

**PUBLIC ATTITUDES REGARDING THE SELECTION OF
JUDGES IN THE STATE OF WASHINGTON:
RESULTS OF A STATEWIDE SURVEY, 2008**

REPORT PREPARED FOR:

**American Judicature Society
and
Washington State Judicial Selection Coalition**

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EXECUTIVE SUMMARY

In late 2008 the *American Judicature Society* hired Washington State University to design and conduct a statewide survey of registered voters across Washington to better understand citizen perceptions about the way in which the state's judges are selected. A mail survey was administered during the Fall of 2008. The total number of respondents statewide was 1,185; this number of observations yields a margin of error of about plus or minus 2.9 percentage points at a 95% confidence level. The principal findings reported herein are as follows:

- A little over 26% of respondents rated Washington's current, non-partisan election method of judicial selection as good or very good, while 35% rated it bad or very bad.
- The largest areas of concern about the current method of selecting judges involved the lack of contested elections, the prominence of judges being appointed to the bench, and the lack of information available to voters to use in judicial elections.
- A little over 60% of respondents rated a commission system (merit system) of judicial selection to be good or very good, while roughly 16% rated such a selection system as bad or very bad.
- The aspects of the commission system viewed most positively were: (1) the use of a nominating commission as part of the appointment process; (2) the fact that retention elections provide voters with the opportunity to vote for or against all judges at regular intervals; (3) the fact that all judges may be held accountable by voters without the need for a person to run against a judge in a contested election; and (4) that judges always appear on election ballots at regular intervals.
- When asked to choose between the current system or a commission system of judicial selection, over 60% indicated a preference for adopting a commission system while about 23% preferred staying with the current system.
- Over 90% of respondents would support the development of a judicial performance evaluation program in Washington to provide information to voters about candidates in local and statewide judicial elections.
- Over 75% reported that having access to information from a judicial performance evaluation program would increase the likelihood that they would vote in judicial elections.
- Respondents had a very positive view of the Washington judiciary as a whole. A commanding majority of respondents perceived Washington's judges to be honest and trustworthy, qualified, and fair and impartial.

PURPOSE

The Division of Governmental Studies and Services and the Criminal Justice Program at Washington State University Spokane were asked by the **American Judicature Society** and the **Washington State Judicial Selection Coalition** to conduct a study to document the opinions of registered voters across Washington state regarding several important issues relating to the selection of Washington's judges. More specifically, the study was intended to achieve the following objectives:

- Assess the opinions of citizens regarding the manner in which judges are selected in Washington state;
- Provide information about whether specific aspects of the existing judicial selection system are viewed as positive or negative by citizens of the state;
- Determine citizen opinions regarding the adoption of a commission (merit) system of judicial selection;
- Provide information about whether specific aspects of a commission judicial selection system are viewed as positive or negative by citizens of the state;
- Document whether citizens would prefer the current method of selecting judges or favor the adoption of a commission system of selecting judges;
- Determine whether citizens support the development of a judicial performance evaluation (JPE) program in Washington state;
- Gain an understanding of the level of importance citizens accord to specific qualities that may be possessed by a judge.

METHODOLOGY

The following section discusses the development and layout of the survey instrument, the construction of a survey sample, and the process of survey administration and methodology for minimizing survey and response bias used in this study. To achieve the several purposes noted above, it was determined early on in discussions with survey sponsors that a written survey instrument (rather than telephone survey) would be the best means of collecting reliable data. The primary reason for this decision involved the complexity of the judicial selection system as described statutorily, and as actually carried out in practice. Due to the length of the descriptions of the system that respondents would be asked to assess and ultimately compare, and due to the importance to the study that survey respondents have an accurate understanding of the judicial selection systems being addressed, providing a written version of the survey questionnaire was the best means of facilitating comprehension and thoughtful consideration.

Survey Instrument

The study survey instrument was developed over the course of several months with considerable input on several iterations of draft surveys from multiple sources, including the AJS staff, the Washington State AJS Chapter, the Washington State Bar Association, and other interested

parties. In a survey such as this, one of the most critical aspects of questionnaire design is to capture accurately the opinions of people about the current method of selecting judges in Washington state. In order to do this it is essential to provide an **accurate, non-leading** description of how judges actually are selected to serve in judicial office. Given this importance, a majority of the survey design and layout time was devoted to creating a fair and balanced means of conveying an accurate description of Washington's current non-partisan election method, and doing the same for a commission system of judicial selection for respondents to consider. Clearly, in asking survey respondents to compare judicial selection systems it is important to take appropriate steps to have all respondents make use of the same definition of the judicial selection systems they are comparing.

To meet this need for clear and cogent descriptions of the current judicial selection system, the survey instrument contains a definition that features: a) the selection methods laid out in statute; and b) a description of how the system has worked in practice over the course of recent years.

Following the preparation of a working draft instrument featuring such a depiction of the current system, further input was obtained from attorneys, judges, and law professors in Washington state and from the American Judicature Society. These extensive efforts at survey design were made to ensure that the instrument as a whole, and in particular the descriptions of judicial selection systems presented, were factually accurate and presented in a neutral manner. After refining the initial final draft survey instrument, researchers at Washington State University conducted an informal pre-test of the instrument with Political Science and Criminal Justice graduate students and university staff (acting in the role of proxy citizens), as well as with a number of attorneys to once again test for factual accuracy and neutrality. The pre-test process also involved testing for survey ease of use and understandability. Both a printed survey format and on-line survey format were tested in the pre-test phase. Following the pre-test process some minor, non-substantive modifications were made in the survey instrument, and the questionnaire at long-last was finalized.

