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Introduction

The Challenges of Judicial Selection and Retention in the States

How to select state judges has been a recurring issue since the founding of the United States. Between 1946 and 2018, 23 of the 38 states that were using some form of popular election for their state supreme courts made significant changes to their methods of selection and/or retention.[1] The most common change was a switch to a yes–no referendum for retention of judges, what is known as a "retention election." A total of 18 states switched to retention elections with 3 of those states continuing to use partisan elections for initial terms and the other 15 states relying on appointment for initial selection; 2 of the 15 had previously switched from partisan to nonpartisan elections.[2] Five additional states switched from partisan to nonpartisan elections. Overall, fifteen states entirely stopped using partisan elections for their supreme courts, six states abandoned nonpartisan elections, and one state abandoned any use of elections for its highest court between 1946 and 2018.[3] Many similar changes were made for lower level courts, although fewer states shifted away from partisan or nonpartisan elections. During this period, only two states that had stopped using partisan elections switched back:[4] Tennessee in 1974, from a system combining

[1] In my reference here and throughout the book to "state supreme courts," I include the New York Court of Appeals, which is the court of last resort in New York; I exclude what is called the "Supreme Court" in New York, which encompasses both the highest trial court and the intermediate Court of Appeals.

[2] The count of 15 excludes New Mexico even though the controlling law makes it appear that all judges are initially appointed. This is explained in Chapter 9. In a nonpartisan election, candidates are not selected by the parties and no party labels appear on the ballot.

[3] Two states, Florida and Utah, initially switched from partisan to nonpartisan elections, and then from nonpartisan to a system using retention elections (only for appellate courts in Florida).

[4] Prior to these two switches back to partisan elections, the last two to do so were Florida, which instituted partisan elections for Circuit Court judges who had, since Reconstruction, been appointed by the governor (see www.judicialselection.us/judicial_selection/reform_efforts/formal_changes_since_inception.cfm?state=FL, accessed September 2, 2017), and Pennsylvania, which in 1921 repealed a 1913 law making appellate elections nonpartisan and reverted to partisan elections for those elections (see www.judicialselection.us/judicial_selection/reform_efforts/formal_changes_since_inception.cfm?state=PA).

gubernatorial appointment with retention elections for its Supreme Court,[5] and North Carolina in 2016–2017 from nonpartisan elections.[6]

In 1971 the Democratic-controlled Tennessee legislature passed a slightly modified version of what was called the Missouri Plan, after the state first that adopted it. The basic Missouri Plan consists of three elements: nomination by a screening body, usually referred to as a nominating commission; selection from the list of nominees by the governor; and periodic retention elections. Proponents of this system have dubbed it "merit selection." Because that label has also been applied to nonelectoral systems that use a nominating commission to constrain the appointing authority, I will use the label Missouri Plan for systems incorporating the three core elements, including systems that include a requirement of some form of legislative confirmation of the governor's choice.[7]

In 1972, before any vacancies occurred on the Tennessee Supreme Court, a Republican, Winfield Dunn, was elected governor, and under the system adopted in 1971, he was to have the opportunity to appoint four justices prior to the 1974 election. This led the legislature, still controlled by the Democrats but without a veto-proof majority, to repeal the modified Missouri Plan as applied to the state's Supreme Court, leaving it in place for the other two appellate courts. Not surprisingly, Dunn vetoed the repeal. He had also vetoed legislation creating a second state medical school, which would compete for resources with the existing medical school located in the governor's hometown. The governor's vetoes of both measures were eventually overridden as a result of a vote swap agreed to between the Democratic House speaker and a Republican representative from the district where the new medical school would be built.[8] Elections for the Tennessee Supreme Court reverted to partisan elections, with nominations made at party conventions.[9] As is discussed in Chapter 5, a further-modified version of the Missouri Plan was to be readopted in 1992. In 2014 the nomination requirement was dropped in response to a drive by conservative interests to again reinstitute partisan elections.

