PAR Analysis

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Judicial Campaign Financing and Merit Selection

Public Affairs Research Council of Louisiana, Inc.

Executive Summary

Louisiana should adopt merit selection for judges.

This recommendation follows a year-long study by PAR that examined all judicial elections at the district court level and above from 1990 to 1994 and closely analyzed individual contributions for four selected races.

The study found that under the current elective system:

- **The majority of state judges win election without direct voter approval.** For the period studied, 61% of the elections involved an uncontested race in which the winner's name did not appear on the ballot. In all, 24 judges were initially seated and 153 judges continued in office during the five-year period without direct voter approval.
- **The majority of contested elections in Louisiana are won by the candidate who spends the most money.** The average winning candidate for the supreme court spent about $438,000; for the court of appeal, almost $194,000, and for district court, more than $77,000. Candidates who spent the most won 78% of the elections.
- **The often expensive judicial elections are largely funded by special interest groups (including lawyers who practice before those judges).** While this study did not explore whether there is any direct connection between campaign contributions and judicial rulings, competition among special interest groups gives the perception that justice is for sale.
- **Judges often end elections with large campaign debts.** Winning candidates from the 1990 to 1994 period with debt still remaining as of February 1995 had an average outstanding debt of $47,081 (ranging from $1,184 to $373,800).
- **Judicial incumbents are rarely challenged or defeated in state elections.** Fewer than one-fifth of incumbent judges during the period studied were opposed for reelection, and only 6% of the incumbents were defeated for reelection.
- **The voter's ability to make an informed decision in judicial races is limited.** A good politician may not make a good judge. In spite of the money spent on campaigns, candidates frequently have low name recognition and voters have little information concerning the candidates' judicial aptitude or ability.

There are no viable options to totally eliminate the problems of campaign finance in judicial elections. The alternative is to eliminate contested elections altogether by adopting a merit selection plan for selecting judges.

1. **PAR recommends that Louisiana adopt a merit selection system applicable to all judges that incorporates the following basic elements of the "Missouri Nonpartisan Court Plan": independent judicial nominating commissions, appointment by the governor of one candidate from the list forwarded by a nominating commission, and retention elections.**

2. **PAR recommends that, at a minimum, merit selection should be used to select judges at the court of appeal and supreme court levels.** These races tend to be more expensive, and public awareness of the candidates is more restricted because they are elected on a regional instead of local basis.

3. **PAR recommends that, if Louisiana decides to retain its current judicial election system, the system be changed so that all judicial elections appear on the ballot.**

4. **PAR recommends, regardless of the judicial selection method used, that the campaign finance law be changed to limit solicitation or acceptance of campaign contributions for judicial campaigns to one year prior to the election and limit the amount that can be carried forward from one election to the next. The state's Board of Ethics should have the responsibility for monitoring all campaign finance regulations related to judicial campaigns.**

Introduction

Over the past 40 years, many states have re-evaluated their methods of selecting judges. Concern over the costs, ethics, and consequences of the election process led to the adoption of merit selection plans in many cases.

The problems associated with judicial elections in other states are also evident in Louisiana—expensive election campaigns, limited voter participation and choice, and questions about the impartiality of the courts. A majority of contested judicial elections in Louisiana are won by candidates who raise or spend the most money. This heavy reliance on funding opens the door for special interest groups that are capable of generating large contributions to a candidate. Special interest groups that provide the bulk of the funding often have more voice in the election and may be ultimately more responsible for selecting judges than the voters.

This study examines Louisiana's method of selecting judges, analyzes the financing of judicial election campaigns and explores merit selection and other methods of selecting judges. PAR compiled election and campaign finance data on judicial races at the district court, court of appeal, and supreme court levels for the five-year period from 1990 to 1994.

Campaign finance data was obtained from candidate reports filed with the state. Summary data was compiled for all judicial elections during the five-year period. Detailed data on each contributor to four selected judicial races was compiled and analyzed.

How Louisiana Selects Its Judges

Louisiana's state court system, with more than 350 full-time judges, includes a state supreme court, five circuit courts of appeal, 47 district courts, and 53 city or parish courts. In addition, mayor's courts and justices of the peace account for approximately 640 more part-time judges. (See Figure 1.)

Louisiana's judges are elected in "partisan" elections in which the candidate's political party affiliation is indicated on the ballot. The state uses an open primary system that requires all candidates, regardless of party affiliation, to appear on the same primary ballot. If there is no winner in the primary, the top two candidates compete in the general election.

Figure 1
Louisiana Court Structure

Louisiana Supreme Court
8 Judges*

Louisiana Courts of Appeal
5 Courts
54 Judges

District Courts of Louisiana
47 Courts
(40 District Courts,
2 Orleans Parish District Courts,
4 Juvenile Courts, and
1 Family Court)
214 Judges, 7 Commissioners

Parish and City Courts
3 Parish Courts
50 City Courts
73 Judges

Mayor's Courts
250 Judges (approximately)

Justices of the Peace
390 Justices of the Peace (approximately)

* Pursuant to Act No. 512 of 1992 and the Consent Decree entered on August 21, 1992 by the United States District Court for the Eastern District of Louisiana in *Chisom vs. Edwards*, the judge elected from New Orleans to the Court of Appeal, 4th Circuit is included as a member of the Louisiana Supreme Court. A Supreme Court district comprised of Orleans Parish was created and an election will be held if one of the two judges representing the first district of the Supreme Court in 1992 leaves office. In 1998, the Legislature will reapportion the Supreme Courts districts into seven districts effective for Supreme Court elections after January 1, 2000.

SOURCE: *Annual Report 1995,* The Judicial Council of the Supreme Court of Louisiana.

Judicial candidates must have been admitted to the practice of law in Louisiana for five years prior to the election and lived for two years in the election district. These qualifications are similar to those required in most states. Judges serve six-year terms except for supreme court and court of appeal judges who serve 10-year, staggered terms.

How Much Voice And Choice Do Voters Really Have?

Voter choice in judicial elections is limited due to the large number of uncontested races in which judges are placed in office without voter approval. Voter participation and ability to make an informed choice is further limited by low-key campaigns, limited name recognition and the lack of information needed to evaluate the relevant qualifications of candidates.