The description of the non-partisan election selection system used in Washington contained in the survey instrument, read as follows¹:

¹ The figures included in the description of the system of judicial selection used in Washington state are based on the make-up of the judiciary at the time of survey administration. Moreover, the election-rate figures are based on the 2008 elections. While derived from the current year, the percent of contested elections and breakdown of how judges reached the bench are consistent with these rates over the last several decades.

CURRENT SYSTEM OF JUDICIAL SELECTION IN WASHINGTON STATE

There are 218 supreme court, court of appeals, and superior court judges in Washington State. These judges take office in one of two ways; Judges are either:

- a. Elected by voters in nonpartisan elections, or
- b. Appointed by the Governor to fill a vacancy due to retirement or death of a current judge.

Currently, 87 judges (40%) reached the bench by nonpartisan election, and 131 judges (60%) reached the bench by being appointed by the Governor.

No matter how judges first reach office, at the end of their terms they must run in a contested election to keep their position. However, if no one challenges a judge, he or she automatically remains in office for another term.

In 2008, 84% of judicial elections are uncontested.

Similarly, in an effort to document the opinions of Washington's citizens about a commission-based system of judicial selection, the survey questionnaire contained a description of such a system. The description, which was based on typical commission systems used in other states, read as follows:

COMMISSION SYSTEM OF JUDICIAL SELECTION

A proposal has been made to change the way judges are selected in Washington. A description of this system is provided in the box below.

Under the COMMISSION SYSTEM method, a bipartisan, broad-based commission (made up equally of lawyers and non-lawyers from across the state) interviews and evaluates candidates for judicial positions and recommends the most highly qualified to the Governor. The Governor is then required to appoint one of the people recommended by the commission. This system is sometimes referred to as "merit selection."

Under this system all judges would face periodic retention elections in which voters decide whether each judge should remain in office.

Sample

A stratified random sample of 5,050 registered voters in Washington state was generated from digitized voter registration records provided by the Office of the Secretary of State. In an effort to obtain information from throughout the state, the sample was stratified based on county population. The sample was created by randomly selecting a number of registered voters from

each county roughly proportional to the county's total number of registered voters.² Given the large number of rural counties featuring low population levels, the sample was organized by the ten population regions utilized by the Washington Office of Financial Management. Figure 1 illustrates the counties contained within each sample stratum.

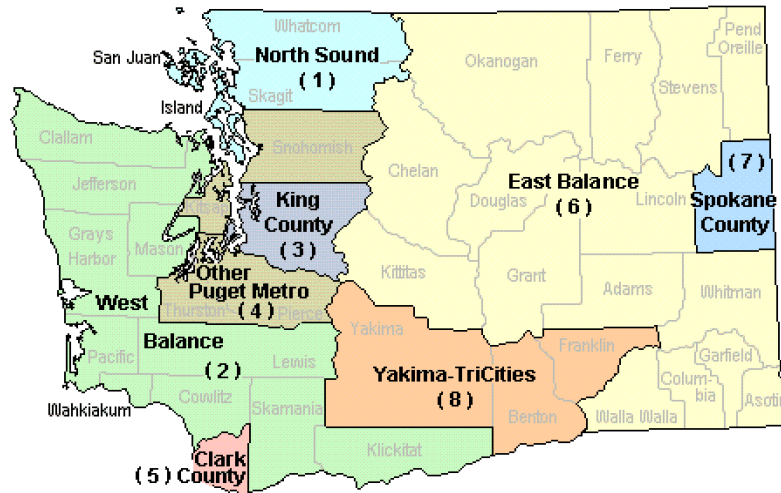


Figure 1 Washington State Population Regions

Survey Administration

The survey was administered in September and October of 2008 through the U.S. Postal Service. As suggested by survey expert Don Dillman,³ prior to mailing out survey questionnaires a letter of introduction and explanation was sent to each registered voter selected for the sample. The pre-survey letter explained the principal purposes of the study and the sponsors of the effort, and notified the recipients that they would be receiving a survey questionnaire concerning judicial selection in the mail shortly. Additionally, the individuals contacted were told that they were selected at random from the state list of registered voters, and if they wished to complete an electronic version of the survey on the Internet they could do so by accessing an Internet address

² Given the large population of King County, a sample somewhat smaller than the actual proportion of registered voters was used.

³ DON A. DILLMAN, MAIL AND TELEPHONE SURVEYS: THE TOTAL DESIGN METHOD (JOHN WILEY AND SONS, 1978) AND DON DILLMAN, JOLENE SMYTH AND LEAH MELANI, INTERNET, MAIL AND MIXED-MODE SURVEYS: THE TAILORED DESIGN METHOD, 3RD ED. (JOHN WILEY AND SONS, 2008). Dillman's advice reflects more than 30 years of experience with survey research, including recent years of experience with web-based surveys. The 2008 text features a valuable section on visual design principles, and this section was very helpful in guiding the "side-by-side" layout of questions/definitions for the current judicial selection method and the proposed commission-based system.

and entering the password provided to them in the pre-survey cover letter. These letters were sent out as First Class Mail so that all undeliverable addresses would generate a return-to-sender notification. This first class pre-survey mailing allows a more refined mailing list to be used for the first mailing of the complete survey packet.

Ten days after the mailing of the introductory letter, survey packet materials were mailed to all individuals for whom a *bona fide* address could be assumed. Included with the survey questionnaire was a letter requesting participation, explaining that their participation was purely voluntary, and requesting that they complete the survey and return it to researchers at Washington State University in the postage-paid, preaddressed return envelope provided. Human subject protections are also set forth in the survey cover, including notification of prior approval of survey protocol by Washington State University and phone and e-mail contact information for persons with concerns regarding survey content or use of the information. Four weeks after the first survey mailing a second wave of surveys, containing essentially the same cover letter, were mailed to all individuals who had yet to respond either on-line or with the mail survey.

