based on the qualifications necessary to an independent and impartial judiciary.

The old Model Cannons of Judicial Ethics contained Canon 32: "Gifts and Favors."\textsuperscript{219} This canon provided: "A judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment."\textsuperscript{220} With the intensification of judicial elections, however, that rule is far removed from the current situation of plentiful campaign contributions.

\textsuperscript{212} Id.
\textsuperscript{213} Abrahamson, Judicial Independence as a Campaign Platform, supra note 36, at 41.
\textsuperscript{214} Ifill, supra note 7, at 98.
\textsuperscript{215} Id.
\textsuperscript{216} Some argue that wide dissemination of a candidate's qualifications is not necessary for retention elections. If the judge's "record is egregious enough to warrant removal" there will be "sufficient adverse publicity . . . generated" to oppose the judge without the need of an opponent. Carbon & Berkson, supra note 101, at 15. This adverse publicity is exactly the problematic campaigning that leaves the voters uninformed because it can captivate the public by construing a judge's holdings inaccurately and withholding information about both sides of the issue.
\textsuperscript{217} Kotey, supra note 11, at 605-06.
\textsuperscript{218} Id. at 606.
\textsuperscript{219} American Bar Association, Opinions of the Committee on Professional Ethics with the Canons of Professional Ethics Annotated and Canons of Judicial Ethics Annotated 198-229 (1967).
\textsuperscript{220} Id. at 225.
As discussed previously, due to a lack of voter knowledge, large campaigns are especially important in judicial races. "In the 2004 judicial election cycle, $24.4 million was spent on television advertisements, over twice as much as the $10.6 million spent in the 2000 election cycle."\(^{221}\) Considering the fact that, on average, winners of judicial elections outspend their losers,\(^{222}\) campaign contributions become more and more important to a judicial candidate.

The recent increase in the cost of judicial campaigns, along with the sources of funds for those campaigns, has not gone unnoticed by the public. In a nation-wide survey of judicial and public opinion, the question was asked: "How much influence do you think campaign contributions made to judges have on their decisions?"\(^{223}\) Seventy-six percent (76%) of the public said that they felt campaign contributions have "some influence" or "a great deal of influence" on the decisions of judges.\(^{224}\) Twenty-six percent (26%) percent of judges responded that they felt that campaign contributions had "some influence" or "a great deal of influence" on their decisions.\(^{225}\) This national study reflects what individual states have also found: in Ohio only seven percent (7%) of people think judges' decisions are never influenced by campaign contributions while fifty-eight percent (58%) percent said judges' decisions are sometimes influenced and twenty-three percent (23%) felt that judges' decisions are influenced most of the time.\(^{226}\) In Texas, a 1999 study conducted by the Texas Supreme Court found that ninety-nine percent (99%) of attorneys and eighty-six percent (86%) of judges felt campaign contributions have some influence on judicial decisions.

It is clear from these studies and surveys that campaign contributions are not only affecting the appearance of the impartiality of the judiciary, but those within the judiciary itself believe the independence of the judiciary has been compromised. These results show that both the public and the judiciary believe those with money can buy justice.\(^{227}\) A continuation of these policies will erode the public faith in the judiciary, the very confidence that is necessary for the functioning of the judiciary.\(^{228}\)

\(^{221}\) Shepard, Electing Judges, supra note 85, at 23.

\(^{222}\) MCFADDEN, supra note 61, at 26. A 2002 study of state Supreme Court justices found that in most races, the candidate who aired the most television advertisements won the election. Ifill, supra note 7, at 65. Another study conducted by the "California Commission on Campaign Financing found that winners of open judicial seats outspent losers four to one: $128,000 to $32,000." Chemerinsky, supra note 4, at 137.

\(^{223}\) Kotey, supra note 11, at 608.

\(^{224}\) Id. at 608-09.

\(^{225}\) Id. at 609.

\(^{226}\) Chemerinsky, supra note 4, at 138.

\(^{227}\) Carrington, supra note 62, at 267.

\(^{228}\) Id.
Several solutions have been proposed to deal with the problem of campaign contributions. One solution that the ABA Code of Judicial Conduct adopted previously was the use of a campaign finance committee through which all donations had to be filtered. Judges were not allowed to personally solicit or accept donations from people. On the other hand, recent campaign finance laws, which are directed at other governmental elections, but which apply equally to judicial elections, require disclosure of all campaign funds and their sources. Every single state has adopted these disclosure laws, which require reporting of all contributors to a judicial candidate’s campaign. These new disclosure laws prevent insulating judicial candidates from the identity of their donors. With knowledge of the identity of their donors, the risk of a judge altering his or her decisions in accordance with the donors’ interests rises greatly.

One solution has been proposed: because of the nature of judicial elections and their differences from legislative and executive elections, all donations to a judicial campaign must remain anonymous. This would “discourage quid pro quo corruption” because candidates would never learn the identity of their donors. This solution will never take root, however, as long as the trend of treating judicial elections the same as legislative and executive elections continues.

Other solutions proposed to eliminate the improper influences resulting from campaign contributions are limits on both expenditures by a candidate and contributions to a candidate’s fund. Currently, many states limit how much an individual can contribute to a judge’s campaign fund; however, only Texas limits contributions in the aggregate from any single law firm. Since 1995, Texas has placed a $30,000 limit on the amount one law firm can contribute to a judge’s campaign. This is a first step toward minimizing the influence that one law firm can have on a judge’s decisions because in the aggregate, one law firm has the ability to raise large amounts of money that dwarf other individual contributions.

229. See MCFADDEN, supra note 61, at 30-31.
230. Id.
232. Id.
233. Id. at 423.
234. Id.
237. Id. at 128.
Any such contribution and expenditure limits are subject to *Buckley v. Valeo*. The Supreme Court in *Buckley* considered the constitutionality of the 1974 amendments to the Federal Election Campaign Act of 1971, which limited campaign contributions, and expenditures, required disclosure of donations, and provided some public funding for presidential campaigns. The Supreme Court upheld the limits on contributions, but found that expenditure limits violated the First Amendment. Expenditure limits violated the First Amendment as they "restrict[ed] the nature and quantity of speech," but this "direct effect" was not found with contribution limits.

Some argue that *Buckley* is distinguishable because it analyzed expenditure limits within the context of all elections, whereas the interest for limiting expenditures in judicial elections is much more compelling due to the nature of the judiciary. Thus far it has been applied equally to judicial elections as it has been applied to other elections.

Another solution to eliminate the impropriety associated with campaign contributions is to require a judge's recusal anytime a donor appears before the judge. In nearly every state, a judge can be disqualified from a case if bias is shown. The current Model Code of Judicial Conduct requires that:

1. A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where:

   a. the judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding; . . .

   e. the judge knows or learns by means of a timely motion that a party or a party's lawyer has within the previous [ ] year[s] made aggregate contributions to the judge's campaign in an amount that is greater than [[[ ] for an individual or [ ] for an entity] ] [[is reasonable and appropriate for an individual or an entity.]]

---

240. *Id.* at 134.
241. *Id.* at 140.
242. *Id.* at 135.
244. MODEL CODE OF JUDICIAL CONDUCT Canon 3(E) (2004).
These canons supplement federal statutes that also require recusal whenever a judge’s impartiality might “reasonably be questioned.” Three U.S. Code provisions in title 28 address recusal: §144 prohibits judges from hearing a case when a valid affidavit has been submitted showing actual bias; §47 prevents a judge from hearing the appeal of a case when they oversaw the case at the lower level; §455 prohibits a judge who is actually or appears to be biased from hearing a case. The most used section for recusal is §455, which was expressly designed to preserve public confidence in the judiciary.

Courts have interpreted both Canon 3(E) and the federal statutes to require recusal when actual bias or the appearance of bias is present. Unfortunately, courts have been hesitant to enforce these statutes. Motions for disqualification are routinely denied where a party to the proceedings has made a contribution to the sitting judge’s campaign fund. This could be due to the fact that recusal cannot be applied in every situation where a party has contributed to the judge’s campaign. Recusal would discourage valid contributions where a person wants to support a judge he or she believes is qualified. With courts unwilling to force judges to recuse themselves from cases, recusal will not be an effective solution for minimizing the effects of campaign contributions on the independence of the judiciary.

One final solution to the problems associated with campaign financing is public funding of elections. The ABA has recommended that states finance their judicial elections to preserve the appearance of an impartial judiciary. With public funding, judges would not be indebted to one specific financier. Instead, they would only be indebted to serve the public’s interest. The availability of public money also has the added benefit of producing more qualified candidates because public funding...
makes running for judicial office more attractive. The voters then have more choices and can elect the best man or woman for the job.

The same problems plague all public funding programs, and at the top of that list is securing adequate funding. The experience of virtually all states shows that tax add-ons are ineffective. Another source for the public funding of judicial elections would be the users of the court system itself. This could be achieved through increased lawyer licensing fees, increased filing fees, or a surcharge on criminal fines or civil penalties. Even with these changes, public funding programs will be chronically under funded, leading judicial candidates to seek funding elsewhere, especially from those that appear before their bench. At this time, the problem of campaign contributions can only be eliminated by moving to a non-elective system of selecting judges which eliminates the need for campaign contributions altogether.

The last major category of problems associated with the election of judges occurs when judges change their behavior based on public opinion. These behavioral changes are not based on legitimate influences of a judge’s ruling such as the law, facts, or evidence, but instead are based on opinion polls and the threat of removal at the election. This violates not only the judicial duty of faithful application of the law, but also promotes and encourages judicial legislation. The legal system of the United States is based on consistent rulings by the judiciary. If judges change their holdings at every election to remain popular, the election of judges undermines the entire judicial system.

