

**Reforming the judiciary –
*not as easy as it looks!***

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Topics to be covered

**NC SELECTING
COURTS JUDGES**

**NEW COURT
MAPS CASES**



NC'S COURT SYSTEM

- **Unified court system** created following the Bell Commission in the 1950s +/-40 districts, 8 divisions
- **Trial courts:** handle civil and criminal cases, from divorces to murder and major litigation
 - **District court:** misdemeanors and smaller civil cases, also juvenile court and magistrates—non-jury trials
 - **Superior court:** felonies and larger civil cases, misdemeanor appeals—jury trials
 - Increasing range of **non-traditional services** (e.g., veterans' court, alternative sentencing, drug court)





NC'S COURT SYSTEM

- **Appellate courts:**
 - **Court of Appeals (12 judges)**
 - Appeals from district and superior court
 - Certain governmental case start here or referred by other bodies, e.g. Bd. of Elections
 - **Supreme Court (7 justices)**
 - Considers appeals from Court of Appeals
 - Decides on questions of law, not facts



NC'S COURT SYSTEM

- **Management of the courts**
 - **Administrative Office of the Courts**
 - Handles non-judicial aspects, e.g., payroll
 - Examines court management issues
 - **8 divisions and 40+ districts**
 - Each district also has a district attorney (prosecutor) and public defender office
 - Superior court judges rotate within divisions (also sometimes between)



FEDERAL COURTS

Western District

Middle District

Eastern District



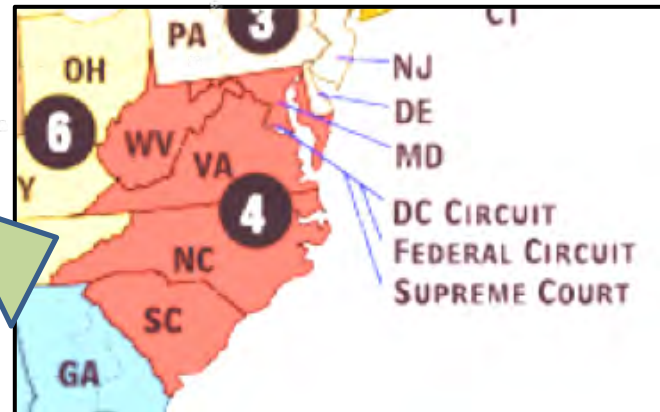
Asheville

Statesville

Charlotte



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Courts affect every part of our society

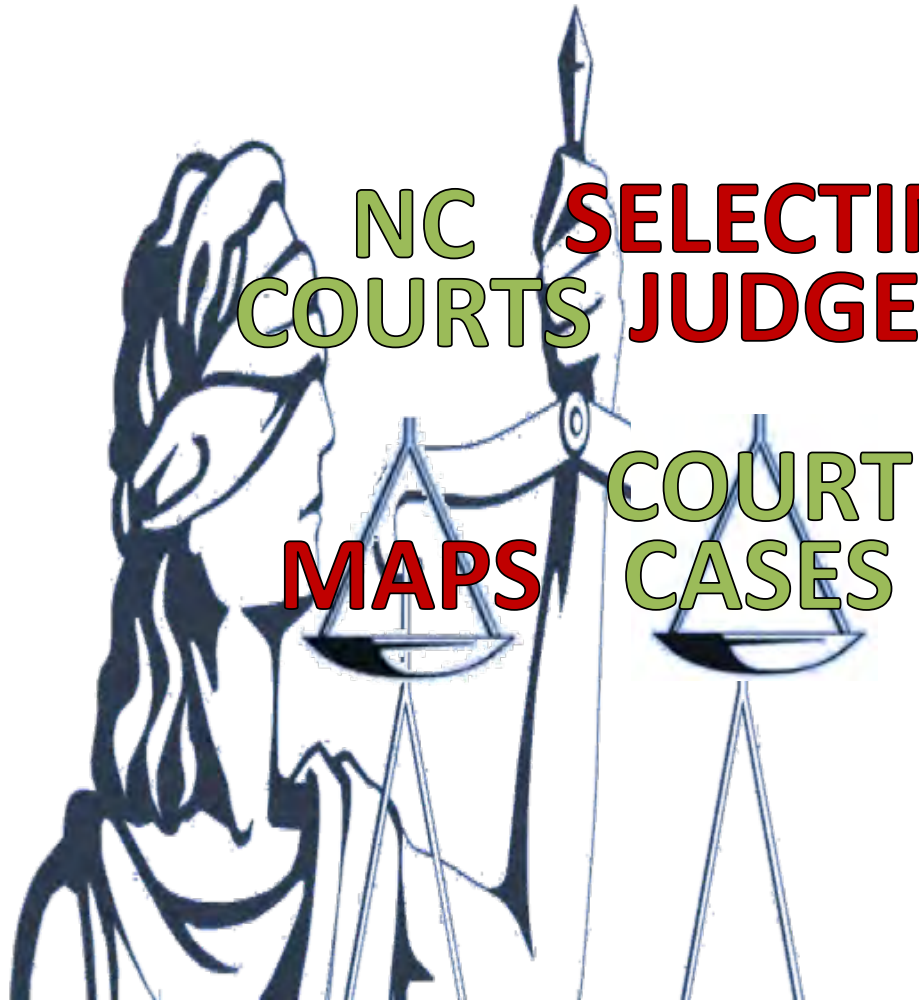
- 2.8 million cases annually in state court
- Criminal: from traffic tickets to murder cases
- Civil: from child custody to constitutional challenges
- Any reform movement is likely to involve one or more court cases
 - Who will decide them?
 - Will they be fair to the poor and people of color?
 - Will they act quickly, based on the facts and the law?

