


Judicial Selection in the United States: Reviewing in the Options

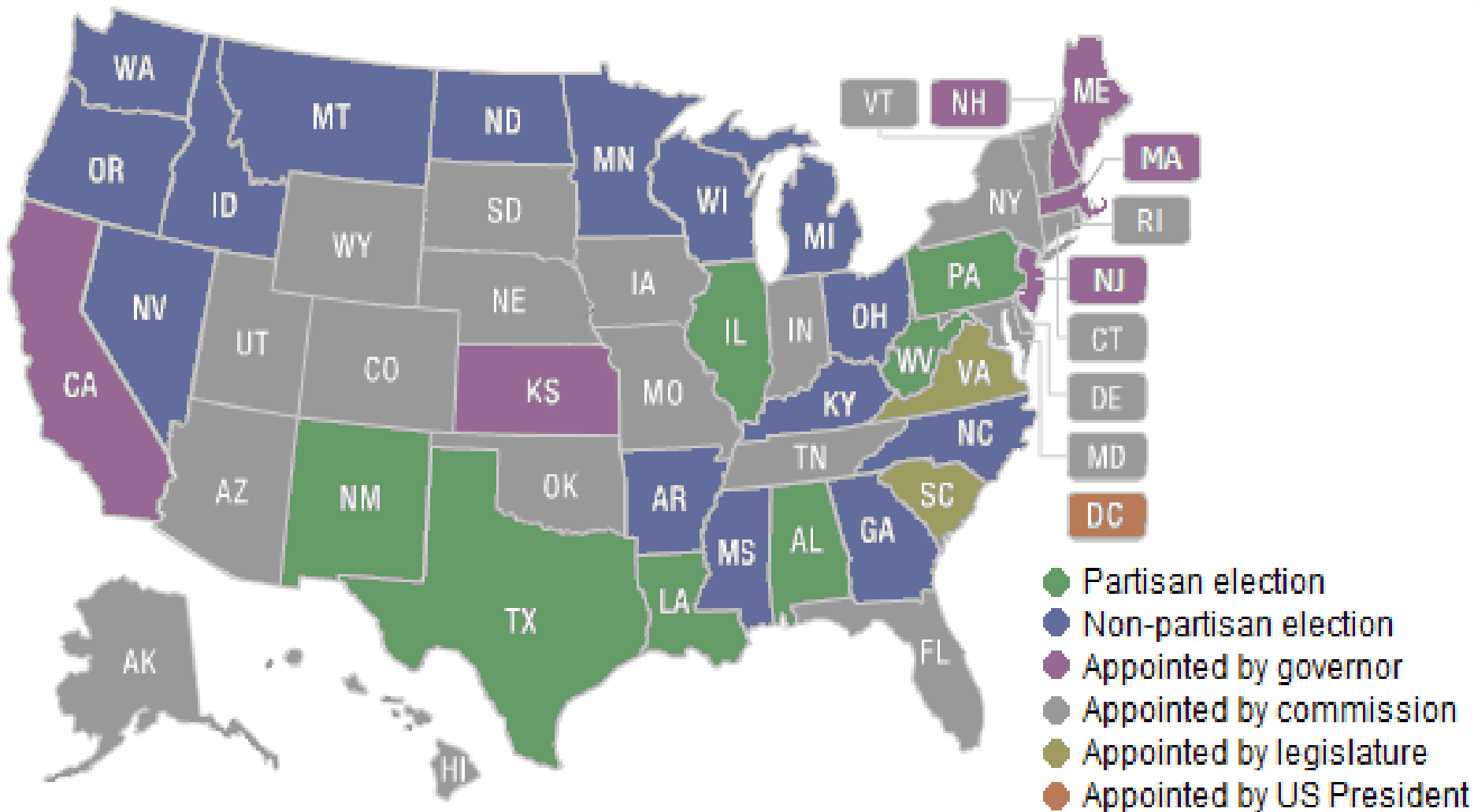


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- The history of state judicial selection
 - Judicial selection systems: The current landscape
 - Elections v. appointments: The binary debate
 - What the judicial selection data tell us

The History of State Judicial Selection

- Late 18th to early 19th centuries: Gubernatorial and Legislative Appointment
- Mid to late 19th centuries: Partisan election
- Early 20th century: Non-partisan election
- Mid 20th century: “Merit Selection”

Judicial Selection Systems: The Current Landscape




State Selection System Summary*

Method of Selection	Supreme Court	Intermediate Appellate Court	Trial Courts
Election	24	21	33
Partisan	7	8	11
Non-Partisan	15	11	20
Legislative	2	2	2
Appointment	26	22	16
Gubernatorial Appointment from Nominating Commission	15	11	5
Gubernatorial Appointment with Executive/Judicial Council Approval	2	1	2
Gubernatorial Appointment with Legislative Approval	9	10	9
Other	0	1	2
N/A (No Court of Jurisdiction)	1	7	0
TOTAL	51	51	51

*Data compiled by Emily Portner

Elections v. appointments: The binary debate

- The law narrative
 - judges are fundamentally different from public officials in the “political” branches of government
 - if afforded independence from the electorate, judges will
 - make decisions on the basis of operative facts and law,
 - Disregard the whims of voters/preferences of campaign supporters
 - Hence appointed judiciaries are best