[5] See Chapter 4.
[6] See Chapter 2.
[7] The original Missouri Plan, referred to at the time of its adoption as the "Missouri Nonpartisan Court Plan," included specific provisions as to the selection of members of the nominating commission, how long a judge would serve prior to facing the electorate for retention, and the percentage of voters who had to support retention; for details, see Richard A. Watson and Rondal G. Downing. *The Politics of the Bench and Bar: Judicial Selection under the Missouri Nonpartisan Court Plan* (New York: John Wiley & Sons, 1969), 13–14.
[8] See Alan Wilson, "Demos Deal Two Blows to Dunn," *Clarksville Leaf-Chronicle* (February 15, 1974), 2.
[9] While nominations were formally made by the party conventions, in practice the party executive committees put forward a slate of candidates that was adopted by the convention; see Tom Humprhey, "'Choice' Deceptive Term in Partisan Judge Elections," *Memphis Commercial Appeal* (September 16, 2012), 1, http://infoweb.newsbank.com.ezp2.lib.umn.edu/resources/doc/nb/news/1415EC4867A4C9D8?p=AWNB, accessed September 2, 2017.

In the early 2000s, North Carolina changed judicial elections for most of its courts, including all appellate courts, from partisan to nonpartisan.[10] Then, in 2015, the North Carolina House of Representatives passed a bill that would have returned all judicial elections to the partisan format, complete with partisan primaries. However, the version passed by the state Senate and signed into law was more limited, applying only to elections for the Court of Appeals. Under the law that went into effect for the 2016 elections, candidates for that court were required "at the time of filing the notice of candidacy . . . [to] indicate on the notice of candidacy the political party recognized under Article 9 of this Chapter with which that candidate is affiliated or any unaffiliated status."[11] The ballot for the Court of Appeals included the party affiliation information. If there were more than two candidates, a blanket primary (sometimes called a "jungle primary") would be held, with all candidates regardless of party running together,[12] with the top two candidates going on to the general election.[13] As is discussed in Chapter 2, this change was to be only the first of a series of changes made over the next two years that returned all judicial elections for North Carolina state judges to partisan ballots.

Why would North Carolina switch back to partisan elections when the national pattern since 1946 had been to move *away* from partisan elections, with many states abandoning the use of any form of contested election? An examination of the political situation, and the later changes that were proposed and then enacted, makes it clear that the goal was to advantage Republican candidates for judgeships. In 2013, for the first time in more than a century, Republicans had gained control of the two "political" branches of the North Carolina government, winning both chambers of the legislature and the governorship. Over the next four years, North Carolina Republicans sought to solidify their control of state government: passing restrictive voting laws that targeted likely Democratic voters, gerrymandering congressional and legislative districts, abolishing public funding of some elections, and changing judicial elections in ways that they hoped would advantage Republican candidates. Even with the election of a Democratic governor in 2016, Republicans retained a veto-proof majority in both houses of the legislature, which allowed them to continue those efforts.[14]

[10] As is discussed in detail in Chapter 2, the same change had been made a few years earlier for one of the state's trial level courts.

[11] House Bill 8, G.A. (N.C. 2015), accessed September 2, 2017.

[12] The only other state using this system for at least some judicial elections is Louisiana, which adopted blanket primaries in 1977; see Herbert M. Kritzer, *Justices on the Ballot: Continuity and Change in State Supreme Court Elections* (New York: Cambridge University Press, 2015), 40, n.15.

[13] See Mark Binker, "Bill Requires Court of Appeals Candidates to List Parties," WRAL (September 29, 2015), www.wral.com/bill-requires-court-of-appeals-candidates-to-list-parties/14935703/, accessed July 21, 2017.

[14] See John Zengerle, "Is North Carolina the Future of American Politics?" *New York Times Magazine* (June 25, 2017), online version dated June 20, 2017, www.nytimes.com/2017/06/20/magazine/is-north-carolina-the-future-of-american-politics.html?_r=0, accessed July 24, 2017.

In contrast to developments in North Carolina and Tennessee, most of the changes to judicial selection in the post–World War II era seemingly had the goal of reducing the role of traditional politics, particularly partisan politics, in judicial selection and retention. One mechanism for this was the shift to nonpartisan elections. A more prominent mechanism was the adoption of constraints on who could be appointed to judicial positions by requiring potential appointees to be nominated by a screening body, the argument being that the focus of screening bodies would be on the candidates' professional qualifications. The nominating commission is one of the central elements of the basic Missouri Plan, versions of which were adopted in fifteen states for some or all courts. However, the requirement of nomination by a screening commission was also added to systems that did not include all three elements of the Missouri Plan. Five states that did not use any form of popular election added a nominating commission to systems of gubernatorial appointment, sometimes in addition to a requirement of legislative confirmation and sometimes replacing such a requirement. South Carolina, where judges are elected by the legislature, added a requirement that the candidates for legislative election be nominated by a judicial merit selection commission. Seven states that continued to use popular elections for some or all courts added the requirement that the filling of interim vacancies by gubernatorial appointment be from a list of candidates nominated by a screening commission.[15]

