

## Talking Points - Which is Right for Alabama, Partisan Elections or Merit Selection?

### Myth vs. Reality

Over the years, defenders of partisan elections of appellate court judges have invented many myths to derail public support for the most widely-discussed alternative: merit selection.

Merit selection supporters are often called upon to reply to the arguments put forth by detractors. Here are some suggested responses:

**1. MYTH:** "Judges should be elected just like other public officials."

**REALITY:** Judges are different from all other elected public officials. Voters should know where gubernatorial, legislative or mayoral candidates stand on controversial issues. We vote for them because of those stands and expect them to fulfill their campaign promises. Judges, however, must be impartial and resolve disputes based solely on the law and evidence. They cannot be held to commitments or comments made on the campaign trail, for such comments, as well as their own personal views of disputed issues, have no role in judicial decision-making.

**2. MYTH:** "Contributions to judicial campaigns are no worse than contributions to any political campaign."

**REALITY:** The field of donors in judicial elections is far more limited than in elections for other public offices. The major contributors are lawyers and special interest groups that regularly appear before the courts. At the very least, this raises the question of whether the recipient can be fair and impartial in ruling on contributors' cases. This question crosses the mind of every litigant whose opponent, or opponent's lawyer, has contributed to the campaign of the presiding judge.

**3. MYTH:** "Voters are informed about and involved in judicial elections."

**REALITY:** Debunking this myth is easy: Just ask 9 out of 10 voters to name the candidates running for appellate judgeships during an election year. (Polls confirm that most can't do this -- even after exiting the voting booth!) Indeed, many voters do not actually vote for judicial candidates. Statewide judicial races are almost invisible; even the media hardly pays attention. Thus, judges are often chosen for reasons that have nothing to do with their qualifications such as top ballot position, county of residence, gender, name recognition or raising enough money to afford the most convincing attack advertisement against an opponent.

Party endorsement is often critical as well. The actual choices in statewide judicial races are often made long before election day when political leaders handpick their candidates. Other judicial hopefuls may drop out after losing the endorsement or drawing a less desirable ballot position. Many highly qualified

candidates, recognizing the futility of running for office without party backing, won't even consider seeking a judgeship in the first place.

**4. MYTH:** "Merit selection will result in the appointment of only big firm lawyers from major metropolitan areas to the appellate bench."

**REALITY:** American Judicature Society statistics confirm that in merit selection states, judges come from all different types of legal practice. Moreover, once partisan elections are eliminated, there would be no advantage to hailing from a large city (where the most voters are located and the money is concentrated). Thus lawyers from small cities, towns and rural areas would have as much chance to be considered and selected as big city lawyers. The need for such diversity would be recognized by the broad-based nominating commission with members from all over the state.

**5. MYTH:** "Merit selection means that the people will never have a say in who sits on the appellate bench."

**REALITY:** Citizens will still be involved in the selection of judges under merit selection. First of all, the people's elected representatives play a central role in the selection process: popularly elected officials appoint members of the nominating commission, and judges must be nominated by the governor. Moreover, through nonpartisan retention elections held after an initial term of office, the voters will have the final say on whether judges deserve to keep their jobs.

**6. MYTH:** "Merit selection is just as political as partisan elections."

**REALITY:** No judicial selection process is entirely apolitical, nor should it be. What's important is to what extent politics dictates who ultimately sits on the appellate bench. Most proposed merit selection plans have an unbiased and balanced membership that is representative of all viewpoints on the nominating commission, to be appointed. The governor would have to select judges from the commission's list. All commissioners would serve terms that would NOT coincide with the term of office of the persons appointing them, thus safeguarding their independence. A decade ago, an American Bar Association survey reported that an overwhelming majority of nominating commission chairs around the country felt that political influence or considerations either never or only infrequently intruded into the commissions' deliberations.

**7. MYTH:** "Merit selection is elitist."

**REALITY:** Some opponents of merit selection use "elitist" to refer to the fact that a nominating commission of a few select individuals will make the initial all-important judicial choices. Others use "elitist" to describe the type of judicial candidate likely to appeal to a nominating commission (often referring to a graduate from a prestigious law school). Neither "elitist" label applies. The Alabama State Bar's Merit selection proposal goes to great lengths to ensure that the nominating commission is as reflective as possible of all segments of our state.

**8. MYTH:** "The partisan election system should be improved rather than discarded."

**REALITY:** The election process is not "fixable." None of the most commonly proposed election reforms -- public financing, rotating ballot position, eliminating county designation from the ballot, capping lawyers' contributions to judicial campaigns-- solves the core problems associated with electing judges. Judicial candidates still would have to raise money and attract substantial political support, and voters still would not have enough valuable, relevant information to make truly informed decisions. As we saw in the most recent election, citizens were faced with having to make informed decisions based on the millions of dollars spent on negative campaign ads.

**9. MYTH:** "Merit selection of appellate judges is the first step along the road to merit selection of judges on all of Alabama's courts."

**REALITY:** It is not unusual for a state to have merit selection for some judges (usually appellate judges), and elections for others. Merit selection supporters appreciate that the greatest need for change is on the statewide level: far more money is raised by the candidates and the voters are far less familiar with those running.

**10. MYTH:** "A legislator's vote for merit selection of appellate judges is the same as a vote for eliminating partisan elections."

**REALITY:** Changing the judicial selection system requires a constitutional amendment approved by both legislators and the electorate. The issue is then put to the voters in a statewide referendum. Therefore, a lawmaker casting a vote in favor of the ASB's merit selection proposal does nothing more than create the opportunity for citizens to decide for themselves how appellate judges should be chosen. Even some lawmakers who are opposed to merit selection acknowledge that it's time to let the people decide.