

SJR

22

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/10/01

FURTHER:

REPORTED OUT
APR 17 2001
SENATE FINANCE COMMITTEE

DATE TURNED IN TO OFFICE: 17 April 01

Finance Committee considered SENATE JOINT RESOLUTION NO. 22

CONSTITUTIONAL AMENDMENT: JUDICIAL OFFICERS' TERMS

Proposing an amendment to the Constitution of the State of Alaska relating to the retention elections for justices of the Alaska supreme court and judges of the superior court.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS SJR 22 (JUD)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

- Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical title
 new: SCR # _____

NEW FISCAL NOTE(S):

| Department | Date | Fiscal | Zero | FN# |
|------------|------|--------|------|-----|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Zero | FN# |
|-----------------|--------|--------|------|-----|
| AK Jud. Council | 4/4/01 | 20.0 | | #1 |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | DO PASS | DO NOT PASS | NO REC | AMEND |
|---------------------------------|---------|-------------|--------|-------|
| <i>Alan Gustafson</i> | | | ✓ | |
| <i>[Signature]</i> | | | ✓ | |
| <i>[Signature]</i> | | | ✓ | |
| <i>[Signature]</i> | | | | |
| <i>[Signature]</i> | ✓ | | | |
| <i>[Signature]</i> | ✓ | | | |
| COCHAIR: <i>[Signature]</i> | ✓ | | | |
| COCHAIR: <i>[Signature]</i> | ✓ | | | |

CS FOR SENATE JOINT RESOLUTION NO. 22(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/10/01
Referred: Finance

Sponsor(s): SENATE JUDICIARY COMMITTEE

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to the
2 retention elections for justices of the Alaska supreme court and judges of the superior
3 court.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. Article IV, sec. 6, Constitution of the State of Alaska, is amended to read:

6 Section 6. Approval or Rejection. Each supreme court justice and superior
7 court judge shall, in the manner provided by law, be subject to approval or rejection on
8 a nonpartisan ballot at the first general election held more than three years after the
9 justice's or judge's [HIS] appoin'ment. Thereafter, each supreme court justice shall
10 be subject to approval or rejection in a like manner every sixth [TENTH] year, and
11 each superior court judge, every fourth [SIXTH] year.

12 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of
13 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
14 State of Alaska, and the election laws of the state.

APR 17 2001

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSJR 22(JUD)
(S) Publish Date: 4/10/01

Revision Date/Time (Note if correction): _____ Dept. Affected: Alaska Judicial Council
Title: Const. Am.:Judicial Officers Retention Terms BRU: _____
Sponsor: Senate Judiciary Component: _____
Requester: _____ Component Number: 0771

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | 18.5 | 18.5 | 18.5 | 18.5 | 18.5 | 18.5 |
| Supplies | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 |

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

SRJ 22 shortens retention terms for Supreme Court Justices from 10 years to 6 years; and terms for Superior Court Judges from 6 years to 4 years. This will increase the average number of judges that the Council must evaluate in each retention election by about 50%, as well as the cost of making information available to voters. The fiscal note assumes existing staff can complete the in-house work.

Prepared by: William T. Colton, Executive Director Phone: 279-2526 Ext. 1
Division: Alaska Judicial Council Date/Time: 04/04/01
Approved by: William T. Colton, Executive Director Date: 04/04/2001
Agency: Alaska Judicial Council

For distribution information, call the Governor's Legislative Office

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Senate Judiciary Committee

SPONSOR STATEMENT COMMITTEE SUBSTITUTE FOR SENATE JOINT RESOLUTION 22 (JUDICIARY) (4/10/01)

CS SJR 22(Jud) proposes an amendment to the Constitution of the State of Alaska changing the length of time between retention elections for supreme court justices and superior court judges. It is designed to increase public involvement in the judicial retention process and to increase the judicial branch's accountability to Alaskans.

Currently, each superior court judge and supreme court justice is subject to approval or rejection by the voters at the first general election held more than three years after he or she is appointed. After the initial election, supreme court justices are up for approval or rejection only every tenth year and superior court judges only every sixth year. SJR 22 changes both these intervals to six years for supreme court justices and four years for superior court judges.

Alaskans need more frequent opportunities to assess the performance of those who serve us in the judicial branch of government. Unfortunately, our courts are currently failing to make all decisions in a timely manner. There is one court decision that has been pending in the supreme court for more than three years. Information like this is critical to ensure public accountability of our judicial officers. Having retention elections more frequently will help ensure that the public is basing their decisions on the most timely information.

There are twenty-two states who select their judges by public elections and another ten states where the legislature either chooses or confirms appointees. Accordingly, in the majority of the United States there is much greater public input, than in Alaska, into who becomes a judge. In Alaska, the opportunity for the public's input comes only through the retention election process. Such a low level of accountability is poor public policy, especially when retention elections are so far apart. By allowing Alaskans to evaluate supreme court justices every six years and superior court judges every four years, we will ensure increased public accountability and better job performance.

**GENERAL INFORMATION REGARDING
THE SELECTION, RETENTION AND
TERMS OF OFFICE FOR JUDGES**

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Legislative Research Report 98.047
March 3, 1998

Judicial Appointments

Legislative Research Services
Division of Legal and Research Services
Legislative Affairs Agency
Alaska State Legislature

Prepared by Patricia Young, Legislative Analyst



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JUDICIAL APPOINTMENTS

You wished to know the procedure by which judges are appointed to fill vacancies in the Alaska Court System. You were particularly interested in knowing with whom the authority for making such appointments resides.

In Alaska, only the governor has the authority to make permanent judicial appointments. Article IV, Section 5, of the Alaska Constitution specifies that the governor will choose and appoint justices to the supreme court and judges to the superior court from a list of nominees submitted by the Alaska Judicial Council.¹ Although the constitution does not require it, the legislature has provided that judgeships in the court of appeals and district court be filled in the same manner.² Following their appointments, justices and judges are subject to periodic retention elections.

The chief justice—who is selected by majority vote of the supreme court justices from among themselves—has the power to appoint a retired judge to serve *pro tempore* (or *pro tem*, i.e., temporarily) as a justice or judge in any court of the state.³ Such *pro tempore* appointments may be made for one or more court cases or for up to two years, except that a *pro tempore* judge or justice may complete a trial or appeal that is in progress at the conclusion of the appointment. Appointments may also be renewed.

The chief justice also has the power to assign judges from one court or division to another for temporary service.⁴ Additionally, the chief justice selects—with the approval of the supreme court—an administrative director who may, with the permission of the chief justice, assign sitting judges to serve in judicial districts outside their own when the courts are in need of assistance and the judges consent to the assignments.⁵ A single temporary assignment of a judicial officer to another judicial district may not exceed 90 days, unless the judicial officer consents to the additional assignment. Assignments in excess of 90 days or any assignment to which a judicial officer has not consented may be made only by special order of the chief justice.⁶

The following table shows the method states predominantly use when selecting and appointing judges and justices. I hope this information is helpful. Please let me know if you have questions or need further information.

¹ States use a variety of methods to select judges, depending on the court; however, the most commonly used selection process involves nomination of qualified candidates by a special, nonpartisan nominating body (usually composed of both attorneys and nonattorneys), appointment by the governor, and periodic voting by the electorate in regard to judges' retention of office. According to the Council of State Governments' *Book of the States, 1986-87*, nineteen states (including Alaska) and the District of Columbia use this type of selection process, which is generally known as a merit or commission system. Nine states select judges by partisan elections; another 13 by nonpartisan elections. The legislature is involved, to some degree, in the selection of judges in eight of the remaining nine states.

² Alaska Statute 22.07.070 (vacancies in the court of appeals) and AS 22.15.170 (selection of district judges and magistrates). The presiding judge of the superior court in each judicial district appoints magistrates, who serve a judicial function at the local level. The presiding judge also may appoint persons to act for up to one year in the capacity of district judges, as needed.

³ Alaska State Constitution, Article IV, Section 11, allows for "special assignments [of retired judges and justices] as provided by court rule." Alaska Rules of Court, Administrative Rule 23, provides for the chief justice, or another justice designated by the chief justice, to appoint, by special assignment, retired justices and judges to sit *pro tempore*.

⁴ Alaska State Constitution, Article IV, Section 18 (court administration).

⁵ Alaska State Constitution Article VI, Section 16, provides that the chief justice shall appoint an administrator. Alaska Rules of Court, Administrative Rule 1, enumerates the duties of the administrative director of the court.

⁶ Alaska Rules of Court, Administrative Rule 24 (f) (length of assignment).

