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Article

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"THE GREATEST SCOURGE AN ANGRY HEAVEN EVER INFLICTED UPON an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary." —Chief Justice John Marshall[1]

Today, the Missouri Nonpartisan Court Plan—known informally as the "Missouri Plan"—informs the judicial selection processes in 38 of the 50 states. Put simply, the Plan operates through a nonpartisan commission that produces a list of potential judges to fill judicial vacancies. The state's governor then selects from the commission's list when making judicial appointments. After one year of service, the judges' names are then placed on a nonpartisan and noncompetitive retention ballot, in which the voters simply select whether the judge will retain his or her position or be removed. Despite its ubiquity, scholars have paid very little attention to the Missouri Plan's development. The sparse scholarship that does consider the Plan typically only analyzes the types of judges it produces or points to its inadequacies.[2]

1. Quoted in the United States Congress Senate Committee on the Judiciary Subcommittee on Improvements in Judicial Machinery, *Judicial Discipline and Tenure: Hearings Before the Subcommittees on Judicial Machinery and Constitution of the Committee on the Judiciary, United States Senate, Ninety-Sixth Congress, First Session, on S. 295, S. 522, S. 678, May 8 and June 25, 1979* (U.S. Government Printing Office, 1979): 479.

2. In most scholarly examinations of the Missouri Plan, its historical development is treated either as a footnote or only provided as a brief background. Even in Richard A.

This paper will unpack the origins and development of the Missouri Plan. I will argue that like other early twentieth century reforms, the Missouri Plan sprung from intellectual elites' calls for institutional change as solutions to social problems. In this case, legal scholars and social scientists contended that judicial selection via partisan elections allowed political machines to pollute the state courts and their decisions. Thus, by taking the courts away from the realm of partisan electoral politics, the public could count on more just and impartial decisions. Judges liberated from politics could pay greater attention to their next case rather than their next election. The irony of the Missouri Plan's development resides in its method of adoption. Because Missouri's legal elites did not win the support of the Missouri legislature, they turned to the people through a ballot initiative. These elites faced a situation where they needed to persuade and educate Missouri's voters that the voters themselves could not be trusted to select their judges.

Historians typically characterize the early twentieth century reform movements' relationship with the courts by describing activists' frustration with what they deemed an illiberal system. Especially regarding legislation aimed at curtailing the power of big business, courts often halted widespread change.[3] Because of the law's traditional conservative nature, Progressives often found themselves in what Brain Tamanaha coined "a problematic asymmetry," in which they needed to work within a system bent toward preserving the status quo.[4] Yet,

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Watson & Rondal G. Downing's (1969) extensive work on the Missouri Plan, *The Politics of the Bench and the Bar,* the Plan's historical development is hurriedly summarized, leaving the bulk of the book to center on the Plan's judicial outcomes. More recent research also considers the *effects* of the Missouri Plan by studying what types of judges the Plan selects or the incentives the Plan gives it judges, while ignoring the questions of how and why the Plan exists. *See* Larry T. Aspin and William K. Hall, "Retention Election and Judicial Behavior," *Judicature* 77, no. 6 (1994): 306–15; Lawrence Baum, *Judges and Their Audiences: A Perspective on Judicial Behavior, Judges and Their Audiences* (Princeton University Press, 2009), https://doi.org/10.1515/9781400827541; Melinda Gann Hall, "State Supreme Courts in American Democracy: Probing the Myths of Judicial Reform," *American Political Science Review* 95, no. 2 (2001): 315–30, https://doi.org/10.1017/S0003055401002234.

3. *See* Harding C. Noblitt, "The Supreme Court and the Progressive Era, 1902–1921" (PhD Dissertation, University of Chicago, 1955); John E. Semonche, *Charting the Future: The Supreme Court Responds to a Changing Society, 1890–1920* (Westport, CT: Greenwood Press, 1978).