Unopposed candidates do not appear on the ballot; they automatically win the election. During the period from 1990 to 1994, this practice resulted in a majority of Louisiana judicial elections (61%) being decided without any voter participation. (See Table 1.) In all, 24 judges were initially seated and 153 judges continued in office without direct voter approval in this five-year period.

The high success rate for incumbents in Louisiana judicial elections offers little incentive for challenges, particularly by lawyers who might later argue cases before that judge. For elections during the five-year period, this study found that:

- Fewer than one-fifth of incumbent judges were opposed for re-election.
- Only 12% of all judicial elections involved an incumbent in a contested election.
- Only 6% of the incumbents were defeated.
- The majority (53%) of incumbents were returned to office in uncontested elections without voter approval. (See Tables 2 and 3.)

Judicial elections tend to be low-key events. *The Code of Judicial Conduct* limits campaign rhetoric by requiring that candidates "not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office" or "make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court." However, in several recent judicial races, the campaigns were more typical of other political races with alleged "mud-slinging" and the emergence of "hot button" political issues.

Table 1
"Most Elections Uncontested"
Louisiana Judicial Elections 1990 to 1994

Category	Supreme Court*	Courts of Appeal	District Courts	Combined Total
Uncontested elections	3 (50%)	37 (65%)	137 (61%)	177 (61%)
Contested elections	3 (50%)	20 (35%)	89 (39%)	112 (39%)
TOTAL	**6 (100%)**	**57 (100%)**	**226 (100%)**	**289 (100%)**

* Due to a Consent Decree, the judge of the 4th Circuit 1st Court of Appeal is included as a member of the Supreme Court. This election is included in the supreme court statistics.

SOURCE: PAR analysis of Louisiana Secretary of State judicial election data.

Table 2
"Incumbents Rarely Challenged"
Louisiana Judicial Elections 1990 to 1994

Category	Supreme Court[a]	Courts of Appeal	District Courts	Combined Total
# of incumbents seeking re-election	3	33	151	187
# of incumbents in opposed elections[b]	0 (0%)	4 (12%)	30 (20%)	34 (18%)
Incumbents running for re-election defeated[b]	0 (0)%	2 (6%)	10 (7%)	12 (6%)

a Includes special court of appeal seat.

b Percentage is number of incumbents in category divided by total number of incumbents seeking re-election in that category.

SOURCE: PAR analysis of Louisiana Secretary of State judicial election data.

Candidates in Louisiana judicial elections generally are not well known by the public. Few candidates have held a high profile position such as state legislator. Candidates often compensate for a lack of name recognition with expensive campaigns.

The state district court level tends to be an entry point for state judges. More than half (54%) came directly from private practice and only 13% had previous judicial experience. However, successful candidates for the court of appeal and supreme court were more likely to have had previous judicial experience. (See Table 4.)

Prior experience as a district attorney (DA), city or parish prosecutor, or a staff member in a DA, Attorney General, or United States District Attorney office was prevalent, with more than 40% of the judges having served in one or more of these positions at some point in their careers. Only 13% of the judges sitting on the bench in 1995 had previously served in the state legislature or in another elective office (other than judge or DA).

The Role of Money in Judicial Elections

Campaign finance plays a crucial role in contested Louisiana judicial elections. Candidates who spent the most won 78% of the elections covered in this study. On average, winners raised and spent about 70% more than their closest challenger. Winning candidates also incurred 75% more debt than their second place challenger.

Cost of Judicial Campaigns

Contested judicial races are often expensive. In contested elections during the five-year period examined, the average winning candidate for the supreme court spent about $438,000 (ranging from $248,519 to $702,836); for the court of appeal, almost $194,000 (ranging from $44,055 to $625,770); and for district court, more than $77,000 (ranging from $1,521 to $487,767). (See Table 5.)

Campaign Debt

Loans played a major role in these judicial elections accounting for approximately 41% of the total campaign revenues raised. (See Table 5.) In addition, 19 of the 318 candidates, including five winners, amassed campaign debts exceeding $100,000 each, by the end of their election.

More than 70% of the candidates borrowed, often heavily, to finance their campaigns. As of February 1995, more than half of these candidates had either paid off their loans or had the debt forgiven. The remaining candidates in the group still owed a combined total of almost $3.5 million. Winning candidates accounted for 55% of this debt with an average outstanding debt of $47,081 (ranging from $1,184 to $373,800). Losing candidates owed, on average, $27,260 (ranging from $992 to $198,305). Nine candidates reported outstanding debt of $100,000 or more.

Judicial candidate debt is a serious problem since candidates usually conduct fund-raisers after the election to repay the debt, and they tend to rely on lawyers for support. Several judges in this study were still soliciting contributions to repay their debt three years after the election.

On average, more than 60% of the debt incurred was from personal loans from the candidate to the campaign. Other loans included those from individuals, other campaigns, businesses, or other sources subject to the contribution limits in the Campaign Finance Law. (See Table 5.) Personal loans made by a candidate to his campaign and bank loans guaranteed by the candidate are not limited by law. This gives wealthier candidates an advantage in campaign financing.

Table 3
Louisiana Judicial Elections 1990 to 1994

Category	Supreme Court[a]	Courts of Appeal	District Courts	Combined Total
Contested Elections				
# with incumbent on ballot	0 (0%)	4 (7%)	30 (13%)	34 (12%)
# without incumbent on ballot (open seat)	3 (50%)	16 (28%)	59 (26%)	78 (27%)
Uncontested Elections				
# with unopposed incumbent	3 (50)%	29 (51%)	121 (54%)	153 (53%)
# with no incumbent (open seat)	0 (0%)	8 (14%)	16 (7%)	24 (8%)
Total	**6 (100%)**	**57 (100%)**	**226 (100%)**	**289 (100%)**

a Includes special court of appeal seat.
SOURCE: PAR analysis of Louisiana Secretary of State judicial election data.

