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If attorneys conclude after thoughtfully considering the present and proposed Treasury Regulations that they can ethically practice in business trust form and achieve the tax benefits of corporate organization, the State Bar Association should be urged to petition the supreme court for a rule change. The bar association of one state has taken this approach, thus recognizing that the matter falls within the constitutional authority of a state's highest court. This course of action resulted in that instance in a critical analysis and ultimate approval of the proposal.

A great responsibility has been placed upon Indiana's judiciary and legal profession to critically evaluate in light of the Canons of Professional Ethics the business trust as an organization for the practice of law. They must weigh the advantages to be gained, with the possible disadvantages which might result. If they conclude that professional ethics do not proscribe practice in business trust form, and the supreme court condones such practice through their rules of procedure, adequate safeguards should be provided in those rules to insure the public welfare would not thereby be adversely affected.

JUDICIAL SELECTION AND TENURE IN INDIANA: A CRITICAL ANALYSIS AND SUGGESTED REFORM

Indiana's method of selecting its judiciary by the partisan election process has for years been considered wholly inadequate by those who have given it serious thought. Yet that system persists, notwithstanding many efforts at legislative reform. The Editors of the Indiana Law Journal feel it is the responsibility of all citizens, attorneys and judges to continually seek adoption of the most sound method of selecting and retaining in public office those entrusted with the responsibility of administering justice. The following note is presented as one writer's evaluation of the present system and its alternatives, in the hope that it will stimulate thoughtful consideration of this matter.

The judges of Indiana courts have not always been swept on and off the bench by the political tide. During the early years of statehood judges of the Supreme Court were appointed by the Governor with the consent of the Senate, and the president judges of the circuit courts by both houses of the General Assembly. Only the associate judges of each circuit court, who exercised little authority, were elected to office.

The appointive system as it existed in Indiana was not atypical in the...
early nineteenth century. Historically, the American people employed the appointment method of selecting judges which had been used in England. In none of the thirteen original states were judges selected by popular election,\(^3\) and it was not until about the middle of the nineteenth century that “democracy became synonomous with the long ballot”\(^4\) and the short term.\(^6\) Actually there had not been a great deal of dissatisfaction with the quality of the appointed judiciary prior to that time,\(^6\) but the fervor of “Jacksonian democracy” brought most public offices, including those of the judiciary, under popular control. The states generally abandoned the practice of the rest of the world and amended their constitutions to provide for the popular election of judges for short terms.\(^7\) By 1856 fifteen of the twenty-nine states then existing selected their judges by popular elections,\(^8\) and all but two of the subsequently admitted states initially adopted the election system.\(^9\)

I. THE PARTISAN ELECTIVE SYSTEM OF JUDICIAL SELECTION AND TENURE

In Indiana the appointment system had endured for a mere thirty-four years when it was discarded by the Constitutional Convention of 1850, this action being ratified by the people when they adopted the constitution by vote in 1851. The Constitution of 1851 provides that all judges of the supreme court and the circuit courts are to be elected by the people, and it reduced their terms from seven to six years.\(^10\)

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3. In New York, Maryland and Massachusetts, the power of appointing judges was vested in the governor subject to the consent of the council. In New Hampshire and Pennsylvania appointments were made by the governor and the council. In the remaining eight of the original thirteen states such power was vested in one or both houses of the legislature. See Stason, Judicial Selection Around the World, 41 J. AM. JUD. SOC'Y 134 (1958).


7. “Outside the United States the idea of popular election of judges has not been widely accepted throughout the world. It is principally found in the United States and the U.S.S.R.” Stason, supra note 3, at 141.

8. Id. at 140.

9. Alaska and Hawaii have been admitted to statehood in the present era of departure from the elective system of selecting judges. Hawaii adopted an appointive system patterned after that prescribed for the federal judiciary. Alaska uses an appointive-elective system which provides for gubernatorial appointment from lists submitted by a judicial commission. ALASKA CONST. art. 4, §§ 5-6 (1959). For Hawaii’s provisions see AMERICAN JUDICATURE SOCIETY, Information Sheet No. 19 (Nov. 20, 1962). For a discussion of the appointive-elective system see note 59 infra and accompanying text.

10. “The judicial power of the State shall be vested in a Supreme Court, in Circuit Courts and other such courts as the General Assembly may establish.” IND. CONST. art. 7, § 1.
pellate court and the superior courts are the product of the General Assembly, their judges being elected to office for four year terms.\(^\text{11}\) The framers of the constitution were not unmindful of the possible effect of their action, for in an effort to lessen the impact of party politics on judicial selections it was provided “that the general assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction by an election to be held for such officers only, at which time no other officers shall be voted for.”\(^\text{12}\) The General Assembly, however, has not seen fit to provide for the separate election. Thus for nearly a century virtually all Indiana judges have been selected through general elections which has sometimes caused them to be characterized as “creatures of partisan politics.”\(^\text{13}\)

For many years there appears to have been little dissatisfaction with the election method. In the rural, agricultural society of the last century lawyers made frequent appearances in the courts. Because the voters had their turn as jurors and the farmers frequently attended terms of the local courts as spectators, the leaders of the bar were well known to many of the electorate\(^\text{14}\) who therefore could make a reasoned choice among the relatively small number of “qualified” lawyers who sought judicial office.\(^\text{15}\) In contrast, the choice among judicial candidates in present day elections is seldom based upon first hand knowledge or reliable information, let alone upon the impression of personal observation in the court-room or elsewhere. Only a small segment of the electorate is ever in-

\(^\text{11}\) The terms of office of judges of the supreme court and circuit courts are provided in IND. CONST. art. 7, §§ 2, 9.

