

Missouri Bar Urges Lawyers to Contact Legislators, Oppose HJR 49

Upsets Balance of Power, Increases Partisan Politics in Judicial Selection

[House Joint Resolution 49](#), a measure that would place on the November ballot a constitutional amendment that would significantly increase the partisan politics involved in the process for selecting judges under the non-partisan court plan, is now pending on the House Calendar.

Because the measure could be taken up at anytime, it is especially important that lawyers learn about the significant changes it proposes for Missouri's judicial selection process and the potential negative effects such changes would have on our state's justice system, and make their voices heard.

What started out as a proposal that would increase the Governor's appointments to the appellate judicial commission from three to five has mushroomed into a radical rewrite of Missouri's current non-partisan court plan.

If [House Joint Resolution 49](#) passes this legislative session and is adopted by voters in November, the changes to the plan would include the following:

- The terms of all current judicial nominating commission members will immediately expire upon adoption of the constitutional amendment.
- The constitutional provision requiring that Supreme Court and appellate judges serve on the commissions will be eliminated, depriving the commissions of representation from individuals who may be the most knowledgeable and qualified to assess the abilities, qualifications and temperament of judicial candidates.
- Judges who currently serve on judicial nominating commissions would be replaced by non-attorney citizens appointed by the Governor. In the case of the appellate judicial commission, the additional citizen member would be appointed "from anywhere in the state." This would impact the geographic diversity of panel members.
- All appointments to judicial nominating commissions would be subject to the advice and consent of the Senate, injecting another level of partisan politics into the system.
- The Supreme Court Rule, which sets terms of elective and appointive members of judicial nominating commissions at six-year staggered terms, would be replaced by four-year terms, giving every Governor the prerogative to unilaterally shift the composition of the commission in favor of his/her political party.
- The Governor would be authorized to veto a first panel of five nominees, requiring the commission to nominate five new candidates. At this point, the final selection – no matter whether by the Governor, Lieutenant Governor or the Commission – must come from the second panel, presumably one of the 6th

through 10th most qualified applicants. And the timing set forth for making a final selection if a Governor rejects two of the panels recommended by the commission could potentially delay judicial appointments for as long as six months.

- All applicants for any judicial vacancy will be made public.
- All “hearings, debates and votes” of judicial nominating commissions will be open to the public and press, potentially turning the process into a stage for political theater and discouraging some of the most qualified candidates from applying.
- Fiscal responsibility for the administration of judicial selections would be taken from the Judicial Branch and vested in the Executive Branch.

The above provides only a thumbnail sketch of the impact of [HJR 49](#). The resolution as drafted contains numerous other unclear and incomplete provisions, the full impact of which is difficult to predict ([HJR 49](#)).

[HJR 49](#) upsets the current balance of power that was implemented specifically to minimize political influence in the selection of judges. Under [HJR 49](#), the Executive Branch would not only have the final choice in selecting a candidate from the panel of nominees approved by the appropriate commission, as is the case under the current process, but the Executive Branch would also be given undue control over the appointments, political composition and fiscal responsibility of the commission empowered to select that panel of nominees.

[HJR 49](#) creates a serious threat to the balance of power fundamental to our democratic system of government and would impair the integrity of the state judiciary. It should be opposed as strongly as possible. The Missouri Bar urges you to contact your state representative and urge opposition to this radical and ill-advised measure. ([Legislator Look-up](#)) ([Senate Judiciary Committee](#))

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