Table 4
Prior Experience of Louisiana Judges Serving on the Bench in 1995

Immediate Prior Occupation[a]	Supreme Court[b]	Courts of Appeal	District Courts	Combined Total
Private Practice	1 (13%)	12 (23%)	110 (54%)	123 (47%)
Judge or Magistrate	7 (87%)	27 (51%)	22 (11%)	56 (21%)
District Attorney (DA), DA staff, Public Defender or Public Defender Staff		4 (7%)	49 (24%)	53 (20%)
State Legislature		7 (13%)	10 (5%)	17 (6%)
Public Service		1 (2%)	9 (4%)	10 (4%)
Other Elective Office		2 (4%)	3 (1%)	5 (2%)
Total	**8 (100%)**	**53 (100%)**	**203 (100%)**	**264 (100%)**
Career Experience[c]				
# with previous judicial experience	7 (87%)	27 (51%)	27 (13%)	61 (23%)
# that held an elective office other than DA or judge during their careers	2 (25%)	13 (25%)	18 (9%)	33 (13%)
# with DA, DA staff, or similar experience	1 (13%)	24 (45%)	82 (40%)	107 (41%)

a This is the occupation that judges listed in their biography immediately prior to the initial term of office for their current judicial position.
b Includes special court of appeal seat.
c This category indicates how many judges have had experience in the indicated occupations at some point in their careers.
SOURCE: PAR analysis of judge biographies in *Guide to the Louisiana Judiciary, 1995 Edition,* Louisiana Governmental Studies, Inc.

Any attempt to limit loans to one's own campaign would likely violate the person's constitutional right to free speech. Another approach, recently enacted in Kentucky, is to limit the amount of loans from the candidate or his family that can be repaid after the election. This limit has not been challenged to date, so it has not been tested in the courts.

Contributors to Judicial Elections

The four judicial races selected for an in-depth analysis of individual contributions included elections for contested Supreme Court seats in 1992 and 1994, a Court of Appeal seat in 1994 and a District Court seat in 1992. The analysis was limited to these four races due to the state's inadequate campaign finance data management system. For these four races alone, an intensive manual effort was required to review the paper reports and enter data on 3,952 contributions for a computer analysis.

(NOTE: Since this research was completed, the Legislature adopted a PAR/BGR recommendation to require development of a computerized campaign finance data management system.)

The lack of a requirement that contributors' occupations be reported also hampered PAR's attempt to categorize contributions by major source. The data was extensively screened to identify lawyer and medical profession contributors using multiple sources of information. Contributions from lawyers, law firms, or their political action committees (PACs) were further divided into "trial lawyer" or "other lawyer" categories. Contributions by individuals connected with business concerns could only be identified as such when the business was listed in the report. Otherwise, such contributions were placed in an "unknown" category. As a result of this and the fact that some business contributions are also in the PAC category, the business category is probably understated. (See Tables 6 and 7.)

Lawyer Involvement

In three of the four selected judicial campaigns, lawyers provided approximately two-thirds of the contributions. An informal review of campaign finance reports shows that this was generally the case for other judicial races.

The winners in three of the four selected elections received a majority of lawyer contributions in their respective races. (See Table 7.) The exception was the 1994 Supreme Court election that received considerable interest from the medical profession and business groups. In the four elections, all candidates received some funding from lawyers. In the two Supreme Court elections, about 14% of the participating lawyers contributed to several candidates in the same election.

Candidates frequently received multiple contributions from lawyers in the same firm. In one case, a candidate received 36 contributions

Table 5
Cost of Judicial Campaigns
All Louisiana Contested Judicial Elections 1990 to 1994

Category	Supreme Court [a]	Courts of Appeal	District Courts[b]	Combined Total
Number of contested elections	3	20	87	110
Number of candidates	10	46	262	318
Average Total Receipts:				
All candidates in category	$290,790	$131,107	$50,081	$69,371
All winning candidates	453,250	198,500	81,448	112,870
All second place candidates	360,315	95,037	48,026	65,090
All losing candidates	221,164	79,266	34,487	46,367
Average Total Disbursement:				
All candidates in category	$277,052	$129,025	$47,963	$66,893
All winning candidates	438,066	193,746	77,544	108,504
All second place candidates	345,325	94,866	46,403	63,367
All losing candidates	208,045	79,240	33,257	44,888
Average Total Loans Received:				
All candidates in category	$70,366	$58,648	$21,348	$28,285
All winning candidates	123,357	96,733	30,887	45,381
All second place candidates	48,333	35,442	22,902	25,876
All losing candidates	47,656	29,352	16,606	19,244
Candidate Debt:				
% of receipts due to loans	24%	45%	43%	41%
# of candidates incurring debt	8 (80%)	39 (85%)	181 (69%)	228 (72%)
Debt outstanding[c]	$328,710	$1,157,305	$1,998,123	$3,484,138
Source of Loans:[d]				
Personal Funds	54%	55%	67%	63%
Bank Loans	14%	17%	20%	19%
Other Loans	31%	27%	12%	18%

a Includes special court of appeal seat.
b Two district court elections were deleted from this study. They were a district court election stayed after a contested primary election and a juvenile court election.
c This is the debt remaining from all campaigns in the category as determined by the candidate's last filed report or the February 1995 supplemental report, whichever is the latest. This total does not include any debt forgiven by the candidate or a contributor, nor debt from a previous campaign.
d May not add to 100% due to rounding.
SOURCE: PAR analysis of candidate reports filed with the Supervisory Committee on Campaign Finance Disclosure.