NC courts are key to reform, especially near-term

- Court challenges = best remedy to overcome:
 - Extreme gerrymandering
 - Misuse of racial criteria
 - Imposition of maps on cities and counties
- BUT Court independence in NC threatened by court gerrymandering and "reform"



Topics to be covered



Two major issues:

- Should we change the way we select our judges?
- Should judicial districts be redrawn?



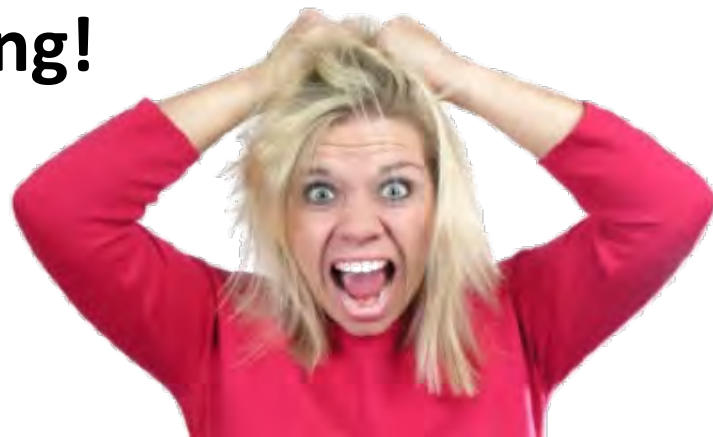
Selecting judges is much harder than it seems!

- We want judges to be **independent AND accountable** – but these **conflict**
- **Judges' performance** hard to **observe or assess**
- **Voters** don't have **much information** or pay **much attention**



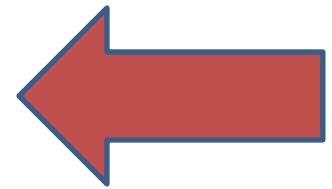
Wait, there's more...

- **Different levels have very different responsibilities**
 - **Traffic tickets vs. constitutional challenges?**
- **Conflicts of interest all over the place**
 - **Legislators/governors don't want to be second-guessed**
 - **Strong political interests and ideology, different ideas on what is fair or balanced**
 - **Campaign funders are mostly lawyers and litigants, money tide is rising!**
- **Major diversity challenges**



How are judges selected in NC?

- All chosen by election, all races now partisan
 - Were partisan for many years (after 1868 constitution)
 - Superior/appellate only made nonpartisan in 2002
 - Used to have public campaign finance (League victory), but now repealed
- Serve 4-year (district courts) or 8-year terms (all others)
- Can run for re-election (until reach mandatory retirement age)
- System is ***actually*** appointment-based
 - Governor fills vacancies by **appointment**
 - Judges run for re-election, but **rarely opposed, rarely lose (so basically most are retention elections)**



So, WHY do we need to change?

- We don't
- Some legislators are not happy that their bills keep being tossed out
- BUT recent avalanche of changes and money flowing into partisan elections may be destabilizing what was a functional system (highly rated among state systems by external rating systems)

So, what are the options?

Four different stages in selecting judges:

- Determine who is eligible**
- Select judges for open positions**
- Reconsider incumbent judges**
- Fill mid-term vacancies**

1. Determine who is eligible

Usually some type of commission

Key questions:

Who is on it? Citizens, judges, lawyers (*legislators?*)

Who selects them?