4. Brian Z. Tamanaha, "The Progressive Struggle with the Courts: A Problematic Asymmetry," in *The Progressives' Century: Political Reform, Constitutional Government, and the Modern American State*, ed. Stephen Skowronek, Stephen M. Engel, and Bruce Ackerman (New Haven, CT: Yale University Press, 2016), 71.

Melvin Urofsky's reevaluation of protective legislation in the early twentieth century found that the state courts were indeed much more friendly to change than their federal counterparts.[5] The Missouri Plan's story differs from these characterizations because rather than attempting to push reform through the courts, concerned Missourians aimed to reform the courts themselves.

Debates over the role of judiciaries and the institutions that govern them must always find a delicate balance between two key principles: judicial independence and public accountability. These principles center on the types of incentives the citizenry would like to place on the judiciary. Quantitative political science provides ample evidence that the incentives presented to judges play a heavy role in judges' decision-making processes.[6] To create a truly independent judiciary, institutions must incentivize judges and courts to make their decisions based on their interpretations of the law without the meddling of outside influences. On the flip side, a truly accountable court faces heavy incentives to make decisions that the public would find agreeable, lest the public remove the judges from office or change the nature of the judiciary. Concerned Americans through the development of their judiciaries—both state and federal—seem to hold both of these somewhat contradictory standards as equally important. We want the courts to be free to interpret the law and make decisions based on legal merits alone, yet at the same time, we respond with outrage and cries for change when the courts make decisions we disagree with.

The federal nature of the United States allows for a great deal of experimentation in the way courts operate in each of the states. While Article III of the federal Constitution outlined a comparatively simple process for selecting federal judges, the states at the time of ratification had already established a myriad of methods whereby the judges on their courts were determined.[7] A popular method in the early-nation states gave legislative bodies the responsibility to determine who sat at the bench. By the turn of the nineteenth century, Jeffersonian and then Jacksonian philosophies of democracy fostered favorable

5. Melvin I. Urofsky, "State Courts and Protective Legislation during the Progressive Era: A Reevaluation," *The Journal of American History* 72, no. 1 (1985), 63.

6. *See* Baum, *Judges and Their Audiences*; Aspin and Hall, "Retention Election and Judicial Behavior"; Brandice Canes-Wrone, Tom S. Clark, and Jason P. Kelly, "Judicial Selection and Death Penalty Decisions," *American Political Science Review* 108, no. 1 (February 2014), 23–39.

7. James A Gleason, "State Judicial Selection Methods as Public Policy: The Missouri Plan" (PhD Dissertation, West Lafayette, Indiana, Purdue University Graduate School, 2016), 63–64.

attitudes toward the democratization of political institutions. General feelings shifted away from constitutional mechanisms and filters of consent and toward a view that the voters should elect their desired candidates to all public positions. Accordingly, states shifted away from their original arrangements for judicial selection and toward selection by partisan popular elections. Missouri followed suit in 1848.

Partisan arrangements yanked state judicial branches into partisan politics—leaving a largely uninformed electorate to select their states' judges based on issues that did not typically concern the courts. Reflecting on the strange politics that dominated state judicial campaigns, Former Missouri Supreme Court Justice Fred L. Williams told his associates in 1937,

> I was elected because Woodrow Wilson kept us out of war. I was defeated in 1920 because Woodrow Wilson did not keep us out of war. In both of the elections not more than five percent of the voters knew I was on the ticket.[8]

On top of dealing with an uninformed electorate, judicial selection via partisan elections also allowed urban political machines to often determine who would sit on the bench before the votes had been cast. Especially as great cultural and economic change in the early 20th century attracted immigrants and low-income families into urban centers, party leaders colluded with one another to choose judges by promising jobs, security, and political favors to vulnerable voters. Once in office, the judges served under the expectation that their decisions would satisfy the desires of the party machine, lest they lose the machine's support and their reelection bid alongside it. Often, the influence of a political machine meant that any candidate without its support had little to no chance of securing victory. This allowed bosses to select nearly anybody to fill vacant offices regardless of their qualifications. In Missouri specifically, party leaders used the support of their machine to secure the election of one of their party members to the St. Louis Circuit Court—who, as a pharmacist by trade, had never practiced law—despite local surveys demonstrating that St. Louis lawyers ranked him as the least desirable on the list of potential candidates.[9] The press frequently criticized Missouri's political machines and their ill-equipped judges,