\(^\text{12}\) The appellate court is established by IND. ANN. STAT. § 4-201 (Burns 1946), and the four year tenure for its members is provided for in IND. ANN. STAT. § 4-206 (Burns 1946). The state’s superior courts are established, and the tenure of their judges provided for, in a number of statutes. See, e.g., IND. ANN. STAT. § 4-501 (Burns 1946), for the provisions pertaining to the Allen County Superior Court.

\(^\text{13}\) Eichorn, Some Present Day Problems of the Bench, 4 IND. L.J. 260, 261 (1929).

\(^\text{14}\) Only the judge of the Municipal Court of Marion County is initially appointed by the governor. IND. ANN. STAT. § 4-2414 (Burns Supp. 1963).

\(^\text{15}\) The typical lawyer practiced in many towns within his circuit which usually was quite large. In 1852 Indiana was divided into ten circuits which covered 82 counties. Banta, When Lawyers Rode the Circuit, in BIOGRAPHICAL SKETCHES AND REVIEWS OF THE BENCH AND BAR IN INDIANA 127 (Taylor ed. 1895).

\(^\text{15}\) The word “qualified” is used in the sense that it refers to legal training and experience rather than to statutory qualifications. The Constitution of 1851 provided that “every person of good moral character, being a voter, shall be entitled to admission to practice law in all Courts of Justice.” IND. CONST. art. 7, § 21. It was said that “this provision opened the door for illiteracy in the law, for incompetent men to waste the money, property and lose the rights of clients who entrusted their business confidently to them.” Thornton, Attorneys at Law, in BIOGRAPHICAL SKETCHES AND REVIEWS OF THE BENCH AND BAR IN INDIANA 125 (Taylor ed. 1895). Art. 7, § 21 was repealed in 1932.
volved as parties, witnesses or jurors at a trial, and the news media generally focus upon the trial's sensational aspects rather than upon the judge or counsel. While a great number of the electorate have many contacts with attorneys in the course of their business or personal affairs, a statewide candidate's qualifications for judicial office can be known only by an infinitesimal per cent of the total electorate. As to candidates elected in the state at large or in the major cities, it may be speculated that in many instances most of their names are first noticed when the ballot is seen in the voting booth. Moreover, in the general election, the fortune of the candidate for judge is tied to the success of the party's slate of candidates for those offices voted upon by all the voters of the state. The most qualified men of the bar are not always put on the bench, often because they are not nominated in the first place. Yet in the face of all of this, there is a great reluctance to surrender the right to elect judges.

Perhaps the Indiana voter still embraces the principle of the era of "Jacksonian democracy" that he is capable of electing a good judge, or, in any event, that he is entitled to try.

The recent legislative history of proposals for "judicial reform" in Indiana appears as evidence that the legislature is unwilling to depart from the present framework of popular, partisan elections. This should

16. In the general election of 1962, the Indianapolis voters chose among candidates for 51 offices, of which 16 were judicial offices. Indianapolis Star, Nov. 9, 1962, p. 9, col. 1.
17. In 12 of the last 18 general elections a single party swept all offices voted upon by the voters of the State. In the remaining six elections, no more than three candidates were elected from the minority party. See Appendix.
18. "In England, from which most of our law and other free institutions came, the judges are by and large, abler lawyers than the abler barristers who come before them. Can we honestly say that such is true of our American states, particularly on the trial level?" Garwood, Judicial Selection and Tenure—The Model Article Provisions, 47 J. Am. Jud. Soc'y 21, 23 (1963). See also text accompanying notes 35-36 infra.
19. See note 66 infra.
20. See, e.g., Address by Charles W. Moore, in Report of Conference on the Question: "Shall a Constitutional Convention Be Called in Indiana?" 132 (1914) [hereafter cited as Moore, Conference Report]: The people of Indiana seem to like politics. Their idea of having a good time is to hold elections as often as possible. Their ballot at a general election is a riot of names and reads like a city directory, with its multitude of party tickets and its myriad of candidates. To deprive Horse Traders' Alley and Irish Hill and the Yellow Bridge gang of a chance to vote at a state-wide primary for democratic, republican, bull moose, prohibition, socialist, and socialist labor candidates and there choose five supreme judges, six appellate judges, five superior judges, and judges for circuit, criminal, probate, and juvenile courts, a half dozen justices of the peace and a city judge, would be like taking his dearest plaything from a child. And on election day in our capital city the genuine Hoosier wants to spend the sixty seconds limited by law in reading the names of two hundred candidates for elective offices, not a single one of whom he knows, and then blindly taking his pick.
21. For an abstract of the legislative history of proposals for judicial reform in Indiana see note 38 infra.
not be taken to establish that the present system of selection is adequate, for the objections to it are patent. Judicial candidates in many cases are selected from party faithful. Qualities of personal integrity, legal training and judicial temperament may in some instances be subordinated to qualifications based largely upon vote-getting ability, as well as a willingness to remain active in party affairs and contribute to party funds. The man who seeks a career on the bench must be a politician as well as a judge. In the first role he is expected to have policies and to support causes; paradoxically, in his role as judge it is demanded that he be unbiased. It has been aptly stated that "it is hard enough to be a good judge. We should not require him to be both a good judge and an expert politician."

Thus there is no assurance under the present Indiana system that the better qualified candidate will either be considered for or elected to judicial office; similarly, there is no assurance that he will be retained upon expiration of his term. Security of tenure for the competent judge is unquestionably a desirable objective of any selection method. The records of our outstanding American judges indicates a positive correlation between length of judicial service and judicial excellence as recognized by the legal community. While tenure alone is not the answer, it has been observed that "the decisions most relied upon as authority are the deci-

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22. "In only two states, Georgia and Indiana, has it been reported that judges customarily engage in partisan politics." VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION 15 (1949). In some instances the "willingness" to contribute to party funds may be immaterial. For example, the Republican judges of the Supreme and Appellate Courts of Indiana were recently assessed by the State Chairman of the party in an amount equal to two per cent of their salaries to be applied toward the party debt. Indianapolis Star, Dec. 15, 1963, § 2, p. 2, col. 3.

