

## **Appendix 2. Judicial Selection and Retention in Other States**

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## **Alabama**

The Alabama judiciary is composed of three appellate courts – the Supreme Court, the Court of Civil Appeals, and the Court of Criminal Appeals – and four trial courts – the circuit, district, probate, and municipal courts. The Circuit Court is the trial court of general jurisdiction. Judges in Alabama are chosen in partisan elections. When judicial vacancies occur between elections, the governor appoints judges to fill those seats. In some counties, appointments are made from a list of names provided by a judicial nominating commission.

## **Alaska**

The Alaska judiciary is composed of two appellate courts – the Supreme Court and the Court of Appeals, and two trial courts – the Superior Court and the District Court. Alaska is one of only two states that has used a merit selection system since gaining statehood to choose its judges. Alaska was also the first state to establish an official judicial performance evaluation program to provide information to voters in retention elections.

## **Arizona**

The Arizona judiciary is composed of three courts of general jurisdiction – the Supreme Court, the Court of Appeals, and the Superior Court. Appellate judges and Superior Court judges in Maricopa and Pima counties are chosen through merit selection. After an initial two-year term, judges must stand for retention. Superior Court judges in smaller counties are chosen in nonpartisan elections.

In 1992, Arizona voters approved Proposition 109, which called for the adoption of a process for evaluating judicial performance. Arizona is the only state with a constitutionally mandated judicial performance evaluation program.

## **Arkansas**

The Arkansas judiciary has four levels: the Supreme Court, the Court of Appeals, the circuit courts, and the district courts. The circuit courts are general jurisdiction trial courts, and the district courts are trial courts of limited jurisdiction. A constitutional amendment adopted by the voters in 2000 provided for nonpartisan election of judges.

## **California**

The California judiciary consists of the Supreme Court, the courts of appeal, and the Superior Court. According to California's constitution, judges of the Supreme Court and courts of appeal are nominated by the governor and must be confirmed by the Commission on Judicial Appointments, which consists of the chief justice, the attorney general, and a presiding justice of the courts of appeal. Since 1979, the legislature has required that the State Bar of California's Commission on Judicial Nominees Evaluation conduct a thorough investigation of the background and qualifications of prospective nominees, but the governor is

not bound by the commission's recommendations. Appellate judges must stand for retention in the next gubernatorial election after their appointment. Appellate judges serve 12-year terms.

Superior Court judges are chosen in nonpartisan elections for six-year terms. The governor fills vacancies on the Superior Court by appointment. As with appellate court appointments, prospective nominees must first be investigated by the Commission on Judicial Nominees Evaluation. The vast majority of Superior Court judges initially reach the bench via gubernatorial appointment, and once on the bench, incumbents are rarely challenged for reelection.

## **Colorado**

The Colorado judiciary is composed of the Supreme Court, the Court of Appeals, the District Court, and various trial courts of limited jurisdiction. Under Colorado's original constitution, judges were elected by the people, but in 1966, voters approved a constitutional initiative calling for merit selection of judges. Under Colorado's merit selection system, judges are appointed by the governor from a list of nominees submitted by a judicial nominating commission, and judges stand for retention at least two years after their appointment. In 1988, the Colorado General Assembly created judicial performance commissions throughout the state to provide voters with information about the performance of judicial retention candidates.

## **Connecticut**

The Connecticut judiciary is composed of the Supreme Court, the Appellate Court, the Superior Court, and the Probate Court. Connecticut adopted a merit plan for selecting judges in 1986. According to the plan, the judicial selection commission recommends qualified candidates to the governor for nomination. The governor's nominee must then be appointed by the general assembly. Judges serve eight-year terms and must be renominated and reappointed. The judicial selection commission also evaluates incumbent judges who seek reappointment.

## **Delaware**

The Delaware judiciary is composed of the Supreme Court, the Superior Court, the Court of Chancery, and various courts of limited jurisdiction. The Supreme Court is the state's appellate court, the Superior Court is the court of general law jurisdiction, and the Court of Chancery is the trial court of general equity jurisdiction. Courts of limited jurisdiction include the Family Court, the Court of Common Pleas, the Justice of the Peace Court, and the alderman's courts.