The change in judicial behavior, especially as election time nears, is most obvious in the context of criminal justice. A 2004 study conducted by Gregory Huber and Sanford Gordon found that judges increase the sentences they impose on criminal defendants as the next election nears. The researchers concluded that over 2,700 extra years of incarceration could be attributed to increases in sentences due to an upcoming election. In another analysis of the Wisconsin Supreme Court, a study concluded that the justices were less likely to protect prisoner and defendant rights as the next election nears. Additionally, it has been found that as election time

---

250. Geyh, supra note 8, at 1480.
251. Id. at 1478.
252. Id. at 1478-79.
253. Id.
254. Raban, supra note 29, at 214.
255. Id.
256. See Czarnezki, supra note 98, at 175.
257. Weiss, supra note 2088, at 1109-10.
258. Id. at 1110.
nears, it is more likely that a criminal defendant will get the death sentence as opposed to a life sentence.\textsuperscript{260} It is clear just from the criminal justice context that judges who are subjected to regular elections will be more likely to submit to public opinion as opposed to applying the law impartially.\textsuperscript{261}

The easiest solution to problematic judicial behavior is to elect judges for life tenure. Life tenure, or even more lengthy terms, would ensure that judges do not need to fear an upcoming election and can therefore make decisions that may be unpopular, but are in accordance with the law. Since the competence of a judge increases with experience, an additional benefit to electing judges for longer terms or life tenure would be a more qualified bench.\textsuperscript{262} Moreover, life tenure is the position that is expressly endorsed by Alexander Hamilton in the Federalist No. 78 as the best means with which to insure judicial independence.\textsuperscript{263}

If life tenure is not accepted by the states due to calls for accountability of the judiciary,\textsuperscript{264} the terms of judges could at least be doubled or tripled in length. This would not only allow judges to rule in accordance with the law without fear of public retribution, but the need to constantly finance a campaign would also decrease.\textsuperscript{265} Life tenure or longer terms of service, subject to good behavior, could present a compromise between the independence of the judiciary and the accountability of judges to the public. Until states provide this, however, judges will be tempted to rule in accordance with popular opinion as elections approach.

IV. GLOBAL SELECTION METHODS

Before analyzing foreign selection methods for judges, it is important to ask whether we should even look to foreign countries' selection methods because of the current controversy surrounding the use of international law.

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{260} Id. at 173.
\item \textsuperscript{261} For further studies that discuss changes in judicial behavior as a correlation with elections, see Souders, supra note 36, at 540-42.
\item \textsuperscript{262} CARBON & BERKSON, supra note 101, at 17.
\item \textsuperscript{263} \textit{The Federalist} No. 78, at 103 (Alexander Hamilton) (Tudor Publishing 1937): If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.
\item \textsuperscript{264} Accountability can be preserved through a removal process because life tenure judges usually serve subject to a "good behavior" provision, similar to the Federal Constitution.
\item \textsuperscript{265} Carrington, supra note 62, at 274.
\end{enumerate}
\end{footnotesize}
in United States courts.\textsuperscript{266} Despite the current controversy, the early U.S.
courts frequently looked to international law to fill in the “gaps” in
domestic law.\textsuperscript{267} The early courts had no choice but to look to transnational
law because this country had no “Code Civil,” a complete supply of law
that the Civil Law countries possessed, and no jurisprudence to turn to as a
common law country. The courts have incorporated international law into
their own jurisprudence via the principle of comity, the “judicial deference
to foreign courts and law in the name of harmonious foreign relations.”\textsuperscript{268}

In contrast to early courts, modern United States courts have devel-
oped a new skepticism toward foreign law.\textsuperscript{269} Justice Scalia\textsuperscript{270} sums up this
position in his \textit{Lawrence v. Texas} dissent, which severely criticized Justice
Kennedy’s use of international law in the majority opinion as “meaningless
dicta. Dangerous dicta, however, since this ‘Court . . . should not impose
foreign moods, fads, or fashions on Americans.’”\textsuperscript{271} The reality, however,
is that every member of the current Supreme Court who has sat a full term
has either authored or joined opinions that have used foreign and interna-
tional law to interpret constitutional provisions that facially have no
international implications.\textsuperscript{272} In two recent high-profile cases, the Court
specifically used international law when it was unnecessary. In both
\textit{Lawrence v. Texas}\textsuperscript{273} and \textit{Grutter v. Bollinger},\textsuperscript{274} the Court looked to
international law for support, in a superfluous and discretionary manner,
demonstrating the Court’s commitment to the globalization trend which
“does not end at the Supreme Court’s steps.”\textsuperscript{275}

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{266.}] Noga Morag-Levine, \textit{Judges, Legislators, and Europe’s Law: Common-Law
\item[\textsuperscript{267.}] Janet Koven Levit, \textit{Going Public with Transnational Law: The 2002-2003
  Supreme Court Term}, 39 TULSA L. REV. 155, 157 (2003). In fact, the issue was addressed
  before the country was even formed in the Federalist No. 63 which claimed the “importance
  of attention to the judgment of other nations.” THE FEDERALIST NO. 63, at 1 (Alexander
  Hamilton or James Madison) (Tudor Publishing 1937).
\item[\textsuperscript{268.}] Levit, supra note 267, at 157-58.
\item[\textsuperscript{269.}] See generally id. at n. 44 (listing examples of cases where Supreme Court
  justices specifically endorse or admonish the use of international law).
\item[\textsuperscript{270.}] Justice Scalia himself used Australian, Canadian, and English law in \textit{McIntyre v.
\item[\textsuperscript{271.}] Lawrence v. Texas, 539 U.S. 558, 598 (2003) (Scalia, J., dissenting) (quoting
  Foster v. Florida, 537 U.S. 990 (2002)). Within months after the \textit{Lawrence} decision, a series
  of proposals against the citation of foreign precedents came before the House of Represen-
  tatives. Morag-Levine, supra note 266, at 38. Representatives Tom Feeney and Bob
  Goodlatte introduced another resolution titled “The Reaffirmation of American Independ-
  ence Resolution.” Id. at 38-39.
\item[\textsuperscript{272.}] Mark Wendell DeLaquil, \textit{Foreign Law and Opinion in State Courts}, 69 ALB.
\item[\textsuperscript{273.}] 539 U.S. 558 (2003)
\item[\textsuperscript{274.}] 539 U.S. 306 (2003).
\item[\textsuperscript{275.}] Levit, supra note 267, at 162.
\end{itemize}
\end{footnotesize}
The global emergence of powerful, independent courts has increased the use of “legal transplantation.” This trend does not have to end with the laws of our country. Rather, it can spread to other important aspects of our legal system, including the way we select our judges. With the growing feeling of community between members of the judiciary worldwide, it makes sense to look to foreign selection methods in order to continually improve our own selection of judges. As nations develop and reform their court systems, they also strive to balance independence and accountability. We can learn from their experiences as we strive to find the perfect balance between independence and accountability.

The election of justices has universally been rejected as most countries choose to appoint their judges in some form or another. The recent trend has been to add a judicial appointments commission to screen and recommend candidates to the executive, but which have no binding power on the executive’s choice. Many civil law countries have held onto their traditional career judiciaries composed of faithful civil servants. Candidates enter the judicial ranks through either a school program or an examination. Upon successful completion of school or the exam, the candidate usually completes an apprenticeship, after which he or she is appointed to a judicial position. Many states continue to use these two popular methods of selecting judges, and countries trying to establish an independent judiciary often look to these two models.

276. Morag-Levin, supra note 266, at 32.
277. Id.
278. See generally APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER (Kate Malleson & Peter H. Russel eds., 2006) [hereinafter APPOINTING JUDGES].
279. See generally Table 2 at p. 479; APPOINTING JUDGES, supra note 278.
280. See discussion infra at pp. 484-85.
281. See discussion infra at pp. 484-85.
282. See generally APPOINTING JUDGES, supra note 278.
TABLE 2: SELECTION METHODS FOR FOREIGN JUDICIARIES

<table>
<thead>
<tr>
<th>Executive Appointment</th>
<th>Without Commission</th>
<th>With Commission</th>
<th>Appointment by Commission</th>
<th>Legislative Appointment</th>
<th>Career Judiciary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>Albania</td>
<td>Algeria</td>
<td>China</td>
<td>Czech Republic</td>
<td></td>
</tr>
<tr>
<td>Argentina</td>
<td>Canada</td>
<td>Andorra</td>
<td>Cuba</td>
<td>France</td>
<td></td>
</tr>
<tr>
<td>Australia</td>
<td>Dominican Republic</td>
<td>Angola</td>
<td>Laos</td>
<td>Germany</td>
<td></td>
</tr>
<tr>
<td>Bangladesh</td>
<td>England</td>
<td>Bulgaria</td>
<td>Macedonia</td>
<td>Italy</td>
<td></td>
</tr>
<tr>
<td>Belarus</td>
<td>Hong Kong</td>
<td>Caribbean Court of Justice</td>
<td>Montenegro</td>
<td>Japan</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>Greece</td>
<td>Croatia</td>
<td>Poland</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cambodia</td>
<td>Namibia</td>
<td>Cyprus</td>
<td>Portugal</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chad</td>
<td>Russia</td>
<td>Israel</td>
<td>Spain</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>Scotland</td>
<td>Lebanon</td>
<td>Turkey</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Zealand</td>
<td>South Africa</td>
<td>Mexico</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>Ukraine</td>
<td>Rwanda</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>Yemen</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

283. This chart is based in large part on APPOINTING JUDGES, supra note 278 and JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY, supra note 35, along with the information contained in Appendix Two at pp. 494-518. Categorizing countries according to selection method is inherently problematic because countries often use multiple selection methods for different levels of judges. Accordingly, countries were categorized according to the primary selection method used for judges. While all countries could not be included, information on counties not included in this table is included in Appendix Two.
In many countries the executive still retains the power to appoint judges.\textsuperscript{284} Some countries, however, have supplemented executive appointment with a recommending committee to ensure that those appointed are qualified and to diffuse some of the power away from the executive.\textsuperscript{285} One country that still retains the power to appoint exclusively with the executive is Australia.\textsuperscript{286} Australia is a federal state, with court systems at both the federal and state levels.\textsuperscript{287} In Australia, the power to appoint federal judges in vested solely in the Governor-General.\textsuperscript{288} The Governor-General in Council is the "executive government of the day."\textsuperscript{289} Additionally, in all Australian states, the executive branch makes appointments to the judiciary.\textsuperscript{290}