However, as becomes clear in several chapters of this book, changes that appear on their face to have the goal of reducing partisanship can be intended to preserve the power of one political party or group. For example, Georgia and Mississippi shifted to nonpartisan elections in the 1980s and the 1990s, and similar switches occurred in North Carolina and Arkansas during the first decade of the current century. These changes might have been intended to limit traditional political influences, or they might have been made to protect Democratic incumbents during the period when the one-party Democratic South was fading. As the various chapters show, this was clearly true in North Carolina and somewhat true in Arkansas, but not a major factor in Georgia or Mississippi.

One can also ask why changes did not occur in some states where they were proposed. For example, in 2007 the Quie Commission, reacting to the U.S. Supreme Court's 2002 decision in *Republican Party of Minnesota v. White*,[16] advanced proposals to change Minnesota's judicial selection system from one using nonpartisan elections to a Missouri Plan system.[17] Although the proposal received some positive attention in the Minnesota state legislature and strong support from several former governors, current and former members of the Minnesota Supreme Court, and

[15] This count includes New Mexico, which has its own unique system; see Chapter 9.
[16] 536 U.S. 765 (2002).
[17] Al Quie, chair, Citizens Committee for the Preservation of an Impartial Judiciary, Final Report and Recommendations (March 26, 2007), www.mnbar.org/docs/default-source/judiciary-committee/citizenscommfinalreport032607.pdf?sfvrsn=0, accessed October 29, 2017.

former vice-president Walter Mondale, it was not adopted.[18] As is discussed in Chapter 13, at least part of the reason for this result was a lack of interest, if not outright opposition, from Republicans in the state legislature.[19] This opposition came at a time when the Republican Party was beginning to endorse candidates in Minnesota judicial elections, and it would seem reasonable to infer that at least some in the Republican Party believed that party-endorsed candidates would have a significant chance of defeating incumbents appointed by Democratic governors.

OUTLINE OF THE BOOK

This book explores the broad question of the dynamics behind states changing how their judges are selected and retained. There are three primary subquestions:

(1) What are the goals of those seeking to alter how state judges are selected and retained?
(2) What explains the timing of changes that do occur?
(3) Why are some efforts successful and others unsuccessful?

To answer these questions, I examined all major changes in state judicial selection systems that occurred between 1980 and 2018, plus the unsuccessful efforts that got significant traction. The former include changes that occurred in 13 states and the latter include unsuccessful efforts in 11 states. Two states had both successful and unsuccessful efforts, which makes a total of 22 states that I considered.

In the balance of this first chapter, I explicate the theoretical framing that I began this study with, present a brief history of state judicial selection in the United States, and summarize the changes that were made and the changes that were proposed but failed to be enacted. The chapter concludes with a brief methodological note describing one measure that I use in many of the chapters and a brief discussion of sources.

The remainder of the book has three parts plus a concluding chapter. Part I consists of four chapters, each considering one of four states – North Carolina, Arkansas, West Virginia, and Tennessee – where the successful efforts to make major changes to judicial selection reflected clear partisan considerations. As some of those chapters show, the nature of the partisan interests was not always as straightforward as one might expect.

Part II consists of five chapters covering a total of seven states (Georgia, Mississippi, Utah, New Mexico, Connecticut, Rhode Island, and South Carolina)

[18] See Barbara L. Jones, "Minnesota Senate Broaches the Subject of Judicial Elections," *Minnesota Lawyer* (February 11, 2008). There was also opposition from a number of groups, including many trial judges who feared that they might face last-minute opposition such that they would not be in a position to mount a response.

[19] Michelle Lore, "Judicial Election Reform Proponents Move Forward: Undaunted by the Incoming GOP Majority," *Minnesota Lawyer* (November 29, 2010), https://minnlawyer.com/2010/11/24/judicial-election-reform-proponents-move-forward/, accessed November 27, 2019.

where the impetus for change came more from the legal subculture side of the divide. Sometimes the precipitating factor was scandal and at other times it was part of a broader effort aimed at modernizing the state's judicial system. Importantly, even if the primary factor was not partisan advantage, there were often elements of partisanship involved.