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8. Quoted by R. Lawrence Dessem, "Mulling Over the Missouri Plan: A Review of State Judicial Selection and Retention Systems," *Missouri Law Review* 74, no. 3 (2008), 477.

9. Richard A. Watson. and Rondal G. Downing, *The Politics of The Bench and The Bar* (New York: John Wiley & Sons, Inc., 1969), 10.

but the machines' support in urban centers lingered for the greater part of the '10s, '20s, and '30s.

Whispers about judicial selection alternatives in the states that would move away from partisan elections began as early as 1914. Much like other Progressive-era calls for change, these whispers germinated in the academe.[10] Northwestern University School of Law professor Albert Kales's seminal work, *Unpopular Government in the United States*, provided an overview of the undemocratic nature of many of the United States' governing institutions. Kales argued that many of the United States' institutions authorized outcomes contrary to majority will and the common good. The book's final chapter argued in favor of a merit-based system of judicial selection—one in which judges would be appointed based on their qualifications rather than as a means to provide political favors.[11] According to Kales, the only judicial official that should be elected is the state's chief justice. An independent body referred to as the judicial council—staffed by already tenured judges—should then produce a list of potential justices to fill vacant seats based on their legal careers. The elected chief justice would fill vacancies with judges from the judicial council's list. The appointed judges would then serve a short term of two to three years, after which they would answer to the voters in a non-competitive yes-no referendum.

Kales's proposal sparked other academics to speak out on the subject of judicial selection reform. Shortly afterward, notable scholars and jurists such as Chief Justice and former President William Howard Taft, Dean of Harvard Law Roscoe Pound, the American Judicature Society's Herbert Harley, Cornell Law Professor Robert Cushman,[12] and British Socialist leader Harold J. Laski either supported Kales's proposition publicly or published their own tweaks to the system Kales presented.[13] Each proposed plan held the removal of partisan elections in common, and grappled with methods whereby the courts could be institutionally independent and publicly accountable.

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10. For a fuller discussion on the role of academics in the Progressive era, *see* chapters 1 & 2 in Thomas C. Leonard, *Illiberal Reformers: Race, Eugenics & American Economics in the Progressive Era* (Princeton, N.J.: Princeton University Press, 2016).

11. Albert Martin Kales, *Unpopular Government in the United States* (Chicago: University of Chicago Press, 1914), 252–61.

12. Robert E. Cushman, "Our Antiquated Judicial System," *The Annals of the American Academy of Political and Social Science* 181 (1935): 90–96. http://www.jstor.org/stable/1019366.

13. Charles B. Blackmar, "Missouri's Nonpartisan Court Plan from 1942 to 2005," *Missouri Law Review* 72, no. 1 (2007): 199–219. https://scholarship.law.missouri.edu/mlr/vol72/iss1/8.

Although popular among the country's legal and intellectual elites, the legal community outside academia did not embrace the need for reform until the ills of partisan judicial elections became painfully evident. One such example came from the political climate of Missouri in the 1930s, which was dominated by the control of the Pendergast political machine. As previously alluded to, the machine decided many elections for local offices behind closed doors, and the voters merely ratified their decisions. In 1936, the Pendergasts supported gubernatorial candidate Lloyd Crow Stark, who secured victory by a wide margin. Once assuming office, however, Stark publicly abandoned his loyalty to the machine and endorsed his own desired candidate for the upcoming Missouri Supreme Court election in 1938. This campaign erupted into a brutal intraparty battle over the judiciary, later tagged as "one of the bitterest campaigns for a judicial post in the state's modern history."[14] Voters and the press viewed the election as a chance to vote for either the pro-Stark or the pro-Pendergast candidate and gave little to no attention to their qualifications for the judicial role they would occupy.

