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Judge selection under scrutiny in state

By **TERRY GANEY** of the Tribune's staff

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JEFFERSON CITY - The debate over how Missouri should select its judges has evolved into charges and countercharges about the sources of money supporting each side of the argument.

A group that wants to change the existing selection process has accused the Missouri Bar Association of imposing a mandatory dues increase on members to protect the status quo. Those who want to keep the judge selection system intact say out-of-state interests want to take control of Missouri's judiciary.

"You just have to guess it's a bunch of wealthy people who don't like the fact that courts apply the law in a way they don't like from time to time," said Chip Robertson, a former state Supreme Court judge and chief justice and now a leader of the group that wants to retain the current system. "You'd have to guess they are the right-wing types."

Not so, said Jonathan Bunch, 28, a former speech writer for Gov. Matt Blunt and executive director of "Better Courts for Missouri," the group that wants to amend the state's judge selection process. Bunch said 90 percent of his group's funding comes from people in Missouri and that the source of support makes no difference.

"It should not matter if we are getting all our funding from a space alien," Bunch said. "The issue is that the Missouri Plan" for selecting judges "has flaws."

Since the 1940s, Missouri has used a commission to screen applicants for the top posts on the bench: the Missouri Supreme Court and appellate courts as well as the largest circuit courts.

In smaller circuits, such as Boone County, judges are chosen by popular vote.

The Missouri Plan replaced the statewide

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election of appellate judges with a system in which the governor appoints the judge from a panel of three submitted by the Appellate Judicial Commission. The commission is a seven-member body composed of the state Supreme Court chief justice, three lawyers elected regionally by members of the Missouri Bar and three lay members appointed by the governor.

Better Courts for Missouri has submitted a ballot initiative to give the governor control over the selection process. In the group's plan, the governor would appoint all seven members of the commission, who would be subject to confirmation by the state Senate.

The commission would submit five final candidates to the governor for each judicial appointment. And if the governor is dissatisfied with all five, the commission would be required to submit another list of five names from which the governor could pick. The selection process would be open to public scrutiny. The existing process is not public.

Bunch said these proposals are moderate adjustments to the Missouri Plan, which has been copied to some extent by more than 30 states. Bunch said more radical changes, such as direct election of judges or appointments by the governor, are not proposed.

The donors to the effort to change the system do not want their names known because they fear retribution from Missouri judges, Bunch said. "I'm protecting the identity of my donors because they are legitimately afraid," Bunch added. "We are not skirting any laws. We are not trying to hide behind a veil of secrecy. In time, as we push the initiative, the people who want to support that will be disclosed, and we will abide by all the laws."

While Bunch has protected those supporting his side, he has also written Missouri Bar Executive Director Keith Birkes, complaining of a dues increase that would raise \$500,000 to keep the current judge selection system in place. He also complained about a trip some Bar executives took to the Bahamas using members' dues.

Birkes said the Bar's board of governors authorized an increase of dues to \$190 from \$150 in November to double the organization's public education budget from \$500,000 to \$1 million. The money would

inform people about the value of the selection system.

"We have always strongly supported the nonpartisan plan, and we will continue to educate the public about it and do everything we can to help it contribute to an impartial judiciary," Birkes said. "Our view is keeping politics out of the process to the maximum extent is a good thing."

Giving the governor control over the appointment of all the commissioners, who would then be subject to Senate confirmation, would inject too much politics into the judicial selection system, Birkes said.

"The Senate confirmation makes the process political and makes everyone accountable to political interests," Birkes said. "When you get a governor and a Senate of the same party, you are going to have excessive political influence over the process. That doesn't serve the interests of an impartial judiciary."

Birkes said members of the Bar's governing board are reimbursed expenses for annual meetings when continuing legal education lectures are made. He said for this year's trip to the Bahamas, board members received \$1,100 each to cover plane fare and two nights' lodging.

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