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- The politics narrative
 - Judges are like other public officials, who make public policy
 - if independent from the electorate, judges will
 - Disregard operative facts and law
 - make decisions on the basis of their own political or ideological preferences
 - Hence elected judiciaries are best

What the judicial selection data tell us:

- Candidate quality
 - General equivalence [Glick & Emmert]
 - Merit selection and marginal candidates [Watson & Downing]
 - Merit selection and judicial discipline [Reddick]
- Candidate diversity
 - No correlation: [Hurwitz & Lanier]
 - On high courts: merit>partisan>non-partisan [Reddick, et al]
 - On trial courts: general equivalence [Reddick et al]
 - May be related to diversity of nominating commission [Esterling & Anderson]



- Incumbency

- Contestation rates:

- partisan > non-partisan > retention [Bonneau/Hall]

- Re-selection rates:

- Retention > non-partisan > partisan [Bonneau/Hall]



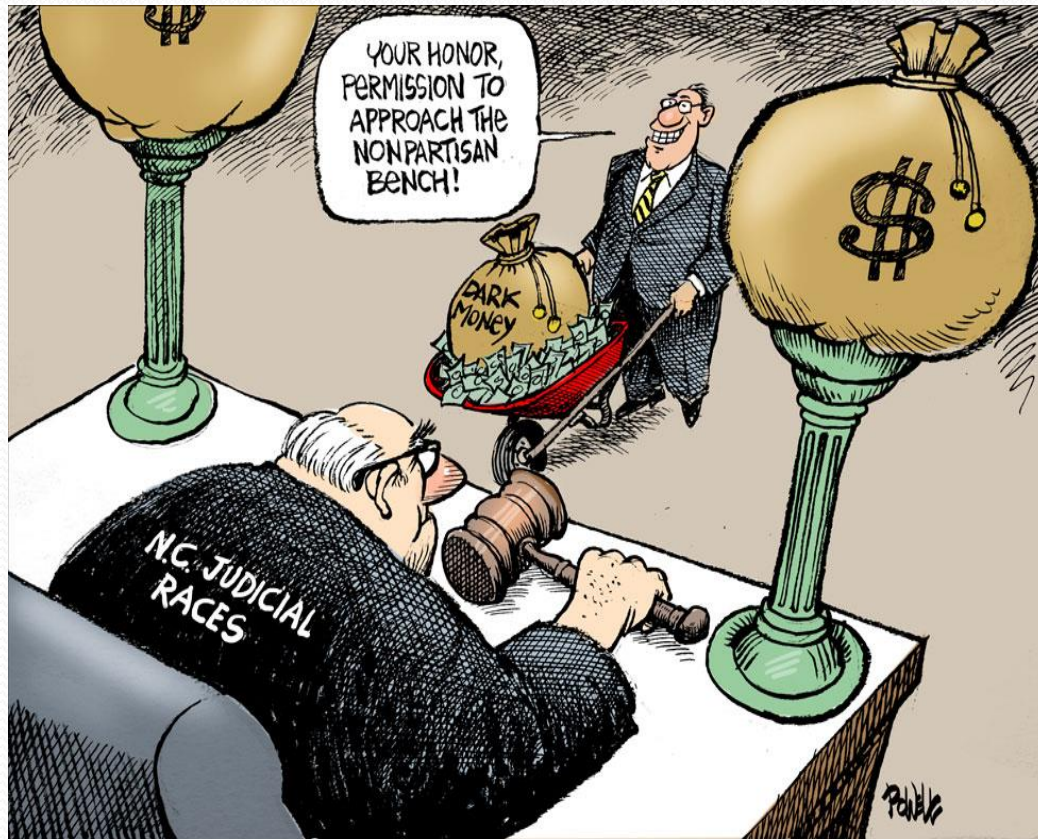
- Partisan Influence

- in partisan races [Bonneau & Hall]
- in non-partisan races [Streb]
- in merit selection [Watson & Downing (1969); Savchak]
 - In commission selection
 - In nominee selection(15-40%)
 - In gubernatorial appointments

- Citizen engagement
 - Relationship between [Bonneau & Hall]
 - Contestation rates
 - Competition
 - Campaign spending
 - Attack ads
 - Voter roll-off
 - Inapplicable to low visibility elections [Streb]

- judicial decision-making
 - Rates at which state supreme courts overturn precedent
 - Elected>appointed [Lindquist]
 - Trial courts and criminal sentencing
 - Impending election adds 3 months to average sentence [Huber & Gordon]
 - The more competitive the race, the more closely incumbents align decisions with voter preferences [Brace & Hall]
 - Responsiveness to public opinion
 - Non-partisan>partisan [Caldarone, et al]
 - Impending retention elections affect decision-making [Savchak]

- Campaign Spending



- Campaign spending
 - Partisan>non-partisan>retention [Bonneau & Hall]
 - Spending increases citizen participation (in high profile races only) [Bonneau & Hall/Streb]
 - Impact on decision-making
 - Correlation [Studies: Alabama, Georgia, Kentucky, Louisiana, Michigan, Montana, Ohio, Pennsylvania, Texas, Washington]
 - Causation-correlation conundrum
 - Study of judges in final term [Shepherd]
 - Study of judges who win landslides [Rebe]

- Public confidence in the courts
 - Legitimacy and contested elections [Gibson]
 - Elected judiciaries and public support
 - Doesn't seem to affect general support for judicial systems
 - Deleterious impact of money/attack ads [Gibson/Hall]
 - Doesn't undermine support for elections