This method of selection seems like it would insulate the judiciary and protect its independence. Judges, however, have been susceptible to removal through the restructuring of courts even though their life tenure is codified in the constitution.\textsuperscript{291} Additionally, the high courts in Australia have been hearing more and more sensitive, political issues that were usually left to the other branches of government, resulting in the judiciary becoming more "politicized."\textsuperscript{292} With these changes, the citizens of Australia have been calling for changes to the process of appointment that allows for more consultation by the executive and more security for the judges themselves.\textsuperscript{293}

Proposals for diffusing the power to appoint from the executive have been presented recently in Australia, including a commission that would make recommendations to the executive branch.\textsuperscript{294} Justices that have been appointed have usually been male and former leaders of the Bar, so it is thought that a commission would also help increase the diversity of the bench.\textsuperscript{295} For now, the court has not experienced any changes in their system of appointments, and judges continue to be appointed by the

\begin{footnotes}
\item 284. See Table 2 at p. 479.
\item 285. See Table 2 at p. 479 and Table 4 in Appendix Two at pp. 494-518.
\item 287. \textit{Id.} at 174.
\item 288. \textit{AustL. Const.}, §72 states: "The Justices of the High Court and of the other courts created by the Parliament (i.) shall be appointed by the Governor-General in Council . . . ."
\item 289. Williams, \textit{supra} note 286, at 175.
\item 290. \textit{Id.}
\item 291. \textit{Id.} at 182-83.
\item 293. \textit{Id.} at 124.
\item 294. Williams, \textit{supra} note 286, at 186.
\item 295. \textit{Id.}
\end{footnotes}
executive government. As the high courts continue to vindicate individual rights, they will remain under the scrutiny of the public eye, however, and calls will continue for a more representative, accountable judiciary.

The reforms that were called for in Australia have indeed been implemented in countries across the world. In fact, the use of a nominating judicial commission is one of the most popular selection methods used by the countries surveyed. South Africa employs this selection method in order to effectively handle many of the highly charged issues that surround their judiciary. The biggest issue the judiciary must deal with is the racial and gender composition of the judiciary. In a country marked by apartheid and segregation, the legitimacy of the judiciary is especially dependent on its racial composition. In fact, the Constitution requires that diversity be taken in account when any appointments are made to the bench.

In order to achieve diversity in the bench, South Africa instituted the Judicial Service Commission (JSC). The President appoints judges with the advice of the JSC, but it is the practice of the JSC to only present the President with one nominee, thereby effectively choosing the judicial candidates themselves. The JSC is constitutionally prescribed and composed of twenty-three permanent members. Three members are judges themselves, from the highest courts; five members are from the legal profession and appointed by the President after nomination from the constituencies; eleven members are politicians: the minister of justice, six members from the National Assembly, and four members from the other house of Parliament; finally four members are designated by the President.

The utility of the JSC has proven effective at limiting the discretion of the executive and increasing the diversity of the bench. Much of the success of the JSC can be attributed to the openness of the selection

296. See Table 2, supra at p. 479.
298. S. Afr. Const. 1996 §174(2) ("The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.").
299. Du Bois, supra note 297, at 280.
300. Hugh Corder, Seeking Social Justice? Judicial Independence and Responsiveness in a Changing South Africa, in JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY, supra note 35, at 194, 197. For the Constitutional Court, the JSC must provide the President with three more names than vacancies on the court, for all other courts, the JSC provides one name per vacancy. Id.
303. Id. at 285.
process. When there is a vacancy in the judiciary it is widely publicized. The names of candidates are posted with an invitation for comments by the public. Interviews of candidates for the positions are conducted in public. Pre-selection and post-selection discussions are conducted in private; however, a transcript of those discussions is made public later. The openness of the proceedings has the effect of recruiting more diverse candidates and thereby increasing the diversity of the bench, along with the legitimacy of the judiciary in the eyes of the public.

This system of selection provides for both accountability and independence. The Constitution provides that judges serve a non-renewable term of twelve years. Judges can potentially be removed from office, but no judge has been removed since 1897, so it is clear that judges enjoy some security in their office, leading to more independence. The accountability of the judiciary comes not only from the removal process, but also from the composition of the JSC. If citizens do not like a judge who is on the bench, they can petition the JSC or the National Assembly for removal, and then in the future pressure the government for a different composition of Commission members. In total, this selection system seems effective in achieving both an independent and accountable judiciary that has achieved the confidence of the public through its diversity.

While many countries have adopted a judicial commission to make recommendations to the executive who then appoints the judges, some countries have gone farther and given the commission the exclusive power to appoint judges. While the South African JSC effectively decides which judge gets the appointment, the executive still retains the appointment power and could use the power in the future and force the JSC to provide the executive with more nominees. In Israel, however, the multi-branch judicial commission retains appointment power.

The Israeli judicial system is marked by a lack of constitutional protections. Despite this, the judiciary has remained largely independent and

304. Id. at 288.
305. Id.
306. Id.
307. Id.
309. Corder, supra note 300, at 199.
310. Id. at 200. A judge can only be removed by the President if the JSC first finds that the judge is incompetent or is guilty of gross misconduct, and if the National Assembly calls for the removal of the judge by two-thirds of its members. Id.
has gained the trust and confidence of the public. The Court has achieved this through strict disqualification measures for bias or even the potential for bias. The test is not whether the judge was actually influenced, but whether there is a likelihood that the judge will be influenced. Because of this, the judiciary has established and maintained a reputation for independence, integrity, and intellectual ability.

The 1953 Judges Act established the current procedure for the appointment of judges throughout all the courts in Israel. The Act established the Judicial Selection Committee, which is composed of three judges, two representatives of the bar, two representatives of the executive, and two representatives of the legislative. The minister of justice, president of the Supreme Court, or any three members of the Committee can make nominations for the committee’s consideration.

It seems that this system for appointing judges would lead to some institutional independence, however, the legislature has intervened in the appointment process beyond serving as members of the Judicial Selection Committee. The legislature has passed laws allowing a judge to be appointed to the high court even though the justice did not meet the legal qualifications, another law to prevent particular justices from hearing a case, and a law that changed the retirement age to allow a specific justice to remain on the court.

In spite of the legislature interfering in judicial affairs, the Israeli judiciary still retains its reputation of independence, most likely because the legislature rarely gets involved. Without constitutional protection, however, in the future the legislature could utilize their powers to interfere with the judiciary even more, potentially causing the loss of public confidence in the judiciary. Despite this shortcoming, Israeli scholars have unanimously agreed that in the last fifty years the judicial selection committee has entirely been a success.

Legislative appointment is rare in foreign countries, especially when compared with executive appointment. China, however, has retained a legislative appointment system in order to preserve the power of its citizens. The Chinese judiciary operates at four levels in China: the Supreme

314. Salzberger, supra note 312, at 239.
315. Id.
316. Shetreet, supra note 313, at 255.
317. Salzberger, supra note 312, at 243.
318. Shetreet, supra note 313, at 243.
319. Salzberger, supra note 312, at 249.
320. Id.
321. Shetreet, supra note 313, at 243.
322. Id. at 255.
People's Courts at the national level, high courts at the provincial level, intermediate courts at the prefectural level, and basic courts at the provincial level. Each level of courts has criminal, civil, economic, and enforcement divisions.

After the Second World War in China, the Communist Party appointed judges based on loyalty. In the mid-1990's, however, a large-scale reform of the judiciary took place in order to establish the "rule of law." The Judges Law of 1995 established minimum qualifications for judges to improve the quality of the judiciary, including the requirement of a law degree and the successful completion of an exam. Once candidates meet these minimal qualifications, they are appointed by the local People's Congress at their court level. The People's Congress of the same jurisdictional level also has the power to remove judges.

Judges within the Chinese judiciary do not experience any independence from the other institutions. There is no tenure of any kind, much less life tenure, for judges in China. Additionally, judges can be removed rather easily from their positions. Section 11 of the Judge's Law allows judges to be removed by the People’s Congress at the corresponding court level upon the recommendation of the President of the Court. As such, judges do not rule against the Party often or in favor of individual rights. Not only does the Party exert outside influence on the judiciary, but judges also feel pressure from the internal ranks of the judiciary and feel the expectation to rule in a certain way. As China seeks to establish a rule of law society, an important part of that process will be establishing the independence of the judiciary.

In many civil law countries across the world, judges are chosen from the ranks of a career judiciary. The career judiciary is usually formed from civil servants that enter through graduation or the successful completion of an exam. The majority of the French judiciary is composed of graduates

324. Id.
325. Colin Hawes, Improving the Quality of the Judiciary in China: Recent Reforms to the Procedures for Appointing, Promoting, and Discharging Judges, in APPOINTING JUDGES, supra note 278, at 395, 399.
327. Hawes, supra note 325, at 400.
328. Id. at 401.
329. Avino, supra note 323, at 379.
330. Hawes, supra note 325, at 404.
331. Id. at 403.
332. Id. at 409.
from Ecole Nationale de la Magistrature (ENM), located in Bordeaux.333 The school was officially established in 1970, but was in existence since 1958. Students enter the ENM after successful graduation with a law degree from an undergraduate institution and the passage of the entrance examination.334 Persons with five years of experience in a legal field are also eligible to enter ENM.335

Once admitted into ENM, a person becomes a civil servant and is paid a salary by the government.336 The program at ENM lasts approximately thirty-one months. During this time, students take courses, but they spend the majority of their time training on the job.337 Students train through various legal internships, including prosecutorial and judicial internships, along with civil and criminal internships.338 At the completion of the program, students take another examination. Those with the highest scores pick first from a list of vacancies provided by the ministry of justice.339

The French judiciary enjoys great institutional independence from other branches as a career judiciary. Because the judiciary itself has control over the education and appointment of judges, the executive and legislative branches cannot influence judges. Internally, however, judges can experience great pressure to rule in certain ways because all professional socialization occurs exclusively within the judiciary.340 Upon entering the judiciary, judges are promoted based on merit, which is determined exclusively by upper level judges.341 With these internal controls, it is easy for upper-level judges to influence those below them. Judges in France, while insulated from other government branches and the public, can still be subject to improper influences.

