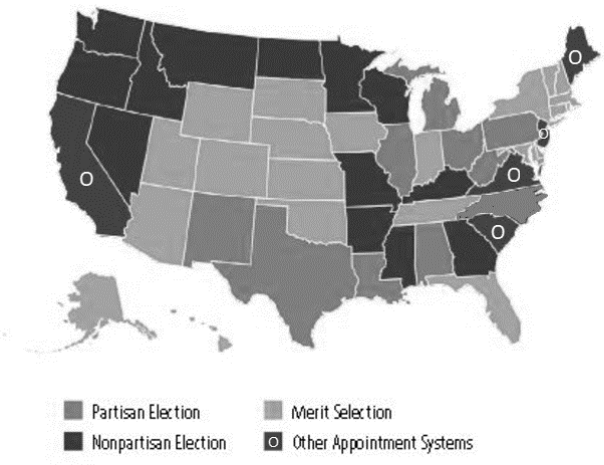
Alternatives for Judicial Selection Used in the United States [1]

States use a wide range of electoral and "merit selection" systems to select judges. Both systems typically involve at least two stages, with a first stage in which candidates are identified, vetted, and winnowed down, and a second stage in which judges are selected. The main systems are:

- Election: partisan or nonpartisan, the system currently used in North Carolina (all judicial elections are now partisan); primaries may be used to select the candidates for the general election; uncompetitive (yes-or-no) "retention elections" may be used once a judge has completed his/her first term
- Merit selection: a formal screening commission nominates a list of approved candidates for each position, from which the governor or legislature then makes selections; gubernatorial appointment may also require legislative confirmation
- Appointment: naming of judges by the legislature or governor without a formal screening process

Different methods can be used for filling open seats (when a judge steps down at the end of a term), renewals (when a sitting judge finishes a term and wishes to stand for a new term), and mid-term vacancies due to retirement, illness, etc. Some systems also include formal assessments of serving judge to improve performance on the bench.

The map shows the systems used for initial selection across the US. There is substantial variation within each model. Many states also use different methods for different levels of the court system.



Nationwide, the most common method for selecting trial court judges (District and Superior Court judges in North Carolina) is nonpartisan election (20 states) followed by merit selection (16 states).

By contrast, merit selection is the most common method for appellate courts (the Appeals and Supreme Courts in North Carolina), used in 24 states for their supreme courts, while 16 use nonpartisan elections. Far fewer states use partisan election or gubernatorial appointment systems without a screening commission. Only Virginia and South Carolina use legislative selection.

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[1] *This is a draft League document prepared for ongoing League work on judicial reform. Author: Dr. Jennifer Bremer, State Coordinator for Fair Elections. Not for quotation. Comments welcome.*
Source: https://www.americanbar.org/groups/crsj/publications/crsj-human-rights-magazine/vol--42/vol-42-no-3/the-politicization-of-state-courts-threatens-fundamental-rights-.html

Why Are There So Many Systems for Selecting Judges? [2]

The fundamental challenge in selecting judges is how to balance judicial independence and judicial accountability. We want judges to be independent, to make decisions based on the law and the facts without fear or favor. At the same time, we want them to be accountable to citizens, reflecting societal values and perceptions on what is fair and appropriate. It is very difficult to observe whether a judge is acting independently or whether s/he is making appropriate decisions on cases coming before the court. There is no really foolproof way to address these challenges, leading to a variety of approaches that offer different levels of independence and accountability.

Judicial selection systems must also: provide an appropriate candidate pool (highly skilled with good judgment, morals, and work ethic); ensure sufficient job security and salaries to attract good candidates; provide ways to discipline judges for misbehavior, safeguard the public from poor choices; and provide appropriate opportunities for diverse public input. These requirements are challenging, to say the least.

Evolution of Judicial Selection Methods in North Carolina's Court System

NC's courts have used several different systems to select judges for the various courts over time. During the early years after independence, the legislature selected the judges, awarding life appointments. Elections were introduced in 1835, initially only for the clerks of the court. The Reconstruction constitution of 1868 and later amendments introduced partisan elections for all judges. Nonpartisan elections began in the 1990s.

By the 1950's, there were over 250 local courts at various levels and hundreds of justices of the peace, most of whom were paid by fees (generally not a good idea). The Bell Commission was established in 1955 to recommend reforms to the structure and operations of the court. Unification of the courts into a single system became its primary goal and was achieved through a constitutional amendment in 1962. This amendment also eliminated appointment of judges, rule-making by the court, court authority to draw districts, and budget flexibility. Many of the commission's other recommendations were not adopted, however, particularly on selection of judges and allocation of responsibilities between the judicial and legislative branches.

Court cases have also played a substantial role in remaking North Carolina's judicial system. For example, the NCGOP successfully challenged use of statewide elections for Superior Court judges, who serve in districts across the state, on the basis that it ensured Democratic victories. Voting rights litigation in the 1980s led to establishment of smaller superior court districts with more uniform population.

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[2] This section draws heavily on the presentation made to the NCGA by James Drennan of UNC-Chapel Hill's School of Government.