23. "The proper use of the elective process in a democratic society is to give the people an opportunity to choose among well-known candidates publicly committed to well-known views and policies. . . . There is no legitimate place in this picture for the election of judges." WINTERS, SELECTION AND TENURE OF JUDGES 11 (undated).


25. It is significant that the twelve outstanding judges in American judicial history each served at least a quarter of a century in what was substantially judicial office. Marshall was on the bench for thirty-four years, Kent for twenty-five, Story for thirty-two, Gibson for forty, Shaw for thirty-one, and Ruffin for thirty-five. Cooley was twenty-one years judge of the Supreme Court of Michigan and for four more a member of the original Interstate Commerce Commission, doing pioneer work upon what was to be a model for American administrative quasi judicial tribunals. Doe was on the bench for thirty-five years and Holmes for fifty years. Cardozo, at the date of his untimely death at the height of his powers, had been on the bench for twenty-four years and six months. Examination of the biographies of the judges who have made their mark in our judicial history will show that length of service has been conspicuous in substantially all of them.

Pound, Introduction to HAYNES, op. cit. supra note 6, at xiii.
sions of the courts whose tenure is least subject to interruption." The elected Indiana judge, however, is not entitled to expect a long uninterrupted life on the bench. He is initially guaranteed a term of only six or four years, and in seeking re-election, because of his inclusion on a party ticket the incumbent judge is vulnerable to party "sweeps" by the opposition. Moreover, in the courts of appellate jurisdiction the incumbent's record is, with a few significant exceptions, apparently unrelated to the probability of his re-election; it is typically the party, not the individual's qualifications or record, which determines the outcome of judicial elections in Indiana.

The partisan elective system is no more conducive to judicial objectivity, than it is to security of tenure. When the trial or appellate judge has successfully remained on the bench beyond the first term, a return to private practice in the face of youthful competition becomes more and more difficult, and consequently the political campaign grows in importance. The desire not to offend public opinion may become pervasive in his court, and perhaps the temptation to sacrifice the legal merits stronger. A mere suspicion of the presence of such temptation in a single judicial office is detrimental to the public's confidence in the integrity of all courts.

26. Moore, Conference Report 129. It is admitted that the less capable judge would also enjoy the benefits of security of tenure, but if the candidates for judicial office are chosen initially on their merits, the evil effects of secure tenure would be minimized. Thus, a system of selecting judges which provides for security of tenure must also insure that only the capable are selected.

27. See Appendix and note 1 supra.

28. This conclusion may not be entirely valid at the trial level because there is a greater possibility that the voter may have some familiarity with his "local" judges. Appellate judges, on the other hand, are unknown to the vast majority of voters because they are selected from geographical districts and voted on by all the voters in the state. There is also a possible, significant exception from the stated conclusion which is more unfortunate than the rule. See note 32 infra and accompanying text.


30. [A]n individual judge who decides his cases by submitting his own mind to the ignorant demands of the populace is recreant to his sworn constitutional duty. He is helping to undermine justice according to law or truth. It follows that any political practice which continually subjects judges to the strain of such a temptation is a false and unworthy practice. Such a practice is that of nominating and electing judges by popular vote.


31. The recent (Feb. 10, 1964) decision of the Indiana Supreme Court invalidating the governor's veto of certain legislation, which also resurrected a reapportionment bill is a prime example. Henricks v. State ex. rel. North-West Indiana Crime Comm'n, 196 N.E.2d 66 (Ind. 1964). The court split 3-2. Every newspaper article and radio and television commentary noted the fact that the majority were all of one political party and the minority of another. For example: "The Indiana Supreme Court yesterday, by a 3-2 vote along party lines, ruled that a special prosecutors' bill is now law. . . ." Louisville Courier Journal, Feb. 11, 1964, p. 1, col. 5 (Ind. ed.).
The judge in Indiana who desires a long life on the bench may be justified in his fear of offending public opinion. There have been instances in recent years where a judge of the supreme court has written or concurred in an opinion adverse to the interests of a large organization which act is believed by some to have caused his defeat at the next nomination or election without regard to his record on the bench. No judge should have to suffer loss of his office to uphold the integrity of a state's highest court. The necessary conclusion is that a system of judicial selection which makes it dangerous for a judge to decide a case in accordance with his convictions as to the legal merits is grossly inadequate.

"There can be no greater fallacy than that which would make the courts 'responsive to the people', for it confuses law with policy, and treats a judicial decision as if it were a matter of choice instead of a matter of right and wrong."  

The two other Republican judges joined Arterburn in holding that Welsh waited too long to veto the special prosecutor bill.

"The two Democratic judges, Walter Myers, Jr., and Amos Jackson, dissented from the majority opinion.” Bloomington Herald Telephone, Feb. 10, 1964, p. 1, col. 9. Such publicity, whether justified or not, can only result in creating an impression in the public's mind that judicial decisions are made along political lines in Indiana.

32. In the general election of 1962 a judge of the Indiana Supreme Court suffered defeat in his re-election bid, which some attributed to the efforts of the Indiana State Teachers Association. "Bobbitt, one of the most respected and best known judges in the state, was opposed by the ISTA simply because he wrote an opinion last June which ruled unconstitutional a law that the executive secretary of the ISTA had sponsored in the 1961 General Assembly." Indianapolis Star, Nov. 11, 1962, sec. 1, p. 1, col. 1. This is the only instance in 32 years that a single party did not win all vacant offices on the Supreme and Appellate Courts. See Appendix. In 1940 the Teachers Federation of Indiana accomplished “the defeat for renomination of a Justice of the Supreme Court of this State. No flaw was found in his character or professional qualifications. The sole objection was that he is a member of a court, the majority of whom declared the law to be against the contention of this pressure group.” Bomberger, Non-partisan Selection of Judges, 16 Ind. L.J. 57, 60 (1940).