Part III looks at unsuccessful efforts at change in a total of eleven states.[20] In eight of these states – Florida, South Dakota, Nevada, Ohio, Minnesota, Pennsylvania, Texas, and New Hampshire – the motivation was largely one of good government, although the opposition in some was clearly more partisan in its motivation. In two of these states – Florida and South Dakota – voters had previously approved a Missouri Plan for appellate courts, but then rejected that system for trial courts. In another two of the seven – Nevada and Ohio – voters rejected Missouri Plan proposals for some or all courts, three times in Nevada. In the three remaining states – Missouri, Kansas, and Oklahoma – efforts for change were precipitated by state Supreme Court decisions that came under attack by conservatives; in all three, the effort was to eliminate the role of a nominating commission that constrained governor's choice of appellate judges. In Kansas, the legislature was able on its own to eliminate the nominating commission for the state's intermediate appellate court, but in none of the three states was the legislature able to get the constitutional amendment on the ballot as is required to make a similar change for the courts that are beyond the direct control of the legislature.

The concluding chapter returns to examine the usefulness of my original organizing framework. I find that although the distinction between the legal and democratic subcultures carries some weight in the analysis, the case studies make

[20] Absent from this list, and from the following chapters of this book, are Louisiana and Alabama.

Louisiana is incorrectly listed as a state where voters (in 1989) rejected a proposal for a Missouri Plan system. In 1986, a group of African American lawyers filed suit, claiming that the districts used for judicial elections in Louisiana violated the 1965 Voting Rights Act. One of the ideas that came up during the litigation and in the legislature was to implement a variant of the Missouri Plan. A listing of unsuccessful proposals for "merit selection" published by the American Judicature Society (www.judicialselection.us/uploads/documents/Merit_selection_chronology_1C233B5DD2692.pdf, accessed June 8, 2019) seems to say that the proposal got to the voters and was "soundly defeated." However, the two proposals presented to the voters dealt only with districting, not with the method of selection. The suit was eventually resolved by creating several majority African American judicial electoral districts. A proposal that would create a system combining initial contested elections with retention elections for subsequent terms (similar to the system used in Illinois, New Mexico, and Pennsylvania), did pass at least one chamber of the state legislature. However, despite support from some quarters for a Missouri Plan system, the core issue throughout the litigation was not the method of selection but underrepresentation of African Americans on the bench.

In the 1990s there was a brief flurry of activity in Alabama, with proposals advanced both for a Missouri Plan system and for a shift from partisan to nonpartisan elections. Although there was some support for a change to nonpartisan elections in the legislature – proposals were approved by committees – there was never any floor action; see Glenn C. Noe, "Alabama Judicial Selection Reform: A Skunk in Tort Hell," *Cumberland Law Review* 28 (1998), 223–224.

clear that the politics of judicial selection/retention change are both more complex and subtler. The chapter also discusses two interesting phenomena that come out through the case studies. The first is that groups that were once inclined to be prime backers of systems limiting the role of the electorate and using nominating commissions to constrain whom governors (or legislators) could select for judgeships have switched positions and now tend to favor elections and disfavor the use of constraining nominating commissions. The second is the greater willingness of voters to support Missouri Plan systems for appellate courts than for trial courts. One could make the argument that it is the appellate judges, particularly state supreme court justices, who are the most involved in making policy and hence should be subject to accountability through elections; in contrast, most of the work of trial judges is highly routine and their decisions tend to be highly constrained by the law and are subject to at least one level of appellate review as a matter of right.

The last chapter ends with a report of the results of a brief survey asking respondents to rate the importance of fourteen characteristics, half related to political qualifications and half to professional qualifications, as considerations in who should be elected or selected to be state judges. Each respondent made separate ratings for trial court judges and justices of the state supreme court. The survey shows clearly that professional qualifications dominate over political qualifications – also this is less so for trial courts than for the state supreme court.

LEGAL AND DEMOCRATIC SUBCULTURES: THE EVER-PRESENT TENSION

In their 1970 book, Richard Richardson and Kenneth Vines distinguished between what they called the legal and democratic subcultures as important in understanding the courts. Their interest was in decision-making by the lower federal courts, and they sought to emphasize that "courts engage in some activities which are usually seen as legal and others which are commonly identified as political."[21] The legal and democratic subcultures are, according to Richardson and Vines, aspects of the larger American political culture and involve fundamental orientations toward aspects of the judiciary including:[22]

> (1) cognitive orientations that concern knowledge of the judicial process and provide theories and concepts for intellectual mastery of the objects and processes in judicial institutions; (2) affective orientations that deal with the attitudes and feelings held toward judicial actors, roles, and policies of the federal courts; and (3) evaluative orientations that refer to opinions and judgments concerning various aspects of the judiciary.