**Table 1: Judicial Selection—Predominant Selection Method
Intermediate Appellate Court and Court of Last Resort**

| Partisan Election | Nonpartisan Election | Selection Commission | Elected or Appointed by Legislature | Other |
|-------------------|----------------------|--------------------------|-------------------------------------|-------------------|
| Alabama | Georgia | Alaska | Connecticut (b) | California (f) |
| Arkansas | Idaho | Arizona | Rhode Island (c) | Maine (g) |
| Illinois | Kentucky | Colorado | South Carolina (d) | New Hampshire (h) |
| Mississippi | Louisiana | Delaware | Virginia (e) | New Jersey (q) |
| North Carolina | Michigan | Florida | | New York (l) |
| Pennsylvania | Minnesota | Hawaii (a) | | |
| Tennessee | Montana | Indiana | | |
| Texas | Nevada | Iowa | | |
| West Virginia | North Dakota | Kansas | | |
| | Ohio | Maryland (a) | | |
| | Oregon | Massachusetts | | |
| | Washington | Missouri | | |
| | Wisconsin | Nebraska | | |
| | | New Mexico | | |
| | | Oklahoma | | |
| | | South Dakota | | |
| | | Utah | | |
| | | Vermont (e) | | |
| | | Wyoming | | |
| | | District of Columbia (e) | | |

NOTES:

Many states use a variety of methods for selecting judges. We have attempted to place each state in the category that describes its most predominant practice for selecting intermediate appellate court and court of last resort judges. For more detail, see Table 4.4, "Selection and Retention of Judges," Council of State Governments, *Book of the States, 1996-97*. States in which governors appoint judges from among nominees submitted by an impartial body that screens applicants have been categorized under "Selection Commission."

- (a) Appointments made with advice and consent of the senate.
- (b) Appointments made by the legislature from nominations submitted by governor exclusively from candidates submitted by the selection commission.
- (c) Supreme court justices elected by legislature; superior, district, and family court judges appointed by governor with advice and consent of senate.
- (d) Supreme court, court of appeals, circuit court, and family court judges elected by legislature from names submitted on a nonpartisan basis by judiciary committee of legislature. Probate judges elected on partisan ballot. Magistrates are appointed by governor with advice and consent of senate.
- (e) Elected by majority vote of the legislature.
- (f) Supreme court and courts of appeal judges appointed by governor and confirmed by commission on judicial appointments.
- (g) Appointments made by governor with advice and consent of senate; no nominating commission.
- (h) Appointments made by governor and confirmed by majority vote of elected five-member executive council; no nominating commission.
- (l) Court of appeals judges appointed by governor with advice and consent of senate, no nominating commission. Others elected on partisan ballot.

SOURCE:

Council of State Governments, *The Book of the States, 1996-97*.

MEMO

TO: DD
FROM: JOMO

AVERAGE TERM FOR ELECTED JUDGES

| STATE | SUPERIOR | APPELLATE | SUPREME |
|-----------------------------|----------|-----------|---------|
| Alabama | 6 | 8 | 6 |
| Arkansas | ? | 8 | 8 |
| California | ? | 12 | 12 |
| Florida | ? | ? | ? |
| Georgia | 4 | 6 | 6 |
| Idaho | ? | ? | 6 |
| Illinois | ? | ? | ? |
| Kentucky | ? | ? | ? |
| Louisiana | ? | ? | ? |
| Maryland | 15 | ? | 15 |
| Michigan | ? | ? | 8 |
| Minnesota | 6 | 6 | 8 |
| Mississippi | ? | ? | 8 |
| Montana | ? | ? | ? |
| Nevada | ? | ? | 6 |
| New Mexico | 8 | 8 | 8 |
| North Carolina | 8 | 8 | 8 |
| North Dakota | ? | ? | 10 |
| Ohio | ? | 6 | 6 |
| Oklahoma | ? | ? | ? |
| Oregon | 6 | 6 | 6 |
| Pennsylvania | ? | ? | ? |
| Texas | ? | ? | 6 |
| Washington | ? | ? | 6 |
| West Virginia | ? | ? | 12 |
| Wisconsin | ? | ? | 10 |
| | 53 | 66 | 153 |
| average from data: | 9 | 7 | 8 |
| average without outliers | 6 | 7 | 8 |

Table 4.1
STATE COURTS OF LAST RESORT

| State or other jurisdiction | Name of court | Justices chosen by | | No. of judges (b) | Term (in years) (c) | Chief Justice (d) | |
|-----------------------------|---------------|--------------------|-------------|-------------------|---------------------|---|----------------------------------|
| | | At large | By district | | | Method of selection | Term of service as chief justice |
| Alabama | SC | * | | 9 (d) | 6 | Popular election | 6 years |
| Alaska | SC | * | | 5 | 10 | By court | 3 years (e) |
| Arizona | SC | * | | 5 | 6 | By court | 5 years |
| Arkansas | SC | * | | 7 | 8 | Popular election | 8 years |
| California | SC | * | | 7 | 12 | Appointed by governor | 12 years |
| Colorado | SC | * | | 7 | 10 | By court | Indefinite |
| Connecticut | SC | * | | 7 (f) | 8 | Legislative appointment (g) | 8 years |
| Delaware | SC | * | | 5 | 12 | Appointed by governor | 12 years |
| Florida | SC | (h) | | 7 | 6 | By court | 2 years |
| Georgia | SC | * | | 7 | 6 | By court | 4 years |
| Hawaii | SC | * | | 5 | 10 | Appointed by governor, with consent of Senate (i) | 10 years |
| Idaho | SC | * | | 5 | 6 | By court | 4 years |
| Illinois | SC | * | * | 7 | 10 | By court | 3 years |
| Indiana | SC | * | | 5 | 10 (j) | Judicial nominating commission appointment | 5 years |
| Iowa | SC | * | | 9 | 8 | By court | 8 years or duration of term |
| Kansas | SC | * | | 7 | 6 | Rotation by seniority | Indefinite |
| Kentucky | SC | * | * | 7 | 8 | By court | 4 years |
| Louisiana | SC | * | | 8 (k) | 10 | By seniority of service | Duration of service |
| Maine | S.J.C. | * | | 7 | 7 | Appointed by governor | 7 years |
| Maryland | C.A. | * | * | 7 | 10 | Appointed by governor | Indefinite |
| Massachusetts | S.J.C. | * | | 7 (l) | To age 70 | Appointed by governor (m) | To age 70 |
| Michigan | SC | * | | 7 | 8 | By court | 2 years |
| Minnesota | SC | * | | 7 | 6 | Popular election | 6 years |
| Mississippi | SC | * | * | 9 (n) | 8 | By seniority of service | Duration of service |
| Missouri | SC | * | | 7 | 12 | By court (o) | 2 years |
| Montana | SC | * | | 7 | 8 | Popular election | 8 years |
| Nebraska | SC | * | *(p) | 7 | 6 (q) | Appointed by governor from Judicial Nominating Commission | Duration of service |
| Nevada | SC | * | | 5 | 6 | Rotation | 2 years |
| New Hampshire | SC | * | | 5 | To age 70 | Appointed by governor with approval of elected executive council | To age 70 |
| New Jersey | SC | * | | 7 | 7 (r) | Appointed by governor, with consent of Senate | Duration of service |
| New Mexico | SC | * | | 5 (s) | 8 | By court | 2 years |
| New York | C.A. | * | | 7 | 14 | Appointed by governor from Judicial Nomination Commission | 14 years |
| North Carolina | SC | * | | 7 | 8 | Popular election | 8 years |
| North Dakota | SC | * | | 5 | 10 | By Supreme and district court judges | 5 years (t) |
| Ohio | SC | * | | 7 | 6 | Popular election | 6 years |
| Oklahoma | SC | * | * | 9 | 6 | By court | 2 years |
| | C.C.A. | * | * | 5 | 6 | By court | 2 years |
| Oregon | SC | * | | 7 | 6 | By court | 6 years |
| Pennsylvania | SC | * | | 7 | 10 | Rotation by seniority | Duration of term |
| Rhode Island | SC | * | | 5 | Life | Appointed by governor from Judicial Nominating Commission | Life |
| South Carolina | SC | * | | 5 | 10 | Legislative election | 10 years |
| South Dakota | SC | * | *(u) | 5 | 8 | By court | 4 years |
| Tennessee | SC | * | | 5 | 8 | By court | 4 years |
| Texas | SC | * | | 9 | 6 | Partisan election | 6 years |
| | C.C.A. | * | | 9 | 6 | Partisan election | 6 years (v) |
| Utah | SC | * | | 5 | 10 (w) | By court | 4 years |
| Vermont | SC | * | | 5 | 7 | Appointed by governor from Judicial Nomination Commission, with consent of Senate | 6 years |
| Virginia | SC | * | | 7 | 12 | Seniority | Indefinite |
| Washington | SC | * | | 9 | 6 | By court | 4 years |
| West Virginia | S.C.A. | * | * | 5 | 12 | Rotation by seniority | 1 year |
| Wisconsin | SC | * | | 7 | 10 | Seniority | Until declined |
| Wyoming | SC | * | | 5 | 8 | By court | At the pleasure of the court |
| Dist. of Columbia | C.A. | * | | 9 | 15 | Judicial Nominating Commission appointment | 4 years |
| American Samoa | H.C. | * | | 8 (x) | (y) | Appointed by Secretary of the Interior | (w) |
| Puerto Rico | SC | * | | 7 | To age 70 | Appointed by Governor, with consent of Senate | To age 70 |

The Council of State Governments

Sources: Court Statistics Project, *State Court Caseload Statistics, 1998* (National Center for State Courts 1999) and State Court Organization 1998; state constitutions, statutes and court administration offices.