Similar instances may occur in the future. The president of the state AFL-CIO, an organization of 300,000 Indiana workers, recently “indicated that his organization's opposition to sales tax supporters would extend to the five State Supreme Court members who unanimously upheld its constitutionality. . . .” Louisville Courier-Journal, Oct. 23, 1963, p. 1, col. 6.

33. Altogether . . . it forms a strong indictment against the system of popular election. Moreover, the necessity of submitting themselves and their legal opinions at frequent intervals to the judgment of the masses creates in the judges a strong temptation to shape their decisions and indeed their whole judicial conduct in such a way as to meet the approval of those to whom they must look for re-election. No judge should be exposed to the necessity of having to curry popular favor in order to retain his office.

Garner, Introduction to Political Science 575 (1910).

34. Moore, Conference Report 128. See also Root, The Importance of an Independent Judiciary, 72 The Independent 704 (1912):

A few people—one single man, perhaps—upon one side and the powers of the multitude upon the other side. For the few, the weak, there stand only the rules of law. On the other side stands the public desire to have a decision in accord with a public feeling. Consider the frame of mind of the judge who is
The able Indiana lawyer who in the face of all this is willing to take to the bench, to withstand the political pressures and to administer justice impartially is to be commended. Too often may be the case, however, where the man who would and could make an able judge prefers to sit quietly in his office practicing law rather than to place his fate in the hands of the demanding party leaders and the fickle electorate. Chancellor Kent prophesied: "The fittest men would probably have too much reservedness of manners, and severity of morals, to secure an election resting on universal suffrage." The able men that do go to the bench cannot be said to be there because of the present method of selection, but rather in spite of it.

II. The "Indiana Plan": Non-Partisan Election of the Judiciary

There has been considerable interest among the leaders of the Indiana bar to adopt a system of selecting judges which will eliminate the many shortcomings of the partisan election. This interest is not unprecedented in Indiana history; dissatisfaction with the partisan election of judges existed at the turn of the century. It has long been realized by members of the state's bar that a system should be adopted which would remove the judge from the many political influences and temptations which beset him, and which would secure his independence. The most frequently suggested reform plan has called for non-partisan election of the judiciary. The early proposals for such a system met with no success in the legislature. The disposition of a House Joint Resolution for non-partisan election introduced in 1945 was typical of the fate which awaited attempts at reform, and was reported as follows: "This
resolution got out on the floor of the House and was defeated 77 to 7 [sic] out of a possible 100 votes. I understand the convincing argument was by some lawyer from a political minded center who declared that a man who is not good enough to be a Republican or a Democrat is not good enough to be a judge. It seemed not to have occurred to the torchlight procession brothers that this was not the point.\textsuperscript{39}

While the enthusiasm for judicial reform apparently waned in the early Fifties, proposals for non-partisan election were resurrected in 1959 as the "Indiana Plan." The bills in that year suffered a quiet defeat,\textsuperscript{40} but the "Indiana Plan" was subsequently polished and introduced in 1961 not without considerable fanfare.\textsuperscript{41} Under its provisions the judicial ballot was to be separate from all other ballots at the general election, and would bear no party emblems. The incumbent judge seeking re-election would not be nominated in the primary, but would merely announce his intention to run in the November general election. All other candidates for the office would petition to have their names included on the special judicial ballot in the primary, and the candidate receiving the greatest number of votes in that contest would oppose the incumbent judge in the general election. On the judicial ballot in the November election the incumbent's name would appear first, and would be identified as "Present Judge." In both the primary and general elections candidates for judge were to be prohibited from participating in political campaign activities and could not be slated by any political party. Every party was prohibited from expending money to influence the election of a judge.

Proponents of the "Indiana Plan" contended that it would attract the best qualified to the bench, provide better tenure so that competent judges could continue their service, remove the judiciary from politics, and yet would maintain the means for voters to remove incompetent

\textsuperscript{39} Report by Louden L. Bomberger, \textit{American Bar Association Committee on Improving The Administration of Justice} Bulletin No. 6 (1945).


\textsuperscript{41} The "Indiana Plan" was finally composed of S. 378, S. 379, S. 380, 92d Sess. (1961), which provided for the non-partisan election of judges of the supreme court, the appellate court, and courts of record in counties, districts and judicial circuits, respectively. The supreme and appellate court bills were essentially the same in their provisions for non-partisan election. An important provision of S. 379 was to divide the State into three appellate divisions—Northern, Central and Southern. Three judges were to be elected from each division to sit as the appellate court for that division. The number of judges on the appellate court was to be increased to nine. Presently there are two appellate court districts. Four judges from each district are chosen by the electors of the state at large.

The bill for the trial courts was an enabling act which applied to circuit, superior, probate, criminal and juvenile courts, allowing each county to choose individually whether or not to adopt the system.
judges.\textsuperscript{42} A product of the Indiana State Bar Association, the plan was strongly supported by that organization in an intensive campaign to impress upon voters the merits of non-partisan election of judges.\textsuperscript{43} The "Indiana Plan" was introduced into the Senate of the 1961 General Assembly, and the supreme court bill was reported out of committee "without recommendation" and soundly defeated.\textsuperscript{44} The two remaining bills of the package were subsequently withdrawn.

