

In its mission statement, the American Bar Association declares that it is the “national representative of the legal profession.” And, not surprisingly, as the largest professional legal organization in the world, many policy makers, journalists, and ordinary citizens do in fact look to the ABA as a bellwether of the legal profession on matters involving law and the justice system. This is why debate about the work and the activities of the ABA—and the role that it plays in shaping our legal culture—is so very important.

ABA WATCH has a very simple purpose—to provide facts and information on the Association, thereby helping readers to assess independently the value of the organization’s activities and to decide for themselves what the proper role of the ABA should be in our legal culture.

We believe this project is helping to foster a more robust debate about the legal profession and the ABA’s role within it, and we invite you to be a part of this exchange by thinking about it and responding to the material contained in this and future issues.

In this issue, we offer a preview of the ABA’s annual meeting in Chicago, including examining how the ABA has reacted to executive actions by the current and past presidential administrations. We also discuss the ABA’s concern with the judicial confirmation process, and we highlight the ABA’s support of the Supreme Court decision in *Arizona v. U.S.* And, as in the past, we digest and summarize actions before the House of Delegates.

Comments and criticisms about this publication are most welcome. You can e-mail us at [info@fed-soc.org](mailto:info@fed-soc.org).

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## ABA Weighs in on Judicial Selection

The ABA has long supported “merit” selection in appointing state-court judges over elections or the federal model. Former American Bar Association President Alfred Carlton convened the Commission on the 21st Century Judiciary in 2003 to study state judicial systems. The Commission was created to “provide a framework and ABA policy that enable the Association to defuse the escalating partisan battle over American courts; to accommodate the principles of merit selection in a new model of judicial selection that minimizes the escalating politicization.” In its report to the ABA, the Commission described recommendations for states to improve their judicial-selection processes so as to avoid this “politicization.” The Commission’s recommendations, adopted by the ABA, state that the “preferred system of state court judicial selection is a commission-based appointive system.” The recommendations go on to describe a Missouri Plan-style appointment system where judges are appointed by the governor from among those on a list of candidates compiled by a commission. These judges would ideally be immune to removal from their positions save for cases of misconduct.

Current ABA President Bill Robinson endorsed the ABA’s position in preferring commission nomination and gubernatorial appointment in a recent op-ed in the *Tennessean*, where he argued for the rejection of a proposed Tennessee constitutional amendment that would make Tennessee judicial appointments more like those in the federal system. He warned the amendment

“would politicize the courts and diminish the perception of appellate judges as fair, impartial and well-qualified.” Robinson claimed the current system of appointment from among nominees selected by a judicial nominating committee, subject to retention elections, is more transparent and open to public scrutiny. He goes on to suggest that the current system holds judges accountable to the people and protects them from political influences, while the federal-style appointment system creates political tension in the judiciary. Robinson warned Tennessee voters that “they should think twice before adopting a radical new system that would only create problems and solve none.”

Critics, including Carrie Severino on National Review Online, contend that Robinson is ignoring empirical evidence that shows “independent commissions” are in fact political by their very nature as lawyer-dominated boards whose compositions are often highly influenced by bar associations. She also draws a comparison between Robinson’s argument and that of James Madison in his essays in *The Federalist* and his *Notes on the Debates in the Federal Convention*, where Madison advised that Americans should “increase accountability and transparency so that those engaged in politics are responsible to the people for their decisions.” Proponents of judicial elections would counter that the best way to hold judges accountable is to allow the public to evaluate their retention through the electoral process, not through an unelected commission.