Despite having controlled Missouri politics for nearly three decades, the 1938 state supreme court election resulted in a harrowing defeat for the Pendergasts. Judge James M. Douglas, the Kansas City candidate that had displeased Pendergast, won by more than 100,000 votes.[15] By most accounts, the bitterly fought campaign "demonstrated the deficiencies in the popular election of judges, at least in urban and statewide contests."[16] Douglas and the anti-Pendergast coalition had undoubtedly emerged victorious over a corrupt political machine. However, Missouri's legal community realized that the partisan selection of judges left open the possibility for the Pendergasts to regain control of the court in the next election. Securing victory in '38 alone did not solve the problem of a corrupt state judiciary.

With the ills of partisan elections made apparent leading up to the 1938 election, the St. Louis Bar Association called the state's key legal actors to a convention with the goal to deliberate alternative methods to select Missouri's judges. First, the St. Louis Bar put together the Committee on Judicial Selection under the leadership of the prominent Missouri lawyer, Ronald J. Foulis, in February

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14. Supreme Court of Missouri, *Proceedings on the Presentation of Portraits of the Honorable James M. Douglas and the Honorable Clem F. Storckman* (Jefferson City, MO: Supreme Court of Missouri, 1977), 9.

15. Richard M. Morehead, *Missouri Court Plan, A Series of Articles on How Missouri Gets and Keeps Able Judges.* (The Dallas Morning News, 1948), 5.

16. Blackmar, "Missouri's Nonpartisan Court Plan from 1942 to 2005."

of 1937.[17] St. Louis attorney Thomas McDonald described the initial findings of this special committee as follows:

> The committee first examined the existing elective system and found it defective in three important particulars: it did not encourage those best qualified for judicial service to become candidates for the bench; it was not conducive to the highest type of performance of judicial duty after election; and it was elective and democratic only in theory, being actually a system of selection by persons with political power.[18]

After reaching these conclusions, the Committee bore the task of looking into the existing scholarship on judicial selection methods—including Kales's influential work—and what reformers in other states had already proposed as alternatives. By the end of the year, Foulis enlisted the help of nationally renowned legal thinkers such as Judge John Perry Wood of the American Bar Association to assist in drafting a complete rework of the state's judicial selection system.[19] Once complete, the Committee forwarded its desired changes to the Lawyers Association of Kansas City for feedback and input. By doing so, Foulis formed an integral and strategic coalition consisting of the legal professionals from the two largest urban centers on opposite sides of the state as well as allies from national legal organizations.

At first, the Committee considered simply changing the state's judicial elections from a partisan to a nonpartisan format. Under this system, judges would still be determined via competitive elections, the only differences being that candidates' party labels would not accompany their names on the ballot and that their elections would not be concurrent with other state and federal offices. However, experimentation with nonpartisan judicial elections in other states led many to believe that these elections were merely a "placebo" treatment rather than a cure for corruption in the judiciary.[20] Removing the partisan

17. Ronald J. Foulis, "Missouri Institute Sponsors Plan for Improving Selection of Judges," *American Bar Association Journal* 26, no. 3 (1940): 221–22.

18. Thomas F. McDonald, "Missouri's Ideal Judicial Selection Law," *Journal of the American Judicature Society* 24, no. 6 (1941), 194.

19. Ronald J. Foulis, "Missouri Non-partisan Court Plan Adopted," *American Bar Association Journal* 27, no. 1 (1941): 9–10. Also present at the deliberations were representatives from the Missouri State Bar Association and former Missouri Supreme Court Justice Fred L. Williams, the aforementioned judge that attributed his defeat at the ballot box to President Wilson intervening in the Great War.