Currently, Delaware judges are chosen through a merit selection process. Under the Delaware Constitution, judges are appointed by the governor with the consent of the senate. Since 1977, Delaware governors have adopted executive orders creating a judicial nominating commission to identify highly qualified candidates for judicial appointments. With the exception of justices of the peace, judges serve 12 years – one of the longest terms for state court judges in the United States. Unlike judges in other merit selection states, judges in Delaware do not run for retention; instead, they must be reappointed through the same process by which they were appointed. An interesting feature of the Delaware Constitution is the requirement that there be partisan balance within the Delaware judiciary

## **District of Columbia**

Until Congress passed the District of Columbia Court Reform and Criminal Procedure Act of 1970, the federal courts in DC exercised both federal and local jurisdiction. The 1970 legislation established the Court of Appeals and the Superior Court to assume responsibility for local jurisdiction. Judges of these courts are appointed to 15-year terms by the President of the United States with Senate confirmation. The President appoints judges from lists submitted by the judicial nomination commission. Judges who seek reappointment to office upon the completion of their terms are evaluated by the Judicial Disabilities and Tenure Commission. Judges who are rated "well qualified" by the commission are automatically reappointed. Judges found to be "qualified" may be appointed by the President for an additional term, subject to Senate confirmation. If the President chooses not to reappoint a "qualified" judge, or if the commission finds a judge "unqualified," the judicial nomination commission compiles a new list of candidates.

## **Florida**

The Florida judiciary is composed of the Supreme Court, the district courts of appeal, the circuit courts, and the county courts. Appellate judges are chosen through a merit selection and retention process, and trial judges are chosen in nonpartisan elections. However, vacancies on the trial courts are filled by the governor from candidates recommended by a judicial nominating commission.

## **Georgia**

The Georgia judiciary consists of the Supreme Court, the Court of Appeals, the Superior Court, and various trial courts of limited jurisdiction. Judges are chosen in nonpartisan elections, but mid-term vacancies are filled through gubernatorial appointment. Since 1972, Georgia governors have established by executive order judicial nominating commissions to recommend candidates to fill the vacancies. The vast majority of Georgia judges are initially appointed to the bench and compete in contested elections to retain their seats.

## **Hawaii**

The Hawaii judiciary consists of the Supreme Court, the Intermediate Court of Appeals, and various trial courts, including the Circuit Court, the District Court, and the Family Court. The Circuit Court is the trial court of general jurisdiction. Hawaii judges are chosen through a variation of the merit selection process. The governor appoints judges of the appellate courts and the Circuit Court from a list of names submitted by the judicial selection commission, while the chief justice appoints district and family court judges from a commission list. Appointees must be confirmed by the senate. Upon the completion of their terms, judges may be retained by a majority vote of the members of the judicial selection commission.

Under Hawaii's original constitution, judges were appointed by the governor with the advice and consent of the senate. The constitutional convention of 1978 approved an amendment calling for the establishment of the judicial selection commission to select judges based "solely on their qualifications and not on political patronage," and the amendment was ratified by voters later that year. The judicial selection commission began nominating candidates for judicial vacancies in 1979.

## **Idaho**

The Idaho judiciary is composed of three levels of courts – the Supreme Court, the Court of Appeals, and the District Court. Judges of these courts are chosen in nonpartisan elections, in which judicial candidates may not be nominated or endorsed by a political party, appear on a party ticket, or list a party affiliation on the ballot. When a judge leaves office in the middle of a term, the governor is authorized to fill the vacancy from a list of names submitted by the Idaho Judicial Council.

## **Illinois**

The Illinois judiciary is composed of the Supreme Court, the Appellate Court, and the Circuit Court. Illinois judges are initially chosen in partisan elections. Judges run in uncontested, nonpartisan retention elections to serve additional terms. Judges of the Supreme Court and Appellate Court serve 10-year terms; Circuit Court judges serve 6-year terms.

## **Indiana**

The Indiana judiciary consists of three constitutional courts – the Supreme Court, the Court of Appeals, and the Circuit Court. Judges of the appellate courts are appointed by the governor from a list of three names submitted by the state judicial nominating commission, and judges of the Circuit Court are elected in partisan contests, with the governor filling mid-term vacancies through appointment. Appellate Court judges serve 10-year terms, and Circuit Court judges serve 6-year terms.