Key:
 S.C. — Supreme Court
 S.C.A. — Supreme Court of Appeals
 S.J.C. — Supreme Judicial Court
 C.A. — Court of Appeals
 C.C.A. — Court of Criminal Appeals
 H.C. — High Court
 (a) See Table 4.4, "Selection and Retention of Judges," for details.
 (b) Number includes chief justice.
 (c) The initial term may be shorter. See Table 4.4, "Selection and Retention of Judges," for details.
 (d) 9 justices sit in panels of 5 or en banc.
 (e) A justice may serve more than one term as chief justice, but may not serve consecutive terms in that position.
 (f) 7 justices sit in panels of 5 (membership rotates daily); upon order of chief justice, 6 or 7 may sit on panel.
 (g) Governor nominates from candidates submitted by Judicial Selection Commission.
 (h) Regional (5), Statewide (2), Regional based on District of Appeal
 (i) Judicial Selection Commission nominates.

(j) Initial two years; retention 10 years.
 (k) Includes one assigned from courts of appeal
 (l) 7 justices sit on the court, and 5 justices sit en banc
 (m) Chief Justices are appointed, until age 70, by the Governor with the advice and consent of the Executive or Council
 (n) 9 justices sit in panels of 3 and en banc
 (o) Selection is typically rotated among the judges
 (p) Chief justice chosen statewide; associate judges chosen by district
 (q) More than three years for first election and every six years thereafter.
 (r) Followed by tenure.
 (s) 5 justices sit in panels of 3
 (t) Or expiration of term, whichever is first
 (u) Initially chosen by district; retention determined statewide
 (v) Presiding judge of Court of Criminal Appeals
 (w) Initial three years; retention 10 years
 (x) Chief judges and associate judges sit on appellate and trial divisions
 (y) For good behavior

Table 4.2 7/1000
STATE INTERMEDIATE APPELLATE COURTS AND GENERAL TRIAL COURTS
NUMBER OF JUDGES AND TERMS

| State or other jurisdiction | Intermediate appellate court | | General trial court | | | |
|-----------------------------|--------------------------------------|---------------|---------------------|---|---------------|--------------|
| | Name of court | No. of judges | Term (years) | Name of court | No. of judges | Term (years) |
| Alabama | Court of Criminal Appeals | 5 | 6 | Circuit Court | 131 | 6 |
| | Court of Civil Appeals | 5 | 6 | | | |
| Alaska | Court of Appeals | 3 | 8 | Superior Court | 40 (a) | 6 |
| Arizona | Court of Appeals | 22 | 6 | Superior Court | 136 (i) | 4 |
| Arkansas | Court of Appeals | 12 | 8 | Chancery/Probate Court and Circuit Court | 106 (b) | (b) |
| California | Court of Appeals | 93 | 12 | Superior Court | 1,012 (c) | 6 |
| Colorado | Court of Appeals | 16 | 8 | District Court | 154 (d) | 6 |
| Connecticut | Appellate Court | 3 | 8 | Superior Court | 167 | 8 |
| Delaware | | | | Superior Court | 17 | 12 |
| | | | | Court of Chancery | (e) | 12 |
| Florida | District Courts of Appeals | 61 | 6 | Circuit Court | 468 | 6 |
| Georgia | Court of Appeals | 10 | 6 | Superior Court | 175 | 4 |
| Hawaii | Intermediate Court of Appeals | 4 | 10 | Circuit Court | 27 (f) | 10 |
| Idaho | Court of Appeals | 3 | 6 | District Court | 37 (g) | 4 |
| Illinois | Appellate Court | 42 (h) | 10 | Circuit Court | 497 (i) | 6 (i) |
| Indiana | Court of Appeals | 15 (k) | 10 (l) | Superior Court, Probate Court and Circuit Court | 279 | 6 |
| Iowa | Court of Appeals | 6 | 6 | District Court | 328 (m) | 6 |
| Kansas | Court of Appeals | 10 | 4 | District Court | 156 (n) | 4 |
| Kentucky | Court of Appeals | 14 | 8 | Circuit Court | 108 | 8 |
| Louisiana | Court of Appeals | 54 | 10 | District Court | 222 (o) | 6 |
| Maine | | | | Superior Court | 16 | 7 |
| Maryland | Court of Special Appeals | 13 | 10 | Circuit Court | 140 | 15 |
| Massachusetts | Appeals Court | 14 | (p) | Superior Court | 80 | (p) |
| Michigan | Court of Appeals | 26 | 6 | Circuit Court | 210 | 6 |
| Minnesota | Court of Appeals | 16 | 6 | District Court | 254 | 6 |
| Mississippi | Court of Appeals | 10 | 8 | Circuit Court | 49 | 4 |
| Missouri | Court of Appeals | 32 | 12 | Circuit Court | 135(q) | 6 |
| Montana | | | | District Court | 37 (r) | 6 |
| Nebraska | Court of Appeals | 6 | 6 (s) | District Court | 53 | 6 (t) |
| Nevada | | | | District Court | 51 | 6 |
| New Hampshire | | | | Superior Court | 28(u) | (p) |
| New Jersey | Appellate Division of Superior Court | 32 | 7 (v) | Superior Court | 384(w) | 7 (s) |
| New Mexico | Court of Appeals | 10 | 8 | District Court | 72 | 6 |
| New York | Appellate Division of Supreme Court | 56 | 5 (y) | Supreme Court and County Court | 496 | (t) |
| | Appellate Terms of Supreme Court | 15 | 5 (y) | | | |
| North Carolina | Court of Appeals | 12 | 8 | Superior Court | 99(aa) | 8 |
| North Dakota | | | | District Court | 43 | 6 |
| Ohio | Court of Appeals | 66 | 6 | Court of Common Pleas | 372 | 6 |
| Oklahoma | Court of Appeals | 12 | 6 | District Court | 71 (bb) | 4 |
| Oregon | Court of Appeals | 10 | 6 | Circuit Court | 100 | 6 |
| | | | | Tax Court | 1 | 6 |
| Pennsylvania | Superior Court | 15 | 10 | Court of Common Pleas | 386 | 10 |
| | Commonwealth Court | 9 | 10 | | | |
| Rhode Island | | | Life | Superior Court | 22 | Life |
| South Carolina | Court of Appeals | 9 | 6 | Circuit Court | 46 (cc) | 6 |
| South Dakota | | | | Circuit Court | 37 (dd) | 6 |
| Tennessee | Court of Appeals | 12 | 8 | Chancery Court | 33 | 6 |
| | Court of Criminal Appeals | 12 | 6 | Circuit Court | 85 | 6 |
| | | | | Criminal Court | 31 | 5 |
| | | | | Probate Court | 2 | (ee) |
| Texas | Court of Appeals | 60 | 6 | District Court | 296 | 4 |
| Utah | Court of Appeals | 7 | 10 (ff) | District Court | 70 (gg) | 6 |
| Vermont | | | | Superior Court and District Court | 29 (hh) | 6 |
| Virginia | Court of Appeals | 10 | 8 | Circuit Court | 148 | 8 |
| Washington | Court of Appeals | 21 | 6 | Superior Court | 167 | 4 |
| West Virginia | | | | Circuit Court | 62 | 9 |
| Wisconsin | Court of Appeals | 16 | 6 | Circuit Court | 254 | 6 |
| Wyoming | | | | District Court | 17 | 6 |
| Dist. of Columbia | | | | Superior Court | 59 | 15 |
| Puerto Rico | Circuit Court of Appeals | 33 | 16 | Court of First Instance | 315 | 12 |

Sources: National Center for State Courts, State Court Caseload Statistics, Annual Report 1998, and State Court Organization 1998.

Key:

— Court does not exist in jurisdiction or not applicable.

(a) Plus eight masters.

(b) There are 30 circuit court judges who serve four-year terms. Chancery probate court, consists of 33 judges who serve six-year terms. (43 additional judges serve both circuit and chancery courts).

(c) Plus 205 commissioners.

(d) Plus 32 magistrates.

(e) One chancellor and four vice-chancellors.

(f) Plus 15 family judges.

(g) Plus 81 full-time magistrate/judges.

(h) Plus 10 supplemental judges.