Table 6
Contributor Data for All Candidates in Four Selected Louisiana Judicial Election Races

Revenue Source	1992 5th District Supreme Court Election	1994 2nd District Supreme Court Election	1994 1st Circuit 3rd District Court of Appeal Election	1992 19th Judicial District Election
# of candidates in election	4	3	2	3
Total # of contributions	1,432	1,574	648	298
Contribution By Source				
Trial lawyer[a]	$409,221 (50%)	$302,783 (34%)	$29,485 (15%)	$69,247 62%)
Other lawyer[a]	$188,351 (23%)	$248,537 (28%)	$34,981 (18%)	$12,140 (11%)
Medical Profession	$15,570 (2%)	$76,531 (8%)	$9,480 (5%)	$900 (1%)
Business not including PAC contributions	$57,242 (7%)	$70,656 (8%)	$32,643 (17%)	$2,210 (2%)
PAC or Special Interest Affiliation	$45,194 (6%)	$51,820 (6%)	$15,200 (8%)	$12,550 (11%)
Unknown or no affiliation	$105,139 (13%)	$151,126 (17%)	$69,942 (36%)	$14,495 (13%)
Total Contributions[b]	$820,717 (100%)	$901,453 (100%)	$191,731 (100%)	$111,542 (100%)
Other Contribution Statistics				
% of lawyers that contributed to several candidates in same race	15%	13%	2%	3%
Average lawyer contribution	$672	$807	$318	$499
Average PAC contribution (less lawyer)	$2,260	$4,711	$760	$1,569
Average business contribution	$650	$631	$351	$147

a Includes contributions from individual lawyers or law firms associated with the category. PAC contributions linked to a law firm or lawyer are included in these categories.
b May not add to 100% due to rounding.
SOURCE: PAR analysis of candidate reports filed with the Supervisory Committee on Campaign Finance Disclosure.

totaling $8,900 from members of one firm, in another, $20,934 from four members of one firm.

While contributions from members of the same law firm could increase a firm's impact, this study found only five instances in the four selected races in which the total contributed by one firm's members exceeded the limit on individual contributions set in the campaign finance law.

Trial Lawyer Involvement

A contribution was categorized as "trial lawyer" if the lawyer or law firm: (1) listed or advertised personal injury as a practice specialty, (2) was involved in the Louisiana Trial Lawyers Association, and/or (3) contributed to the Lawyers for Louisiana PAC.

In the four races, about half of the lawyers contributing were trial lawyers, yet they gave 63% of the total amount contributed by all lawyers. Trial lawyers provided an average of 40% of the total contributions to all candidates from all sources in the four elections, ranging from 15% to 62%. (See Table 6.)

Table 7
Contributor Data for Winning Candidates In Selected Louisiana Judicial Election Races

Revenue Source	1992 5th District Supreme Court Election	1994 2nd District Supreme Court Election	1994 1st Circuit 3rd District Court of Appeal Election	1992 19th Judicial District Election
# of candidates in election	4	3	2	3
Total # of winner's contributions (% of all contributions in election)	744 (52%)	787 (50%)	356 (55%)	269 (90%)
Contribution By Source				
Trial lawyer[a]	$237,950 (49%)	$26,367 (8%)	$19,385 (20%)	$39,708 (50%)
Other lawyer[a]	$121,730 (25%)	$88,410 (28%)	$22,950 (24%)	$11,190 (14%)
Medical Profession	$2,575 (1%)	$67,556 (21%)	$2,905 (3%)	$700 (1%)
Business not including PAC contributions	$45,625 (9%)	$37,281 (12%)	$13,955 (15%)	$2,210 (3%)
PAC or Special Interest Affiliation	$8,875 (2%)	$51,820 (16%)	$6,200 (7%)	$12,550 (16%)
Unknown or no affiliation	$64,525 (13%)	$48,640 (15%)	$29,497 (31%)	$12,395 (16%)
Total Contributions[b]	**$481,280 (100%)**	**$320,074 (100%)**	**$94,892 (100%)**	**$78,753 (100%)**

a Includes contributions from individual lawyers or law firms associated with the category. PAC contributions linked to a law firm or lawyer are included in these categories.
b May not add to 100% due to rounding.
SOURCE: PAR analysis of candidate reports filed with the Supervisory Committee on Campaign Finance Disclosure.

Business, Medical Profession and Other Contributions

Identifiable contributions from non-lawyer PACs, business, and the medical profession combined ranged from 14% to 30% of the funding (less loans) for all candidates in the four races. (See Table 6.) However, some of these categories may be understated due to the lack of occupation information on campaign finance reports.

The general public—those not identified as special interest contributors—play a very limited role in financing judicial campaigns. Since campaign financing plays an important role in judicial selection, this also results in the general public playing a reduced role in choosing their judges.

Group Effect

Special interest groups can maximize their influence in judicial elections by targeting specific candidates.

For example, although all candidates in the four selected races received some level of support from trial lawyers, one candidate in each race received stronger support than their challengers, averaging 62% of the total trial lawyer contributions in each race.

In three of the four races, the winning candidate received the strongest trial lawyer support. In the other race, the 1994 2nd District Supreme Court race which was labeled as a "Trial Lawyer versus Business" election, the winner received 78% of the total contributions from business, the medical community, and PACs but only 9% of the total trial lawyer contributions for this election.

Campaign Contributions and Judicial Impartiality

PAR did not attempt to determine whether campaign funding might have an impact on judicial rulings and found no definitive research in other states that established a relationship. However, even the perception that such a relationship exists can itself undermine public confidence in the judiciary.

The major role lawyers play in funding judicial elections raises several concerns. One is that in an action before him, a judge might tend to favor the lawyer who contributed to his campaign over one who did not. Even the perception that this could happen is a problem.

Another concern is that, if lawyers' contributions control the selection of most judges, the resulting judiciary might tend to favor plaintiffs in suits against businesses or governmental defendants who were not major contributors. The recent strong competition among these groups in some judicial elections could create the impression that justice is for sale.

Various proposals have been suggested to reduce the actual or perceived influence of money in judicial races. These proposals have included limiting spending on campaigns, prohibiting contributions from lawyers, recusal of judges from cases due to campaign contributions, public disclosure of campaign contributions connected to a specific legal proceeding, and shielding judges from knowledge of campaign contributions. These proposals are either unworkable or involve tradeoffs. There are no foolproof options for reducing the impact, or the perceived impact, of campaign contributions on the judiciary.

Spending Limits

Attempts in other states to limit campaign spending have generally been ruled unconstitutional. The U. S. Supreme Court has ruled that spending limits may be tied to voluntary participation in a publicly supported campaign finance program (such as the Presidential Election Fund on federal income tax returns), but participation cannot be required. In 1993, only seven of the 23 states with public financing also included voluntary spending limits.