Other trial courts have been created by statute, including the superior courts, county courts, probate courts, town and city courts, and small claims courts. With the exception of some judges in four counties, the majority of these judges are chosen in partisan elections. In Vanderburgh County, elections for judges of the Circuit and Superior courts are nonpartisan. In Lake and St. Joseph counties, Superior Court judges are chosen through a merit selection process; and in Allen County, elections for Superior Court judges are nonpartisan, and interim vacancies on the Superior Court are filled by the governor from a list of candidates recommended by a local judicial nominating commission.

## **Iowa**

The Iowa judiciary is composed of two appellate courts – the Supreme Court and the Court of Appeals – and the unified District Court. Iowa judges are chosen through merit selection, where a nominating commission identifies a list of highly qualified candidates and the governor appoints a judge from that list. After one year in office, and then at regular intervals, judges stand in retention elections.

## **Kansas**

The Kansas judiciary is composed of three levels of general jurisdiction courts – the Supreme Court, the Court of Appeals, and the District Court. Kansas has a bifurcated system of judicial selection, in which Appellate Court judges are chosen through merit selection and District Court judges are chosen through merit selection or partisan election, at the option of each district. The majority of judicial districts in Kansas have chosen merit selection.

Legislation enacted in 2013 replaces merit selection for the Court of Appeals with a system of gubernatorial appointment and senate confirmation.

## **Kentucky**

The Kentucky judiciary consists of the Supreme Court, the Court of Appeals, the Circuit Court, and the District Court. A constitutional amendment effective January 1, 1976, created a unified court system known as the Court of Justice and established nonpartisan elections for judges. Judges of the Supreme Court, Court of Appeals, and Circuit Court are elected to eight-year terms, and District Court judges are elected to four-year terms. When a mid-term judicial vacancy occurs, the governor appoints a replacement from a list submitted by a judicial nominating commission.

## **Louisiana**

The Louisiana judiciary consists of three levels of general jurisdiction courts – the Supreme Court, the Court of Appeals, and the District Court – and a number of limited jurisdiction trial courts. Louisiana judges are chosen in partisan elections. Judicial candidates initially run in a “blanket primary,” in which candidates of both parties appear with party labels on the same ballot. The top two vote getters in the primary election run in the general election.

## **Maine**

The Maine judiciary consists of the Supreme Judicial Court, the Superior Court, the District Court, and the Probate Court. The district and probate courts are courts of limited jurisdiction. Maine’s judicial selection process is similar to the process for selecting federal judges – judges are nominated by the governor and confirmed by the senate, but they serve seven-year terms rather than serving for life.

## **Massachusetts**

The Massachusetts judiciary is composed of the Supreme Judicial Court, the Appeals Court, and the Trial Court. Seven departments make up the Trial Court: the Superior Court, the District Court, the Boston Municipal Court, the Juvenile Court, the Housing Court, the Land Court, and the Probate and Family Court. Since 1780, Massachusetts judges have been appointed for life by the governor with the consent of the governor's council. Since 1975, Massachusetts governors have created nominating commissions by executive order to advise them in making judicial appointments.

## **Michigan**

The Michigan judiciary consists of the Supreme Court, the Court of Appeals, the Circuit Court, and various trial courts of limited jurisdiction. Judges are chosen in nonpartisan elections, but Supreme Court candidates may be nominated at political party conventions or by nominating petition. Incumbents may simply file an affidavit of candidacy.

## **Minnesota**

The Minnesota judiciary consists of the Supreme Court, the Court of Appeals, and the District Court. According to the constitution, judges are chosen in nonpartisan elections, but many judges resign before their terms end, allowing the governor to appoint their replacements.

## **Mississippi**

The Mississippi judiciary is composed of the Supreme Court, the Court of Appeals, and the Circuit Court. Throughout its history, Mississippi has experimented with all methods of judicial selection. The state's original constitution of 1817 left the selection of judges to the legislature. In 1832, Mississippi became the first state in the nation to establish popular elections for all judges, and in 1868, it became one of the first elective states to move away from the election of judges when it adopted gubernatorial appointment with senate confirmation. Popular elections were reinstated in 1910 and 1914 and have been maintained ever since. In 1994, the legislature passed the Nonpartisan Judicial Election Act, which changed the elections for most judicial offices from partisan to nonpartisan contests.