20. Gleason, "State Judicial Selection Methods as Public Policy: The Missouri Plan," 80.

label in Chicago a little over a decade earlier did help ensure that voters looked toward other considerations beyond party cues when deciding their vote choice. However, direct competition between judicial candidates still resulted in elections becoming popularity contests, where candidates with more appeal were selected over those that may have been more qualified or better fit. Further, voters paid little to no attention to off-cycle judicial elections—with less than nine percent of Chicago's registered voters typically casting ballots in their April judicial elections.[21] Thus, in nonpartisan off-cycle elections, small factions in the electorate still determined who sat on the bench.

The Committee abandoned the prospect of nonpartisan judicial elections in favor of a "merit" system, built off the back of Kales's suggestions from decades prior.[22] As the name suggests, the merit system operated on the assumption that judges should be selected because of their merits. The Committee believed merit selection was possible through the removal of popular competition from the selection process. In its place, a nonpartisan nominating commission, consisting of the state supreme court's chief justice, three lawyers selected by the Missouri Bar Association—one from each Court of Appeals district—and three laymen (who were not members of the Bar) selected by the governor, would assemble a list of qualified individuals to fill any judicial vacancies. When a vacancy opened up, the governor would then select an individual from the nominating commission's list to fill that seat. These judges would serve probationary terms of up to one year on the bench, after which their names would go on a noncompetitive retention ballot that reads as follows, "Shall Judge XXX be retained in office? Yes, or no?"[23] This method came to fruition only after some back and forth between the Committee on Judicial Selection and the Lawyers Association of Kansas City on the particulars. Once the two groups were satisfied, the Committee asked Washington University in St. Louis law professor Israel Treiman to formally draft these provisions into a proposed constitutional amendment—titled "The Missouri Nonpartisan Court Plan"—before the end of 1937.

With the advent of the Nonpartisan Court Plan, Missouri's legal elites believed they had struck a perfect balance between judicial independence from political influences and accountability to the public. The Committee summarized

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21. McDonald, "Missouri's Ideal Judicial Selection Law," 194.

22. Herbert M. Kritzer, *Judicial Selection in the States: Politics and the Struggle for Reform*, 1st ed. (Cambridge University Press, 2020), 20–21.

23. Morehead, *Missouri Court Plan, A Series of Articles on How Missouri Gets and Keeps Able Judges*, 13.

its findings into what it characterized a "one well-worded sentence which deserves to be quoted":

> We strongly favor a system whereby judges are to be appointed by an official and responsible authority, whose power of appointment, however, is to be guided by a body of intelligent opinion and subjected to final control by popular will effectively voiced through the ballot.[24]

The Plan's lack of direct competition over judicial vacancies and the nominating commission's responsibility to seek out qualified candidates worked to ensure that the most qualified judges sat at the bench rather than the most popular candidates. Further, the commission believed the nominating commission's members would be too virtuous to yield to lobbying influences in formulating their lists. An appeal to the public's ability to check the actions of the judiciary remained, but the public would evaluate individual judges' judicial performances when casting votes. Chairman Foulis upheld this belief of balance between independence and accountability as he described the Plan's merits to the American Bar Association,

> The report of the Committee which submitted the plan to the Missouri Bar Association, point out that [the plan] is no way novel or revolutionary, but is founded upon a principle of judicial selection tried and found successful in the oldest states of the country and by the Federal Government, that it is a plan which retains the democratic idea of ultimate control over judges by the people, *along with an intelligent method of selecting* qualified candidates for judicial office, regardless of political considerations.[25]

Not long after, the American Bar Association and American Judicature Society publicly endorsed the Missouri Nonpartisan Court Plan as the new standard of judicial selection policy for the states.[26]

Understandably eager, the Missouri Bar Association dedicated considerable effort to lobbying the state legislature to affix the Plan as an amendment to the state's constitution. The amendment was introduced to the General Assembly in February 1939 and shortly passed on to the legislative committee of the House on Constitutional Amendments with a public hearing scheduled for March 15. Dozens of representatives from the Missouri and St. Louis Bar Associations,