(i) Plus 318 associate judges, and 50 permissive associate judges.

(j) Associate judges 4 years.

(k) Plus one tax court judge.

(l) Two years initial, 10 years retention.

(m) Includes 112 district judges, 54 district associate judges, 7 senior judges, 12 associate juvenile judges, 135 part-time magistrates, one associate probate judge, and 7 alternate district associate judges.

(n) Plus 69 district magistrates.

(o) Plus seven commissioners.

(p) To age 70.

(q) Plus 175 associate circuit judges.

(r) Plus six judges for water court and one for workers' compensation court.

(s) More than three years for first election and every six years thereafter.

(t) The initial term is for 3 years but not more than 5 years.

(u) Plus 11 full-time marital masters.

(v) Followed by tenure.

(w) Plus 21 surrogates.

(x) On reappointment until age 70.

(y) Or purson.

(z) Fourteen years for Supreme Court, 10 years for county court.

(aa) Plus 100 clerks with estate jurisdiction.

(bb) Plus 77 associate judges and 73 special judges.

(cc) Plus 21 masters-in-equity.

(dd) Plus 8 law magistrates, 7 part-time law magistrates, 92 full-time clerk magistrates, and 58 part-time clerk magistrates.

(ee) Locally determined.

(ff) Three years initial, six years retention.

(gg) Plus 7 domestic court commissioners.

(hh) District and superior court judges also serve as family court judges.

(ii) Plus two part-time judges.

Judging How Justices Are Chosen

By Lawrence W. Reed

Some legal observers contend it's time to change the way Michigan Supreme Court justices are selected. Is this a wise idea? Let's look at the current process and its results.

Candidates for the court are nominated by political parties at summer conventions, after which they officially run and appear on the ballot as "nonpartisan." When a vacancy occurs because of death or resignation, the governor appoints a replacement, who must face voters in the next general election.

Surveying just a handful of states reveals no uniform number of justices or a standard method of selection that would appear to have decisive advantages over the others. Michigan's court has seven justices; West Virginia, Tennessee, and Indiana are among the states that have only five on their highest court; the supreme court of Texas, like its federal counterpart, has nine.

At least one state, Tennessee, requires its high court to meet in multiple locations. Some states, but not all, require state senate confirmation of gubernatorial nominations to their supreme court. In some states, justices run as partisans from the very beginning; in others, they are nonpartisan throughout the process. Michigan's partisan/nonpartisan hybrid is somewhat unusual, but there is little evidence to suggest it has produced inferior justices.

In Maryland, members of the state's highest court are initially appointed by the governor and confirmed by the state senate. After that, they run for office on their records, unopposed. If voters reject a judge's retention in office, the office becomes vacant and must be filled by a new appointee. The process may look nonpartisan because no political party officially nominates a justice, and competing court candidates don't go head-to-head in noisy elections, but governors almost always choose men and women who share their personal and political philosophies.

While the process of partisan nomination followed by nonpartisan campaigning may appear contradictory, "problems" with it are overblown. A party endorsement does not disclose how a justice may rule in any future case; rather, it is reflective of the fact that a jurist's track record and philosophy are generally compatible with a particular party's broad perspective. Requiring candidates to run on a party line in November may be more consistent, but it might also prompt too many voters to make their decisions based on party labels rather than the qualities and performance of the candidates. If voters have to dig a little bit to learn who's running and why, that's probably a healthy thing.

Proposals to make Michigan Supreme Court slots purely appointive—as they are at the federal level, subject to Senate confirmation for life terms—would do away with the messy electoral process altogether. But that reform would not necessarily guarantee high-quality, squeaky-clean justices immune to either cash or politics.

Moreover, periodically putting incumbents and wannabes before the voters gives citizens the opportunity to rectify appointive mistakes. Even though most voters spend appallingly little time learning much about who is on the ballot, Michigan citizens don't want to give up their right to vote on who serves on their highest court.

A few observers have occasionally argued that some form of "merit selection" is missing from Michigan's Supreme Court. They usually advocate

that the governor name justices only from a pre-approved list, which almost always means a list approved by the State Bar or some committee thereof. Supposedly, this would assure that we get the best and most qualified . . . but the legal community is not some angelic and dispassionate group of altruists. It is made up of its own elite and factions, each with its own agenda. Governors have some incentive to choose good people for spots on the court and if they fail, at least the voters under the current system can rectify their mistakes.

If the present system unduly politicizes the Court or forces candidates to compromise their integrity by grubbing for campaign money, one small reform could ameliorate that. It would be drawn from the so-called "Missouri system" and

would require that justices go before the voters in retention elections when their terms are up. By voting "yes" or "no" voters would decide whether to retain or remove a justice, but wouldn't choose between competing candidates on the ballot.

Fundamentally, however, the current process has not failed Michigan citizens. Rather, it has produced what is arguably the best state supreme court in the nation: a body of eminently qualified, experienced, and sensible jurists, the majority of whom believe in interpreting law, not manufacturing it from the bench. Let's be careful we don't "fix" what appears not to be broken.

Lawrence W. Reed is president of the Midland, Michigan-based Mackinac Center for Public Policy.

Surveying just a handful of states reveals no uniform number of justices or a standard method of selection that would appear to have decisive advantages over all the others.

Table 4.4
SELECTION AND RETENTION OF JUDGES

| <i>State or other jurisdiction</i> | <i>How selected and retained</i> |
|------------------------------------|---|
| Alabama | Appellate, circuit, district and probate judges elected on partisan ballots. Municipal court judges appointed by the governing body of the municipality (majority vote of its members). |
| Alaska | Supreme Court, court of appeals, superior court and district court judges appointed by governor from nominations submitted by Judicial Council. Supreme Court, court of appeals and superior court judges approved or rejected on nonpartisan retention ballot at first general election held more than three years after appointment. Reconfirmation every 10, eight and six years, respectively. District court judges approved or rejected at first general election held more than two years after appointment. Reconfirmation every four years. District court magistrates appointed by and serve at pleasure of presiding judge of superior court in each judicial district. |
| Arizona | Supreme Court justices and court of appeals judges appointed by governor from a list of not less than three nominees submitted by a nine-member Commission on Appellate Court Appointments. Superior court judges (in counties with population greater than 250,000) appointed by governor from a list of not less than three nominees submitted by a nine-member commission on trial court appointments. Judges initially hold office for term ending 60 days following next regular general election after expiration of two-year term. Judges who file declaration of intention to be retained in office run at next regular general election on nonpartisan retention ballot. Superior court judges in counties having population less than 250,000 elected on nonpartisan ballot; justices of the peace elected on partisan ballot; police judges and magistrates selected as provided by charter or ordinance; Tucson city magistrates appointed and reappointed by mayor and council from nominees submitted by nonpartisan Merit Selection Commission on magistrate appointments. |
| Arkansas | All elected on partisan ballot. |
| California | Supreme Court and courts of appeal judges appointed by governor, confirmed by Commission on Judicial Appointments. Judges run unopposed on nonpartisan retention ballot at next general election after appointment. Superior court judges elected on nonpartisan ballot with counties having the option to use selection method described above; judges elected to full term at next general election on nonpartisan ballot. Municipal court and justice court judges initially appointed by governor and county board of supervisors, respectively, retain office by election on nonpartisan ballot. |
| Colorado | Supreme Court and court of appeals judges appointed by governor from nominees submitted by Supreme Court Nominating Commission. District judges appointed by governor from nominees submitted by Judicial District Nominating Commission. After initial appointive term of two years, judges run on nonpartisan retention ballot. Municipal judges appointed by municipal governing body. Denver County judges appointed by mayor from list submitted by nominating commission; judges run on nonpartisan retention ballot. |
| Connecticut | Judges of the Supreme Court, appellate court, and district court appointed by Legislature from nominations submitted by governor exclusively from candidates submitted by the Judicial Selection Commission. Judicial Review Council makes recommendations on nominations for reappointment. Probate judges elected on partisan ballots. |
| Delaware | All appointed by governor from list submitted by a judicial nominating commission (which is established by executive order) with consent of majority of Senate. |
| Florida | Supreme Court and district courts of appeal judges appointed by governor from nominees submitted by appropriate judicial nominating commission. Judges run for retention at next general election preceding expiration of term. Circuit and county court judges elected on nonpartisan ballots. |
| Georgia | Supreme Court, court of appeals, superior court, and state court judges elected on nonpartisan ballots. For the magistrate courts, the chief magistrate is selected in a partisan election; additional magistrates are appointed by the chief magistrate with the consent of the judges of the superior court. Probate judges and justices of peace elected on partisan ballots. Juvenile and municipal court judges appointed. |
| Hawaii | Supreme Court and intermediate court of appeals justices and circuit court judges nominated by Judicial Selection Commission (on list of four to six names) and appointed by governor with consent of Senate. Judges reappointed to subsequent terms by the Judicial Selection Commission. District court judges nominated by Commission (on list of at least six names) and appointed by chief justice. |
| Idaho | Supreme Court and court of appeals justices and district court judges elected on nonpartisan ballot. Magistrates appointed on nonpartisan merit basis by District Magistrates Commission and run for retention in first general election next succeeding the 18-month period following initial appointment; thereafter, run every four years. |
| Illinois | Supreme Court, appellate court and circuit court judges nominated at primary elections or by petition and elected at general or judicial elections on partisan ballot. Judges run in uncontested retention elections for subsequent terms. Circuit court associate judges are appointed by circuit judges for four-year terms. |
| Indiana | Supreme Court justices and court of appeals judges are appointed by governor from list of three nominees submitted by seven-member Judicial Nominating Commission. Judges serve until next general election after two years from appointment date; thereafter, run for retention on record. Circuit, superior and county judges in most counties run on partisan ballot. Circuit court judges in Vanderburgh County run on a nonpartisan ballot. Superior court judges in Allen County run on a nonpartisan ballot. The majority of superior court judges in Lake County, and all superior court judges in St. Joseph and Vanderburgh counties, are appointed by the governor upon recommendation of the Judicial Nominating Commission. Probate court and city court judges are selected by partisan elections. |
| Iowa | Supreme Court, court of appeals and district court judges appointed by governor from lists submitted by nominating commissions. Judges serve an initial one-year term until January 1 following next general election, then run on records for retention. Judicial magistrates appointed by county judicial magistrate appointing commission. District associate judges are appointed by the district judges of the judicial election district from persons nominated by the County Magistrate Appointing Commission, and stand for retention every four years thereafter. |

