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Judicial Selection in Utah

Jonathan Adams

Policy Analyst

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Roadmap

- General background
- History
- Current landscape
- Judicial selection in Utah
- Contemporary debates
- Q&A

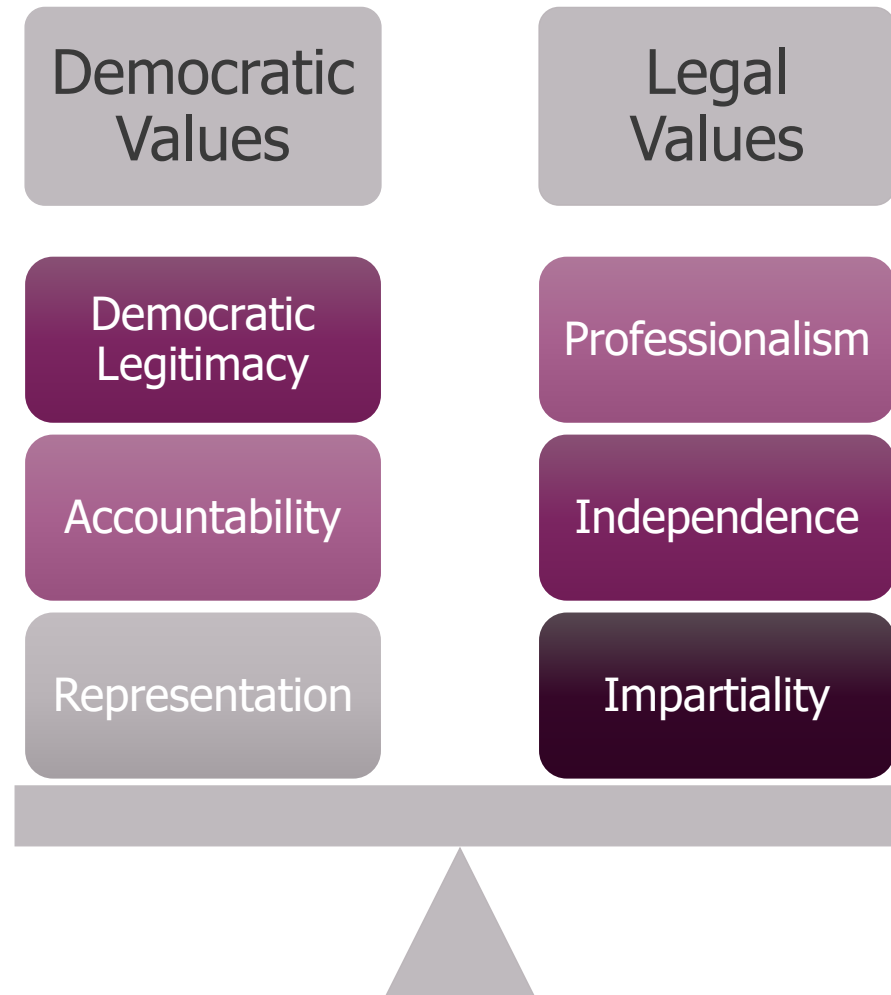


Why Does Judicial Selection Matter?

- Courts shape the country's legal and policy landscape
- Judicial selection may affect the quality and independence of the judiciary
- Judicial selection at the state level is especially consequential
- State courts hear 95% of all cases filed