24. McDonald, "Missouri's Ideal Judicial Selection Law," 194.
25. Foulis, "Missouri Institute Sponsors Plan for Improving Selection of Judges," 211.
26. Gleason, "State Judicial Selection Methods as Public Policy: The Missouri Plan," 97

alongside a select few non-attorneys, attended and testified in favor of the Plan during the hearing. At the same time, no dissenters of the Plan appeared nor spoke at the House Committee's hearing.[27] After hearing multiple testimonies given on the Plan's strengths, the House Committee commented that they would not act on the proposed amendment until any that opposed it had testified. Nevertheless, as the hearing went on and no opposition arrived, the House Committee adjourned the meeting and classified the proposal as unfavorable without providing any explanation to those present.[28] Without the House Committee's endorsement, neither legislative chamber addressed the amendment any further.

The Plan's defeat in the legislature only encouraged Missouri's legal elites to push even harder for their desired reform. Many cited the legislature's inaction as further evidence that partisan politics should not have a place in the courtroom. After weighing their options, the Missouri Bar, St. Louis Bar, and Lawyers Association of Kansas City decided to move forward by submitting the proposed amendment to Missouri's voters by initiative in the upcoming general election. To do so, however, they found themselves in a sticky situation. In essence, they planned on asking voters to voluntarily give up their ability to select their state's judges, a privilege provided in Missouri for nearly a century. Along those lines, they needed to convince Missouri's layfolk that they themselves could not be trusted to select worthy judges. Adding to the complexity, a mere two years earlier judicial reform initiatives had failed at the polls in Michigan and Ohio.

Aware of these difficult obstacles, members from each of the state's three legal organizations and interested citizens joined forces under an organization they named the Missouri Institute for the Administration of Justice. Foulis, also appointed as a leading member of the Institute, conducted extensive research to determine the failures of Michigan and Ohio's recent campaigns. Further, proponents from those failed campaigns happily provided insight to the Institute concerning their campaigns' shortcomings.[29] Primarily, the Michiganders and Buckeyes encouraged the Institute to carry out an educational campaign on top of its political one. In large part, Michigan and Ohio's efforts failed because their voters perceived the proposed plans would bring benefits to the

27. Jack W. Peltason, "The Missouri Plan for the Selection of Judges," *University of Missouri Studies* 10, no. 2 (1945), 51.

28. Foulis, "Missouri Institute Sponsors Plan for Improving Selection of Judges," 221–22.

29. Peltason, "The Missouri Plan for the Selection of Judges," 52–54.

Bar rather than to the states' larger populations. The formation of the Missouri Institute for the Administration of Justice proved a genius political strategy, because by detaching itself from the Bar associations and presenting itself as a political action group, voters began to perceive the amendment as more than just a legal issue.

Both the educational and political campaigns rolled out immediately after the Institute established itself by organizing local volunteer groups in each of Missouri's counties. Interested attorneys used their extensive networks to gather volunteers and support in every corner of the state. The Institute started circulating petitions in April to secure the amendment's place on the ballot in the November 1940 general election. By July, the Institute successfully organized 20,000 volunteers, only 3,000 of whom practiced law. Further, the Institute's initial petitioning efforts received double the minimum number of signatures required to place the initiative on the ballot. On July 2, the Institute organized a caravan of supporters to travel from St. Louis to the capitol in Jefferson City to deliver the signatures. The group packed all 74,075 signatures into an armored car that drove straight to the steps of the secretary of state's office.[30]

From July to November, the Missouri Institute for the Administration of Justice's primary tactic consisted of persuasion through education. To appeal to broader sets of voters and to curb illusions that the amendment would only serve the interests of the Bar, organized volunteers reached out to one hundred different citizen action groups across the state. The Institute appealed to each group's desire to receive equal and just treatment from the courts and cited the ills made evident by the Pendergast machine's influence in the 1938 election. Group after group came out publicly endorsing the amendment, including state-wide women's service groups, religious organizations, local newspapers, business lobbies, and both 1940 gubernatorial candidates and the incumbent governor. Organized labor, however, required an extra level of convincing. Foulis led a group of legal researchers to produce a myriad of studies to suggest that appointed judges would supposedly produce more liberal decisions in favor of labor legislation than those elected. Eventually, these findings seemed to appease many labor unions' concerns.