See footnotes at end of table.

SELECTION AND RETENTION OF JUDGES — Continued

| <i>State or other jurisdiction</i> | <i>How selected and retained</i> |
|------------------------------------|---|
| Kansas | Supreme Court and court of appeals judges appointed by governor from nominations submitted by Supreme Court Nominating Commission. Judges serve until second Monday in January following first general election after one year in office; thereafter run on record for retention every six (Supreme Court) and four (court of appeals) years. District judges in 17 judicial districts are appointed by governor through nonpartisan commission plan. District judges in 14 judicial districts are elected on partisan ballot. |
| Kentucky | All judges elected on nonpartisan ballot. |
| Louisiana | All justices and judges elected on partisan basis, but state has open primary which requires all candidates to appear on a single ballot. |
| Maine | All appointed by governor with confirmation of the Senate, except probate judges who are elected on partisan ballot. Governor reappoints and Senate reconfirms for seven-year terms. |
| Maryland | Court of Appeals and court of special appeals judges nominated by judicial nominating commission, and appointed by governor with advice and consent of Senate. Judges run on record for retention at next general election after one year of service. Judges of circuit courts and Supreme Bench of Baltimore City nominated by commission and appointed by governor. Judges of circuit court run on nonpartisan ballot in first general election after year of service (may be challenged by other candidates). District court judges nominated by commission and appointed by governor, subject to Senate confirmation. Judges of the district court appointed by governor, with Senate confirmation. Judges of the orphans' court are selected in nonpartisan elections. |
| Massachusetts | All nominated and appointed by governor with advice and consent of Governor's Council, Judicial Nominating Commission, established by executive order, submits names on nonpartisan basis to governor. |
| Michigan | Nominated in party conventions, all except district court magistrates are elected on nonpartisan ballot at general election. District court magistrates appointed by district court judges, with approval of county board of commissioners. |
| Minnesota | All elected on nonpartisan ballot. |
| Mississippi | All elected on nonpartisan ballot, except municipal court judges who are appointed by governing authority of each municipality. |
| Missouri | Judges of Supreme Court, court of appeals and the circuit courts of Jackson, Clay, Platte, and St. Louis counties appointed initially by governor from nominations submitted by judicial selection commissions. Judges run for retention after one year in office. All other judges elected on partisan ballot. |
| Montana | All elected on nonpartisan ballot. Judges unopposed in reelection effort, run for retention. Water court judges are appointed by chief justice; Workers' Compensation judges are appointed by the governor. |
| Nebraska | All judges appointed initially by governor from nominees submitted by judicial nominating commissions. Judges run for retention on nonpartisan ballot in general election following initial three-year term; subsequent terms are six years. |
| Nevada | All elected on nonpartisan ballot. |
| New Hampshire | All appointed by governor and confirmed by majority vote of elected five-member executive council. |
| New Jersey | Judges of Supreme Court, superior court, tax court and municipal court appointed by governor with advice and consent of Senate, except judges of municipal courts serving a single municipality who are appointed by the governing body. Judges are reappointed for seven-year terms by the governor (to age 70) with the advice and consent of Senate. Surrogates selected in partisan elections. |
| New Mexico | Supreme Court, court of appeals, district and metropolitan judges appointed by governor from list submitted by a judicial nominating commission. At next general election, after appointment, judges run for full terms in partisan, contested election. The elected judge runs for subsequent terms in uncontested retention elections. Judges of probate court and municipal and magistrate courts are selected in partisan elections. |
| New York | All elected on partisan ballot, except judges of Court of Appeals, who are appointed by governor from list submitted by commission on judicial nomination with advice and consent of Senate. Governor also appoints judges of court of claims and designates members of appellate division of supreme court. Mayor of New York City appoints judges of criminal and family courts in the city from list submitted by a judicial nominating commission, established by mayor's executive order. |
| North Carolina | All elected on partisan ballot, except special judges of superior court who are appointed by governor, and magistrates, who are appointed by senior resident superior court judge. |
| North Dakota | All elected on nonpartisan ballot. |
| Ohio | All nominated in partisan primary elections, but in general elections, party affiliations not listed on ballot. Court of claims judges may be appointed by chief justice of Supreme Court from ranks of Supreme Court, court of appeals, court of common pleas or retired judges. |
| Oklahoma | Supreme Court, Court of Criminal Appeals, court of appeals and Workers' Compensation Court judges appointed by governor from list of three names submitted by judicial nominating commission. Judges run for retention on nonpartisan ballot at first general election following completion of one year's service; Workers' Compensation Court judges reappointed by governor. District and associate district judges elected on nonpartisan ballot. Special judges appointed by district judges within judicial administrative districts. Municipal judges appointed by governing body of municipality. |
| Oregon | All judges elected on nonpartisan ballot for six-year terms, except municipal judges who are generally appointed and serve as prescribed by city council. |
| Pennsylvania | All initially elected on partisan ballot and thereafter on nonpartisan retention ballot, except magistrates (Pittsburgh) who are appointed by mayor with advice and consent of city council. |
| Rhode Island | All judges appointed by governor from list submitted by Judicial Nominating Commission, with the separate advice and consent of the Senate and House of Representatives. All judges hold office during good behavior. |

SELECTION AND RETENTION OF JUDGES — Continued

| <i>State or other jurisdiction</i> | <i>How selected and retained</i> |
|------------------------------------|--|
| South Carolina | Supreme Court, court of appeals, circuit court and family court judges elected by legislature from names submitted on a nonpartisan basis by Judicial Merit Selection Commission. Probate judges elected on partisan ballot. Magistrates appointed by governor with advice and consent of Senate. Municipal judges appointed by mayor and aldermen of city. |
| South Dakota | Supreme Court justices appointed by governor from nominees submitted by Judicial Qualifications Commission. Justices run for retention at first general election after three years in office. Circuit court judges elected on nonpartisan ballot. Magistrates appointed by presiding judge of judicial court with approval of Supreme Court. |
| Tennessee | Judges of the Supreme Court and intermediate appellate courts appointed initially by governor from list of three nominees submitted by Appellate Court Nominating Commission. Judges run on nonpartisan retention ballot at biennial general election held more than 30 days after occurrence of vacancy. All other judges elected on partisan ballot, except some municipal and city court judges, who are appointed by governing body of city. |
| Texas | All elected on partisan ballot (method of selection for municipal judges determined by city charter or local ordinance). |
| Utah | Supreme Court, district court, circuit court and juvenile court judges appointed by governor from list of at least three nominees submitted by Judicial Nominating Commission. Judges run unopposed for retention in general election following initial three-year term; thereafter run on record for retention every 10 (Supreme Court) and six (other courts of record) years. |
| Vermont | Supreme Court justices, superior court and district and family court judges nominated by Judicial Nominating Board and appointed by governor with advice and consent of Senate. Judges retained by vote of general assembly for six-year terms. |
| Virginia | All full-time judges elected by majority vote of legislature. |
| Washington | Supreme Court, court of appeals, superior court and district court judges elected on nonpartisan ballot. Municipal judges in cities having a population greater than 400,000 are elected on nonpartisan ballot; municipal judges in cities of less than 400,000 appointed in manner determined by city legislative body. |
| West Virginia | Supreme Court of Appeals judges, circuit court judges and magistrates elected on partisan ballot. Municipal judges selected according to city charter. |
| Wisconsin | Supreme Court, court of appeals and circuit court judges elected on nonpartisan ballot. Municipal court judges selected according to bylaw or ordinance adopted by city council, town board or village board. |
| Wyoming | Supreme Court justices, district and county court judges appointed by governor from list of three nominees submitted by Judicial Nominating Commission. Judges run for retention on nonpartisan ballot at first general election occurring more than one year after appointment. Justices of the peace elected on nonpartisan ballot. Municipal (police) judges appointed by mayor with consent of council. |
| Dist. of Columbia | Court of Appeals and superior court judges nominated by president of the United States from a list of persons recommended by District of Columbia Judicial Nominating Commission; appointed upon advice and consent of U.S. Senate. |
| American Samoa | Chief justice and associate justice(s) appointed by the U.S. Secretary of the Interior pursuant to presidential delegation of authority. Associate judges appointed by governor of American Samoa on recommendation of the chief justice, and subsequently confirmed by the Senate of American Samoa. |
| Guam | All appointed by governor with consent of legislature from list of nominees submitted by Judicial Council; thereafter, run on record for retention every seven years. |
| No. Mariana Islands | All appointed by governor with advice and consent of Senate. |
| Puerto Rico | All appointed by governor with advice and consent of Senate. |
| U.S. Virgin Islands | All appointed by governor with advice and consent of legislature. |