Ban Lawyer Contributions

A bill to prohibit lawyers from contributing to judicial campaigns passed the Legislature in 1995, but was vetoed by the governor. He argued it would surrender our judicial system to insurance companies, chemical companies, and other business interests. Prohibiting contributions by one of several special interest groups raises the issue of what criteria determines whether a group's influence on the courts is appropriate. The constitutionality of such a ban would almost certainly be challenged on First Amendment grounds.

Required Recusal or Public Disclosure

Judges could be required to recuse themselves from cases involving a campaign contributor. A related approach would be to require written disclosure of campaign contributions from all possible participants in a case to the judge assigned. Both of these approaches could help dispel the perception that contributions influence a judge's rulings. However, these

requirements could hamper the court's operations. Just raising the issue could increase the length of trials, the incidence of appeals, and ultimately the workload of the courts.

Remove Judge From Fund-Raising

Requiring judicial candidates to completely divorce themselves from direct knowledge of their campaign contributions has been proposed. Effective July 8, 1996, the *Louisiana Code of Judicial Conduct* was revised to prohibit judges or judicial candidates from personally soliciting or accepting campaign contributions. However, a candidate's campaign committee could solicit and accept campaign contributions on his behalf.

While this new approach might help avoid perceptions of bias, it may also make it difficult to hold candidates accountable for fund-raising improprieties. A claim of ignorance is probably a valid defense, but it is doubtful the candidate would be unaware of who his contributors were.

Alternative Judicial Selection Methods

States use four primary methods to initially select judges: gubernatorial appointment, gubernatorial appointment through merit selection, general election by the public, and election or appointment by the state legislature. Of these four, the primary "reform" movement in judicial selection has been gubernatorial appointment through merit selection.

Merit Selection: An Alternative to Judicial Elections

Currently, 14 states use merit selection to pick trial and appellate court judges. In addition, six states use a mixed system of elections and merit selection. If gubernatorial appointment with and without merit selection are combined, nearly half of the states appoint appellate court judges while more than a third appoint trial court judges. (See Figures 2 and 3.)

"Merit selection" is a method of appointing judges and is the primary alternative to elections. The predominant model used for merit selection is the "Missouri Nonpartisan Court Plan."

The "Missouri Nonpartisan Court Plan" has three major elements: (1) the use of nominating commissions, composed of lawyers and non-lawyers, that screen candidates when a vacancy occurs and nominate three candidates for each position; (2) requiring the governor to appoint the judge from the list submitted by the nominating commission; and (3) requiring the appointee to stand for an unopposed retention election at the first general election after the first year in office and prior to the end of each subsequent term.

History of Merit Selection

Prior to 1845, all states appointed their judges. However, from 1846 to 1912, the new states adopted an election process, and several older states began electing judges as well.

A Louisianian, Walker B. Spencer, is credited with first proposing in 1921 a merit selection plan that included all of the basic elements that eventually evolved into the "Nonpartisan Court Plan" adopted by the American Bar Association in 1937. Better known as the "Missouri Nonpartisan Court Plan," it was first adopted by that state in 1940. This plan became the model for other states as they switched to merit selection. (See Figure 2.)

Proposals for Merit Selection in Louisiana

The Louisiana State Bar Association proposed a plan to appoint judges for inclusion in the 1921 Constitution, but it was rejected in favor of election. Merit selection was again considered and rejected for the 1974 Constitution.

In 1986, the first of two suits was brought by African-Americans challenging the state's parish-wide, at-large judicial election process. Merit selection was again considered as an option; however, the suit was resolved by creating several minority subdistricts to increase black representation on the bench. In 1996, a lawsuit challenging the creation of the subdistricts was filed and is yet to be resolved.

In 1990, the Legislature considered a proposed constitutional amendment that would have permitted merit selection. The bill fell far short of the 70 votes required for passage of a constitutional amendment and failed by a vote of 40 for and 49 against in the House. In 1995, another constitutional amendment failed in the House by a vote of 51 for to 45 against.

The merit selection plan proposed for Louisiana in 1995 closely followed the "Missouri Nonpartisan

Court Plan." The bill called for five 15-member nominating commissions, one for each appeal court circuit. These commissions would have made nominations to fill all judgeships from city court to appeal court within that circuit. A separate commission with three members (one lawyer and two non-lawyers) from each area commission would have made supreme court nominations.

Each area commission would have included nine non-lawyers elected by a majority of the legislators whose districts overlap the circuit court. Six members would have been lawyers elected by the Louisiana Bar Association. All members would have been residents of the area and would have been prohibited from holding public office or employment or being a member of any political committee of a party or faction.

