

Inquiring Minds topic – 19 July 2019

Roger Palms, Moderator

Vote and be hanged

New research confirms old suspicions
about judicial sentencing

Thought Starters:

1. Are judges being bought or are we seeing good-old American democracy at work?
2. If the process of appointing judges rather than electing them were to be implemented in every state, how would we go about making this change?
3. Those who go to prison are “bad people” anyway so why not elect judges who will treat criminals severely, especially right before election time?
4. If sentenced criminals could vote, would it make a difference in which judges were elected?
5. Do we elect judges anyway, even in states where elected officials choose them?
6. What solution to this issue would you propose?

“Sooner or later,” warned Alexis de Tocqueville in 1835, judicial elections “will have dire results”. One day, he continued, “it will be perceived that by so diminishing the independence of the magistrates, not only has judicial power been attacked, but the democratic republic itself.” His warning was not heeded: most states elect judges to at least some courts.

Today’s opponents of judicial elections cite two main fears. The first is that judges may rule more favorably to those who contributed to their campaigns. Cognizant of such concerns, in 2015 Chief Justice John Roberts joined the Supreme Court’s liberals to uphold a state ban on judges personally soliciting campaign donations. “Judges are not politicians,” wrote Roberts, “even when they come

to the bench by way of the ballot...A state may assure its people that judges will apply the law without fear or favor—and without having personally asked anyone for money.”

The second worry is that judges will impose harsher sentences to curry favor with voters: “Hang ‘em high!” is a catchier campaign slogan than “Impartially apply the law to each case even when doing so produces unpopular results.” Several studies have shown that judges tend to sentence defendants convicted of serious crimes more harshly shortly before they file for re-election than they do at the beginning of their terms. People tend to prefer judges who protect society from killers to those who protect it from jaywalkers.

Where judgeships are obtained by appointment, judges apply the law more consistently.

Unfortunately judicial elections are only growing more competitive. In the 2015-16 election cycle, Pennsylvania set a national record for money spent in state supreme-court elections—\$21.4m for three seats, most of which the candidates raised themselves. North Carolina saw more money spent (\$5.4m for a single seat, most of it from outside groups) than any state other than Pennsylvania. Kansas set a state spending record (\$2.1m for five seats) and Washington also saw \$2.8m spent for three seats. Much of that money came from unknown sources; the Brennan Centre, a think-tank and advocacy group, could trace just 18% of the \$27.8m of outside group spending on state supreme-court races in 2015-16. That cycle set a record for justices elected in \$1m-or-more races (27). That is good news for political consultants and campaign measures, but not for justice.

This article appeared in the United States section of the print edition of *The Economist* under the headline "Vote and be hanged"-Apr 27th 2019| WASHINGTON, DC

Additional information:

Judicial selection in Florida



[Florida Supreme Court](#)

Method: [Assisted appointment](#)

Term: 6 years

[Florida District Courts of Appeal](#)

Method: [Assisted appointment](#)

Term: 6 years

[Florida Circuit Court](#)

Method: [Nonpartisan election of judges](#)

Term: 6 years

[Florida County Court](#)

Method: [Nonpartisan election of judges](#)

Term: 6 years

State court judges in Florida are selected through one of two methods, depending on the level of the court. Judges of the appellate courts undergo a process of [assisted appointment](#) (or the [Missouri Plan](#)), while judges of the trial courts participate in [nonpartisan elections](#).^[1] Judges' terms begin on the first Tuesday after the first Monday in January.

Supreme Court and Courts of Appeal

The **seven justices** of the [Florida Supreme Court](#) and the **60 justices** of the [Florida District Courts of Appeal](#) are selected in an identical manner. A [judicial nominating commission](#) screens potential judicial candidates, submitting a list of three to six nominees to the governor. The governor must appoint a judge from this list. Newly appointed judges serve for at least one year, after which they appear in a yes-no [retention election](#) held during the next general election. If retained, judges serve six-year terms.

Qualifications: To serve on one of these courts, a judge must be:

- a qualified elector;
- a state resident;
- admitted to practice law in the state for 10 years prior to assuming the bench;
- under the age of 75.

Selection of the chief justice: The [chief justice](#) of the appellate courts is selected by peer vote. He or she serves in that capacity for two years.

Vacancies

If a midterm vacancy occurs, the seat is filled as it normally would be if the vacancy occurred at the end of a judge's term. A judicial nominating commission recommends three to six qualified candidates to the governor, and the governor selects a successor from that list. The new appointee serves for at least one year before running in a yes-no [retention election](#).

Mandatory retirement: Under the Florida constitution, a judge must retire at age 75; however, a judge who reaches 75 after serving at least half of his or her term may complete that term.

Circuit Court

There are **597 judges** on the [Florida Circuit Court](#), each elected via nonpartisan elections. They serve six-year terms, after which they must run for re-election if they wish to retain their seat.

In the event of a midterm vacancy, the circuit courts employ the same [assisted appointment](#) method that the appellate courts use. Judges selected this way serve for at least one year, after which they must run for re-election.

Like the appellate courts, the [chief judge](#) is selected by peer vote and serves in that capacity for two years. Judicial qualifications are also identical to those of the appellate courts, except that instead of the requisite ten years of in-state law practice, only five are required.

County Court

Like the [circuit courts](#), the [Florida County Court](#) selects its judges through nonpartisan elections. County judges serve six-year terms, after which they must run for re-election if they wish to retain their seat.

In the event of a midterm vacancy, the county courts employ the same [assisted appointment](#) method that the appellate courts use. Judges selected this way serve for at least one year, after which they must run for re-election.

Judicial qualifications are identical to those of the appellate courts, except that instead of ten years of in-state law practice, only five are required. In counties of 40,000 people or less, this five-year requirement is waived altogether.

Changing the selection process

If a county wishes to use a merit selection process instead of elections, it may choose to do so. The county must collect signatures from voters (equal or greater in number to 10% of the county votes cast in the recent presidential election) and file this petition with the secretary of state. The measure must then be approved by the majority of county voters.

Judicial nominating commissions

In [Florida](#), there are **26 judicial nominating commissions** that nominate applicants for state court vacancies:

- A statewide nominating commission for the [Florida Supreme Court](#);
- A commission for each of the five district courts of appeal; and
- A commission for each of the twenty circuit courts in the state.

Each nominating commission includes nine members who are appointed by the governor to four-year terms. Four members are attorneys appointed from a list of nominees submitted by the Florida Bar; of the remaining five members, at least two must be attorneys as well. Commissioners must be residents of the jurisdiction their commission serves.