

# Example of essay on should federal judges be appointed or elected: an analysis of...

[Law](#), [Criminal Justice](#)



The United States of America chooses judges in three principle ways. The first is through appointment, in this method, the executive of the state is required to nominate an individual for the position of judge. After the appointment, the state must approve the nominees before they can take up responsibility as judges (Bardes, Shelley & Schmidt, 2011). The federal government, through the mandate of the constitution, follows this method of choosing judges. There are also some eleven states that select their judges through appointment.

The second method that is used in about seventeen states is “ retention election”. In this method, a judge is appointed to the bench by a state executive. At the end of a predetermined term, the public is asked to vote on whether they would like to retain the services of the judge. The final decision is made based on the results of the yes or no vote. If the judge in question is rejected in the vote, the governor appoints another judge who serves for a term before being subjected to a similar vote (Bardes, Shelley & Schmidt, 2011).

The third option is through contested elections. Judges contest for their seats like politicians contest for office. They seek nomination in a political party through a competitive process. Once they win the nomination, the aspiring judge competes with a judge nominee from another party in a general election. The winner serves one term in office before seeking a fresh mandate from the voters through re-election. Twenty two states use competitive elections to select their judges (Bardes, Shelley & Schmidt, 2011).

Many legal scholars strongly oppose the selection of judges through popular

vote because elections tend to make judges favor their supporters, therefore affecting their impartiality. On the other hand, the American people have repeatedly expressed their support for choosing their judges through election. Opinion polls have repeatedly showed that the people support the process overwhelmingly by 65% to 80% each time (Meiners, Ringleb & Edwards, 2012). Only 20% of Americans support the appointment of judges. The proponents of elected judges believe that election by popular vote provides the most reliable way of guaranteeing independence of the judiciary. This is because judges receive their mandate from the people and not the political class. According to Meiners et al. (2012), since judges owe their positions to the people, they are inclined make rulings that protect the interests of the masses rather than the small but powerful ruling class. Elections eliminate political influence from the judiciary. Governors often overlook transparency requirements to appoint individuals who would protect their special interest. The electorate may not be privy to these interests because they are not involved in the process. Americans believe that to avoid puppet judges, judicial elections are the best way to go. Judges who have been elected into office have a short tenure compared to appointed judges who have tenure for life. Elected judges can be replaced by the people if they are not performing. To protect their jobs, elected judges are forced to work harder and deliver better judgments because their re-election depends on their job performance.

Another argument for the election of judges is that part of the responsibility of judges is to make important policy decisions. During judicial elections, judges participate in debates which they use to present their position on

various pertinent issues such as governance, criminal justice and human rights (Meiners, Ringleb & Edwards 2012). The electorate uses these debates to choose judges who would uphold their respective positions on these issues.

The election of judges has been faulted for allowing less qualified judges into office. This is because the electorate is largely unaware and less concerned about the qualifications of the judge vying for office (Neubauer & Meinhold, 2012). The voter is usually moved to vote by their perception of the judge's ability to make judgments that concur with the voter's opinions.

Furthermore, voters often vote for candidates from their gender or race regardless of whether they are the most qualified for the job or not.

The election of judges has been endorsed by a majority of voters much to the chagrin of legal experts such as scholars and judges. Their concern is that the electoral process politicizes the judiciary to the point of tarnishing the integrity of the profession. Judges are often forced to seek campaign funds from law firms and other legal groups that often have a vested interest in the election of the judges (Neubauer & Meinhold, 2012). In the run up towards elections, judges make their decisions using public opinion rather than the law to avoid upsetting the voter. In the end, vote hunting activities diminish the credibility of the profession and the image that the profession enjoys.

Legal experts prefer the appointment method because the appointment process is usually rigorous and largely based on academic qualification, experience and a thorough background check. Neubauer & Meinhold (2012) contend that appointed judges are selected based on their suitability for the

available position. The appointing authority such as the governor, conducts wide consultations among all interest groups before making the final decision. This process allows for gender and racial issues to be considered. An appointed judge enjoys tenure of office. This means that they are free to perform their duties without fear or favor. Consequently, they can deliver their judgments without worrying about jeopardizing or losing their employment (The Faculty Blog, 2012). Judges who enjoy security of tenure are able to uphold judicial independence because they are not subject to any appointing body. Appointed judges can hold controversial opinion, create legal precedents and write quality judgments without fear. This is because appointed judges have a long term view of their careers, a luxury which elected judges cannot afford (The Faculty Blog, 2012).

It is important to note that the appointment of judges is not entirely free from flaws. Most of the appointed judges in the country have strong political connections. Governors and other people who are involved in the appointment process can use their authority to appoint their colleagues, friends and business partners. Just like the electoral process, it is possible for the appointers to overlook merit in the appointment of judges (Neubauer & Meinhold, 2012).

The debate on whether to appoint or elect judges will probably continue for a long time. Studies have shown that there is no marked difference in the overall performance of appointed and elected judges. There is also no marked difference in the gender and racial balance of judicial benches constituted by either appointment or election (Bardes, Shelley & Schmidt, 2011). Both methods of selection have weaknesses which have to be dealt

with.

The best approach would be to combine appointments with a reliable recall provision that will ensure that non-performing judges are replaced. The individuals with the authority to appoint should be accountable for their appointments. There should be wide consultative meetings by all stakeholders, including the representatives of the people. The ultimate goal of finding judges should be to uphold the rule of law (The Faculty Blog, 2012).

## **References**

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