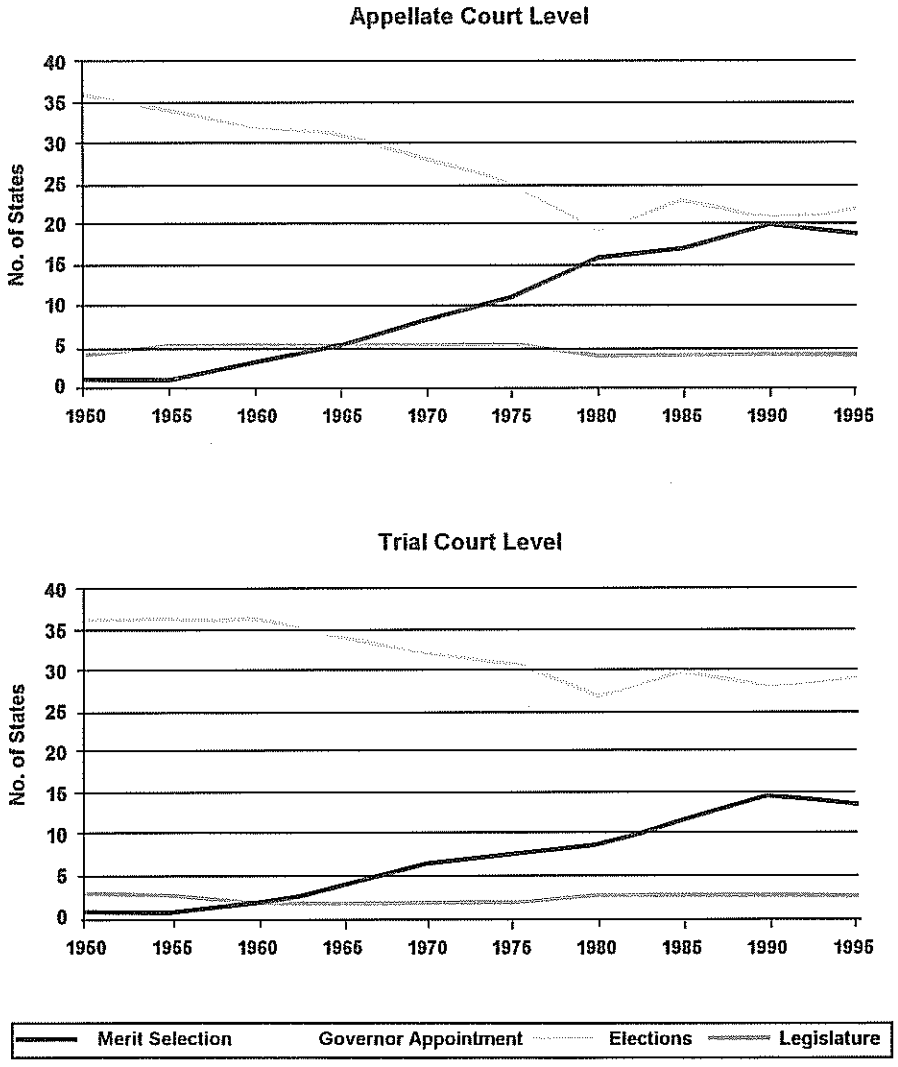
The proposal also would have required each commission to substantially reflect the gender and racial characteristics of its jurisdiction's population.

For each vacancy, a commission would have had 60 days to select and forward three names to the governor, who would have had 30 days to appoint one judge from the nominees. After 18 months in office, appointed judges would have stood for uncontested retention elections at the next congressional election. A simple majority of the voters would have decided whether to retain or remove the judge.

Key Issues in the Merit Selection Debate

There are strong positions on both sides of the merit selection debate. Proponents argue that it would reduce politics in the judiciary, help recruit more highly qualified lawyers to the bench, and eliminate the influence of campaign contributions. Opponents

Figure 2
History of the Judicial Selection Process In the Fifty States



NOTES:

(1) Appellate Court category includes data indicating the initial selection process for the state's equivalent of a Supreme Court and Court of Appeal. (Where a state's method for selecting judges at these two levels differed, the method used for the supreme court was included.) The Trial Court category included data indicating the initial selection process for judges in the state's equivalent to a district court level.

(2) Elections refer to a partisan or non-partisan election selection process for judges. Legislature refers to appointment or election of judges by the state legislature.

SOURCE: The Council of State Governments, *The Book of the States*, various editions.

claim it would eliminate the rights of citizens to vote and select their judges, limit public accountability of judges, limit the ability of minorities and women to become judges, and allow politics and special interests to control the selection process.

Political and Special Interest Control. Under merit selection, special interests would no longer have the direct means—campaign funding—to influence the selection process but still might exert more subtle pressures. Restrictions on nominating board membership could limit the influences of party politics and special interests, but probably not remove them entirely. The method of appointing members could help balance interests.

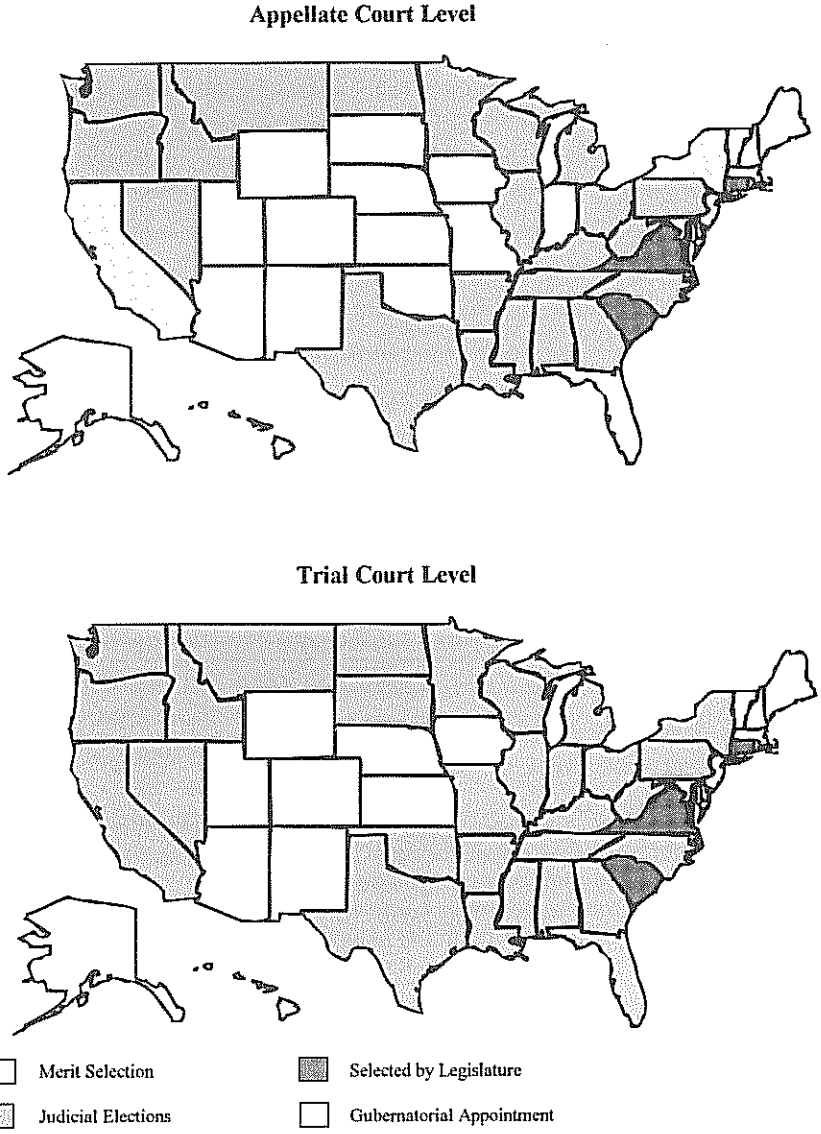
The nominating process in merit selection involves a screening of candidates' qualifications, experience, character, ability and judicial temperament. The process is designed to select a person with the qualities to be an effective judge rather than an effective politician.