Of the 5,050 surveys mailed, 760 were returned as undeliverable, leaving a total of 4,290 distributed surveys. Responses were received from 1,185 people, with 408 coming on-line and 777 coming through the U.S. postal service. Overall, a reasonably good response rate of 27.6% was obtained for a rather demanding multi-page survey.

Table 1 provides important information on the proportion of the sample made up by each of the 10 population regions, as well as the response totals and response rates for each region. The share of responses received from the ten population regions was roughly equivalent to their proportion of the total sample, with no region deviating by over 3%. Given the diversity of the state, with a few densely populated major urban regions and many sparsely populated rural areas, it is important that survey responses were collected from throughout the state.

Table 1 Distribution and Response Distribution

	Percent of State Population	Percent of Sample	Percent of Responses	Total Responses
North Sound	6.5%	6.9%	7.7%	91
West Balance	7.7%	8.3%	8.4%	99
King County	30.2%	23.8%	21.7%	257
Other Puget Sound	8.2%	8.5%	9.6%	114
Clark County	5.7%	5.9%	5.3%	63
East Balance	7.1%	9.8%	11.2%	133
Spokane County	7.2%	7.9%	9.5%	112
Yakima/Tri-Cities	5.7%	7.0%	7.2%	85
Snohomish County	10.2%	9.9%	10.4%	123
Pierce County	11.5%	11.9%	9.0%	106

The demographic characteristics of respondents are also important to assess, and these are presented in Tables 2-6 below. These respondent characteristics are very similar to the makeup of the sample population as well as the general population of the state at the county-level. These tables indicate that an unbiased sample and response pattern was attained in the 2008 survey of registered voters in the state of Washington.

Table 2 Gender

	Frequency	Percent
Male	489	45.6%
Female	583	54.4%

Table 3 Racial/ethnic Background

	Frequency	Percent
White	988	83.4%
African American	17	1.4%
Latino	29	2.4%
Native American	20	1.7%
Asian American	39	3.3%
Other	8	.7%

Table 4 Age

	Frequency	Percent
18-29 years	107	9.5%
30-39 years	157	14.0%
40-49 years	193	17.2%
50-59 years	245	21.9%
60 years or older	419	37.4%

Table 5 Employment Status

	Frequency	Percent
Self-employed	125	11.2%
Employed outside your home	551	49.3%
Homemaker	62	5.6%
Student	21	1.9%
Retired	333	29.8%
Not employed (not retired)	25	2.2%

Table 6 Highest Level Of Education Completed

	Frequency	Percent
Some high school	28	2.5%
High school graduate	125	11.2%
Some college or trade school	320	28.7%
Community college degree (AA)	142	12.7%
Four-year college degree	270	24.2%
Graduate Degree	231	20.7%

RESULTS

The prime objectives of this study were to learn how Washington’s citizenry perceives the current method used to select the state’s judges, how they assess a commission-based system of judicial selection, how they compare the relative merits of each system when asked to make a direct comparison, and what the underlying bases are for these citizen opinions. The results from the statewide survey administered shortly after the state’s primary elections in 2008 are presented directly below. Following the presentation of survey findings regarding the non-partisan election and commission-based election comparison, results from other items addressed in the survey are reported as well. Included in this area are questions regarding what qualities respondents value in their judges, how respondents viewed the state’s judiciary as a whole, and citizens’ opinions regarding the use of judicial performance evaluations in Washington state.

Perceptions of Current System of Judicial Selection

In general, citizens who are registered voters in the state had a rather negative view of the current system used to select judges in Washington. Immediately upon being presented with the carefully constructed description of the current judicial selection system (as described in detail above), survey respondents were asked the following question:

Given the information presented above, how would you rate the system currently used to select judges?

As seen in Table 7, while a little more than one-in-four (26.6%) survey respondents rated the current system as either “good” or “very good,” over a third (35%) rated it as being either “bad” or “very bad.”

Table 7 Rating of Current System for Selecting Judges

	Frequency	Percent
Very Good	37	3.3%
Good	260	23.3%
Neither Good nor Bad	346	31.0%
Bad	279	25.0%
Very Bad	113	10.1%
Not Sure	80	7.2%

To formulate a deeper understanding of the underlying sentiments behind the opinions about the current system of selecting judges, survey respondents were asked whether they viewed several aspects present in the judicial selection process in a positive light or in a negative light. It is important to note that the current judicial selection system features a variety of characteristics, some of which may be viewed favorably and others of which may be viewed unfavorably.

As illustrated in Figure 2, a majority of respondents viewed having **contested elections** and **non-partisan elections** favorably. In stark contrast, advertising by special interest groups, automatic retention of judges who are not challenged, and the need for candidates to raise money were viewed by many citizens as negatively affecting the court system.