Striking the Right Balance

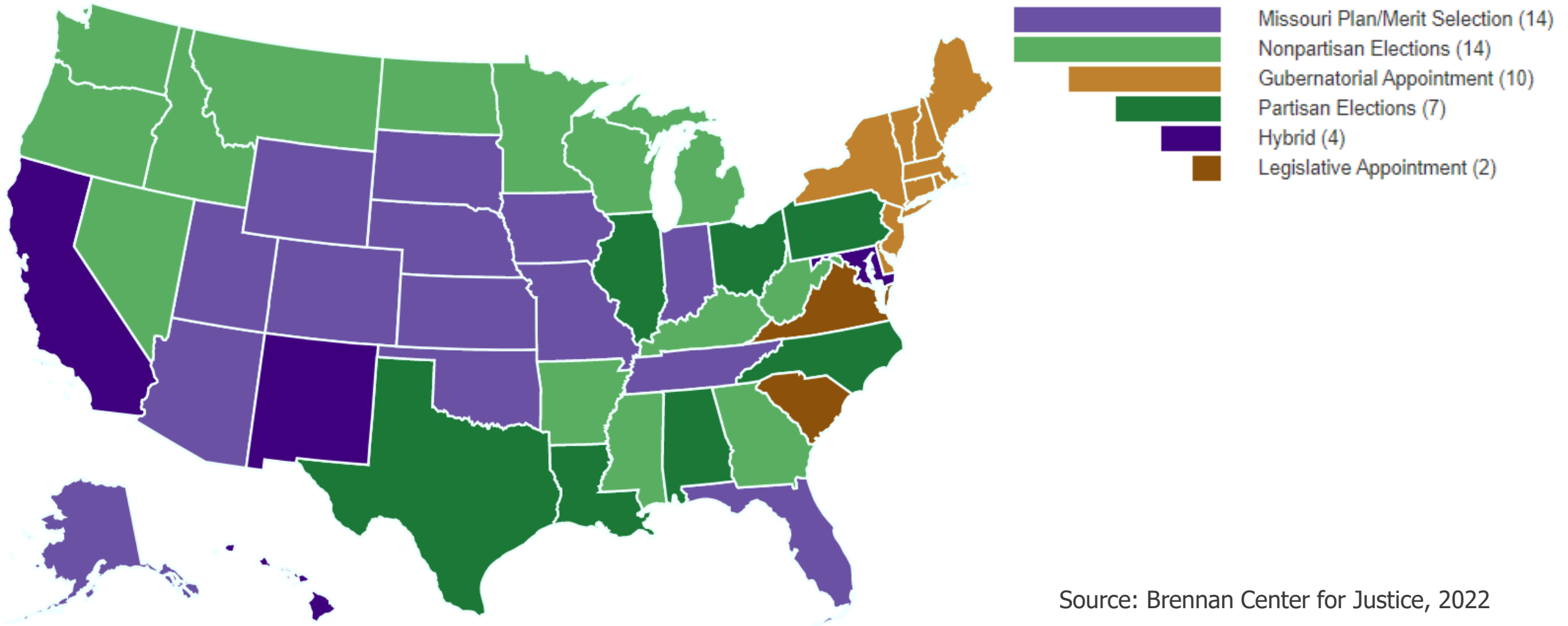


Brief History of Judicial Selection

- **Founding Era:** Gubernatorial or legislative appointments
- **Jacksonian Era:** Partisan judicial elections
- **Progressive Era:** Nonpartisan judicial elections
- **Mid-20th Century:** Merit selection (“Missouri Plan”)
- **Today:** Reforms in Republican states



Judicial Selection Across the U.S.



Source: Brennan Center for Justice, 2022



History of Judicial Selection in Utah

1945: Judicial selection based “solely upon fitness for office without regard to partisan political consideration.”

1949: Merit-based system vetoed by governor

1951: Nonpartisan judicial elections

1967: Judicial nominating commissions + nonpartisan elections

1981: Constitutional crisis over Senate consent powers

1985: Compromise results in current system



Utah's Merit Selection System

1. Judicial nominating commission

2. Governor appointment

3. Senate confirmation

4. Retention election



Judicial Nominating Commissions

- 9 commission, composed of 7 governor appointees
- Requirements
 - US citizens
 - Residents of Utah and judicial district
 - Cannot be legislators
 - Two members selected from Utah State Bar
 - No more than 4 from same political party or members of the bar
- Commission interviews candidates and refers nominees to the governor



Governor Appointment

- Must appoint a nominee within 30 days
 - Otherwise, Chief Justice makes the appointment



Senate Confirmation

- Senate has final review on a judicial candidate
- Senate confirmations:
 - Allows for independent assessment
 - Provides a public process
- Senate review was initially perfunctory, but became formalized in 2003
- Senate holds a confirmation hearing on each judicial candidate and makes recommendation to full body
- 60 days to confirm or process restarts

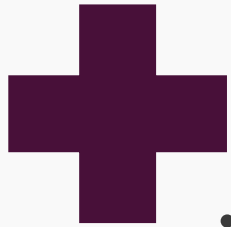


Retention Election

- Supreme Court justices – 10 years
- All other judges – 6 years
- Judicial Performance Evaluation Commission (JPEC) created in 2008 to evaluate judges
- Evaluations based on survey scores and courtroom observations and reported online