Regional and international courts have increased greatly in recent years as countries across the world recognize the rule of law.342 With the plethora of international courts, it is also important to consider the methods they use to select their judges. In fact, there are now over thirty international courts with over two hundred and fifty judges that can exercise

---

335. Id. at 183.
336. Id.
337. Id.
338. Id.
339. Id.
340. Guarnieri, supra note 333, at 117.
341. Id.
significant power with wide-ranging effects. Generally, most of the international and regional tribunals take a similar approach to appointing judges: member states each nominate a candidate, which is voted on by the organization as a whole.

In the International Tribunal for the Law of the Sea, for example, each member state is allowed to nominate up to two candidates. After nomination, the judicial candidates are then voted on by secret ballot by all the parties to the Court. Those elected not only have to win the largest number of votes, but also have to be elected by a two-thirds majority of member states. Additionally, the African Court of Human and People’s Rights elects its judges in a similar manner: member states nominate up to three candidates, two of whom must be nationals of the nominating state. Nominated candidates are then voted on by the Assembly of Heads of States and the Government of the African Union. Finally, the European Court of Human Rights selects its judges by allowing the Parliamentary Assembly of the Council of Europe to vote on judicial candidates nominated by member states.

The International Court of Justice (ICJ) warrants further inspection as the longest standing international court and as an example of the problems inherent in the widely used selection system most used by international courts. The ICJ acts as a “world court” from its home in The Hague, the Netherlands. It resolves disputes between member states of the United Nations and in 1945 when it was created under the Charter of the United Nations.

343. Id. For example, the World Trade Organization has an Appellate Body for adjudicating trade disputes between member states. The International Tribunal for the Law of the Sea operates in Hamburg and recently prohibited Japan from fishing southern blue-fin tuna. Additionally, an international court in Washington D.C. itself, the Inter-American Commission of Human Rights, ordered a stop to the human rights violations in Guantanamo Bay. Id. at 220. Id.
344. Id. at 220.
345. Id.
346. Id.
348. Id. at 221.
350. Id. One exception to these general models of nomination by each member state and then voting by the general assembly is the European Court of Justice (ECJ), the tribunal for the European Union. In the instance of the ECJ, each member state is responsible for selecting a judge, who is then appointed by “common accord.” In addition to the judges, there are nine advocates general, five who are selected by the five largest member states while the remainder is appointed by rotating states. Martin Shapiro, The European Court of Justice, in JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY, supra note 35, at 273, 281.
352. Id.
Nations, along with issuing advisory opinions in limited cases. The fifteen judges of the ICJ are elected by the member states of the United Nations. Both the Security Council and the General Assembly vote on judicial candidates and candidates need an absolute majority vote in both the Security Council and the General Assembly in order to be appointed. Like many other international and regional courts, member states to the United Nations have the right to propose candidates for election, up to four candidates, only two of which can be of the same nationality of the nominating state. The Court cannot have more than one judge of a single nationality, despite the fact that once elected, ICJ judges are no longer considered representatives of their states and are expected to be completely impartial.

Although this is the selection method utilized by several inter-country tribunals, several problems arise from this selection method. Elections to the ICJ have been characterized as “highly politicized affairs.” In order to get the judge of their choice elected, member states engage in “lobbying” and “vote-trading.” The election of judges often involves several informal and formal meetings between diplomats, each using any political clout they can muster to support their candidate. Votes promised for a judicial candidate are then exchanged for support in another matter before the United Nations. These problems are similar to some of those plaguing the United States where judicial nominating commissions are “highly politicized affairs,” and commission members engage in vote-trading.

A new regional court has developed an alternative to the common model of nomination by a member state with election by all member states. In 2001, the English speaking, newly-independent British colonies signed an agreement establishing the Caribbean Court of Justice (CCJ). Previously, newly independent colonies still relied on Great Britain’s Privy

353. Id.
354. Id. at 23.
355. Id.
356. Id. at 24.
357. Id.
358. See generally, Mackenzie & Sands, supra note 342.
359. Id. at 225.
360. Id.
361. Id.
362. Id.
Council as a final appellate court. The new CCJ has two functions: (1) to serve as a final court of appeals that would replace the Privy Council; and (2) to serve as a new international court for the region. Those designing the new tribunal chose not to allow member states to directly appoint or elect judges, instead creating a Regional Judicial and Legal Services Commission.

The new Commission is composed of eleven members. The members include:

[T]he Court President, who is the Chairman of the Commission; two persons appointed jointly by the Organisation of the Commonwealth Bar Association and the Organisation of Eastern Caribbean States Bar Association; one chairman of the Judicial & Legal Service Commission of a Contracting Party; one chairman of the Public Service Commission of a Contracting Party; two persons from civil society nominated jointly by the Secretary General of the Community and the Director-General of the OECS; two distinguished jurists nominated jointly by the Dean of the Faculty of Law of any of the Contracting Parties and the Chairman of the Council of Legal Education; and two persons nominating jointly by the Bar or Law Associations of the Contracting Parties.

It is the responsibility of this Commission to recommend the President of the Court, who is eventually appointed by the Heads of Governments of member states. The Commission also appoints all other judges to the CCJ.

The model used by the CCJ, as opposed to the ICJ and many other international courts, may prove to be the selection method that more effectively chooses judges based on qualifications. When member states of any international organization trade favors in highly secret meetings, politics will continue to infest the judiciary. Providing for a completely separate commission with a sole purpose of appointing judges allows...
commission members the freedom to choose truly qualified judges without the hindrance of politics, thereby ensuring a more independent judiciary.

V. SOLUTIONS

It is clear that no one solution will fit the needs of every state. It is clear, however, that states that regularly elect their judges need to consider an alternative means of filling the ranks. Under current judicial elections, judicial independence is being sacrificed for judicial accountability. The constitutional rights of every litigant that comes before an elected judge are at risk of not being judged by the law, but by the current public opinion poll of the day. To alleviate these problems, I propose a selection system that is based on several different foreign selection methods, a selection system that takes the strongest component from each country so as to correctly balance accountability with independence.

The first component is borrowed from South Africa: their extensively public Judicial Service Commission. This committee significantly increased the racial diversity of the bench, thereby establishing the legitimacy of the bench. In an age of public opinion that does not believe in the legitimacy of the court, it is especially important to revitalize public confidence in the judiciary. This can be achieved by states adopting a judicial commission, but additionally conducting the selection processes in public. South Africa posts advertisements when a vacancy arises; if U.S. states were to also do this, not only would the diversity of the bench increase, but the public would stop perceiving the bench as a result of “cronyism.”

In addition to the publicizing of vacancies, the new judicial commissions should also publicly interview the candidates. As part of this process, the commission should invite comments from the public as to any questions, concerns, or comments about the judiciary. This will invite participation in the process that is far superior to an election, because the people that will choose to participate are those that are knowledgeable and those that care. Finally, this process will bring to light a candidate’s qualifications in a more objective manner, instead of the usual biased television advertisements that are paid for by those appearing before the bench.

The composition of an appropriate judicial service commission would best be modeled after the South African example. In South Africa, the JSC was composed of twenty-three members from the judicial, legislative, and

372. Discussed supra at p. 481-82.
373. See supra p. 447.
executive branches. This representation reflects the interests that all three branches have in the quality of the judiciary. A multi-branch composition also provides that the people's elected officials, who best represent the people's interests, can ensure some accountability in the choice of candidates to the bench.

Once the committee publicizes the vacancies, hears comments from the public, and interviews candidates, it should make its recommendations to both the legislative and executive branches. Both branches should approve of the candidate before the judge is placed in office. This component can be borrowed from the People's Republic of China or even from our own federal government. Providing both the legislative branch and the executive branch a chance to approve a judicial candidate gives the people the accountability for which they so clamor. If voters become unhappy with the judicial branch, all they must do is vote their elected officials out of office in the next election. Additionally, judges are still held accountable once on the bench through impeachment proceedings and the appeals process. With the approval requirement by the executive and legislative branches, along with the accountability procedures already in place, a state's citizens can be assured that judges will be held accountable.

The question of tenure also arises. Retention elections were an attempt at providing the public with a "veto" power and judges with near life tenure; however, this seems to have failed. In recent years, retention elections have been characterized as highly political battles dominated by special interest groups. These retention elections do not reflect the will of the people, but instead reflect the will of those with the biggest pocketbook. To cure these ails, life tenure would be the best option for avoiding the behavioral changes seen in judges as elections near, and for avoiding the improper influence of money during the campaign season. Life tenure ensures that judges would be free to rule in accordance with the law and would also ensure that our constitutional democracy is protected. Life tenure can also be subject to "good behavior," ensuring that unqualified judges can always be removed, and thus providing the populace with their accountability.

Many states will never adopt life tenure for their judges. In response to this, Connecticut's model of retention may be the best model of retention to follow, as it provides some security for judges. Connecticut provides that upon expiration of a judge's term, the judicial review council will submit a recommendation concerning the reappointment of the judge to the governor, the judicial selection commission, and to the standing committees.