Political visibility and connections might still help draw attention to a candidate, but requiring the nominating commission to operate under written guidelines governing its selection process and candidate criteria could help reduce political influences and emphasize qualifications and experience. Model procedures have been outlined by the American Judicature Society in its *Handbook for Judicial Nominating Commissioners*. The handbook specifies an application and recruitment process that includes a general media announcement of vacancies, use of a standardized application questionnaire, and suggestions on how to recruit applicants.

Judges and Representative Democracy. Judges are meant to be non-political officers who render decisions based strictly on the law and the merits of a case. A selection system that considers judges to be representatives of a particular constituency is at odds with the notion of judicial impartiality even if the judges do not consider themselves as serving in a representative role. Some argue that the only constituency a judge should have is justice itself.

Recruiting Quality Judges. The purpose of merit selection is to seat judges on the basis of professional rather than political qualifications. The qualities of a good politician may differ from those of a good judge. Merit selection might also encourage qualified lawyers, who would otherwise avoid the political arena, to seek positions.

Figure 3
Judicial Selection Process in the Fifty States



See notes on Figure 2.
SOURCE: The Council of State Governments, *The Book of the States*, 1994-95.

Currently, one must only have been a member of "the bar" for five years and meet the residence requirement to run for judge. Under merit selection, other more relevant factors beyond the minimum qualifications could be considered such as those recommended by the American Judicature Society in Table 8. A judicial nominating commission in a merit selection process generally has more access than the public to the information needed to adequately judge the qualifications of judicial candidates.

In states with a merit selection system there is a high level of competition for judgeships. In Utah, for example, in 1995 there were 327 applicants for 13 trial court vacancies. Likewise, there were 343 applicants for 6 vacancies in Arizona, and 255 applicants for 11 vacancies in Iowa. At the appellate court level, 40 applicants competed for one vacancy in Oklahoma, 79 applicants for 3 vacancies in Kansas, and 39 applicants for 3 vacancies in Arizona.

By contrast, from 1990 to 1994 in Louisiana, 61% of all judicial primary elections were uncontested, and of the contested races, 55% had only two candidates.

Eliminating Influence of Campaign Contributions. The least controversial claim for merit selection is that it would eliminate problems associated with the financing of election campaigns in the initial selection of judges. Uncontested retention elections would likely involve minimal campaign spending by an incumbent in most cases.

Right to Vote for Judges. Merit selection eliminates the voters' ability to initially select a judge but allows them to vote on whether to retain or remove a judge after every term. In practice, the current Louisiana election process gives voters the opportunity to initially select judges about three out of four times (i.e., in contested elections), but denies them an opportunity to vote on retaining judges in a majority of the cases.

Voters who believe strongly that they have a right to elect judges as a democratic principle may not easily be swayed by the merit selection arguments. This is one of the more subjective issues in the debate.

Minorities and Women on the Bench. The potential impact of merit selection on the racial and gender composition of the judiciary has been argued. Some believe that the election process provides greater access for minorities to judgeships. The recently created minority subdistricts for several courts resulted in the election of several new minority judges. Out of 263 judges at the district court or higher level in Louisiana in 1995, 28 (11%) were minority males, 12 (5%) were minority females, and 23 (9%) were white females.

Data from the American Judicature Society indicates that, nationally, African-American and women appellate judges were more likely to be appointed than elected initially to the bench. Of the 227 women nationwide serving as appellate court judges in January, 1996, 33% were chosen by gubernatorial appointment by merit selection, 23% were appointed by the governor, and 29% were elected to the bench. For the 81 African-American appellate court judges in January, 1996, 34% were chosen by gubernatorial appointment by merit selection, 25% were appointed by the governor, and 23% were selected by elections.

Louisiana has increased minority representation on the bench by the creation of minority subdistricts. These subdistricts were not created for supreme court districts, but the consent decree did establish a minority seat on the Supreme Court. In general, election districts for non-judicial office which were drawn on the basis of race have been found to be uncon-

Table 8
American Judicature Society Criteria for Evaluating Qualifications of Judicial Candidates

Qualities for all judges:		
Suitable Age	Good Health	Impartiality
Industriousness	Integrity	Professional Skills
Community Contacts	Social Awareness	
Additional qualities for appellate judges:		
Collegiality	Writing Ability	
Additional qualities for trial judges:		
Judicial Temperament	Decisiveness	Speaking Ability
Additional qualities for supervisory judges:		
Administrative Ability	Interpersonal Skills	

SOURCE: American Judicature Society, *Handbook for Judicial Nominating Commissioners.*

stitutional in several federal court cases, including a Louisiana congressional district. It is unclear whether these rulings will have a future impact on the existence of these minority subdistricts for judicial elections. The subdistricts are currently being challenged in the courts.

Proponents of merit selection argue that minority and female representation might even be increased if nominating commissions reflect population characteristics and existing districts are retained for selection and retention election purposes. Voters in minority-controlled districts could use retention elections to assure that minority appointments were made.

Other Judicial Selection Methods

Several alternatives to both the election method and basic merit selection plan are discussed below.

In Connecticut, South Carolina, and Virginia, the legislature elects or appoints judges. This eliminates the direct influence of campaign contributions. However, contributions to individual legislators could play an indirect role in judicial selection.

In Illinois and Montana, judges are selected initially by contested partisan elections. Once selected, judges run for subsequent terms in uncontested retention elections. This reduces the potential influence of campaign money by having only one contested election. This method resembles the current practice in Louisiana since the majority of elections with incumbents are already uncontested, but it is different in that it requires voter approval in the uncontested retention elections.

