



Testimony of the American Judicature Society in Support of SB 1324 and SB 1325

The American Judicature Society (AJS) is a national nonpartisan organization of judges, lawyers, and other citizens dedicated to maintaining the independence and integrity of the courts. Consistent with this mission, AJS since its inception has promoted a commission-based appointment system for selecting judges—a process that has come to be known as “merit selection.” AJS believes that merit selection benefits the judiciary in four essential ways:

Selecting highly qualified judges. The independent nominating commission nominates individuals for appointment on the basis of their professional qualifications rather than their political credentials. It evaluates applicants on criteria relevant to a judge’s role, such as impartiality, integrity, judicial temperament, collegiality, industry, and communication skills. At the same time, the commission screens out unqualified applicants. Similar screening and evaluative mechanisms do not exist in elective systems. After an initial term of office, voters assess each appointee’s performance in a nonpartisan retention election and remove from office those who have not fulfilled their judicial responsibilities.

Bringing greater diversity to the bench. In addition to placing the best qualified judges on the bench, merit selection also brings greater diversity to the courts. The merit selection process may be structured so that opportunities for seating judges who represent the diversity of the state are enhanced. Among those currently serving on appellate courts across the country, 76% of minority judges and 65% of women judges were appointed rather than elected to their positions.

Limiting politics in the selection process. For the past decade, judicial elections have seen unprecedented campaign fundraising and spending, increased special interest group involvement, and relaxed ethical standards for candidate speech. Merit selection minimizes political and special-interest influences in the selection process by eliminating the need for candidates to raise funds, advertise, and make campaign promises. And, judges chosen through merit selection do not find themselves trying cases brought by attorneys who contributed to their election campaigns.

Promoting public confidence in the judiciary. Merit selection systems enhance public trust and confidence in the courts. Recent national polls show that citizens are concerned about the role of parties, special interests, and money in judicial elections. According to a 2007 poll by the Annenberg Public Policy Center, between two thirds and three fourths of Americans believe that the need to raise money to conduct their campaigns influences judges’ decisions. A 2004 Zogby poll revealed that nine in ten Americans fear that special interests are trying to use the

courts to shape economic and social policy. The public seems to view judicial merit selection and retention as the solution to these concerns, with 71% supporting such systems in a 2001 survey.

Judicial merit selection has stood the test of time. It was first adopted in 1940 in Missouri. During the 1960s and 1970s, twenty-three other jurisdictions adopted merit selection. Today, thirty-three states and the District of Columbia use merit selection to choose at least some of their judges. It is noteworthy that no state that adopted merit selection since 1940 has returned to judicial elections. Governors, legislators, and voters in these states appreciate the benefits of merit selection in identifying the best qualified judges and ensuring that those judges are politically independent and publicly accountable.