375. S. Afr. Const. §178; see supra at pp. 481-82.
of the judiciary in the House of Representatives and the Senate.376 This provides the public with the “veto” they so desire, but it also softens the influence of special interest groups. In order for a judge to not be retained, many different people will have to be convinced, who will ideally take the time to examine the concerns fully, and not rely on multi-million dollar campaigns run by special interest groups. This method of retention will be more fair, more representative, and more secure for the judges themselves, allowing judges to exercise their power in accordance with the law.

A judicial selection system that employs a multi-branch judicial selection commission, who publicly advertises vacancies, publicly interviews candidates, and hears concerns from the public, will insulate the judiciary from the public, providing for more independence. When coupled with a mechanism that allows for approval by both the executive and legislative branches of government, this will ensure that both accountability and independence are properly balanced in order to ensure a properly functioning judiciary that retains the trust of the people. Finally, life tenure or presumed retention will ensure that judges do not submit to the “sword of public opinion” and instead have the confidence to rule based on the facts and the law. This tri-partite system will eliminate many of the problems associated with judicial elections, and instead balance both judicial independence and public accountability.

VI. CONCLUSION

Judicial elections have become “nosier, nastier, and costlier” as courts become more politicized and the public demands more.377 These judicial elections threaten both the independence and the impartiality of the judiciary. Donations to a judge’s campaign threaten the impartiality of the judge, while changes in a judge’s conduct as elections near violate a litigant’s rights under the law. In order to combat these problems, states need to look to other selection systems and adopt the strengths of those systems into their own scheme for electing judges. States must learn to adapt their current selection systems, or instead pay the high cost of a corrupt and dependent judiciary: “the scourge of an angry heaven.”

KELLY J. VARSHO*


377. See Schotland, Judicial Independence and Accountability, supra note 2, at 150.

* J.D. candidate, May 2008, Northern Illinois Univesity College of Law; B.S., University of Wisconsin - Madison, 2005. I would like to thank all my friends and family; especially Mom, Dad, and Jesse for their unwavering support, and Andy for inspiring me daily and challenging me every step of the way.
# Appendix One: Variations on State Selection Methods

## Table 3: Variations on State Selection Methods

<table>
<thead>
<tr>
<th>State</th>
<th>Selection Method</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>California uses a “reverse merit system.” Judges are appointed by the governor and are then confirmed by the Commission on Judicial Nominees Evaluation. Judges are then subject to retention elections.</td>
<td>CAL. CONST. art. VI, § 7; American Judicature Society, California, <a href="http://www.ajs.org/js/CA.htm">http://www.ajs.org/js/CA.htm</a> (last visited Mar. 31, 2007).</td>
</tr>
<tr>
<td>Connecticut</td>
<td>The governor nominates judges from a list submitted by the judicial selection commission, who is then appointed by the general assembly. For retention, the judicial review council submits recommendations concerning the nomination for reappointment of any judge to the governor, the judicial selection commission, and to the standing committees of the judiciary in the house of representatives and the senate.</td>
<td>CONN. CONST. art. V, § 2; CONN. GEN. STAT. § 2-40 (2004); CONN. GEN. STAT. § 51-44(a) (2004).</td>
</tr>
<tr>
<td>Delaware</td>
<td>Appointments are made by the governor from a list of nominees submitted by a judicial nominating commission. The appointment is subject to the consent of the senate.</td>
<td>DEL. CONST. art. IV, § 3; DEL. CONST. art. IV, § 30; Del. Code. Ann. Tit. 10 §1303; Del. Exec. Order No. 4.</td>
</tr>
<tr>
<td>Illinois</td>
<td>Judges are elected in partisan elections and then subject to retention elections. Illinois is also different in that they require a 60% voter approval rate for a judge to be retained.</td>
<td>ILL. CONST. art. 6, § 12.</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Judges are appointed by the governor from a list of nominees submitted by the judicial nominating commission and then confirmed by a governor’s council which is elected by Massachusetts’ legislature.</td>
<td>MASS. CONST. pt. 2, cl. 2, §1, art. IX; Executive Order No. 477; American Judicature Society, Massachusetts, <a href="http://www.ajs.org/js/MA.htm">http://www.ajs.org/js/MA.htm</a> (last visited Mar 31, 2007).</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>State</th>
<th>Selection Method</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Hampshire</td>
<td>Judges are nominated by the governor and affirmed by a majority vote of a five-member executive council. The council members are elected by the general population.</td>
<td>N.H. CONST. pt. 2, art. 46; American Judicature Society, New Hampshire, <a href="http://www.ajs.org/js/NH.htm">http://www.ajs.org/js/NH.htm</a> (last visited Mar 31, 2007).</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Judges are appointed by the governor from a list provided by a nominating commission. At the first general election following appointment, judges run on a partisan ballot. If the appointee wins the elections, he or she is subject to retention elections.</td>
<td>N.M. CONST. art. VI, § 33; N.M. CONST. art. VI, § 35; American Judicature Society, New Mexico, <a href="http://www.ajs.org/js/NM.htm">http://www.ajs.org/js/NM.htm</a> (last visited Mar 31, 2007).</td>
</tr>
<tr>
<td>New York</td>
<td>For the Court of Appeals and the Appellate Division of the Supreme Court, the governor appoints the judge from a list provided by the judicial nominating commission. At the end of the term, the judge must be re-appointed. Supreme Court judges (along with some specialized courts) are subject to partisan elections.</td>
<td>N.Y. CONST. art. VI, §2; N.Y. Judiciary Law, art. 3-A; American Judicature Society, New York, <a href="http://www.ajs.org/js/NY.htm">http://www.ajs.org/js/NY.htm</a> (last visited Mar 31, 2007).</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>District Court judges are elected in nonpartisan elections.</td>
<td>OKLA. CONST. art. 7, §9.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Supreme Court judges are elected by the two houses of the legislature and serve during good behavior. Superior Court, District Court, and Family Court judges are appointed by the governor, subject to confirmation by the Senate.</td>
<td>R.I. CONST. art. 10, §4; American Judicature Society, Rhode Island, <a href="http://www.ajs.org/js/RI.htm">http://www.ajs.org/js/RI.htm</a> (last visited Mar 31, 2007).</td>
</tr>
<tr>
<td>South Dakota</td>
<td>After gubernatorial appointment, judges are subject to retention elections. Circuit court judges are elected by nonpartisan elections.</td>
<td>S.D. CONST. art. V, §7.</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Judges are elected in territorial districts. For Supreme Court judges, two judges are elected by the state at large while three districts each elect one more judge.</td>
<td>TENN. CONST. art. 6, §3; TENN. CONST. art. 6, §4; Tenn. Code Ann. §17-1-103.</td>
</tr>
</tbody>
</table>
### TABLE 3: VARIATIONS ON STATE SELECTION METHODS

<table>
<thead>
<tr>
<th>State</th>
<th>Selection Method</th>
<th>References</th>
</tr>
</thead>
</table>

### APPENDIX TWO: WORLD SELECTION METHODS

### TABLE 4: WORLD SELECTION METHODS

<table>
<thead>
<tr>
<th>Country</th>
<th>Selection Method</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>The members of the High Court are appointed by the President of the Republic with the consent of the Assembly. The other judges are appointed by the President after recommendation by the High Council of Justice.</td>
<td>ALBANIA CONST. art. 136 available at <a href="http://www.ipls.org/services/kush/cp9.html">http://www.ipls.org/services/kush/cp9.html</a>.</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>----------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Armenia</td>
<td>The President of Armenia appoints all judges after recommendation by the Minister of Justice and the Council of Justice.</td>
<td>ARMENIA CONST. art. 95(1), 55(11) available at <a href="http://www.abanet.org/ceeli/publications/jri/jri_armenia_2005_eng.pdf">www.abanet.org/ceeli/publications/jri/jri_armenia_2005_eng.pdf</a>.</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>The President appoints judges. The President has the power to promote and discipline which is exercised in consultation with the Supreme Court.</td>
<td>BANGLADESH CONST. art. 95(1), 115, 116.</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Belarus</td>
<td>The president appoints half of the Constitutional Court while the other six are appointed by the Council of the Republic. The president also appoints the judges of the Supreme Court and Supreme Economic Court, along with all military and district judges.</td>
<td>Freedom House, Country Report: Belarus, 2005 <a href="http://www.freedomhouse.org/template.cfm?page=47&amp;nit=358&amp;year=2005&amp;display=law">http://www.freedomhouse.org/template.cfm?page=47&amp;nit=358&amp;year=2005&amp;display=law</a> <a href="http://encarta.msn.com/encyclopedia_761553191_7/Belarus.html">http://encarta.msn.com/encyclopedia_761553191_7/Belarus.html</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Belgium</td>
<td>The King appoints Justices of the Peace, judges of superior courts, judges of the administrative courts, and judges of the Court of Cassation.</td>
<td>BELGIUM CONST. art. 151(1), §4.</td>
</tr>
<tr>
<td>Benin</td>
<td>Most judges are trained at the National School of Administration. After training, judges are appointed by the President after recommendation by the Higher Council of Judges.</td>
<td>Michel Tchanou, Judicial Reform: Indispensable, <a href="http://ospiti.peacelink.it/anb-bia/nr337/e01.html">http://ospiti.peacelink.it/anb-bia/nr337/e01.html</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Bermuda</td>
<td>The Chief Justice is appointed by the Governor after consulting the Premier and the Opposition Leader. The other Judges of the Supreme Court are appointed by the Governor after consultation with the Chief Justice. The judges of the Court of Appeal are appointed by the Governor.</td>
<td>BERMUDA CONST. art. 73, 77.</td>
</tr>
<tr>
<td>Bhutan</td>
<td>The justices of the Supreme Court and High Court are appointed by the King upon the recommendation of the National Judicial Commission.</td>
<td>Royal Court of Justice, Judiciary of Bhutan, <a href="http://www.judiciary.gov.bt/html/judiciary/justice.php">http://www.judiciary.gov.bt/html/judiciary/justice.php</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Botswana</td>
<td>The Chief Justice and the President of the Court of Appeals are appointed by the President. The other judges of the High Court and Court of Appeals are appointed by the President, acting in accordance with the advice of the Judicial Service Commission. The President appoints lower court judges in accordance with the advice of the Judicial Service Commission.</td>
<td>BOTSWANA CONST. art. 96, 100, 104.</td>
</tr>
<tr>
<td>Brazil</td>
<td>Judges are appointed to the constitutional court by the president with the approval of a simple majority of the Senate. Lower court judges have to pass both an exam and personal interview before being admitted to the judiciary. These judges are appointed by the president from a list of candidates submitted by either the constitutional court itself or by majority vote of the national bar association and national prosecutors' association.</td>
<td>BRAZIL CONST. art. 101, 104, 111-A.</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Cambodia</td>
<td>The government appoints judges after recommendation by the judges of the higher courts. The higher court judges sit on committees that nominate lower court judges and request the government to appoint these judges. The chief justice makes the recommendations for appointments to higher courts.</td>
<td>Seminar on Cambodian Judiciary: Independence of the Judiciary, Lecture by Justice H. Suresh, available at <a href="http://www.ahrchk.net/pub/mainfile.php/cambodia_judiciary/110/">http://www.ahrchk.net/pub/mainfile.php/cambodia_judiciary/110/</a>.</td>
</tr>
<tr>
<td>Canada</td>
<td>The Prime Minister makes appointments to the Supreme Court, the Federal Court, and the Tax Court. Provincial governments appoint all judges of the provincial courts.</td>
<td>F.L. Morton, <em>Judicial Appointments in Post-Charter Canada: A System in Transition, in APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER 56, 57</em> (Kate Malleson &amp; Peter H. Russel, eds., 2006).</td>
</tr>
<tr>
<td>Cape Verde</td>
<td>The Supreme Court has five members, one appointed by the president, one appointed by the National Assembly, and three appointed by the Supreme Council of Magistrates. The Ministry of Justice and Labor appoints local judges.</td>
<td>Encyclopedia of the Nations, Cape Verde: Judicial System, <a href="http://www.nationsencyclopedia.com/Africa/Cape-Verde-JUDICIAL-SYSTEM.html">http://www.nationsencyclopedia.com/Africa/Cape-Verde-JUDICIAL-SYSTEM.html</a> (last visited Apr. 10, 2007).</td>
</tr>
</tbody>
</table>
## Table 4: World Selection Methods