The failure of the proposed legislation cannot be attributed to lack of interest by the groups that are most interested in improving judicial administration in Indiana. The "Indiana Plan," as noted above, was vigorously supported by members of the bar,\textsuperscript{45} and was quite similar to a non-partisan election plan the judges of Indiana had endorsed by secret ballot several years earlier.\textsuperscript{46} The bar campaign to inform any politically influential group that would listen of the advantage of the "Indiana Plan" over the present system was well organized and apparently well executed, yet its strength was insufficient to overcome the opposition's stronghold in the organized parties. A leading member of the 1961 legislature remarks: "Indiana is a very political-minded state. We even have judges who are county chairmen of their respective parties in the coun-

\textsuperscript{42} 3 Res Gestae No. 6, p. 5 (1959).
\textsuperscript{43} The campaign plan included a poll of every candidate for state legislative office to determine his position on non-partisan election of judges. The results of the poll were made available throughout the state. Each local bar association scheduled a meeting to discuss the bills and take an official position with respect to them. Each county chairman was to submit at least 10 resolutions from organizations in his county endorsing the bills. Speakers were provided to appear before any organization that could be interested, which included professional, fraternal and labor groups. Support of newspapers, radio stations and television stations was actively solicited. See \textit{Indiana State Bar Association, Non-Partisan Election of Judges Program} (1960).

\textsuperscript{44} In 1961 the supreme court bill, S. 378, 92d Sess. (1961), was the only one of the three-bill package for non-partisan election of judges which was called out and voted upon. It was defeated by a vote of 34-16. In 1959 when a similar plan had been introduced, the trial court bill, S. 305, 91st Sess. (1959), was called out first and defeated 32-14.

If the voting on the two bills was really a protest against non-partisan election of all judges, it would indicate that the support campaign conducted prior to introducing the plan in 1961 was generally ineffective.

\textsuperscript{45} It is difficult to determine exactly what portion of the members of the bar were in favor of the Indiana Plan although it had the endorsement of the Indiana State Bar Association. A poll of lawyers throughout the state was conducted in 1949 by the Judicial Selection and Tenure Committee and over 75% favored a change from the present system. In 1956 over 80% voted for a change. Hollowell & Hamill, \textit{Judicial Selection and Tenure in Indiana—A Challenge to the Bar}, 3 Res Gestae No. 6, p. 3 (1959).

\textsuperscript{46} In 1941 the question was presented to the members of the Indiana Judges Association: "Do you favor the bill [H.B. 255] recommended by the Judicial Council of Indiana for the non-partisan election of judges?" The response was: Yes 46, No 26. Report of the President of the Indiana Judges Association, 45th Annual Meeting of the Indiana State Bar Association (1941).
ties. When the judges are removed from partisan politics, they no longer need to contribute to a political party of their choice. This, of course, was not well received by those in organizational politics who, in turn, have an influence on members of the General Assembly. The partisan election of judges is so firmly entrenched as an integral part of the political system in Indiana that those in control of the parties are not likely to be easily persuaded to relinquish their measure of control over such a politically significant office.

It would be easy to make party leaders the scapegoat for impeding judicial reform, but to denounce the political "machine" for the defeat of the "Indiana Plan" does not tell the whole story. There were objections to the plan by legislators, judges, and members of the bar, as well as those in organized politics, which were not politically inspired but went to the merits of the non-partisan election system. In fact, there are those who contend that selection by non-partisan election is in many respects inferior to the present Indiana system of partisan election:

Non-partisan election of judges does free the judge from certain ties and obligations to political parties, but he loses more than he gains. Political parties are known and judged by their policies and personalities, and it is to their advantage to have both of high caliber. A party's sponsorship of a judicial candidate is in many ways a poor guarantee of a man's suitability for a judicial office, but nevertheless it is some guarantee, for when a man's name goes on the ballot under the party emblem he becomes one of the personalities on which the party stakes its hopes of securing or remaining in power. In the non-partisan election, a man's candidacy means no more than he wants the office, and it may mean that he is not getting enough law practice to make a living.

The proponents of the "Indiana Plan" answer that it should not be the responsibility of a political party to endorse the qualifications of a candidate for judge, and within an ideal system of selection the contention is sound. Under the provisions of the "Indiana Plan" the responsibility

48. The Senate Committee on Judiciary "A" in 1961 was composed of nine members, eight of whom were attorneys. That committee reported "without recommendation" S. 378 which provided for non-partisan election of supreme court judges. Three of those attorneys voted against the bill on the floor of the Senate. Senate Journal, 92d Sess. (1961).
NOTES

would be assumed by no one. It would be entrusted solely to the electorate, the large majority of whom are not in a position to know the judicial candidate's qualifications. In the primary election any person with the minimum statutory qualifications could petition for inclusion on the judicial ballot. Thus, in an effort to remove politics from the courts, the "Indiana Plan" would sacrifice the primary objective of a good selection system, viz., to insure that only capable persons may be candidates for the office.\footnote{51}

It cannot be answered that the electorate will put the best man into office. Under the "Indiana Plan" the voters have no basis for determining which candidate is the most qualified, for the burden of informing the electorate of his qualifications is placed solely on the candidate. On the trial court level in rural counties, perhaps the candidate for judge could make his qualifications known to the voters. On the other hand, the candidate for judge of the supreme or appellate court would find it extremely difficult to place his qualifications before the electors of the state at large without the assistance of the party campaign. Because it is unquestionable that a good system of selection enables the elector to know a candidate's qualifications, the non-partisan election system such as the "Indiana Plan" must be rejected as an inefficient method of selection.