Named stakeholder groups?

Diversity required?

What information is made public?

None – just the names

Assessment results only

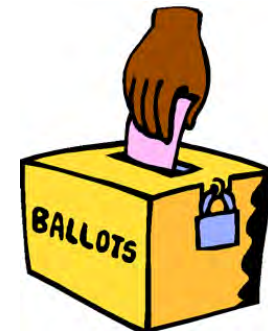
Public process (interviews)

**No
commission
in NC**

2. Select judges for open positions

Three basic approaches:

- **Appointment**
= “You’re my boy!”
- **Merit selection**
= Assessment + Appointment
- **Election**
with or without assessment



2. Select judges for open positions

Three basic approaches:

- Appointment
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with or without assessment

*Sounds
easy,
right?*



Widely-Used Methods of Judicial Selection for State Courts

Merit Selection

Legislative (SC/VA only)

Judicial Merit
Selection
Commission

List of 1-3 vetted
candidates/
position

Legislature votes
to select among
candidates

Optional elements

Missouri Plan

Expert nominating
committee

List of vetted
candidates
(several/position)

Governor
selects from
vetted list

*Legislature
confirms
appointments*

Appointment

*Candidate ratings
(Commission/Bar
Assn/other)*

List of vetted
candidates
(several/position)

Governor
appoints for
extended term

*Legislature
confirms
appointments*

Election

Partisan

*Candidate ratings
(Bar Assn/other)*

Partisan primary

Party candidates
proceed to general
election

Top vote-getter
wins election

Non-partisan

*Candidate ratings
(Bar Assn/other)*

Non-partisan
primary

Top 2 candidates
proceed to general
election

Top vote-getter
wins election

Who uses each system?



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What options are being considered in Raleigh?

ANY change from elections would require constitutional amendment (on primary or general election ballot)

- Governor appoints
- Legislature confirms
- Retention elections

Blue Plan: Federal-style appt., e.g. 1995 SB 971

Step 1: Immediately suspended 1996 elections for appellate courts.
Existing terms extended up to 30 months.
Plan applies when a vacancy occurs.



Step 2: Governor nominates.



Step 3: Each house of General Assembly confirms by majority of members present and voting, generally within 60 days of nomination.



Step 4: At the general election following legislative confirmation, the people vote to confirm or reject the judge for an 8-year term of office.
Retention elections indefinitely.

- Nominating committee
- Governor appoints
- Single 14-year term, can reapply

Orange Plan: Missouri-style, e.g. 2012 SB 458

Step 1: A judicial vacancy occurs.



Step 2: A 15-member Judicial Nominating Commission identifies, solicits, reviews and nominates two candidates. The Commission is composed of:

- the Governor's appointees from lists of three nominees by each of:
 1. The North Carolina Bar Association
 2. The North Carolina Advocates for Justice, Inc.
 3. The North Carolina Association of Defense Attorneys
 4. The North Carolina Association of Women Attorneys, Inc.
 5. The North Carolina Association of Black Lawyers, Inc.
 6. The Council of the State Bar
 7. The North Carolina Conference of District Attorneys
 8. The Commission on Indigent Defense Services
- and non-attorney appointees of (1) the Governor, (2) the President Pro Tem, (3) the Speaker, (4-5) the minority leaders of the Senate and House and (6-7) the majority or minority leaders in the House and Senate of the party opposite the Governor's.



Step 3: Governor must appoint one of the Judicial Nominating Commission's two nominees.



Step 4: The appointee serves a 14-year term and is eligible for re-nomination by the Commission.

- Nominating committee
- Governor appoints
- Single 14-year term, can reapply
- Ruled out by joint committee leadership without much explanation (“performed badly in other states”)
- No role for legislature....

Orange Plan: Missouri-style, e.g. 2012 SB 458

Step 1: A judicial vacancy occurs.