## **Missouri**

The Missouri judiciary consists of the Supreme Court, the Court of Appeals, and the Circuit Court. In 1940, Missouri became the first state to adopt merit selection of judges. The Nonpartisan Selection of Judges Court Plan, which has come to be known as the Missouri Plan, has served as a model for the 34 other states that use merit selection to fill some or all judicial vacancies.

## **Montana**

The Montana judiciary consists of the Supreme Court, the District Court, and various courts of limited jurisdiction. Supreme Court and District Court judges are chosen in nonpartisan elections. When interim vacancies occur, the governor appoints a candidate from a list submitted by the judicial nomination commission. Appointees must be confirmed by the senate.

## **Nebraska**

The Nebraska judiciary consists of the Supreme Court, the Court of Appeals, the District Court, the County Court, and the Worker's Compensation Court. Some counties also have a Juvenile Court. The District Court is the trial court of general jurisdiction. All Nebraska judges are appointed by the governor from a list submitted by a judicial nominating commission. Judges stand for retention in the next general election more than three years after their appointment and then every six years thereafter.

## **Nevada**

The Nevada judiciary consists of the Supreme Court, the District Court, the justices' courts, and the municipal courts. The Supreme Court has mandatory appellate jurisdiction, and the District Court is the trial court of general jurisdiction. Judges are chosen in nonpartisan elections. An unusual feature of Nevada's judicial elections is that voters are given a "none of the above" option. In a 2002 Supreme Court race, nearly 78,000 voters marked "none of these candidates."

## **New Hampshire**

The New Hampshire judiciary consists of the Supreme Court, the Superior Court, the District Court, and the Probate Court. The district and probate courts are courts of limited jurisdiction. New Hampshire judges are nominated by the governor and confirmed by the executive council, a five-member body elected by the people to advise the governor. In 2000, Governor Shaheen became the first New Hampshire governor to create a judicial nominating commission by executive order. In 2005, Governor Lynch followed her example with an executive order creating a judicial selection commission.

## **New Jersey**

New Jersey's judiciary has two appellate courts – the Supreme Court and the Appellate Division of the Superior Court, and three trial courts – the Superior Court, the Tax Court, and the Municipal Court. The Superior Court is the court of general jurisdiction. The governor, with the approval of the senate, chooses all judges in New Jersey. Judges stand for reappointment after seven years in office, and once reappointed, they serve until they reach the age of 70.

## **New Mexico**

The New Mexico judiciary consists of the Supreme Court, the Court of Appeals, the District Court, and various trial courts of limited jurisdiction. New Mexico judges were originally chosen in partisan elections, but in 1988, voters approved a constitutional amendment creating a hybrid system of judicial selection that includes merit selection, partisan elections, and retention elections. When a judicial vacancy occurs, the appropriate nominating commission recommends qualified candidates to the governor, and the governor makes an appointment. At the next general election, a contested partisan election is held to fill the seat for the remainder of the term. The successful candidate runs in retention elections thereafter. The threshold for retention is higher in New Mexico than in most other states; judges must receive at least 57% in affirmative votes to be retained.

## **New York**

The structure of the New York judiciary is one of the most complex among the 50 states. There are courts that function throughout the state, including the Court of Appeals, the Appellate Division of the Supreme Court, the Supreme Court, the Court of Claims, the Surrogate's Court, and the Family Court. There are courts that operate only in New York City, such as the civil and criminal courts of the city of New York; there are courts that exist only outside of New York City, including county courts, city courts, and town and village justice courts; and there are district courts that reside in only two of the state's counties. Additional confusion is created by the fact that New York calls its major trial court the Supreme Court, a title given to the court of last resort in most other states.

Most of New York's trial court judges are chosen in partisan elections, with judicial candidates competing in primary elections to determine who will represent the party in the general election. According to statute, however, candidates for the Supreme Court are chosen through a party convention system, in which primary voters elect convention delegates who choose candidates for the judgeships.