Another problem created by removal of the would-be judge from the party ticket is that he is forced to conduct his campaign as an individual. The amount of time devoted to party campaign activities under the partisan election system would not be eliminated by the non-partisan system, but would merely be devoted to the personal campaign. Indeed, the candidate under the non-partisan system may even have to campaign harder to catch the voter's eye. In addition, he must bear the financial burden in this personal campaign without the assistance of the party fund, though it is likely that he would accept contributions to his campaign fund from "non-political" sources.\footnote{52} In short, he must be a one-man political ma-

\footnote{51. The emphasis of a non-partisan election plan upon elimination of political influence rather than on the selection of the most capable lawyers to serve as judges is apparent in a statement by a past Chairman of the Judicial Selection Committee of the Wisconsin State Bar Association concerning the Wisconsin system of non-partisan election of judges: "I do not mean to say that we do not have weak as well as strong individual judges, from the standpoint of ability and efficiency and courage; but the element of political control or even political leaning on the part of our judges has been so far eliminated by the non-partisan system of selection that the suggestion of such control or leaning does not enter our consciousness." \textit{Judicial Council of Indiana, First Annual Report} 18 (1936).}

\footnote{52. At a hearing on a proposed system of non-partisan election of judges for Kentucky, a Democratic State Representative, who is also an attorney in private life, remarked that "he would rather risk his case with a Republican judge than one financed}
machine without the rooster or the eagle to identify him in the voting booth. The non-partisan election would take the judicial candidate out of party politics; it would not take him out of the campaign.

An achievement claimed for the non-partisan "Indiana Plan" was that it would maintain "a simple and effective means for the voter to remove incompetent judges." It cannot be denied that a removal provision is essential to an effective and democratic method of judicial selection, but the removal provisions of the "Indiana Plan" are of questionable merit. That plan would require the judge to submit to the re-election process at relatively short intervals, a prescription hardly compatible with its declared objective of assuring the capable judge a long career on the bench. Moreover, the provision for removal of incompetent judges necessarily has the greater significance in a method of selection which permits the election of incompetent judges in the first instance, as is possible where selection is by non-partisan election. As Dean Roscoe Pound has asserted, "Too much thought has been given to the matter of getting less qualified judges off the bench. The real remedy is not to put them on."

Another shortcoming of the non-partisan election plan is that it generally does not prevent interim appointments of unscreened persons. Under the "Indiana Plan" a vacancy on the bench due to death or resignation would be filled by the Governor, who is free to appoint any person with minimal qualifications for the office. The better system would require the approval of the appointee by the body initially responsible for filling the office.

The most meritorious objective of the typical plan for non-partisan election is to enhance the incumbent judge's chances for re-election and thus aid in achieving the desired security of judicial tenure. The "Indiana Plan" provided that the incumbent be listed first on the judicial ballot with the description "Present Judge" next to his name. That requirement would not only allow the candidate to be identified with his record as judge of a particular court, but would also indicate to the uninformed voter that the office-seeker had experience on the bench. If the electorate had no particular reason to be dissatisfied with the incumbent or his court, it would not likely replace him with another since party affiliation would be immaterial. Thus, the incumbent judge would normally have an "edge" over his opponent, and to this extent would be guaranteed

by a pressure group. "I can go in and have a case with equity on my side, and have a judge with campaign contributions on his side." Louisville Courier-Journal, Nov. 20, 1963, p. 1, col. 7.

53. See text accompanying note 42 supra.
more security than under the partisan election method. The Indiana version of the non-partisan election system, however, would not guarantee the competent judge sufficient security. He would remain just as vulnerable to removal by disappointed interest groups as under the partisan election system, and he would still have to submit to the election process at relatively short intervals since the terms of supreme and circuit court judges are provided for in the constitution and cannot be extended by unilateral legislative action.

In view of the inherent weaknesses of the system of non-partisan judicial election, the contention that the type proposed in the "Indiana Plan" would attract the best qualified persons to the bench must be questioned. If the present Indiana system of partisan election is repugnant to those inclined toward a career on the bench because of the necessary subjection to the election process, the pressure of special interest groups upon the elected judge, and the general insecurity of tenure, selection by non-partisan election will not be much less repugnant. If capable attorneys will only be attracted to state judicial offices which allow independence in the administration of justice, which have the prestige and respect that must inure to a position demanding professional competency and personal integrity, and which guarantee rightful security of tenure, selection of judges by non-partisan election is no solution. What is needed is a system consistent with the traditions of popular election that will recruit the best candidates for judicial office, allow them to remain on the bench for the maximum number of their productive years and permit those judges on the bench to concentrate upon their judicial duties rather than upon the next election. These objectives can be attained by the appointive-elective system of selection.

55. A perturbing question is "what will the supporters of the incumbent judge do in the primary when they receive a judicial ballot which does not include the incumbent's name?" Several possibilities exist: (1) they will abstain from voting the judicial ballot; (2) they will mark the ballot not caring for whom they vote because they will switch to the incumbent in the general election; (3) they will vote in a manner which is likely to place the incumbent's weakest opponent upon the judicial ballot in the general election; (4) they will vote intelligently for the "best" candidate and then have to be wooed out of his camp by the incumbent judge in his general election campaign. For every voter to whom the fourth possibility applies, the incumbent's "edge" is diminished.

56. Ind. Const. art. 7, §§ 2, 9.
57. See Garwood, supra note 18, at 23.

Non-partisan judicial selection through an appointive-elective system is based on a pattern first advanced by the American Judicature Society in 1913. Drafted by Professor Albert M. Kales of the Northwestern University Law School, the Society's plan was published in that year as Bulletin VII, A State-Wide Judicature Act. Endorsed by the American Bar Association in 1937 as the most
III. THE APPOINTIVE-ELECTIVE SYSTEM OF JUDICIAL SELECTION
AND TENURE

The State of Missouri serves as an appropriate model for study by those who would attempt to improve the quality of judicial administration in Indiana. Historically the two states have sailed parallel courses, only to have diverged in recent years. As in Indiana, the first Constitution of Missouri provided for the appointment of judges by the Governor. Following the national trend to abolish the system of appointment of judges for life, and to substitute the election for short terms, Indiana abandoned the appointment method in the Constitution of 1851, Missouri by constitutional amendment in the same year. The members of the bar in both states have generally agreed that by changing to the partisan elective system the independence of judges was impaired and the standards of courts lowered.