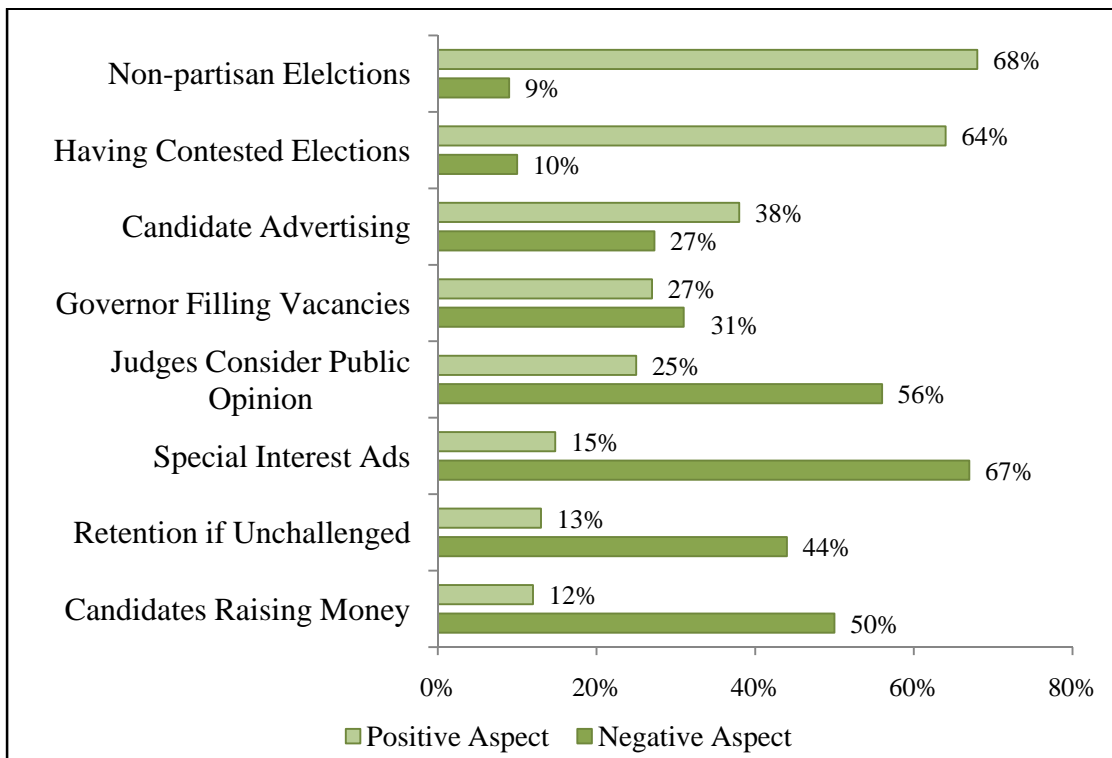


Figure 2 Citizen Perceptions of Major Aspects of the Current Non-partisan Election Judicial Selection System in Washington

To deepen our understanding even further concerning what factors might lie behind the apparent lack of support for the existing judicial selection system, immediately after being asked to rate the current system of selecting judges survey respondents were presented with an *open-ended question* requesting them to explain in their own words why they rated the current judicial selection system as they did. This type of survey item permits the use of a qualitative assessment in combination with the tallying up of fixed-option answers to survey questions. It is possible that citizen attitudes toward the present system are primarily idiosyncratic, reflecting highly personalized experiences with the judicial selection process. It is also possible, however, that there are strong common themes expressed by citizens reflecting commonly experienced shortcomings with the existing judicial selection system.

In all, a total of 649 respondents provided explanations underlying their survey responses regarding the existing judicial selection system both in support of and in opposition to that system. The comments registered in the survey were coded for content, and then classified into categories upon which the comments appeared to have clustered.⁴ Using two independent coders working in tandem, ten distinct content analysis-based categories were established for comments regarding the current system of judicial selection (see Table 8). A substantial number of respondents commented that too many judges are appointed by the Governor and that such appointments tend to be inappropriately partisan and political. A large number of respondents also voiced concern that they were frustrated by the large number of uncontested elections and the lack of judicial accountability present in the current system. Of those individuals who viewed the current system of selecting judges positively, the most common comment was a general feeling that the system works well to place capable judges in the state’s courts.

Table 8 Comment Categories Relating to Current Judicial Selection System

Comment Category	Frequency
Governor appointment is partisan, unqualified	128
Voters need more information so they can vote	113
Judges should be elected / too many are appointed	112
Judges need to have competition	83
Fair; works well	58
Judges need accountability, need some way to get bad ones out	47
Do not know of a better way	26
Bad judges are voted out	20
Judges are doing a good job	19
We can trust the governor to appoint a good judge	15

⁴ The comments are presented in total in Appendix C. In addition to the 503 comments falling into one of the content analysis-derived categories, 146 comments not readily categorized into one of these topic areas were provided by respondents.

Among the most interesting subsets of comments registered in the survey involve statements centered on the theme that **voters need to have more information about judges** to enable them to take part more effectively in judicial elections. The fact that so many survey respondents volunteered this idea as an issue of concern in how they view the judicial selection system is indicative of an issue that requires serious study and appropriate action.

Citizen Perceptions of a Proposed Commission System of Judicial Selection

In general, registered voters in Washington had a rather positive view of the commission system of judicial selection. Immediately after being presented with the description of the carefully constructed depiction of the proposed commission system as described above, survey respondents were asked the following question:

Given the information presented above, how would you rate the commission system for selecting judges?

In response to this direct question, over 61% of survey respondents expressed the view that the proposed commission-based system was either “good” or “very good,” while only one-in-eight (16%) thought it was either “bad” or “very bad” (see Table 9). Given this evidence of widespread support for the hypothetical commission system, it is very important to consider the underlying reasons which lie behind the favorable opinions registered by survey respondents.

Table 9 Rating of Commission System for Selecting Judges

	Frequency	Percent
Very Good	244	22.0%
Good	435	39.2%
Neither Good nor Bad	142	12.8%
Bad	117	10.5%
Very Bad	64	5.8%
Not Sure	108	9.7%

Toward the goal of deeper understanding, the survey questionnaire asked respondents to opine whether they believed specific items associated with a commission judicial selection system would be a positive or negative component of that system. The views expressed by survey respondents are set forth in Figure 3.

