



PENNSYLVANIANS
FOR MODERN COURTS

Merit Selection Reform FAQ

1. How many states have a merit selection system?

- 6 states use partisan elections to select all their judges.
- 8 states use partisan elections to select supreme court justices.
- 33 states and D.C. use merit selection to choose at least some judges. (This includes elective states that use MS to fill midterm vacancies.)

2. Is merit selection the same as the federal system?

No. Although both systems use appointment and confirmation, there are several key differences.

- Merit selection mandates that the governor appoint from a list selected by the nominating commission. Federal appointers may use a commission to recommend candidates, but are not in any way obligated to follow those recommendations.
- Judges selected through merit selection face a retention (yes-no) election after four years on the bench and then every ten years thereafter. Federal court judges are appointed for life and may only be removed through impeachment.
- In a merit selection system, qualifications are written into the constitution. In the federal system, the President gets to decide qualifications unilaterally.

3. Who picks the pickers?

Elected officials. The Governor appoints 5 members of the commission and the majority and minority leaders of both houses each appoint 2 members (8 total members appointed by the legislature).

- While this bill does not directly include representatives from interest groups (eg: business, labor, teachers, pro-life/pro-choice groups, etc.), the elected officials responsible for nominating commission members have an incentive to include specific constituencies.
- This structure is consistent with a number of other commissions within our government.

4. What is the role of retention elections in merit selection?

Retention elections provide an opportunity for voters to hold judges accountable for their behavior on the bench.

5. Why are retention elections different than partisan elections?

Partisan elections are generally decided by factors such as party affiliation, ballot position, and name recognition which have nothing to do with the qualifications of the candidates.

Retention elections are a yes-no election where voters have the chance to evaluate the performance of the judge and decide whether they deserve to stay on the bench. While recent years have seen some increase in



contentious retention elections, they have been significantly less expensive and nasty than partisan judicial elections.

6. **Does merit selection take the politics out of judicial selection?**

No. Where there are people, there will be politics. However:

- It minimizes the impact of partisan politics (especially important because being a judge is a nonpartisan job).
- It takes the money out of the process of choosing judges.
- With qualifications built into the constitutional amendment, the public can have confidence that judges are qualified.
- The implementing legislation will include provisions mandating transparency.

7. **What is the role of the public in a merit selection system?**

Merit selection provides several opportunities for meaningful participation by the public, including:

- The opportunity to submit information to the nominating commission about the judicial applicants.
- The opportunity to submit information to the Governor about the potential judicial nominees.
- The opportunity to participate in the Senate confirmation process.
- The opportunity to decide whether the judge should stay on the bench through voting in a retention (yes-no) election after four years, and every ten years thereafter.

8. **How expensive are judicial elections?**

Very. Spending in the 2015 judicial elections topped \$16 million. Spending to date in the most recent primary elections alone has hit more than \$4.75 million. It is anticipated that there will not only be huge amounts of money raised by PA lawyers and interest groups but that out-of-state groups and Super PACs will likely make significant contributions directly to candidates and as independent expenditures.