The lawyers of Missouri were moved by dissatisfaction in the late Thirties to establish the Missouri Institute for the Administration of Justice. The membership of the group was not restricted to lawyers; the Institute’s successes were attributed in large part to the fact that laymen

acceptable substitute available for direct election of judges and often identified by the use of the popular caption “Missouri Plan” (after the pioneering adopting state), this plan is characterized by three basic elements:

(1) Nomination of states of judicial candidates by non-partisan lay-professional nominating commissions.

(2) Appointment of judges by the state governor from the list submitted by the commission.

(3) Review of appointments by the voters in succeeding elections in which the judges run unopposed on the sole question of whether their records warrant retention in office (merit retention).

Today nine states (California, Missouri, Oklahoma, Alabama, Alaska, Kansas, Iowa, Nebraska and Illinois) use the non-partisan appointive-elective plan or a variation to select all or part of their state judges.

59. The Missouri system for the selection of judges is submitted for study not because it is necessarily superior to the similar plans adopted by other states. See note 58 supra. It does represent a plan adopted by a midwestern state which formerly selected its judges by partisan election. The plan has been in effect for 20 years; consequently, there is data available concerning judicial selection under the plan as well as an abundance of published critical studies.

An exhaustive study of the appointive-elective system should include the Model State Judicial Article which was approved by the House of Delegates of the American Bar Association in 1962. The constitutional article includes a provision for selection of judges by the appointive-elective plan with expository comments upon each paragraph. See 47 J. Am. Jud. Soc’Y 8 (1963).

60. Mo. Const. art. 5, § 13 (1820).

61. Mo. Const. amend. 6, § 1 (1820) provided for the election of Supreme Court judges. The circuit court judges were not elected until adoption of the new Constitution. Mo. Const. art. 6, § 14 (1865).

In 1937 the Institute drafted the "Missouri Plan" which was subsequently adopted by the voters of that state as an amendment to their constitution. Similar plans had also been considered for Indiana at that time. The Indiana State Bar Association approved the appointive-elective system in 1939, but recommended that judges be elected on a non-partisan ballot "until constitutional changes can be adopted." In 1944 the Judicial Council of Indiana recommended a constitutional amendment which provided for selection of judges by the appointive-elective system of the type adopted in Missouri. The proposed amendment was introduced at the General Assembly of 1949 as Senate Joint Resolution No. 12, referred to committee which reported it back with a recommendation that it not pass. The resolution did not get a second reading.

The appointive-elective system proposed for Indiana was very similar to that adopted in Missouri. Under the "Missouri Plan," when a vacancy exists in the office of any judge affected by the plan, the governor must fill it by an appointment from among three persons nominated to him by a non-partisan judicial commission serving that particular court. After the person appointed has served a probationary period of twelve months, the judge's name is submitted unopposed to the voters at the next general election on a separate judicial ballot, without party designation. The single issue is "Shall Judge ——— of the ——— Court be retained in office?" If a majority of voters favor retention of

63. Ibid.
64. The plan was later incorporated into the Missouri Constitution of 1945. Mo. Const. art. 5, § 29 (1945).
65. A committee appointed under a resolution of the General Assembly by the governor of Indiana proposed in 1934 that the governor appoint judges from a list submitted by a judicial council, tenure to be good behavior. Report of the Indiana State Committee on Governmental Economy on the Administrative of Justice in Indiana, 10 Ind. L.J. 111 (1934).
66. "Governor Townsend at once stated that he was opposed to any plan which would take selection of their judges away from the people. The Governor said 'To have the executive branch select the judicial would surely destroy our system of checks and balances.' The bar committee had indicated that the plan would insure the greatest degree of independence to the judiciary." Indiana Bar Approves Appointive Plan, 23 J. Am. Jud. Soc'y 126 (1939).
67. The proposed amendment provided that all vacancies, other than in the justice of the peace and the magistrates court, be filled by the governor from a list of three names submitted by the appropriate Judicial Appointment Commission. Terms of office were to be eight years. Upon expiration of the term, the question to be submitted to the voters was, "Should Judge ——— of the ——— Court be retained in office?" Report of the Judicial Council of Indiana 15-18 (1948).
68. Under the "Missouri Plan" the appointive-elective system of selection is mandatory only as to the "supreme court, the court of appeals, the circuit and probate courts within the city of St. Louis and Jackson County, and the St. Louis courts of criminal correction." The voters of the remaining circuits may elect to be included under the system. Mo. Const. art. 5, §§ 29(a)-(b).
the judge in office, he then serves a full term and at its expiration may again run unopposed for another term. If the voters choose not to retain the judge, then the nominating and appointing procedure is again invoked.69

As with most plans which seek to insure security of tenure, the "Missouri Plan" provides relatively long terms of office. The judges of the supreme and appellate courts serve for 12 years, and the terms for trial court judges, of whom only a few are within this selection system, have remained at six years. Upon expiration of his term of office, the judge runs only against his record rather than against a live opponent. Thus, the judge is spared the necessity for a time-consuming campaign and is free to perform his judicial duties. The effects of these provisions were evaluated by Chief Justice Hyde of the Supreme Court of Missouri:

I think an outstanding feature of the plan is that it makes it possible for every judge to be a better judge . . . because he does not have to put in any time campaigning and can give all his time to his judicial work. Our judges can now always be working on the next case instead of on the next election. Furthermore, judicial qualities have been substituted for party affiliations as the principal basis for selecting and retaining judges. . . . A judge does not have to worry about maintaining political fences. The result of all this is that all of our appellate court dockets have been brought up to date for the first time in half a century, and are being kept on a current basis. Improvements have been made in bringing the circuit court dockets up to date . . . . Delays have been lessened and expense of litigation reduced. The adoption of this plan is undoubtedly the greatest

69. There is no provision for a temporary judge to serve until the regular judge is appointed. Since the commission acts "whenever a vacancy occurs", it is presumed that the interim period would be relatively short. A vacancy would create a disruption only in the single-judge courts; the appellate level courts can function normally with a vacancy.