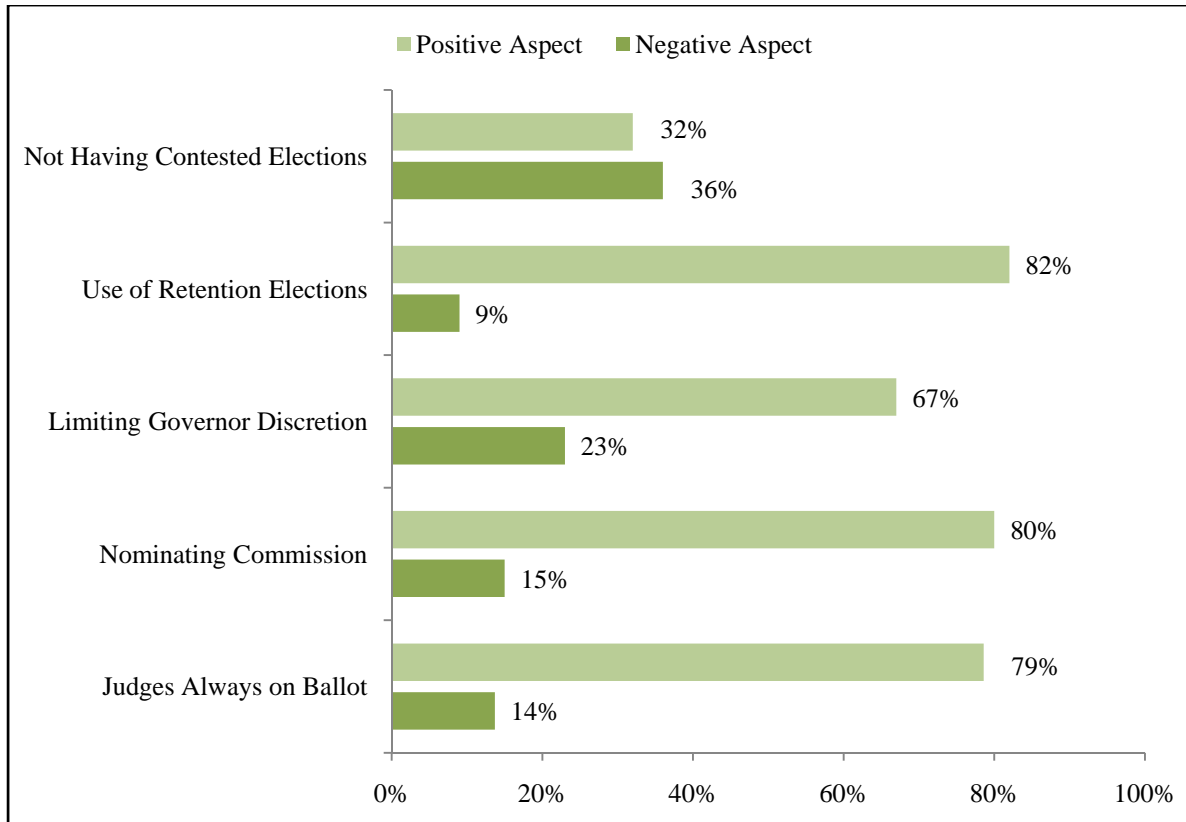


Figure 3 Perceptions of Key Aspects of a Commission-Based Judicial Selection System

Two distinct categories of features associated with the commission system were viewed very positively by registered voters in Washington. First, survey respondents showed strong support for the ability to hold judges accountable at the ballot box. Roughly 8 in 10 respondents indicated that requiring judges to appear on the ballot periodically and the use of retention elections would be a positive aspect of a judicial selection system. The importance of these items likely stems from the small number of contested judicial elections taking place in Washington, and the corresponding absence of electoral accountability faced by the judiciary.

The second category of features viewed positively by registered voters involves limiting the power the Governor currently holds over *interim judicial appointments*. Two-thirds of survey respondents believed limiting the governor’s discretion by requiring him/her to make judicial appointments from among a set of individuals submitted by a nominating commission was a positive aspect of a commission-based system. Similarly, 80% of survey respondents expressed the view that the idea of a nominating commission that would pre-screen candidates and identify a short list of nominees for gubernatorial appointments was a good idea.

As was done with our consideration of the current judicial selection system, to better understand these results survey respondents were presented with an open-ended question requesting them to explain why they felt the way they did about a proposed commission system. In all, 631 respondents provided one or more such explanations, both in support and opposition of the proposed system. To deepen the analysis of what is driving respondent sentiment, these

comments were also content analyzed and coded for content and then classified based on common themes upon which the comments appeared to have clustered.⁵ Using two independent coders once more, nine categories were established for comments regarding the proposed commission system of judicial selection (see Table 10). Comments regarding the opinion that the commission system would base judicial selection on a **judge’s qualifications** were far and away the most common remarks. From the viewpoint of those respondents who viewed the commission system in a negative light, the leading concerns expressed in the comments were the possibility that the commission could be partisan and/or political in its work.

Table 10 Comment Categories Relating to Commission Judicial Selection System

Comment Category	Frequency
Commission system is based on the judges’ qualifications	137
Public should be able to vote	77
Commission is more qualified than voters	63
Non-partisan	54
Commission could be partisan	52
Limits the Governor’s power	47
Concern about how commission is selected	45
Retention elections are good	43
Gives Governor too much power	20

The second most prevalent comment category involved statements expressing the belief that the public should be able to vote for their judges. Interestingly, of the people who provided such comments only about one in four (26%) viewed the commission system positively while nearly six-in-ten (59%) rated the method of judicial selection as either “bad” or “very bad.”