## **North Carolina**

The North Carolina judiciary consists of the Supreme Court, the Court of Appeals, the Superior Court, and the District Court. Partisan elections for judges were established in 1868, but in recent years, the general assembly has moved to nonpartisan elections – for Superior Court judges in 1996, for District Court judges in 2001, and for Appellate Court judges in 2002.

Nonpartisan elections for appellate court judges were one component of a major judicial selection reform package passed by the North Carolina General Assembly in 2002. Known as the Judicial Campaign Reform Act, the Act also gives appellate court candidates the option of public financing, provides for a voter's guide on appellate court candidates, and lowers the limit on contributions to appellate court candidates to \$1,000. North Carolina was the first state to adopt full public financing of judicial elections.

## **North Dakota**

The North Dakota judiciary consists of the Supreme Court, the Court of Appeals, the District Court, and the municipal courts. The Court of Appeals was created by the legislature on an experimental basis in 1987 to hear cases assigned by the Supreme Court. Its judges are chosen from among active and retired District Court judges, retired Supreme Court justices, and attorneys. The Supreme Court and the District Court are established in North Dakota's constitution, and since 1910, judges of these courts have been chosen in nonpartisan elections. Vacancies on these courts are filled by the governor from a list of candidates submitted by the judicial nominating commission, or by special election.

## **Ohio**

The Ohio judiciary is composed of two appellate courts – the Supreme Court and the Court of Appeals, and three trial courts – the Court of Common Pleas, the County Court, and the Municipal Court. The Court of Common Pleas is the court of general jurisdiction. Judges in Ohio are selected in nonpartisan elections, which means that party affiliations are not listed on the ballot. However, political parties have a prominent role in selecting judges since judicial candidates are nominated in partisan primary elections and are endorsed by political parties.

## **Oklahoma**

Oklahoma is one of only two states that has two courts of last resort – the Supreme Court has jurisdiction over appeals of all civil matters, and the Court of Criminal Appeals hears all criminal appeals. The Court of Civil Appeals is an intermediate appellate court, and the District Court is the trial court of general jurisdiction. Oklahoma has a bifurcated system of judicial selection. Appellate Court judges are chosen through merit selection, and trial court judges are chosen in nonpartisan elections.

## **Oregon**

The Oregon judiciary consists of the Supreme Court, the Court of Appeals, the Circuit Court, the Tax Court, and various trial courts of limited jurisdiction. Oregon judges have been chosen in nonpartisan elections since 1931. The governor appoints judges to fill mid-term vacancies on the courts, and the appointee stands for election at the next general election. In recent years, approximately 85% of Oregon judges have first been appointed rather than elected to office, and the vast majority were unopposed in elections to retain their seats.

## **Pennsylvania**

The Pennsylvania judiciary is composed of the Supreme Court, the Superior Court, the Commonwealth Court, the Court of Common Pleas, and various minor courts. The Supreme, Superior, and Commonwealth courts are appellate courts, and the Court of Common Pleas is the trial court of general jurisdiction. Pennsylvania judges are chosen in partisan elections. Pennsylvania is one of only two states that holds its judicial elections in off years in conjunction with municipal elections.

## **Rhode Island**

The Rhode Island judiciary is composed of the Supreme Court, the Superior Court, and various trial courts of limited jurisdiction. Rhode Island is the most recent state to adopt merit selection by constitutional amendment. It did so in 1994.

## **South Carolina**

The South Carolina judiciary is composed of the Supreme Court, the Court of Appeals, and the Circuit Court. There are also numerous trial courts of limited jurisdiction, organized into family, probate, equity, magistrate, and municipal courts. South Carolina is one of only two states whose legislature is responsible for selecting judges.

In 1996, South Carolina voters approved a constitutional amendment creating a judicial merit selection commission. The commission considers the qualifications and fitness of candidates for South Carolina courts and submits the names of up to three nominees to the general assembly. The general assembly must elect one of these nominees.

## **South Dakota**

South Dakota's unified judicial system consists of the Supreme Court, the Circuit Court, and magistrate courts. Supreme Court justices are appointed by the governor from a list of candidates submitted by the judicial qualifications commission, and Circuit Court judges are chosen in nonpartisan elections.