Sources: Judicial Selection in the United States: A Compendium of Provisions, 3rd Edition (Chicago: American Judicature Society), Forthcoming 2000; "Judicial Selection in the States: Appellate and General Jurisdiction Courts," American Judicature Society.

Note: Unless otherwise specified, judges included in this table are in the state courts of last resort and intermediate appellate and general trial courts.



ALASKA COURT SYSTEM
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THE ALASKA COURT SYSTEM OPPOSES SJR 22

SJR 22 would shorten the periods between retention elections for supreme court justices and superior court judges. The proposed shortened retention periods would increase costs to the state, lower voters' scrutiny of individual judges, and are not in line with retention terms in other merit selection states.

The people of Alaska have the opportunity to approve or reject judges at periodic retention elections. Alaska has the nation's most extensive system for seeking public input on retention. The Judicial Council surveys lawyers, law enforcement officers, jurors, court employees and children's caseworkers. It looks at a judge's disciplinary record, disqualifications from assigned cases, appellate record, and the evaluation by the CourtWatch program. The Judicial Council holds public hearings to allow people to testify about their experiences with judges who are standing for retention. Most of this information is made available to the voters. A judge will be voted out of office if enough voters are unhappy with the judge's performance.

The following periods between retention elections are established in the Alaska Constitution:

- Supreme Court Justice: At first general election held more than three years after appointment, and then every 10th year
- Superior Court Judge: At the first general election held more than three years after appointment, and then every 6th year

Alaska's Constitution strikes the right balance between public accountability and judicial independence. Alaska's Constitutional delegates worked hard to create a judicial merit and selection system that delicately balances the public's right to an accountable judiciary with the important goal of a strong and independent judiciary. The current proposal to change retention terms would upset that balance and damage the integrity of Article IV. The convention minutes show that the drafters specifically considered and rejected a proposal to decrease the retention term for supreme court justices to six years.

Shortening retention terms would decrease voters' scrutiny of individual judges. Shortening retention terms would cause more judges to be on the ballot at each general election. Voters are bombarded with information about candidates and ballot propositions. Voters have limited time to study information on judges standing for retention, and increasing the number of judges on the ballot would only exacerbate that problem.

Shorter retention terms increase costs. The judicial evaluation process is integral to retention elections. The Judicial Council provides voters with important information on the performance of each judge or justice, so that voters can make informed retention decisions. Increasing the frequency of retention elections would increase the number, and thus the cost, of these evaluations.

Alaska's current retention terms are in line with retention terms in other merit selection states. Twenty other states have merit selection and retention laws similar to Alaska's. Retention terms in many of those states are similar to or longer than Alaska's current terms.

Retention terms in Colorado, South Carolina and Utah are identical to Alaska's. Six states have retention terms longer than Alaska's: California (12 years supreme, 6 years trial court), Hawaii (10 year terms), Indiana (10 years supreme court, 6 years superior courts), Maryland (10 years), Massachusetts (to age 70) and Missouri (12 years supreme court, 6 years circuit court).

Retention terms in eight other states are significantly longer than the terms proposed in SJR 22: Florida (6 years supreme, 6 years circuit), Iowa (8 years, 6 years), Nebraska (6 years), New Mexico (8 years for appellate, 6 years for district), South Dakota (8 years for supreme court), Tennessee (8 years supreme court), Vermont (6 years), Wyoming (8 years for supreme, 6 years for district court).

Even the states with the shortest retention terms have longer terms than are proposed in SJR 22: Arizona (6 years supreme, 4 years superior), Kansas (6 years supreme court, 4 years district court), Oklahoma (6 years supreme court, 4 years district court).

Shorter terms will tend to discourage the most highly qualified people from seeking judicial office. Short-term positions are inherently less attractive because of the lack of job security. Highly skilled attorneys with well established practices will be less inclined to leave their private-sector positions knowing that they must stand for retention at four year intervals.

Voters already have an early opportunity to vote on supreme court justices and superior court judges. Alaska's retention system requires newly appointed superior court judges and justices to first stand for retention after a short, probationary term (three years after appointment). This evaluation period gives judges early feedback on their performance and gives voters an early chance to unseat them if necessary.

The Alaska Judicial Council opposes shortening retention terms to four years as proposed by SJR 15

Alaska's Constitution strikes the right balance between public accountability and judicial independence. Even a cursory review of the minutes of the Constitutional convention shows that Alaska's Constitutional delegates worked hard to create a judicial merit selection system that delicately balances the public's right to an accountable judiciary with the important goal of an independent judiciary able to protect the Constitutional rights of citizens. The current proposal to change retention terms would upset that balance and damage the integrity of Article IV. Indeed, the drafters of our constitution specifically considered and rejected lowering the retention term for supreme court justices to even six years. The American Judicature Society recommends retention terms of at least eight years.

Shorter terms discourage qualified attorneys from applying. Shorter retention terms, with the lesser job security they entail, will discourage highly qualified judicial applicants. This will be especially true for experienced and successful private practitioners. The result of SJR 15 may be a lesser qualified judiciary with less experience representing private citizens.

Increased numbers of judges on the ballot decrease voters' scrutiny of individual judges. At each general election voters are bombarded with information about candidates and ballot propositions leading to what are referred to as "bed-sheet ballots." Voters already have limited time to study information on judges standing for retention. (There are 33 judges now scheduled to be on the ballot this year.) Increasing the numbers of judges on the ballot would only exacerbate that problem.

Shorter retention terms increase costs. An integral part of retention elections is the retention evaluation process. The Judicial Council gathers extensive information on each judge or justice and provides that information to the voters so that they can make informed retention decisions. Increasing the frequency of retention elections would increase the costs of the evaluation or, in the alternative, lead to a less intensive evaluation. Election costs also would increase.

Alaska's current retention terms are in line with retention terms in other merit selection states. Twenty other states have merit selection and retention laws similar to Alaska's. Retention terms in many of those states are similar to or longer than Alaska's current terms, while only three of those states have terms even approaching the four years proposed in SJR 15. No other merit selection states have terms as short as proposed by SJR 15.

Retention terms in Colorado, Indiana, South Carolina and Utah are identical to Alaska's. Five states have longer retention terms longer than Alaska's: California (12 years supreme, 6 years trial court), Hawaii (10 year terms), Maryland (10 years), Massachusetts (to age 70) and Missouri (12 years supreme court, 6 years circuit court).

require Senate confirmation of appointees.

Retention terms in eight other states are significantly longer than the terms proposed in SJR 15: Florida (6 years supreme, 6 years circuit), Iowa (8 years, 6 years), Nebraska (6 years), New Mexico (8 years for appellate, 6 years for district), South Dakota (8 years for supreme court), Tennessee (8 years supreme court), Vermont (6 years), Wyoming (8 years for supreme, 6 years for district court).

Only three states have retention terms even approaching the terms proposed in SJR 15: Arizona (6 years supreme, 4 years superior), Kansas (6 years supreme court, 4 years district court), Oklahoma (6 years supreme court, 4 years district court).

The Judicial Council's thorough evaluation process is more effective in ensuring public accountability than shorter retention terms. Alaska has a system of judicial performance evaluation that is used as a model throughout the United States and in many other countries. The Judicial Council has created a system in which more than 7,500 people in 1998 had an opportunity to critique judicial performance. Citizens commenting included jurors, citizens at public hearings, police, probation officers, social workers, court employees, attorneys and independent court watchers. Their input was summarized and considered by the Judicial Council along with detailed information about appellate affirmances and reversals, peremptory challenges, promptness, conflicts of interest and other aspects of performance. The information was available throughout the state in news articles, on the Internet, in the Alaska Voters' Pamphlet and through other media.