Comparing Attitudes Toward the Two Judicial Selection Systems

The data collected in the survey allowed for the direct comparison of respondents’ preferences between the current nonpartisan election system of judicial selection (featuring frequent interim appointments and few contested elections) and the commission system. The first means of comparison simply involves examining the ratings of the two systems considered side-by-side. Figure 4 presents such a tandem comparison. As is readily evident, the commission system was overwhelmingly more favorably viewed than the current selection system. While over two-

⁵ The comments are presented in total in Appendix C. In addition to the 434 comments allocated to the content analysis-based categories, 197 comments not readily categorized were provided by respondents.

thirds of survey respondents viewed the commission system positively, less than one-third had such a view of the current selection system. When examining the number of respondents who rated the selection systems negatively, the disparity is somewhat less drastic but is still significant. Slightly more than two-thirds of respondents rated the current system negatively, while fewer than one in five registered voters viewed the commission system negatively.

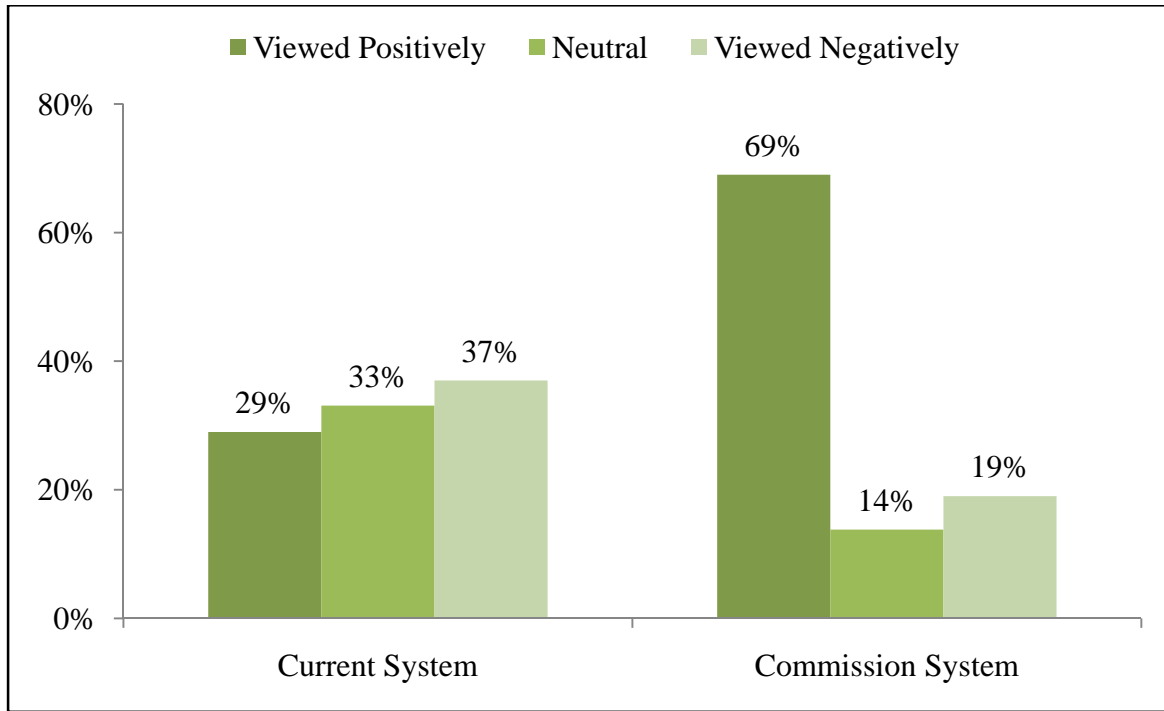


Figure 4 Summary of Views of Judicial Selection Systems

In addition to being able to compare whether respondents viewed the selection systems positively or negatively, it was deemed worthwhile to have them indicate which of the two selection systems they would prefer to be used in Washington. Because it is quite possible that a number of respondents may view both systems similarly,⁶ a preferable means of comparing preferences is to ask respondents to indicate which method would be preferable in a head-to-head comparison. To facilitate this type of assessment, survey respondents were asked to indicate which system they would like to see used in Washington on a 1-to-7 continuum. The left end of the continuum represents strongest possible preference for retaining the current system, and the right end of the continuum represent strongest possible preference for adoption of the commission-based system. The survey results for this question are displayed in graphic form in Figure 5.

⁶ Of the 259 respondents who rated the current system of selecting judges as either “very good” or “good,” a total of 174 (67%) rated the commission system similarly.