The education of layfolk not affiliated with the aforementioned groups occurred through the Institute's persistent presence in the state's press. This task also proved challenging. Coverage on the war in Europe and the 1940

30. Peltason, "The Missouri Plan for the Selection of Judges," 53.

presidential election dominated the states' news markets. So, the campaign took advantage of the major papers' sympathies to the amendment and lobbied to publish new campaign information as frequently as possible. The Institute repeatedly published a four-page educational pamphlet titled the "M.I.A.J. News" in each of the state's major papers. The pamphlet provided a simply worded explanation of the value of each aspect of the Nonpartisan Court Plan and the disadvantages of the current system. The pamphlet closed with the following list of succinct bullet points summarizing its main arguments,

- The plan is designed to abolish the evils of the present primary and elective system.
- Many men will be willing to serve on the bench under this plan, who would not submit themselves to the ordeal of seeking office under the present political system.
- It will free our judges from demands upon their time from political sources.
- It should cause the courts to function more efficiently.
- The plan contains effective checks and balances.
- It is *not* an outright appointive system.
- It *does not* destroy the right of the people to have a voice in the selection of judges.
- It does, however, eliminate entirely the necessity of judges, for the courts affected, running in a primary election against probably a dozen or more opponents. The plan also makes it unnecessary for a judge to run against an opponent in the general election. The judge will run solely on his record, and his name will appear on a separate judicial ballot without party designation.[31]

The Institute's education efforts in the press proved successful. Despite the popularity of national and international news, voters still recognized the Missouri Nonpartisan Court Plan—to the point where press-initiated polls leading up to the election suggested that ninety percent of the readers, both lawyers and laypeople, were aware of and approved of the Plan.[32]

The support for the campaign across various citizen organizations and the press made it difficult for any of the Plan's critics to make their voices heard. In

31. Foulis, "Missouri Non-partisan Court Plan Adopted," 10.
32. McDonald, "Missouri's Ideal Judicial Selection Law," 194–95.

fact, very little opposition to the Plan made an appearance in the press or public discourse leading up to the November 1940 election. Among the few key critics of the Plan were Kansas City lawyers Ellison Neel and Cliff Langsdale and Democratic state legislator H. P. Lauf—all of whom had ties to the Pendergast machine. Their principal counterarguments pointed to the fact that the elective system had served the needs of Missouri for nearly one hundred years and that better government comes when power is closest to the people.[33] Moreover, they spoke against the claim that the courts would be taken out of politics, instead contending that an "insidious" new type of politics would erupt among the seven nonpartisan nominating commissioners. However, the opposition mostly remained hush leading up to the election, most likely due to the Plan's apparent and growing popularity.

The Missouri legal elites' success leading up to a toilsome initiative election in 1940 can thus be attributed to their superior political strategy of educating laypeople and involving social and political groups throughout the state. Amongst themselves, the legal community believed the advantages of their proposal to be self-evident. However, they recognized that for the Plan to succeed at the polls, they needed to garner support among the voters outside the legal community. Through extensive persuasion through education campaigns and coalition-building with other influential state organizations, the Missouri Institute for the Administration of Justice successfully avoided the charge that the Missouri Nonpartisan Court Plan was merely a piece of legislation that benefited the Bar, but rather a necessary change that any reasonable Missourian ought to support. In November, the Institute and its allies secured victory by a wide margin of between 90,000 and 100,000 votes.[34] In the same election, six other proposed constitutional amendments "met overwhelming defeat."[35]