The Judicial Council already conducts mid-term evaluations of judges. The Council conducts attorney and peace officer surveys every two years of judges who are on the ballot that year, or who will be on the ballot 2 1/4 years in the future. The mid-term evaluation gives judges a chance to improve performance and the Council advance notice of any problems.

Voters already have an early opportunity to vote on supreme court justices and superior court judges. Alaska's retention system requires newly appointed superior court judges and justices to first stand for retention after a short, probationary term (three years after appointment). This evaluation period gives judges early feedback on their performance and gives voters an early chance to assess the judges.

Conclusion. Alaska already has a system that emphasizes both judicial accountability and judicial independence. A thorough evaluation gives Alaska voters more information on judicial performance than is available anywhere else in the world. The judicial independence so prized by our constitutional drafters allows courts to protect the constitutional rights of Alaskans. Shortening retention terms as proposed in SJR15, shorter than in any merit selection state, will upset this delicate balance. The change is unnecessary, expensive, and would discourage quality judicial applicants. Ultimately, the goal of the Judicial Council is to maximize judicial excellence. This proposal is counterproductive to that goal.

Sponsor Statement – SJR 15 (1999)

SJR 15 proposes amendments to the Constitution of the State of Alaska that are designed to bring a measure of public involvement to the judicial selection process, and to increase the judicial branch's accountability to Alaskans. It does so in three ways.

First, SJR 15 allows the governor to fill court vacancies by appointing any attorney who meets the qualifications set out in the constitution and state statutes. This differs from the current system, in which the governor's choices are limited to only those nominees selected by the Alaska Judicial Council (AJC), a body which has little political accountability. Three of the six voting members on the AJC are selected by the Alaska Bar Association and are not required to undergo any type of confirmation process. The other three are non-attorney members appointed by the governor and subject to legislative confirmation. Since AJC members serve lengthy six-year terms, and only half are chosen by elected officials accountable to the voters, opportunities to change the composition of the council are exceedingly rare.

Under Article IV, Section 5 of the Alaska Constitution, the AJC is allowed to submit as few as two names to the governor to fill each judicial vacancy. Out of the thousands of attorneys in Alaska, the governor can choose only among those hand-picked few approved by AJC. This makes the governor's appointment power largely ceremonial. A committee of six persons exercises near total control over who is permitted to serve in one of the three branches of state government. There is no other example in our constitutional order of such enormous power being concentrated in the hands of a few non-elected functionaries. It is also noteworthy that three of the six AJC members are attorneys who are permitted to represent clients in the courtrooms of judges who may some day apply and be considered by the AJC to fill future vacancies on higher courts.

The second change proposed by SJR 15 is to require legislative confirmation of the governor's appointments to fill vacancies on the superior court and supreme court. This is similar to the federal system, in which the president's appointees to fill vacancies on the federal bench are confirmed by the U.S. Senate. Many other states also require some form of legislative confirmation, which allows the public to participate in the process through their elected representatives. Confirmation hearings provide a valuable opportunity for judicial nominees to be questioned about their philosophy on interpreting and applying statutory and constitutional law.

Finally, SJR 15 would increase the frequency of judicial retention elections. Currently, each superior court judge and supreme court justice is subject to approval or rejection by the voters at the first general election held more than three years after he or she is appointed. After the initial retention election, supreme court justices are up for approval or rejection every tenth year and superior court judges every sixth year. SJR 15 changes these intervals to six years for supreme court justices and four years for superior court judges. This change will provide Alaska voters more frequent opportunities to assess the performance of those who serve us in the judicial branch of government.

Prepared by Mike Pauley, Staff Aide to Senator Loren Leman (907-465-3841)
Last updated: March 22, 2000

(1999)

Resolution Proposes Increased Accountability from Judiciary

Juneau – A proposed constitutional amendment introduced today by Senator Loren Leman (R-Anchorage) and Senator Dave Donley (R-Anchorage) will provide increased accountability from state judges and change the process for filling judicial vacancies.

"The role of the court system in Alaska government has changed in recent years, and this change has not been for the better," stated Senator Leman. "Increasingly, state judges have abandoned their constitutional role as *interpreters* of the law, and are instead beginning to *write* the law. But this is the responsibility of elected public officials, who are accountable to the people. If judges continue to act as policymakers, then we need to allow the voters and the other two branches of government to place some checks on their growing power."

Senate Joint Resolution 15 provides for more frequent retention elections of judicial officers. Supreme court justices would appear on the ballot *once* every six years, instead of the current ten year term. Likewise, superior court judges would appear on the ballot every fourth year instead of every six years. SJR 15 also changes the judicial appointment process by allowing the governor to appoint any licensed attorney in Alaska to fill judicial vacancies, instead of limiting the governor's selection to a small list of nominees approved by the attorney-dominated Alaska Judicial Council. The governor's judicial appointees would not take office until confirmed by a majority of the legislature meeting in joint session, just as the U.S. Senate confirms all Presidential appointees to the federal courts.

"This amendment will help restore the delicate balance of power between our three branches of government," commented Senator Leman. "Judges are servants of the people, similar to other government officials, and must be accountable to the people." SJR 15 will allow the governor, the legislature, and the voters to have greater input in the judicial selection process.

Senator Donley noted that the Supreme Court's *Bess v. Ulmer* decision last year provides a vivid example of why judicial reform is needed. "In the *Bess* decision, the Supreme Court denied the people of Alaska their right to vote on a constitutional amendment related to prisoners' rights, without even allowing the parties to brief the issue. This amendment was designed to correct the worst excesses of the flawed *Cleary* settlement, as well as several other court decisions giving convicted prisoners in Alaska special rights. With the *Bess* ruling, voters have been denied the opportunity to correct this court's previous flawed decisions. That sets a dangerous precedent that undermines democratic self-government in Alaska."

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alaska judicial council

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The Alaska Judicial Council Opposes Shortening Retention Terms as Proposed by SJR 22

Alaska's Constitution strikes the right balance between public accountability and judicial independence. Even a cursory review of the minutes of the Constitutional convention shows that Alaska's Constitutional delegates worked hard to create a judicial merit selection system that delicately balances the public's right to an accountable judiciary with the important goal of an independent judiciary able to protect the Constitutional rights of citizens. The current proposal to change retention terms would upset that balance and damage the integrity of Article IV. Indeed, the drafters of our constitution specifically considered and rejected lowering the retention term for supreme court justices to six years. The American Judicature Society recommends retention terms of at least eight years.

Shorter terms discourage qualified attorneys from applying. Shorter retention terms, with the lesser job security they entail, will discourage highly qualified judicial applicants. This will be especially true for experienced and successful private practitioners. The result of SJR 22 may be a lesser qualified judiciary with less experience representing private citizens and businesses.

Increased numbers of judges on the ballot decrease voters' scrutiny of individual judges. At each general election voters are bombarded with information about candidates and ballot propositions leading to what are referred to as "bed-sheet ballots." Voters already have limited time to study information on judges standing for retention. (There were 30 judges on the ballot this past year.) Increasing the numbers of judges on the ballot would only exacerbate that problem.

Shorter retention terms increase costs. An integral part of retention elections is the retention evaluation process. The Judicial Council gathers extensive information on each judge or justice and provides that information to the voters so that they can make informed retention decisions. Increasing the frequency of retention elections would increase the costs of the evaluation or, in the alternative, lead to a less intensive evaluation. Election costs also would increase.

Alaska's current retention terms are in line with retention terms in other merit selection states. Twenty other states have merit selection and retention laws similar to Alaska's Retention terms. In many of those states they are similar to or longer than Alaska's current terms, while only three of those states have terms as short as the six years proposed in SJR 22.

Retention terms in Colorado, Indiana, South Carolina and Utah are identical to Alaska's. Five states have longer retention terms longer than Alaska's: California (12 years supreme, 6 years trial court), Hawaii (10 year terms), Maryland (10 years), Massachusetts (to age 70) and Missouri (12 years supreme court, 6 years circuit court).

Retention terms in eight other states are longer than the terms proposed in SJR ~~15~~²². Florida (6 years supreme, 6 years circuit), Iowa (8 years, 6 years), Nebraska (6 years), New Mexico (8 years for appellate, 6 years for district), South Dakota (8 years for supreme court), Tennessee (8 years supreme court), Vermont (6 years), Wyoming (8 years for supreme, 6 years for district court).

Only three states have retention terms as short as the terms proposed in SJR ~~15~~²²: Arizona (6 years supreme, 4 years superior), Kansas (6 years supreme court, 4 years district court), Oklahoma (6 years supreme court, 4 years district court).