[21] Richard J. Richardson and Kenneth N. Vines, *The Politics of Federal Courts* (Boston: Little, Brown and Co., 1970), 7.
[22] *Id.*, 7–8.

Although Richardson and Vines were focused on the lower federal courts, these ideas apply with equal – and in some ways greater – force to the state courts at all levels.

In Richardson and Vines's conceptualization, the legal subculture focuses on norms that seek to insulate judges from political pressures, calling on them to rely on legal texts, precedent, and the like in arriving at their decisions. This is part of what Charles Gardner Geyh labels the "legal culture paradigm." In his words, "the legal community has a distinct culture," the norms of which are inculcated in law school, entrenched in practice, and perpetuated on the bench" and "take the role of law as a constraint on judicial behavior seriously."[23] The inculcation of these norms is a central part of American legal education. Law schools do not simply teach budding lawyers the content of the law, but rather to "think like a lawyer," which includes "an appreciation of the pervasive indeterminacy inherent in the nature of an adversarial system in which opposing lawyers offer competing perspectives on applicable facts and law."[24] Central to the legal subculture are the norms of judicial independence and judicial impartiality, but there is also a recognition that the personal values of a judge can influence the judge's decision in situations of ambiguity subject to the law's setting the "range of acceptable outcomes."[25] These norms are reinforced by interaction with professional peers and by the nature of day-to-day legal practice that for most judges precedes going on the bench. The values and norms of the legal subculture appear in codes of behavior for judges and are advanced by groups such as bar associations, law schools, and associations of judges. Thus the legal subculture is closely tied to the professional world in which judges work, reflecting training, norms of analysis, and respect from professional peers. In the chapters that follow, I refer to the goal of "professionalism" or "legal professionalism" as reflecting the norms of the legal subculture.

The democratic subculture reflects the democratic values of representation and accountability. It is epitomized by the idea that the decisions of those holding government positions should reflect the ideals, goals, and needs of the electorate. Elections are the primary mechanism for achieving this. Federal judges are substantially insulated from democratic pressures because of life tenure. Although democratic values have always played some role in the process of selecting federal judges, particularly Supreme Court justices, those values today suffuse the selection process for most, if not all, Article III judges.[26] Even with the changes that

[23] Charles Gardner Geyh, *Courting Peril: The Political Transformation of the American Judiciary* (New York: Oxford University Press, 2016), 8.
[24] *Id.*, 82–83.
[25] *Id.*, 91.
[26] Nancy Scherer, *Scoring Points: Politicians, Activists, and the Lower Federal Court Appointment Process* (Stanford, CA: Stanford University Press, 2005); Sarah A. Binder and Forrest Maltzman, *Advice and Dissent: The Struggle to Shape the Federal Judiciary* (Washington, DC: Brookings Institution Press, 2009); Amy Steigerwalt, *Battle over the Bench: Senators, Interest Groups, and Lower Court Confirmations* (Charlottesville: University of Virginia Press, 2010).

have occurred in federal judicial selection, most states employ systems of selection and/or retention in which the democratic subculture plays a larger role than it does in the federal system.

Central to the democratic subculture is that judges should reflect the politics and policy preferences of the community in which they serve. By "politics," I mean the partisan preferences of the community; that is, in constituencies that are strongly oriented toward one political party, the judges serving that constituency should generally come from that party, perhaps having served in other elective offices as members of that party even where judges are not selected through partisan elections. By "policy," I mean views on specific policy issues, and that judges' own views on those issues should generally accord with the majority view of their constituency. Thus, judges where there is strong support for the death penalty should themselves be supporters of the death penalty; judges in communities that support environmental concerns over property development should be supportive of environmental concerns. Although "politics" and "policy" are distinct, in early twenty-first-century United States, they are closely related. Thus, in the chapters that follow, I often equate the concerns of the democratic subculture with what I label "politics/policy."