The election's results brought encouragement to the Plan's allies and bitterness to its enemies. The very next year, Representative Lauf spoke on the legislature's floor and insisted that the populace had been ill-informed by the Missouri Institute for the Administration of Justice leading up to the election. Soon after,

33. Peltason, "The Missouri Plan for the Selection of Judges," 69.

34. McDonald, "Missouri's Ideal Judicial Selection Law," 56; Laurance M. Hyde, "The Missouri Plan for Selection and Tenure of Judges," *Journal of Criminal Law and Criminology (1931–1951)* 39, no. 3 (1948), 280.

35. Martin L. Faust, "Popular Sovereignty in Missouri," *Washington University Law Quarterly* 27, no. 3 (1942): 312–29; "Missouri Voters Approve Judicial Selection Amendment Note," *Journal of the American Judicature Society* 24, no. 4 (1940): 118.

Lauf and his allies in the legislature demanded a repeal of the Plan to be put on the ballot in 1942, which was suitably nicknamed the Lauf Amendment. The repeal's presence encouraged opposition to the Plan to speak louder than they had in 1940. Nevertheless, the Missouri Institute for the Administration of Justice's organized efforts were no match for Lauf and his Pendergast allies. The proposed repeal fostered larger amounts of support for the Nonpartisan Court Plan than in the original 1940 election, and in 1942 the Plan emerged victorious once again by a margin of more than 180,000 votes.[36] The Plan's popularity reached near unanimity a few years later when the state called for a new constitutional convention in 1945, to the point where none of the convention's delegates dared alter its provisions for judicial selection in the new constitution.

In hindsight, the Missouri Plan seems a near perfect solution to the ills of corrupted state judiciaries. It proposed a seemingly proper balance between the ideals of judicial independence and public accountability. In an attempt to convince the legal community to adopt their own versions of the Plan, Missouri Institute for the Administration of Justice's William W. Crowdus explained,

> The average judge wants to be honest and do the right thing. Now our judges have no political strings on them, and there's a spirit of independence they never knew before. They're no longer under pressure. Clients formerly hired lawyers because of real or imaginary influence with the judge. Now all it costs a judge to run for re-election is a 3 [cent] stamp to mail his application.[37]

Lawrence P. Hyde, the first Missouri Supreme Court Justice to be appointed under the Plan, reinforced Crowdus's statement to the Texans by saying, "No plan is perfect, but I don't see how anybody could devise a better one. One of the best features is that a Governor cannot use court jobs to pay his political campaign debts anymore."[38] The Plan satisfied the fundamental American desire to ensure virtuous officeholders the independent ability to govern as they see fit, while also providing for the possibility for the people to step in and prevent any abuses of power. Furthermore, the Plan's satisfaction of this desire led

36. Hyde, "The Missouri Plan for Selection and Tenure of Judges," 280.

37. Morehead, *Missouri Court Plan, A Series of Articles on How Missouri Gets and Keeps Able Judges*, 4.

38. Morehead, 5. See also "Missouri's Plan on Judges Praised: State's Chief Justice Asserts in Speech Here That Courts Now Are Out of Politics," *New York Times*, 1949, sec. books.

a supermajority of the states to adopt similar judicial selection methods by the end of the 20th century.

Reflecting on the Missouri Plan's development, its story provides a satisfying tale of ordinary Americans emerging victorious over corrupt influences on government through democratic means. What makes the Missouri Plan's story so unique, however, is that, for the ordinary voter, to support the Plan was at the same time to support giving up the privilege of having a direct say in who governs. Such a phenomenon is practically unheard of in the history of direct democracy in the United States. Herein lies the irony of the Missouri Plan's development: intellectual elites alone could not bring to pass their desired reform, and the people, through popular election, conceded from themselves the ability to determine their government officials through popular election.