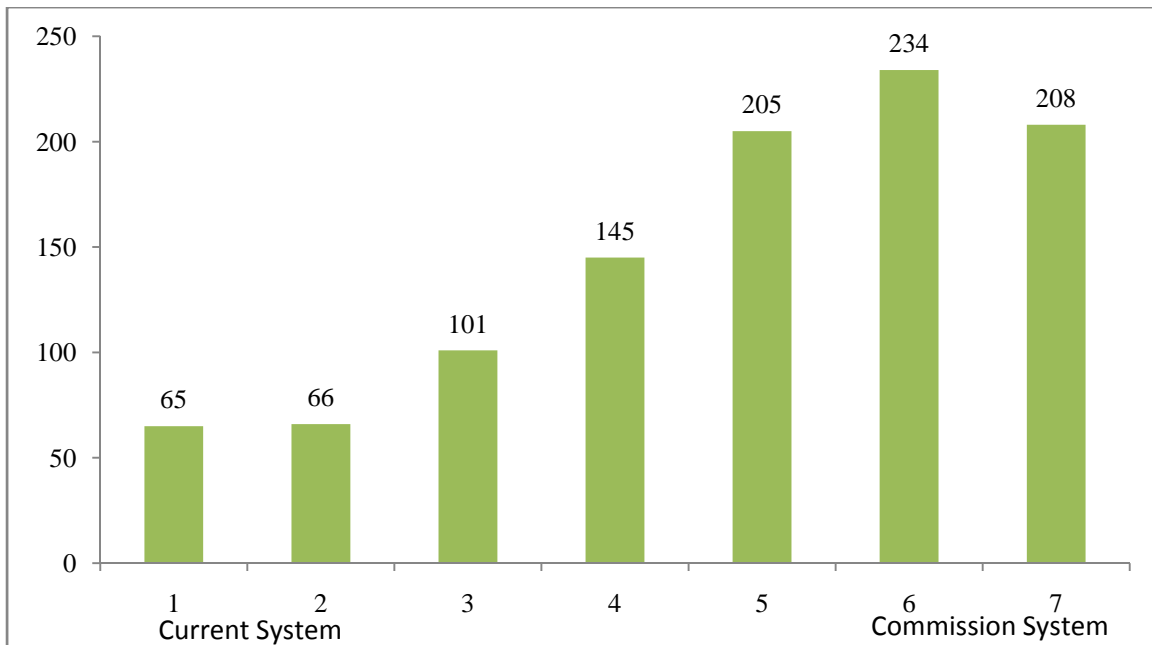


Figure 5 Judicial Selection System Preference by Number of Respondents

It is clear that in a head-to-head choice, after having considered in some detail the major characteristics of both the current nonpartisan election system and the hypothetical commission-based system, the registered voters surveyed in Washington during the 2008 election season clearly prefer the commission system. While it will be apparent when some other questions included in the survey are discussed below, Washington’s citizens think highly of their courts and tend to feel that their courts are being run by fair and competent judges. However, it is also the case that these same citizens are not happy with a judicial selection system which features “nonpartisan elections” which are a relative rarity in comparison to judicial interim appointments or uncontested judicial contests. In this context, a system of judicial selection which features a promise of merit selection by a nonpartisan commission of both legal and lay representatives AND which features periodic retention elections seems quite appealing.

Bivariate Analyses

In an effort to determine if views about judicial selection systems varied by demographic characteristic or geographic location, a combination of comparison of means t-tests, correlations and cross-tabulations was conducted between these respondent characteristics and the three key questions addressing attitudes about the two specific selection systems. No statistically significant relationships were found to exist between demographic characteristics and either the ratings of the two selection systems or in the preferred method of judicial selection judged in a head-to-head comparison.

From a cross-regional perspective, there was widespread support for the commission-based judicial selection system. The only exception to this general observation occurs in the Yakima/Tri-Cities region, where only 48% of respondents viewed the commission system positively. This is significantly less than the 69% level of support registered statewide. The only other noteworthy difference based on geography was that 70.5% of survey respondents residing in urban counties viewed the commission system positively as opposed to 64.3% residing in rural counties. Beyond these relatively minor variations, the attitudes of survey respondents were quite consistent across the entire state.

Judicial Performance Evaluations

To deepen our understanding of citizen perceptions of judicial selection in Washington state, the questionnaire contained several questions designed to probe what registered voters thought about the utility of a judicial performance evaluation program in the state. Since one important argument in favor of such a program is that its findings could be made available to voters taking part in judicial elections, this topic was included in the 2008 judicial selection survey. In this regard, the questionnaire contained the following statement and trailing question:

A number of states conduct performance evaluations of their judges. These programs ask attorneys, jurors, and other individuals who recently appeared before a judge to evaluate the judge on qualities such as integrity, legal ability, communication, and temperament based on their personal observations. The results are collected, compiled, and distributed to the public to provide information for voters to use in judicial elections. The results are also given to the judge to promote self-improvement.

Would you support or oppose the development of a judicial performance evaluation program in Washington?

The survey results on this question, presented in Table 11, indicate overwhelming support for such a judicial performance evaluation program. Slightly more than 90% of survey respondents supported the development of a judicial performance evaluation program; nearly half of those (47%) were **strongly supportive**. In contrast, fewer than 5% were opposed to a judicial performance evaluation program in operation in the state. Additionally, it is noteworthy that over 85% of survey respondents indicated that such a program would increase the likelihood that they would cast a vote in judicial elections (see Table 12). These figures show a clear need for increased information about judges with which voters can intelligently cast ballots in judicial elections.

Table 11 Development of Judicial Performance Evaluation Program in Washington State

	Frequency	Percent
Strongly Support	519	47.0%
Support	478	43.3%
Oppose	34	3.1%
Strongly Oppose	13	1.2%
Don't Know	60	5.4%

Table 12 Effect of Judicial Performance Evaluation Program on Voting Probability

	Frequency	Percent
Much More Likely	634	57.4%
Somewhat More Likely	323	29.2%
No Effect	123	11.1%
Somewhat Less Likely	4	.4%
Much Less Likely	5	.5%
Don't Know	16	1.4%

To understand the reasoning of survey respondents generating these results, the registered voters taking part in the 2008 survey were asked to explain in their own words the reasoning underlying their opinions. Over 600 survey respondents provided one or more such comments explaining their position on the development of a judicial performance evaluation program in Washington. As was done before, these many volunteered comments were content-analyzed and coded for content and classified based on common themes upon which the comments appeared to have clustered.⁷ Using two independent coders, seven mutually-exclusive categories were established as shown in Table 13.

