Merit selection remains in Iowa, but more power given to governor

By: Tim Anderson

After years of trying, Iowa lawmakers and others wanting to tweak or completely replace a decades-old system of selecting state Supreme Court judges were able to proclaim legislative victory in 2019. But as of early October, they still needed some wins in court to ensure the change.

At issue is Iowa’s 57-year-old merit-based selection process: State supreme court justices are appointed by the governor, whose choices are limited to a list of three candidates submitted by a judicial nominating commission. Four other Midwestern states also use some form of merit selection.

According to Rachel Paine Caufield, a professor of political science at Drake University, merit selection “was the major court innovation of the later part of the 20th century.” It began in Missouri, she says, and then gradually spread to other states as a way of limiting the influence of party machines, ensuring the independence of the judiciary, and putting the selection of judges in the hands of the legal community itself.

In Iowa, for example, the 17-member judicial commission traditionally has been split this way: eight non-lawyers appointed by the governor and confirmed by the state Senate; eight Iowa lawyers (two from each congressional district) elected by resident members of the bar association; and a sitting member of the Iowa Supreme Court serving as the final member (and as commission chair).

But this year’s legislative tweak gives Iowa’s governor the power to appoint a majority of the commissioners — nine of the 17. (The sitting state Supreme Court justice no longer serves as the final member.) Legislative attempts at such a change (or to eliminate merit selection altogether) date back to 2010, Caufield says, when the state’s highest court legalized same-sex marriage. Other controversial, abortion-related rulings followed.

What’s happening in Iowa is reflective of a nationwide trend — whereas the mid-20th century was notable for the rise of merit selection, she notes, there is more momentum today for methods of judicial selection that give elected officials (usually the governor) more control.

Eight Democratic members of the Iowa House have mounted a legal challenge to the law modifying judicial selection. They say, in part, that SF 638 violates a provision in the state Constitution “that every act shall embrace but one subject.” SF 638 was a budget bill; including language on the judicial nominating commission violates this “single subject” rule, those House members say.

In late September, the Associated Press reports, the Iowa Supreme Court handed over jurisdiction of this case to the state Court of Appeals. A lower court judge dismissed the lawsuit in June, but plaintiffs in the case appealed the ruling. Meanwhile, a second lawsuit challenging this year’s legislative action on judicial selection was filed in September, according to The Des Moines Register.

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