<table>
<thead>
<tr>
<th>Country</th>
<th>Selection Method</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cayman Islands</td>
<td>Judges of the Grand Court and the Court of Appeal are appointed with instructions from the secretary of state of the United Kingdom on behalf of the Queen. The governor, on the advice of the secretary of state, appoints one of the judges to be the chief justice. The governor appoints magistrates on the advice of the chief justice.</td>
<td>Cayman Islands Government, The Judicial Branch, <a href="http://www.gov.ky/portal/page?id=1142,1481290&amp;_dad=portal&amp;_schema=PORTAL">http://www.gov.ky/portal/page?id=1142,1481290&amp;_dad=portal&amp;_schema=PORTAL</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Chad</td>
<td>Magistrates are appointed by the president.</td>
<td>Index of Economic Freedom, Chad, <a href="http://www.heritage.org/research/features/index/country.cfm?id=Chad">http://www.heritage.org/research/features/index/country.cfm?id=Chad</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Chile</td>
<td>Corte Suprema: judges are appointed by the president and approved by the Senate from lists of candidates provided by the court; the president of the Supreme Court is elected by the 20-member court.</td>
<td>CIA World Factbook, Chile, <a href="https://www.cia.gov/cia/publications/factbook/print/ci.html">https://www.cia.gov/cia/publications/factbook/print/ci.html</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Comoros</td>
<td>The Constitutional Court includes a member appointed by the president of the Union, a member appointed by each of the two vice presidents, a member appointed by each of the three island government presidents, and a member appointed by the president of the National Assembly. The head of state appoints magistrates.</td>
<td>United States Department of State, 2006 Country Report on Human Rights Practices, Comoros, <a href="http://www.state.gov/g/drl/rls/hrrpt/2006/78727.htm">http://www.state.gov/g/drl/rls/hrrpt/2006/78727.htm</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Cook Islands</td>
<td>The Chief Justice of the High Court is appointed by the Queen, acting on the advice of the Executive Council tendered by the Prime Minister. Other Judges are appointed by the Queen’s Representative, acting on the advice of the Executive Council and the Chief Justice of the High Court and the Minister of Justice.</td>
<td>Government of the Cook Islands, Judiciary, <a href="http://www.ck/govt.htm#jud">http://www.ck/govt.htm#jud</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Cote d'Ivoire</td>
<td>Judges are appointed by the Executive: either directly from the legal profession or from those who have completed the appropriate training and passed the necessary examinations.</td>
<td>Alphonse Quénum, Justice - Not Always Impartial and Certainly Vulnerable, <a href="http://ospiti.peacelink.it/anb-bia/nr337/e08.html">http://ospiti.peacelink.it/anb-bia/nr337/e08.html</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Cuba</td>
<td>The Ministry of Justice screens candidates and then forwards their recommendation to the appropriate legislative body for appointment: Municipal Assemblies for municipal judges; Provincial Assemblies for provincial courts; and the National Assembly for the Supreme Court.</td>
<td>Gerard J. Clark, The Legal Profession in Cuba, 23 SUFFOLK TRANSNAT'L L. REV. 413, 424 (2000).</td>
</tr>
</tbody>
</table>

Table 4: World Selection Methods
### Table 4: World Selection Methods

<table>
<thead>
<tr>
<th>Country</th>
<th>Selection Method</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cyprus</td>
<td>Supreme Court Judges are appointed by the President. Other judges are appointed by the Supreme Council of Judicature which is composed of the members of the Supreme Court.</td>
<td>CyprusNet.Com, Cyprus Judiciary System <a href="http://www.cyprusnet.com/content.php?article_id=2804&amp;subject=standalone">http://www.cyprusnet.com/content.php?article_id=2804&amp;subject=standalone</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>The President appoints judges following an apprenticeship, examination, and evaluation by the court president. In practice, Minister of Justice nominates each judicial candidate, based on a recommendation from the president of the court on which the candidate will be assigned.</td>
<td>Open Society Institute, Judicial Independence in the Czech Republic 135 (2001), available at <a href="http://www.eumap.org/reports/2001/judicial/sections/czechjudicial_czech.pdf">http://www.eumap.org/reports/2001/judicial/sections/czechjudicial_czech.pdf</a>.</td>
</tr>
<tr>
<td>Denmark</td>
<td>The Supreme Court is appointed by the Crown with the government's recommendation.</td>
<td>Jurist: Legal Intelligence, Denmark, <a href="http://jurist.law.pitt.edu/world/denmark.htm">http://jurist.law.pitt.edu/world/denmark.htm</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>East Timor</td>
<td>The President of the Supreme Court is appointed by the President. The Superior Council for the Judiciary and appoints all other judges.</td>
<td>EAST TIMOR CONST. S. 124, 125, available at <a href="http://www.etan.org/etanpdf/pdf2/constfien.pdf">http://www.etan.org/etanpdf/pdf2/constfien.pdf</a>.</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Eritrea</td>
<td>&quot;The President shall have the following powers and duties: . . . appoint justices of the Supreme Court upon proposal of the Judicial Service Commission and approval of the National Assembly; appoint judges of the lower courts upon proposal of the Judicial Service Commission.&quot;</td>
<td>Eritrea Const. art. 42 available at <a href="http://www.trybunal.gov.pl/constit/constitu/other/eritrea/eritrea-e.htm">www.trybunal.gov.pl/constit/constitu/other/eritrea/eritrea-e.htm</a>.</td>
</tr>
<tr>
<td>European Union</td>
<td>For the European Court of Justice (ECJ), each member state is responsible for selecting a judge, who is then appointed by &quot;common accord.&quot; In addition to the judges, there are nine advocates general, five who are selected by the five largest member states while the remainder is appointed by rotating states.</td>
<td>Martin Shapiro, The European Court of Justice, in JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY: CRITICAL PERSPECTIVES FROM AROUND THE WORLD 273, 281 (Peter H. Russell &amp; David M. O'Brien eds., 2001).</td>
</tr>
<tr>
<td>Fiji</td>
<td>The Chief Justice is appointed by the President on the advice of the Prime Minister, who is required to consult with the Leader of the Opposition. The judges of the Supreme Court, the President of the Court of Appeal, the Justices of Appeal are appointed by the President, after nomination by the Judicial Service Commission. The Judicial Service Commission appoints Magistrates and any other judicial offices that may be established by Parliament.</td>
<td>Fiji Const. s. 131-133, available at <a href="http://www.servat.unibe.ch/law/icl/fj00000_.html">http://www.servat.unibe.ch/law/icl/fj00000_.html</a>.</td>
</tr>
</tbody>
</table>