Two themes, critical to considering how citizens want to select judges, emerged from this qualitative analysis. First, over 200 respondents supported the development of a judicial performance evaluation program because it would assist themselves and assist other voters in holding Washington judges more accountable. As was evident in the results reported above regarding the current putatively elective system of selecting judges, voters are dissatisfied with a system that does not provide them with the opportunity to hold sitting judges accountable.

⁷ The comments are presented in total in Appendix C. In addition to 485 comments placed into the several content analysis-based categories generated, 115 comments provided by respondents were not amenable to categorization.

Performance evaluation programs are perceived as providing a practical basis for enhancing judicial accountability.

Relatedly, a total of 165 respondents provided comments relating to the need for such a program to provide voters with information they require to vote intelligently in judicial elections. Respondents view information provided by a judicial performance evaluation program as one of the few sources of unvarnished information available about how well a judge is doing his or her job. The following comments collected in the survey succinctly illustrate this point.

It would provide more information on the judges to aid in the voter's decision. My biggest concern with the current system is that the voter has to blindly vote for judges. (Respondent No. 10176)

If you're not involved with courts on a regular basis you'd have no clue as to the judge's performance. There is a need for this kind of information to make an educated decision. (Respondent No. 11671)

[I support it] so that population would know more about the judges during an election. Right now, we know nothing about most of the judges. (Respondent No. 11740)

Table 13 Comment Categories Relating to Judicial Performance Evaluation

Comment Category	Frequency
Keeps judges accountable	201
Gives voters information needed to vote	165
Helps judges improve themselves	83
Evaluation is always good	59
Individuals could make good judges look bad	37
Everyone else gets evaluated	29
Gives the people a voice	28

Washington Citizen Views of the Judges Serving on Washington State Courts

The 2008 judicial selection survey contained a bank of questions asking citizens to indicate how well or poorly a series of traits describe the state's judges. Some of these traits are positive (accountable to the public, fair and impartial, honest and trustworthy, qualified) and some are

negative (controlled by special interests, for sale, and political). Table 14 summarizes some of the findings from this set of survey responses.

It is clear from the results set forth in Table 14 that registered voters in Washington tend to view their judges favorably. Washingtonians tend to believe that their judges are somewhat accountable to the public, they are fair and impartial in their judgments, they can be relied upon to be honest and trustworthy, and they get high marks for being qualified to serve. With respect to negative traits, there is limited sentiment that special interests exercise undue influence and that justice can be bought. However, among the negative traits, the criticism that Washington’s courts are overly “political” tends to strike a chord with Washington’s registered voters. As noted above, a common theme identified in the comments recorded on the current system of nonpartisan elections related to the “excessive political influence” present in the timing of resignations from the bench and the making of interim appointments.

Table 14 Citizen Perceptions of Washington’s Judges

Trait	Percent Responding Trait Describes State’s Judges
Positive Traits	
Qualified	65%
Honest and Trustworthy	59%
Fair and Impartial	58%
Accountable to the public	51%
Negative Traits	
Controlled by special interests	22%
“For sale”	16%
Political	41%

In addition to these “traits of judges in general” items on the 2008 survey, a listing of “qualities judges should possess” was also included in the survey questionnaire. A review of these survey results indicates a strong consensus among registered voters in Washington with respect to what qualities they believe ought to characterize a judge in their state. Those results are set forth in Table 15.

Table 15 The Qualities Preferred by Citizens in Washington’s Judges

Quality	Percent of Citizens Attaching High Importance
Fair and impartial	99%
Follows the law	97%
Honest	99%
Independent	88%
Protects people’s rights	97%
Qualified	98%
Responsive to public opinion	46%
Shares my values	63%
*Total ratings of 7 through 10 on a 10-point scale where 1=not important &10=very important	

It seems apparent from this final set of findings that Washingtonians are more interested in the fair, competent and independent operation of the courts than in the judges of the state’s courts being responsive to trends in public opinion and reflecting the values of the state’s citizenry. It would seem that these traits are likely to be reflected in the operation of a commission-based merit selection process than in an elective process. Perhaps the patterns of preference reflected in these survey responses add one more piece of insight into why such a strong preference for a commission-based judicial selection process was documented in the 2008 statewide survey of registered voters in Washington.

CONCLUSION

From the results obtained from the survey and discussed in this report, it is clear that citizens of Washington are frustrated by the absence of direct voter input into the selection the state’s judges. Such concern was predicted by the late Professor Charles H. Sheldon, the leading authority on the Washington state judicial system, when he astutely noted, “Whether Washington utilizes nonpartisan elections, the merit plan, or gubernatorial appointments matters less than what transpires within these formal selection systems.”⁸ We suspect that Professor Sheldon would not be surprised by the results presented in this report. While the results are open to

⁸ Charles H. Sheldon, *Politicians in Robes: Judges and the Washington Court System*, IN GOVERNMENT AND POLITICS IN THE EVERGREEN STATE 138, (David C. Nice, John C. Pierce, and Charles H. Sheldon eds., 1992).

varied interpretation, they do raise some important issues and challenge heretofore untested assumptions. Specifically, it has been a widely held belief among people who have followed judicial politics in the Evergreen State that “*Washingtonians would never give up their right to elect their judges*”.⁹ Given the evidence of citizen interest in and support for a merit selection process documented in this survey, it may be time to set aside this long-established belief and adopt a stance more open to the possibility of change in how the state’s judges ought to be selected.

⁹ *Political Speech Doesn't Need any More Controls*, EVERETT HERALD, Dec. 27, 2006; Kate Riley, *Cleaning Up Judicial Elections*, SEATTLE TIMES, Nov. 14, 2006 at B6.