Clearly, the ideas of the legal and democratic subcultures have some similarities to the frequently discussed tension between the goals of independence versus accountability. This tension can be overstated because there are mechanisms of accountability beyond the traditional tools of reelection and reappointment. First and most obvious is the appellate process. Except for the U.S. Supreme Court and state supreme courts dealing with questions that are purely matters of state law, decisions of judges are subject to review on appeal.[27] A decision that departs from the law can be appealed and, if appealed, has a significant chance of being overturned. Even factual determination by trial judges has the potential of being overturned if the appellate court finds that the trial judge abused his or her discretion in finding the facts.[28] Except for decisions on the law based on the U.S. Constitution or on a state constitution, the legislature can change the law, both statutory and common law, as found by a court, although the change will generally not apply to parties in previously decided cases. Research shows that this is not infrequent at the federal level.[29] Modifying the law as determined on a constitutional basis is more difficult, although it does not always require a constitutional

[27] Geyh, *Courting Peril*, *supra* note 23, 106.

[28] See www.justia.com/trials-litigation/appeals/, accessed January 30, 2019. Although it is very difficult for an appellate court to overturn facts determined by a jury, it is not uncommon for a trial judge to do so by rendering a judgment notwithstanding the verdict (JNOV) if the judge finds that the jury's finding was unreasonable.

[29] See, for example, William N. Eskridge. "Overriding Supreme Court Statutory Interpretation Decisions," *Yale Law Journal* 101 (1991), 331–456; Jeb Barnes, *Overruled? Legislative Overrides, Pluralism, and Contemporary Court-Congress Relations* (Stanford, CA: Stanford University Press, 2004).

change; the legislature can revise or rewrite the offending law so that it passes constitutional muster.[30] For decisions based on state constitutions, changes to those constitutions are generally easier than those for the federal constitution, and in nineteen states may be initiated by citizen petitions.[31]

A second form of accountability arises through judges' concerns about their reputations among what Lawrence Baum refers to as their audiences.[32] One such audience is their colleagues on the bench.[33] A particularly important subgroup of colleagues in trial courts may be those with administrative responsibilities that include assignment to courthouses and courtrooms, calendar allocations (i.e., the type or types of cases a judge handles), and the distribution of support personnel.[34] A second is the broader legal profession, including practicing lawyers, legal academics, and judges of other courts.[35] A third is the broader public, regardless of whether a judge is concerned about reelection or reappointment.[36] Judges are no different than other people in their desire for respect and esteem, and this desire serves as a form of accountability outside the processes through which political or democratic accountability function.

A third, but more marginal mechanism of accountability, consists of the various procedures for judicial discipline.[37] In all states except Hawaii and Oregon,[38] the legislature has one or more mechanisms through which it can remove a judge from office. These mechanisms are not confined to impeachment, which typically requires the legislature finding that the offending judge has engaged in something akin to "high crimes and misdemeanors." There are also procedures that allow the removal of a judge without legislative action, typically through a disciplinary body, often with a final decision by the state supreme court.[39] A prominent example of the

[30] See J. Mitchell Pickerill, *Constitutional Deliberation in Congress: The Impact of Judicial Review in a Separated System* (Durham, NC: Duke University Press, 2004), 31–61; James Meernik and Joseph Ignagni, "Judicial Review and Coordinate Construction of the Constitution," *American Journal of Political Science* 41 (1997), 447–467; see also Keith E. Whittington, *Repugnant Laws: Judicial Review of Acts of Congress from the Founding to the Present* (Lawrence: University Press of Kansas, 2019).

[31] See "Initiative and Referendum States," www.ncsl.org/research/elections-and-campaigns/chart-of-the-initiative-states.aspx, accessed January 28, 2019.

[32] Lawrence Baum, *Judges and Their Audiences: A Perspective on Judicial Behavior* (Princeton, NJ: Princeton University Press, 2006), 89–90.

[33] *Id.*, 50–60.

[34] Roy B. Flemming, Peter F. Nardulli, and James Eisenstein, *The Craft of Justice: Politics and Work in Criminal Court Communities* (Philadelphia: University of Pennsylvania Press, 1992), 79–80.

[35] Baum, *Judges and Their Audiences*, *supra* note 32, 97–104.

[36] *Id.*, 118–123.

[37] Geyh, *Courting Peril*, *supra* note 23, 108–114.

[38] See www.judicialselection.com/judicial_selection/methods/removal_of_judges.cfm?state, accessed January 28, 2019.

[39] *Id.* Some states also have procedures for voters to recall a judge, although that gets into the realm of the democratic subculture; a recent example is Aaron Persky, a California judge who was recalled after imposing a sentence of only three months on a college athlete convicted of