The Judicial Council's thorough evaluation process is more effective in ensuring public accountability than shorter retention terms. Alaska has a system of judicial performance evaluation that is used as a model throughout the United States and in many other countries. The Judicial Council has created a system in which about 10,000 Alaskans in 2000 had an opportunity to critique judicial performance. Citizens commenting included jurors, citizens at public hearings, police, probation officers, social workers, court employees, attorneys and independent court watchers. Their input was summarized and considered by the Judicial Council along with detailed information about appellate affirmances and reversals, peremptory challenges, promptness, conflicts of interest and other aspects of performance. The information was available throughout the state in news articles, on the Internet, in the Alaska Voters' Pamphlet and through other media.

The Judicial Council already conducts mid-term evaluations of judges. The Council conducts attorney and peace officer surveys every two years of judges who are on the ballot that year, or who will be on the ballot 2 ½ years in the future. The mid-term evaluation gives judges a chance to improve performance and the Council advance notice of any problems.

Voters already have an early opportunity to vote on supreme court justices and superior court judges. Alaska's retention system requires newly appointed superior court judges and justices to first stand for retention after a short, probationary term (three years after appointment). This evaluation period gives judges early feedback on their performance and gives voters an early chance to assess the judges.

Conclusion. Alaska already has a system that emphasizes both judicial accountability and judicial independence. A thorough evaluation gives Alaska voters more information on judicial performance than is available anywhere else in the world. The judicial independence so prized by our constitutional drafters allows courts to protect the constitutional rights of Alaskans. Shortening retention terms as proposed in SJR 22 will upset this delicate balance. The change is unnecessary, expensive, and would discourage quality judicial applicants. Ultimately, the goal of the Judicial Council is to maximize judicial excellence. This proposal is counterproductive to that goal.



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THE ALASKA COURT SYSTEM OPPOSES CSSJR 22 (JUD)

CSSJR 22 (JUD) would shorten the periods between retention elections for supreme court justices and superior court judges. **The proposed shortened retention periods would increase costs to the state, lower voters' scrutiny of individual judges, and are not in line with retention terms in other merit selection states.**

The people of Alaska have the opportunity to approve or reject judges at periodic retention elections. Alaska has the nation's most extensive system for seeking public input on retention. The Judicial Council surveys lawyers, law enforcement officers, jurors, court employees and children's caseworkers. It looks at a judge's disciplinary record, disqualifications from assigned cases, appellate record, and the evaluation by the CourtWatch program. The Judicial Council holds public hearings to allow people to testify about their experiences with judges who are standing for retention. Most of this information is made available to the voters. A judge will be voted out of office if enough voters are unhappy with the judge's performance.

The following periods between retention elections are established in the Alaska Constitution:

- Supreme Court Justice: At first general election held more than three years after appointment, and then every 10th year
- Superior Court Judge: At the first general election held more than three years after appointment, and then every 6th year

Alaska's Constitution strikes the right balance between public accountability and judicial independence. Alaska's Constitutional delegates worked hard to create a judicial merit and selection system that delicately balances the public's right to an accountable judiciary with the important goal of a strong and independent judiciary. The current proposal to change retention terms would upset that balance and damage the integrity of Article IV. The convention minutes show that the drafters specifically considered and rejected a proposal to decrease the retention term for supreme court justices to six years.

Shortening retention terms would decrease voters' scrutiny of individual judges. Shortening retention terms would cause more judges to be on the ballot at each general election. Voters are bombarded with information about candidates and ballot propositions. Voters have limited time to study information on judges standing for retention, and increasing the number of judges on the ballot would only exacerbate that problem.

Shorter retention terms increase costs. The judicial evaluation process is integral to retention elections. The Judicial Council provides voters with important information on the performance of each judge or justice, so that voters can make informed retention decisions. Increasing the frequency of retention elections would increase the number, and thus the cost, of these evaluations.

Alaska's current retention terms are in line with retention terms in other merit selection states. Twenty other states have merit selection and retention laws similar to Alaska's. Retention terms in many of those states are similar to or longer than Alaska's current terms.

Retention terms in Colorado, South Carolina and Utah are identical to Alaska's. Six states have retention terms longer than Alaska's: California (12 years supreme, 6 years trial court), Hawaii (10 year terms), Indiana (10 years supreme court, 6 years superior courts), Maryland (10 years), Massachusetts (to age 70) and Missouri (12 years supreme court, 6 years circuit court).

Retention terms in eight other states are longer than the terms proposed in CSSJR 22 (JUD): Florida (6 years supreme, 6 years circuit), Iowa (8 years, 6 years), Nebraska (6 years), New Mexico (8 years for appellate, 6 years for district), South Dakota (8 years for supreme court), Tennessee (8 years supreme court), Vermont (6 years), Wyoming (8 years for supreme, 6 years for district court).

Only three states have retention terms similar to those proposed in CSSJR 22 (JUD): Arizona (6 years supreme, 4 years superior), Kansas (6 years supreme court, 4 years district court), Oklahoma (6 years supreme court, 4 years district court).

Shorter terms will tend to discourage the most highly qualified people from seeking judicial office. Short-term positions are inherently less attractive because of the lack of job security. Highly skilled attorneys with well established practices will be less inclined to leave their private-sector positions knowing that they must stand for retention at four year intervals.

Voters already have an early opportunity to vote on supreme court justices and superior court judges. Alaska's retention system requires newly appointed superior court judges and justices to first stand for retention after a short, probationary term (three years after appointment). This evaluation period gives judges early feedback on their performance and gives voters an early chance to unseat them if necessary.

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/23/01

FURTHER: Finance

Date of 5-Day Notice: 3/29/01
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4/10/01

Judiciary Committee considered SENATE JOINT RESOLUTION NO. 22

CONSTITUTIONAL AMENDMENT: JUDICIAL OFFICERS' TERMS

Proposing an amendment to the Constitution of the State of Alaska relating to the retention elections for justices of the Alaska supreme court and judges of the superior court.

and recommends:

- be replaced with _____ CS SJR 22 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

- Senate Bill:**
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR # _____

NEW FISCAL NOTE(S):

| Department | Date | Fiscal | Zero | FN# |
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| COURT | 4/4/01 | ✓ | | 1 |
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PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Zero | FN# |
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APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | DO PASS | DO NOT PASS | NO REC | AMEND |
|---------------------------------|---------|-------------|--------|-------|
| <i>[Signature]</i> | | | ✓ | |
| <i>[Signature]</i> | ✓ | | | |
| <i>[Signature]</i> | | | ✗ | |
| | | | | |
| | | | | |
| CHAIR: <i>[Signature]</i> | ✓ | | | |

Subject: SJR 22**Date: Fri, 13 Apr 2001 10:16:31 -0800****From: Kristina Johannes <kdj@gci.net>****To: Senator_Dave_Donley@Legis.state.ak.us**

I would like to testify in favor of SJR 22, judicial retention. Most of the individuals who have testified thus far have all agreed that some accountability of judges to the electorate is desirable. Indeed several who have testified have made reference to the minutes of our Constitutional Convention, which clearly show this concern was also shared by many of the delegates. Our founders were far-sighted in adopting a system in which accountability was to be balanced by stability in order to attract qualified candidates. However, circumstances have demonstrated that what they were trying to achieve has not completely transpired. The current terms are too long to render any meaningful accountability to the electorate.

It has become clear over time that there are two main judicial philosophies: strict interpretation versus judicial activism. These two philosophies are diametrically opposed to each other. They are analogous to the fundamental differences of opinions one finds between two political parties. In a real sense, a partisan spirit can be said to exist in the judiciary with these two philosophies. Therefore I think it is entirely appropriate to increase the accountability of judges to the electorate, who have a great stake in this issue.

To which of these philosophies a particular judge subscribes is a worthy and important issue that the voter takes into consideration in a retention election. Since the philosophy of judicial activism ascribes more power to the judiciary and less to the people through their elected representatives, it is important that voters have a more timely opportunity to weigh in on the actions of the judiciary through more frequent retention elections. Much damage can be done to the Constitution while the electorate is patiently waiting to express their opinion on the matter. Since the Constitution belongs to the people, we should allow the people a greater role in its protection from particular judicial philosophies.

I believe that judicial activism does great harm to our system. If the meaning of a document can be changed by a single person, a judge, why did we put such safeguards on the amendment process? The answer of course is that our founders never envisioned a single person having so much power. The Constitution is like a contract that we have all made with each other. If we want to change the terms of the contract, we should all have a say in it. That's the whole purpose of representative government. Judicial activism seems to be growing in Alaska. Because of this, it is essential that the people have an increased opportunity to express their satisfaction or dissatisfaction with this trend. More frequent judicial retention elections would achieve this.

Thank you,

Kristina Johannes
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12/28/01