**Table 4: World Selection Methods**
### Table 4: World Selection Methods

<table>
<thead>
<tr>
<th>Country</th>
<th>Selection Method</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>Upon graduating from the National School for the Judiciary, <em>Ecole Nationale de la Magistrature</em> (ENM) graduates take an examination. Those with the highest ranking scores pick first from a list of vacancies provided by the Ministry of Justice.</td>
<td>Doris Marie Provine &amp; Antoine Garapon, <em>The Selection of Judges in France: Searching for a New Legitimacy, in APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER</em> 176, 183 (Kate Malleson &amp; Peter H. Russel, eds., 2006).</td>
</tr>
<tr>
<td>Germany</td>
<td>Judges in Germany are professional judges who follow an intensive three year course of studies followed by two years of training. Each of the two phases is followed by written and oral examinations. Ministries of Justice and nominating commissions play a large role in recruiting those judges that pass both phases and their examinations.</td>
<td>Donald P. Kommers, <em>Autonomy versus Accountability: The German Judiciary, in JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY: CRITICAL PERSPECTIVES FROM AROUND THE WORLD</em> 131, 143 (Peter H. Russell &amp; David M. O’Brien eds., 2001).</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>-----------</td>
<td>----------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Ghana</td>
<td>The justices of the Supreme Court are appointed by the President acting in consultation with the Council of State and with the approval of Parliament. Justices of the Court of Appeal and of the High Court and Chairmen of Regional Tribunals are appointed by the President acting on the advice of the judicial Council.</td>
<td>GHANA CONST. art. 144 available at <a href="http://www.ghanareview.com/Gconst.html">http://www.ghanareview.com/Gconst.html</a>.</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Judges of the Supreme Court and Courts of Appeals are elected by the National Congress from lists prepared by active magistrates, the Bar Association and law school deans. Other judges are appointed by the Supreme Court.</td>
<td>Encyclopedia of Nations, Guatemala: Judicial System, <a href="http://www.nationsencyclopedia.com/Americas/Guatemala-JUDICIAL-SYSTEM.html">http://www.nationsencyclopedia.com/Americas/Guatemala-JUDICIAL-SYSTEM.html</a> (last visited Mar. 30, 2007).</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>“Judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors.”</td>
<td>The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, art. 88, available at <a href="http://www.info.gov.hk/basic_law/flash.html">http://www.info.gov.hk/basic_law/flash.html</a>.</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>India</td>
<td>The Supreme Court of India is appointed by the President of India. The justices of the high courts are appointed by the President after consultation with the Chief Justice and the Governor of the State. For puisne judges, the President appoints judges after consultation with the Chief Justice of the Supreme Court, the Governor of the State, and the Chief Justice of the High Court.</td>
<td>Supreme Court of India, Law, Courts and the Constitution, <a href="http://supremecourtofindia.nic.in/new_s/constitution.htm">http://supremecourtofindia.nic.in/new_s/constitution.htm</a> (last visited Apr. 10, 2007); Indian Courts, Indian Judiciary, <a href="http://indiancourts.nic.in/">http://indiancourts.nic.in/</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Iran</td>
<td>The head of the judiciary is appointed by the Supreme Leader. The head of the judiciary appoints all other members of the Supreme Court, and the chief judges in all of Iran’s provinces. The head of the judiciary is authorized to appoint all other judges.</td>
<td>International Commission of Jurists, Iran: Attacks on Justice 197, available at <a href="http://www.icj.org/IMG/pdf/iran.pdf">http://www.icj.org/IMG/pdf/iran.pdf</a>.</td>
</tr>
<tr>
<td>Italy</td>
<td>After competitive examination, judges are appointed for training. Following successful training and another examination, the judicial council posts vacant positions, with those candidates scoring the highest receiving their preference in position.</td>
<td>Consiglio Superiore della Magistratura, The Italian Judicial System, 11-14 <a href="http://www.csm.it/documenti%20pdf/sistema%20giudiziario%20italiano/inglese.pdf">http://www.csm.it/documenti%20pdf/sistema%20giudiziario%20italiano/inglese.pdf</a>.</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>---------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Jamaica</td>
<td>The Chief Justice and the President of the Court of Appeal are appointed by the Governor General on the recommendation of the Prime Minister after consultation with the Leader of Opposition. Judges of the Supreme Court and Judges of the Court of Appeal are appointed by the Governor General on the recommendation of the Judicial Services Commission. Resident Magistrates are appointed by the Governor General and the Judicial Services Commission.</td>
<td>Jamaican Ministry of Justice, The Courts of Jamaica, <a href="http://www.moj.gov.jm/courts">http://www.moj.gov.jm/courts</a> (last visited Apr. 9, 2007).</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>Supreme Court Justices are recommended by the High Judicial Council to the President, who proposes the candidate to the Senate, who then elects the judges. Regional court judges are appointed by the President, after recommendation by the High Judicial Council. The President appoints all lower court judges, based on proposals by the Minister of Justice and the Justice Qualification Collegium.</td>
<td>American Bar Association, Central European and Eurasian Law Initiative, Legal Information for Kazakhstan, <a href="http://www.abanet.org/ceeli/countries/kazakhstan/legalinfo.html">http://www.abanet.org/ceeli/countries/kazakhstan/legalinfo.html</a> (last visited Mar. 30, 2007).</td>
</tr>
<tr>
<td>Korea, North</td>
<td>Justices of the highest court are appointed by the Supreme People’s Assembly’s standing committee.</td>
<td>United States Department of State, Background Note: North Korea, <a href="http://www.state.gov/r/PA/ei/bgn/2792.htm">http://www.state.gov/r/PA/ei/bgn/2792.htm</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Korea, South</td>
<td>The Chief Justice and the Justices of the Supreme Court are appointed by the President of the Republic and require confirmation by the National Assembly. Other judges are appointed by the Chief Justice with the consent of the Council of Supreme Court Justices.</td>
<td>Supreme Court of Korea, Judges, <a href="http://www.scourt.go.kr/scourt_en/organization/judges/index.html">http://www.scourt.go.kr/scourt_en/organization/judges/index.html</a> (last visited Apr. 9, 2007).</td>
</tr>
<tr>
<td>Kosovo</td>
<td>The Kosovo Judicial and Prosecutorial Council (KJPC) recommends judges and prosecutors for appointment to the Special Representative of the UN Secretary General (SRSG). The SRSG then appoints judges from lists of candidates recommended by the KJPC and endorsed by the General Assembly.</td>
<td>American Bar Association, Central European and Eurasian Law Initiative, Legal Information for Kosovo, <a href="http://www.abanet.org/ceeli/countries/kosovo/legalinfo.html">http://www.abanet.org/ceeli/countries/kosovo/legalinfo.html</a> (last visited Apr. 9, 2007).</td>
</tr>
<tr>
<td>Laos</td>
<td>Judges at all levels are appointed by the National Assembly Standing Committee.</td>
<td>LAOS CONST. art. 67 available at <a href="http://www.laoembassy.com/news/constitution/body.htm">http://www.laoembassy.com/news/constitution/body.htm</a></td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Madagascar</td>
<td>Presidents of the courts are appointed by the Council of Ministers from a list of candidates compiled by the Justice Minister, in consultation with the High Council of the Judiciary. Other judges are appointed by decree as proposed by the Justice Minister.</td>
<td>Mathieu Célien Ramasiarisolo, Madagascar: The Judiciary – An Absolute Necessity, <a href="http://ospiti.peacelink.it/anb-bia/nr337/e13.html">http://ospiti.peacelink.it/anb-bia/nr337/e13.html</a> (last visited Apr. 9, 2007).</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Malawi</td>
<td>The Chief Justice is appointed by the President and confirmed by the General Assembly. The President also appoints other judges are after recommendation by the Judicial Service Commission.</td>
<td>Patrick Mawaya, Malawi: The Judiciary - On a Test Run, <a href="http://ospiti.peacelink.it/anb-bia/nr337/e14.html">http://ospiti.peacelink.it/anb-bia/nr337/e14.html</a> (last visited Apr. 9, 2007).</td>
</tr>
<tr>
<td>Maldives</td>
<td>All the judges of the High Court, the highest court in the country, and the lower courts are appointed and can be dismissed by the President.</td>
<td>Asian Centre for Human Rights, Maldives: Judiciary - Under the President’s Thumb, <a href="http://www.achrweb.org/briefingpapers/Maldives-BP-0107.htm#_Toc160430320">http://www.achrweb.org/briefingpapers/Maldives-BP-0107.htm#_Toc160430320</a> (last visited Apr. 9, 2007).</td>
</tr>
<tr>
<td>Mexico</td>
<td>Lower court judges are appointed by the Federal Judicial Council (CFJ). The CFJ is composed of the country’s chief justice, one judge, two district magistrates, two members chosen by the Senate, and one member appointed by the president.</td>
<td>Jodi Finkel, Judicial Reform as Insurance Policy: Mexico in the 1990s, 47 LATIN AMERICAN POL. &amp; SOC’Y, 87, 91-92 (2005).</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>---------</td>
<td>------------------</td>
<td>------------</td>
</tr>
<tr>
<td>Monaco</td>
<td>The Supreme Court is composed of ten members, five full members and five deputy members. All are appointed by the Prince after nomination by the National Council, the Council of State, the Crown Council, the court of appeal and the court of first instance. These five institutions all nominate a full member. Only the National Council and the Council of State also put forward a deputy.</td>
<td>Official Website of Monaco, The Supreme Court, <a href="http://www.gouv.mc/devwww/wwwnew.nsf/1909$/efcb8af3d5f55567c1256fa3004fccc5f5?OpenDocument&amp;5Gb">http://www.gouv.mc/devwww/wwwnew.nsf/1909$/efcb8af3d5f55567c1256fa3004fccc5f5?OpenDocument&amp;5Gb</a> (last visited Apr. 9, 2007).</td>
</tr>
<tr>
<td>Mongolia</td>
<td>The President of the Mongolia appoints judges after proposal of the Judicial General Council.</td>
<td>Mongolian State Law on the Courts, art. 6 cl. 2 available at <a href="http://www.asuult.net/nemesis/mongolian_judiciary/">http://www.asuult.net/nemesis/mongolian_judiciary/</a>.</td>
</tr>
<tr>
<td>Mozambique</td>
<td>Judges are appointed by the President of the Republic after consultation with the Supreme Council of the Judiciary. The Assembly of the Republic appoints the other judges to the Supreme Court.</td>
<td>MOZAMBIQUE CONST. art. 170, available at <a href="http://confinder.richmond.edu/admin/docs/moz.pdf">http://confinder.richmond.edu/admin/docs/moz.pdf</a>.</td>
</tr>
<tr>
<td>Namibia</td>
<td>The President appoints all Judges to the Supreme Court and the High Court on the recommendation of the Judicial Service Commission.</td>
<td>NAMIBIA CONST. art. 82 available at <a href="http://www.orusovo.com/namibia/">http://www.orusovo.com/namibia/</a></td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>-----------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Netherlands</td>
<td>All judicial appointments are made by the Crown.</td>
<td>United States Department of State, Background Note: The Netherlands, January 2007, <a href="http://www.state.gov/r/PA/ei/bgn/3204.htm">http://www.state.gov/r/PA/ei/bgn/3204.htm</a> (last visited Apr. 9, 2007).</td>
</tr>
<tr>
<td>Panama</td>
<td>The nine Supreme Court justices are appointed by the president subject to the advice and consent of the Legislative Assembly. Supreme Court justices appoint the judges of the superior courts who then appoint the circuit court judges in their respective jurisdictions.</td>
<td>Encyclopedia of Nations, Panama: Judicial System, <a href="http://www.nationsencyclopedia.com/Americas/Panama-JUDICIAL-SYSTEM.html">http://www.nationsencyclopedia.com/Americas/Panama-JUDICIAL-SYSTEM.html</a> (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>The Chief Justice is appointed by the Head of State acting on the advice of the National Executive Council. Other Judges are appointed by the Judicial and Legal Services Commission.</td>
<td>PAPUA NEW GUINEA CONST. art. 169-70.</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>-----------</td>
<td>----------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Paraguay</td>
<td>The Supreme Court appoints lower court judges and magistrates after recommendation by the magistrate’s council.</td>
<td>The Jurist, Paraguay: Courts &amp; Judgments, (<a href="http://jurist.law.pitt.edu/world/paraguay.htm%5C">http://jurist.law.pitt.edu/world/paraguay.htm\</a>) (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Peru</td>
<td>The Senate confirms justices that have been nominated by the President based on recommendations by the National Justice Council.</td>
<td>Encyclopedia of Nations, Peru: Judicial System, (<a href="http://www.nationsencyclopedia.com/Americas/Peru-JUDICIAL-SYSTEM.html%5C">http://www.nationsencyclopedia.com/Americas/Peru-JUDICIAL-SYSTEM.html\</a>) (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Philippines</td>
<td>The President appoints judges of the Supreme Court and lower courts from a list of candidates submitted by the Philippine Judicial and Bar Council.</td>
<td>The Jurist, Philippines: Courts &amp; Judgments, (<a href="http://jurist.law.pitt.edu/world/philippines.htm%5C">http://jurist.law.pitt.edu/world/philippines.htm\</a>) (last visited Apr. 10, 2007).</td>
</tr>
<tr>
<td>Poland</td>
<td>Most justices enter the profession through an apprenticeship. Other judges are appointed by the President after nomination by the National Council of the Judiciary.</td>
<td>Open Society Institute, Monitoring the EU Accession Process, Judicial Capacity in Poland, 158 (2002) available at (<a href="http://www.eumap.org/reports/2002/judicial/international/sections/poland/2002_j_poland.pdf%5C">http://www.eumap.org/reports/2002/judicial/international/sections/poland/2002_j_poland.pdf\</a>).</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Russia</td>
<td>Judges of the Constitutional Court, Supreme Court and High Arbitrazh Court are all appointed by the Council of the Federation after nomination by the president.</td>
<td>American Bar Association, Central European and Eurasian Law Initiative, Legal Information for Russia, <a href="http://www.abanet.org/ceeli/countries/russia/legalinfo.html">http://www.abanet.org/ceeli/countries/russia/legalinfo.html</a> (last visited Mar. 30, 2007).</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>The Chief Justice of the Supreme Court is appointed by the President on the recommendation of the Judicial and Legal Service Commission and after approval of Parliament. The other Supreme Court justices are appointed by the President after recommendation by the Judicial and Legal Service Commission. The judges of lower courts are appointed by the Chief Justice after consultation with the Judicial and Legal Service Commission.</td>
<td>Sierra Leone Const. art. 135(1), 135(2), 142(1).</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Somaliland</td>
<td>The President appoints the justices of the Supreme Court after consultation with the Judicial Commission. The Chief Justice also has to be approved by the Parliament. Lower court judges are appointed by the Judicial Commission.</td>
<td>SOMALILAND CONST. art. 105, 107, 108.</td>
</tr>
</tbody>
</table>
### Table 4: World Selection Methods