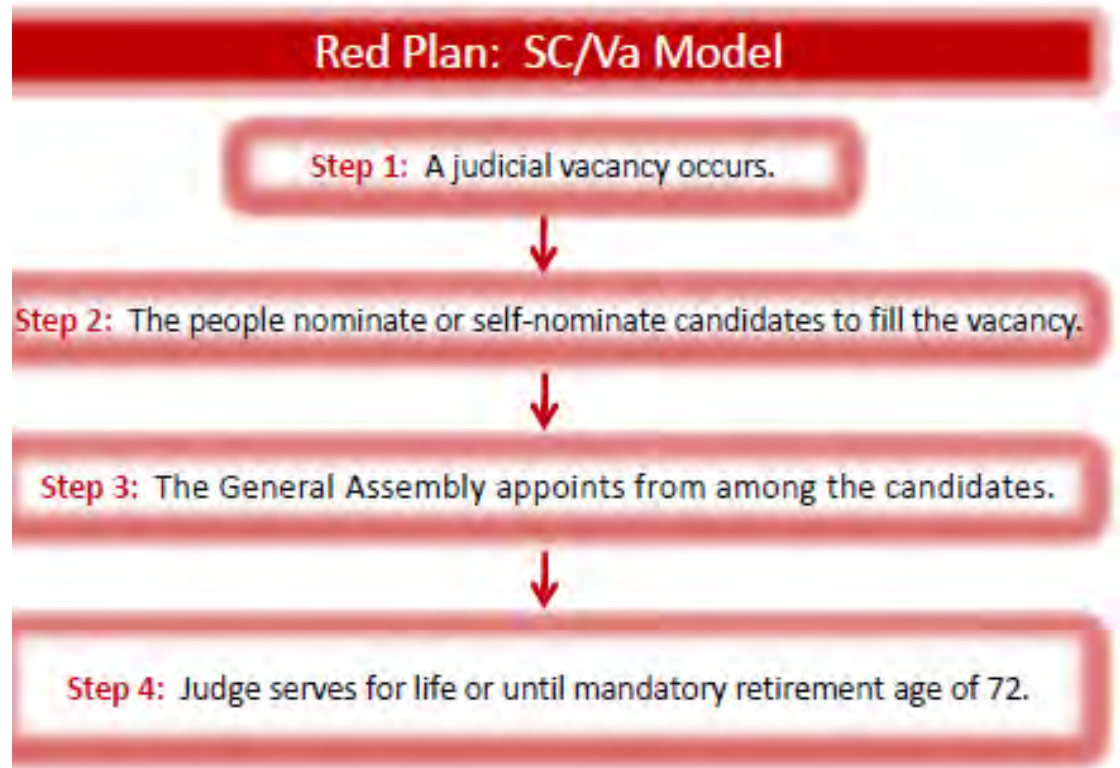
Step 2: A Judicial Nominating Commission solicits, reviews and recommends candidates. The Commission is composed of:

- the Governor appoints members from lists of the following by each of:
 1. The North Carolina Bar Association
 2. The North Carolina Advocates for Justice
 3. The North Carolina Association of Attorneys
 4. The North Carolina Association of Women Attorneys, Inc.
 5. The North Carolina Association of Black Lawyers, Inc.
 6. The Council of the State Bar of North Carolina
 7. The North Carolina District Attorneys
 8. The Commission on Judicial Administration
- and non-attorney appointees: (1) the Governor, (2) the President Pro Tem, (3) the Speaker, (4) the members of the Senate and House and (6-7) the majority and minority leaders of the House and Senate of the party opposite the Governor.

Step 3: The Governor must appoint one of the Commission's two nominees.

Step 4: The appointee serves a 14-year term and is eligible for re-nomination by the Commission.

- Self-nomination
- NCGA appoints
- Lifetime appointment



- Self-nomination
- Commission appointed by Chief Justice assesses, puts forward all “qualified”
- NCGA sends 3+ names to governor
- Governor appoints
- Retention election to one 10-year term during 2nd general election after appointment

Purple Plan: Balanced judicial selection plan

Step 1: A judicial vacancy occurs.

Step 2: The people nominate or self-nominate candidates to fill the vacancy.

Step 3: A non-partisan 7 or 9 member Independent Merit Selection Commission appointed by the Chief Justice to staggered terms evaluates all nominees for statewide judicial openings. Local Independent Merit Selection Commissions evaluate nominees for superior and district court judgeships. The commissions will rate nominees either “Qualified” or “Not Qualified at this Time”. The Merit Selection Commission shall forward all qualified nominees to the General Assembly for further consideration.

Step 4: The General Assembly reviews the qualified nominees submitted by the Independent Merit Selection Commission and forwards at least 3 nominees they consider best qualified to the Governor for consideration.

Step 5: The Governor reviews the qualified nominees submitted by the General Assembly and appoints the nominee he/she considers most qualified to serve a provisional judicial term.

Step 6: At the 2nd general election following the Governor’s appointment the people vote to confirm or reject the judge to a 10 year term of office. After the term the Judge is not eligible for reappointment to the same court.