## **Tennessee**

The Tennessee judiciary is composed of three appellate courts – the Supreme Court, the Court of Appeals, and the Court of Criminal Appeals; four trial courts of general jurisdiction – the Chancery Court, the Circuit Court, the Probate Court, and the Criminal Court; and three courts of limited jurisdiction – the Juvenile Court, the General Sessions Court, and the Municipal Court. In terms of judicial selection method, Tennessee is considered a “hybrid” state; some judges are chosen through merit selection and others run in partisan elections.

Under the Tennessee Plan adopted by the legislature in 1994, merit selection, with retention elections and performance evaluation, is utilized for all appellate court judges.

## **Texas**

Texas is one of only two states with two courts of last resort – the Supreme Court, which hears only civil matters, and the Court of Criminal Appeals. The Court of Appeals is the state's intermediate appellate court, and the District Court is the trial court of general jurisdiction. Courts of limited jurisdiction include county, probate, municipal, and justice of the peace courts. When Texas became a state in 1845, judges were appointed by the governor with senate consent, but since 1876, judges at all levels of courts have been elected by the people in partisan elections.

## **Utah**

The Utah judiciary consists of the Supreme Court, the Court of Appeals, the District Court, the Juvenile Court, and the justice courts. Except for Justice Court judges, Utah's judges are chosen through a merit selection process. The governor fills all judicial vacancies from a list of candidates submitted by a judicial nominating commission. The governor's appointee must then be confirmed by a majority vote of the senate. Utah is one of only eight states that requires senate confirmation of judicial appointees.

## **Vermont**

The Vermont judiciary is composed of the Supreme Court; the trial courts, including the Superior Court, which hears predominantly civil cases, the District Court, which hears primarily criminal cases, and the Family Court; and courts of special jurisdiction, including the Probate Court, the Environmental Court, and the Judicial Bureau. Vermont judges are appointed by the governor from a list of candidates submitted by the judicial nominating board. Judges serve six-year terms and must then be retained by a majority vote of the general assembly.

## **Virginia**

The Virginia judiciary is composed of the Supreme Court, the Court of Appeals, the Circuit Court, and the District Court. The District Court is a court of limited jurisdiction. Virginia is one of only two states whose legislature is responsible for selecting its judges. When the legislature is not in session, the governor fills vacancies by appointment. Appointees must then be elected at the next legislative session.

## **Washington**

There are four levels of courts in Washington – the Supreme Court, the Court of Appeals, the Superior Court, and the district and municipal courts. The district and municipal courts are courts of limited jurisdiction. Washington judges are selected in nonpartisan elections.

Prior to 2006, Washington was one of only four states without limits on campaign contributions to judicial candidates, but in the spring of that year the legislature applied the same contribution limits to judicial candidates that were in place for other candidates.

## **West Virginia**

The West Virginia judiciary consists of the Supreme Court of Appeals, the Circuit Court, the Family Court, the Magistrate's Court, and the municipal courts. The Supreme Court of Appeals is the state's appellate court, and the Circuit Court is the trial court of general jurisdiction. Except for municipal court judges, whose selection method varies by municipality, judges have been chosen in partisan elections since West Virginia achieved statehood in 1862.

## **Wisconsin**

The Wisconsin judiciary consists of the Supreme Court, the Court of Appeals, the Circuit Court, and municipal courts. Judges are chosen in nonpartisan elections in the spring of each year. Only one Supreme Court justice and one Court of Appeals judge in each district may be elected in a given year.

In November 2009, the Impartial Justice Act was signed into law, creating a public financing system for judicial elections. The program provides up to \$400,000 of initial public financing for Supreme Court candidates. The law also reduces contribution limits for candidates who opt out of public financing from \$10,000 to \$1,000.

## **Wyoming**

The Wyoming judiciary is composed of the Supreme Court, the District Court, the Circuit Court, and the Municipal Court. The Supreme Court is the state's appellate court, and the District Court is the trial court of general jurisdiction. Judges of the Supreme, District, and Circuit courts are chosen through a merit selection process, in which the governor appoints a judge from a list of three names submitted by the judicial nominating commission. After at least one year in office, the judge stands for retention. If retained, Supreme Court justices serve eight-year terms, District Court judges serve six-year terms, and Circuit Court judges serve four-year terms.

Source: National Center for State Courts (<http://www.judicialselection.us/>)