



Factsheet: Judicial elections in South Carolina

South Carolina has a system of legislative, merit-based elections for most judicial positions.

Legislators choose judges from a pool of up to three candidates whom the Judicial Merit Selection Commission (JMSC) has deemed qualified for judicial office after receiving feedback from surveys, citizen review groups and the South Carolina Bar Judicial Qualifications Committee (JQC).

To assist South Carolinians in understanding the judicial selection process, the Judicial Independence and Impartiality Committee of the South Carolina Bar has prepared this fact sheet regarding the current process and its history, along with a brief commentary on the importance of having a fair and impartial judicial election process in which the impact of partisan politics is minimized.

How the process works

The South Carolina General Assembly elects Supreme Court justices and judges to the Court of Appeals, the Administrative Law Court, Circuit Court, and Family Court. Elections are held in a joint session of the General Assembly. Each member of the Senate and House of Representatives has one vote and, to be elected, a candidate must receive a majority of the votes cast.

Candidates for each of these judicial positions submit detailed applications to the JMSC, setting forth their background and experience. Prior to the election, all candidates are screened by the JMSC, which is comprised of four members of the public and six Senate and House members.

The screening process includes:

- Interviews and evaluation by the SC Bar's JQC. This includes at least 30 calls made to Bar members about each candidate for vacant judicial seats and 15 calls on incumbent judges. The JQC also conducts interviews with each candidate. The JQC makes its report to the JMSC with recommendations ranging from Well Qualified to Not Qualified.
- Distribution by the JMSC of surveys about each candidate to all members of the Bench and Bar.
- Interviews by the Citizens Committee on Judicial Qualifications, which is comprised of up to 10 public members representing each of the state's five districts: Lowcountry, Pee Dee, Midlands, Piedmont, and Upstate.
- A public hearing before the JMSC.

South Carolina judges must stand for re-election every six years (every 10 years for the Supreme Court).



Legislative delegations confirm the gubernatorial appointments of Masters-in-Equity. Probate judges are elected directly by the public. Magistrate and municipal judges are selected separately.

Improvements to the process

Updates were made to South Carolina's judicial selection system in 1996, which is when the JMSC was formed. See Kevin Eberle, *Judicial selection in South Carolina: who gets to judge?* 13 SC Lawyer 6, 20-25 (2002). Prior to the changes, any person who met the constitutional age and residency requirements could be considered for a judgeship by the General Assembly. Now, the JMSC has the exclusive authority to nominate candidates for the General Assembly's consideration.

Another key change in 1996 was the addition of a requirement that the JMSC forward the names of not more than three nominees to the General Assembly. Previously, the review panel did not have authority to remove names from consideration and sent all candidates—qualified or not—to the General Assembly for consideration. Legislators cannot seek judicial office until one year after leaving the General Assembly or one year after failing to file for reelection to the General Assembly. In addition, no member of the JMSC is eligible to run for a judge or justice position until having been off the JMSC for a year.

Finally, the law prohibits early campaigning by candidates and bans legislators from offering their pledge of support until after the JMSC formally releases its qualifications report. No legislator can trade anything of value, including a pledge to vote for legislation or for other candidates, in exchange for votes for a particular candidate.

Independence and impartiality critical to upholding rule of law

To dispense justice under the rule of law, the judicial branch must be independent of outside influences of any kind from any direction. It is crucial to the integrity of our justice system that judicial elections remain based upon the candidates' qualifications alone, not the coercion of special interests. The introduction of political ideology into our justice system threatens the historical separation of powers and rule of law.

Members of the public, on their day in court, want to appear before an unbiased judge, elected not because of his or her allegiance to special interest groups or campaign contributors, but because of his or her qualifications to serve that office.

Other states use different methods for selecting judges, including appointment by the governor, usually with Legislative consent, much like the Federal system, and direct public election of judges. Every judicial selection method, however, includes an element of politics.



Public election of judges is typically funded in the same manner as other elections, bringing some risk of undue influence, or at least the appearance of influence, by campaign contributors. “While popular elections no doubt produce a judiciary more aware of popular sentiment, accountability to the public is cited by opponents as a hindrance to a judge's impartiality; an elected judge must contend not just with the pressure to please the masses, but also the need to please the donors to his or her campaign,” Kevin Eberle, *Judicial Selection in South Carolina: Who Gets to Judge?*, S.C. Law. 20, 22 (May/June 2002).

The appointment of judges by a governor avoids the campaign finance concerns of public elections, but places much of the power to select judges in the hands of a single elected official. By contrast, the South Carolina system requires that a candidate receive the support of a broad group of elected representatives.

South Carolina’s current system has been among the least affected by partisan politics, and its effectiveness in creating a high-quality bench has been noted by observers. As one author has asserted, “in spite of common criticisms, South Carolina's present system and process for judicial selection has improved since the reforms of 1996 and is now structured to better serve the State's needs. South Carolina's process for judicial selection, though not without flaws, has produced a highly-qualified judiciary that is now more diverse and operates effectively and independent of legislative control.” Ronald T. Scott, *Judicial Selection in South Carolina: Is the Time Ripe for Systematic Restructuring and Improvement? You Be the Judge*, 68 S.C. L. Rev. 743 (2017).

Although no system is without flaws, the current system in South Carolina is designed to provide a transparent process for judicial selection with meaningful opportunities for public input. Its goal is to elevate merit over partisan political considerations.

More information

South Carolina Judicial Merit Selection Commission

- [JMSC homepage](#)
- [How judges are elected in South Carolina](#)
- [Citizens Committee Information](#)

South Carolina Bar Judicial Qualifications Committee

- [Overview and previous reports to 2014](#)



Articles

Scott, Ronald T. (2017) "[Judicial Selection in South Carolina: Is the Time Ripe for Systematic Restructuring and Improvement: You Be the Judge.](https://scholarcommons.sc.edu/sclr/vol68/iss4/9)" 68 S.C. L Rev. 743 (Spring 2017). Available at South Carolina Law Review: Vol. 68: Iss. 4, Article 9. Available at: <https://scholarcommons.sc.edu/sclr/vol68/iss4/9>.

Eberle, Kevin (2002) "[Judicial Selection in South Carolina: Who Gets to Judge?](#)" 13 *SC Lawyer*, 20-25. (May/June 2002).

Bannon, Alicia (2016). "[Rethinking Judicial Selection in State Courts,](#)" Brennan Center for Justice at NYU School of Law.