Several states use a mixed system that combines elective and appointed methods. Typically, elections are used to select trial court judges and merit selection to select appellate court judges. This mixed system eliminates the problems of campaign finance from the more expensive judicial campaigns.

New Mexico selects judges initially by a merit system. At the next general election after appointment, judges run for full terms in contested elections. If the appointed judge wins, subsequent elections are uncontested retention elections. This method gives voters more choice than under pure merit selection and provides a check on the nominating system. However, the problems of campaign finance remain and less qualified candidates could have access to the judiciary.

Recommendations

Louisiana's method of selecting judges often results in costly political campaigns largely funded by special interest groups (including lawyers who practice before those judges), the accumulation of campaign debts that remain to be paid after the election, and many judges retaining or even initially winning seats without direct voter approval. Whether these conditions have had an influence on judicial rulings or on the quality of the judiciary is difficult to assess. But there is a perception that this is the case, and that is a problem.

There are no viable options to totally eliminate the problems of campaign finance in judicial elections. The best alternative is to eliminate contested elections altogether by adopting a merit selection plan for selecting judges. At a minimum, merit selection should be used to select judges at the court of appeal and supreme court levels, because these races tend to be more expensive, and public awareness of the candidates is more restricted because they are elected on a regional instead of local basis.

The following are four sets of PAR recommendations to: (1) implement a merit selection method applying to all judges, (2) outline a modified method if Louisiana decides to apply merit selection only to judges at the supreme court and court of appeal levels, (3) improve the current election process, and (4) make changes in the campaign finance law that should be made regardless of which judicial selection method is used.

1 ● PAR recommends that Louisiana adopt a merit selection system applicable to all judges that incorporates the following basic elements of the "Missouri Nonpartisan Court Plan": independent judicial nominating commissions, appointment by the governor of one candidate from the list forwarded by a nominating commission, and retention elections.

This system should:

● Use five regional nominating commissions (with jurisdictions coinciding with the court of appeal districts) to nominate candidates for court of appeal and lower judicial positions and one state nominating commission to nominate candidates for supreme court positions.

- Establish by law specific rules of procedure to be used by the Judicial Nominating Commissions for nominating judges. At a minimum, the law should include provisions for general vacancy advertisement, application procedures, screening requirements and interview requirements. The commissions should also be required to comply with the current open meeting law.

- Require the governor to select a candidate from the list provided by the responsible nominating commission. If the governor fails to select a candidate within 30 days, the responsible nominating commission should make the selection.

With regard to the nominating commissions:

- Each regional nominating commission should have no more than 10 members and be composed of the following at a minimum: one retired judge selected by the Judicial Council of the Supreme Court of Louisiana, five non-lawyer members selected by legislators representing all or part of the region, and three lawyer members selected by the Louisiana Bar Association. Commission members should be residents of the district.

- The supreme court nominating commission should include one lawyer and two non-lawyer members selected by each regional nominating commission from its membership.

- No public servant, registered lobbyist, or employee of any group contracted or assigned to directly support the state's judicial system should be allowed to serve on a nominating commission.

- Commission membership should reflect to the greatest extent possible the gender and racial characteristics of the population of their districts.

Commission members should:

- Be limited to one five-year term. The terms of commission members should be staggered.

- Only be removed for specific reasons of malfeasance.

- Be prohibited from participating in any political activities, whether related to a judicial election or not, such as providing campaign financing; attending fund-raisers; publicly supporting candidates; or working for candidates, political parties or political action committees (PACs).

- Be prohibited from being selected as a judicial nominee for three years after their term of office on a commission.

2. PAR recommends that, if merit selection were to be applied to court of appeal and supreme court judges only, the selection system should include all of the provisions recommended above, except that a single statewide judicial nominating commission should be created.

- The commission should consist of no more than 16 members including: two non-lawyer members from each court of appeal district selected by the legislators representing all or part of the district, one lawyer member from each district selected by the Louisiana Bar Association, and one retired judge selected by the Judicial Council of the Supreme Court of Louisiana.

3. PAR recommends that, if the judicial election system is retained:

- All judicial elections should appear on the ballot. An uncontested judicial election would become a retention election in which a simple majority decides whether to accept or reject the candidate.

- A candidate not approved in the retention election should still be eligible to run in a subsequent election for the same seat.

4. PAR recommends the following changes in the campaign finance law, regardless of whether a merit selection, elective or mixed system of selecting judges is used:

- The Louisiana Election Code should include all campaign finance restrictions applicable to judicial elections. Responsibility for ensuring compliance should rest entirely with the state's Board of Ethics.

● **Judicial candidates and their campaign committees should be restricted in soliciting or receiving campaign contributions to a period no earlier than one year prior to the primary election and no later than the day of the primary election, or general election if a runoff is required. Candidates and their committees should not be allowed to solicit any contributions after the final election, even if a campaign debt exists.**

Effective July 8, 1996, the Louisiana Code of Judicial Conduct was revised to include a similar restriction, but with a longer time period.

● **Judicial candidates should be prohibited from retaining campaign contributions in excess of an amount specified by the following scale that was recently included in the Louisiana Code of Judicial Conduct:**

Population of Election District	Amount that may be retained
Below 25,000	$25,000
25,000-100,000	$50,000
100,001-200,000	$75,000
200,001-300,000	$100,000
300,001-400,000	$125,000
Over 400,000	$150,000

Amounts in excess of the allowed limit should be returned on a pro rata basis to the contributors or donated to a charitable organization after all campaign debts and expenses have been paid. This change should be incorporated into the Louisiana Election Code.

● **Campaign finance reports should include the name, address, occupation and employer (if self-employed, the name and place of business) of each individual contributor.**

● **Transfers of campaign funds from any candidate to another or among candidates' political committees should be prohibited.**

● **Use of contributions to a campaign for an office other than the one for which the contribution was made should be prohibited.**

Primary author of this report is Richard Omdal.

Public Affairs Research Council of La., Inc.
4664 Jamestown Avenue, Suite 300 • P. O. Box 14776
Baton Rouge, LA 70898-4776
Phone (504) 926-8414 • FAX (504) 926-8417

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