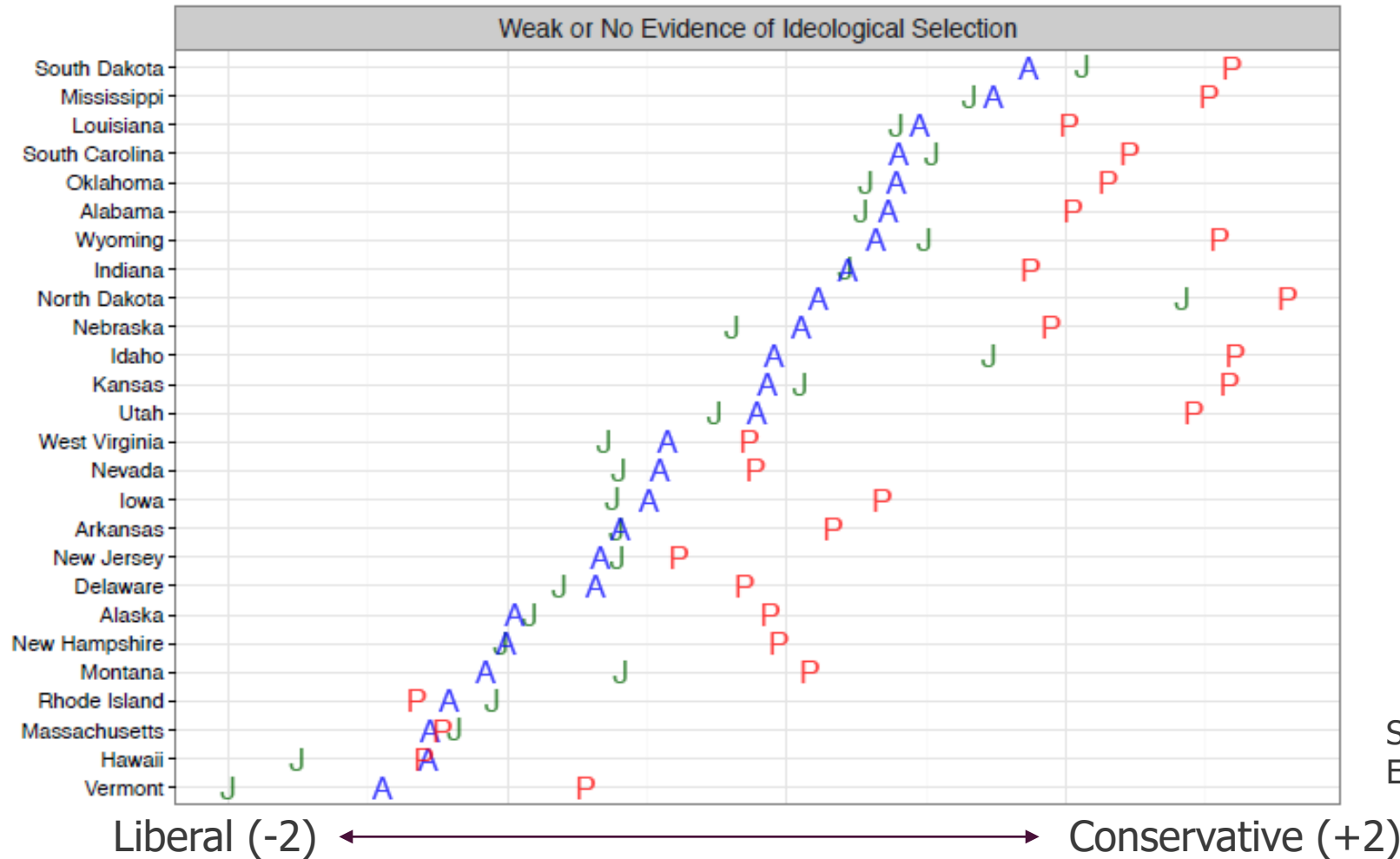
Debating the Merits of Merit Selection



- Selects high-quality judges
 - More prestigious education/experience
 - More widely cited opinions
 - More ethical
 - Enhances judicial independence
 - Increases public trust
- Lacks transparency
 - Less diversity
 - Retention elections ineffective
 - Empowers the Bar, which skews liberal



Ideological Skew of Judiciary



Source: The Journal of Law and Economics, 2017



Questions?



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