<table>
<thead>
<tr>
<th>Country</th>
<th>Selection Method</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tanzania</td>
<td>The judges of the high courts are appointed by the President after consultation with the Judicial Service Commission; Justices of the Court of Appeal are appointed by the President after consultation with the Chief Justice.</td>
<td>TANZANIA CONST. art. 109, 118 available at <a href="http://www.tanzania.go.tz/images/constitutioneng.pdf">http://www.tanzania.go.tz/images/constitutioneng.pdf</a>.</td>
</tr>
<tr>
<td>Togo</td>
<td>After completing a competitive examination, judges follow a two-year training course at the College for Senior Civil Servants. The Council of Judges (CSM) then recommends judges for appointment to the Justice Minister, who then makes the appointment.</td>
<td>Paschal K. Dotchevi, Togo: Justice – In Need of a Rethink, <a href="http://ospiti.peacelink.it/anb-bia/nr337/e21.html">http://ospiti.peacelink.it/anb-bia/nr337/e21.html</a> (last visited Apr. 11, 2007).</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>The Chief Justice is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. Other Supreme Court judges are appointed by the President on the advice of the Judicial and Legal Service Commission. The Judicial and Legal Service Commission appoints magistrates and all other judicial officers.</td>
<td>Judiciary of the Republic of Trinidad and Tobago, Appointment of the Judiciary, <a href="http://www.ttlawcourts.org/appointment.htm">http://www.ttlawcourts.org/appointment.htm</a> (last visited Apr. 9, 2007).</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Country</th>
<th>Selection Method</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turkey</td>
<td>Turkey has a civil service judiciary where students choose to train for a judicial career early in the legal education process. After graduation from judicial school, they begin their apprenticeship in eastern Turkey, moving westward region by region throughout their career.</td>
<td>Jurist: Legal Intelligence, Turkey: Courts &amp; Judgements, <a href="http://jurist.law.pitt.edu/world/turkcor4a.htm">http://jurist.law.pitt.edu/world/turkcor4a.htm</a> (last visited Apr. 11, 2007).</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>The president appoints the Supreme Court, Velayat, Ashgabat, Etrap and City Court judge, although the Supreme Court Chairman has to approved by the General Assembly. The President appoints the other judicial officers on the recommendation of the Supreme Court Chairman.</td>
<td>American Bar Association, Central European and Eurasian Law Initiative, Legal Information for Turkmenistan, <a href="http://www.abanet.org/ceeli/countries/turkmenistan/legalinfo.html">http://www.abanet.org/ceeli/countries/turkmenistan/legalinfo.html</a> (last visited Mar. 30, 2007).</td>
</tr>
<tr>
<td>Uganda</td>
<td>The President appoints the Chief Justice. Other judges are also appointed by the President with the recommendation of the Judicial Service Commission. Magistrates are appointed by the Judicial Service Commission.</td>
<td>Republic of Uganda, Courts of Judicature: Judicial Officers, <a href="http://www.judicature.go.ug/judicial.php">http://www.judicature.go.ug/judicial.php</a> (last visited Apr. 11, 2007).</td>
</tr>
<tr>
<td>Ukraine</td>
<td>Those interested in judicial appointment have to pass a qualification examination. Those who pass and are recommended by the qualification commission are then reviewed by the High Judicial Council (HCJ). Those receiving recommendation from the HCJ are presented to the President for final appointment.</td>
<td>American Bar Association, Central and East European Law Initiative, Judicial Reform Index for Ukraine 3 (2002), available at <a href="http://www.abanet.org/ceeli/publications/jri/jri_ukraine.pdf">www.abanet.org/ceeli/publications/jri/jri_ukraine.pdf</a>.</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>Federal Supreme Court judges are all appointed by the UAE president with the approval of the Supreme Federal Council. Other federal judges are appointed by the UAE president after nomination by the minister of justice.</td>
<td>United Nations Development Programme, Programme on Governance in the Arab Region, Arab Judicial Structures: United Arab Emirates, <a href="http://www.pogar.org/publications/judiciary/nbrown/uae.html">http://www.pogar.org/publications/judiciary/nbrown/uae.html</a> (last visited Apr. 9, 2007).</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>Supreme Court judges are nominated by the president and confirmed by the Oliy Majlis (legislature). Lower court judges are appointed by the president.</td>
<td>Microsoft Encarta Encyclopedia, Uzbekistan: Judiciary, <a href="http://encarta.msn.com/encyclopedia_761551989_6fUzbekistan.judges">http://encarta.msn.com/encyclopedia_761551989_6fUzbekistan.judges</a> are appointed by the president. html (last visited Apr. 11, 2007).</td>
</tr>
<tr>
<td>Vanuatu</td>
<td>The Chief Justice is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. Other judges are appointed by the President acting on the advice of the Judicial Service Commission.</td>
<td>VANUATU CONST. art. 47(2), 49 (3), available at <a href="http://www.vanuatu.gov.vu/government/library/constitution.html">http://www.vanuatu.gov.vu/government/library/constitution.html</a>.</td>
</tr>
<tr>
<td>Zambia</td>
<td>The Supreme Court justices are appointed by the President subject to ratification by the National Assembly. Other judges are recommended by the Judicial Service Commission and appointed by the President, subject to ratification by the National Assembly.</td>
<td>ZAMBIA CONST. art. 93, 95.</td>
</tr>
<tr>
<td>Country</td>
<td>Selection Method</td>
<td>References</td>
</tr>
<tr>
<td>----------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>The Chief Justice and other judges of the Supreme Court and the High Court are appointed by the President after consultation with the Judicial Service Commission.</td>
<td>ZIMBABWE CONST. s. 84</td>
</tr>
</tbody>
</table>