In the first 20 years under the "Missouri Plan" there were 44 appointments for the following reasons:

<table>
<thead>
<tr>
<th>Reason</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Divisions Created (Jackson County)</td>
<td>3</td>
</tr>
<tr>
<td>Deceased</td>
<td>18</td>
</tr>
<tr>
<td>Retired</td>
<td>12</td>
</tr>
<tr>
<td>Term Expiring</td>
<td>3</td>
</tr>
<tr>
<td>Resigned</td>
<td>7</td>
</tr>
<tr>
<td>Not Retained by Popular Vote</td>
<td>1</td>
</tr>
</tbody>
</table>

Total Appointments | 44 |

improvement that has ever been made in the judicial system in this state.\textsuperscript{70}

The strength of the "Missouri Plan" lies in the function of the judicial commission to nominate only the most qualified persons for appointment by the governor. One commission is established for the supreme and appellate courts, and a separate commission for each of the circuits under the plan. They are composed of an equal number of lawyers elected by the bar and laymen appointed by the governor, and one judge who acts as chairman.\textsuperscript{71} The commission is thus representative of the bench, the bar and the public, and its non-partisan nature has been a significant factor in eliminating the influence of political considerations in selection of nominees. The members of the commission are prohibited from holding any official position in a political party,\textsuperscript{72} and the governor cannot effectively control a given commission through appointment of its members.\textsuperscript{73} In all but a few instances, the panel of three nominees submitted to the governor has included at least one nominee not of the governor's political party.\textsuperscript{74}

Although there is no absolute assurance that the commission will nominate only the most capable persons, its nature makes it better able to fulfill the nominating function than either party leaders under the partisan election system, or the governor in making interim appointments. The system's premise is that the commission members are not liable for political debts and can thus evaluate a nominee's judicial fitness without regard to his political affiliation. To assume that each member is without political sympathies and bias would be naive; however, since no significant benefits inure to a given party by representation on the bench because of the plan's prohibition against political activities of judges, the compulsion to favor a certain candidate for political reasons is minimized.

\textsuperscript{70} Quoted by Harris, \textit{In Support of the Pennsylvania Plan}, in \textit{Ohio Conference on Selection and Tenure of Judges} 344, 347 (1963).

\textsuperscript{71} The Appellate Judicial Commission consists of seven members, one of whom is the chief justice of the supreme court, who acts as chairman. The remaining members are three lawyers elected by the state bar and three laymen appointed by the governor. Each circuit judicial commission consists of five members. The chairman is the presiding judge of the court of appeals of the district; the lawyers and laymen are residents of the area within the circuit and are selected in a manner similar to their counterparts on the Appellate Judicial Commission. Mo. Const. art. 5, § 29(d).

\textsuperscript{72} Ibid.

\textsuperscript{73} The governor only appoints the lay members of the commission. In some instances, the governor is also responsible for a given chairman's presence on the commission since the chairman was originally appointed as judge of the supreme or appellate court by a governor.

\textsuperscript{74} Hemker, \textit{supra} note 69, at 161. The data which would indicate how many members of the opposition party were appointed since the adoption of the plan is unavailable. For one governor's record see note 78 \textit{infra}. 
Moreover, since the commission members are prohibited from holding an official party position, it is unlikely that they would be politically guided as might party leaders or the governor. Even so the effect of a single member's political considerations upon the choice of the slate of nominees would not be significant. Once the name of a potential nominee is before the commission for consideration, his judicial fitness can be weighed against the ideal qualifications for judicial office by a group, the majority of which is intimately familiar with those qualifications through their legal training and courtroom experience. Thus, the nominee can be "sized up" by the application of valid criteria, rather than by an assessment of his helpfulness to the party or by the electorate's notion of what makes a good judge. The conclusion that a judicial nominating commission will always nominate for a judicial office the best candidates available is untenable; however, it is in a better position to make a good faith effort to do so than are those responsible for fulfilling this function under the typical election system.

The charge most frequently voiced against the "Missouri Plan" is that it is undemocratic, but this argument is not convincing. While the judge is not initially selected by the electorate, the public can and should participate directly by submitting names for judicial office to the commission and by following a judge's record so as to be in a position to vote intelligently when he later appears on a short and understandable judicial ballot. Moreover, the plan allows voters an opportunity to unseat a weak or incompetent judge, while at the same time giving reasonable assurance of nomination of the best available candidates by a group thoroughly acquainted with the candidate's qualifications. The system provides reasonable tenure for the judge, permits him to be independent but not arbitrary and frees him from the pressures of the campaign, all of which necessarily promote the efficiency of the courts.75

It is admitted that the judge under such a plan remains somewhat vulnerable to the possibility of being turned out of office because of an opinion adverse to the interests of a large organization, a risk which cannot be completely eliminated under any system which requires public approval for retention in office. Whether the judiciary is to be selected by a method which is consistent with the traditions of popular election in preference to a purely appointive system is, of course, a fundamental de-

75. In Missouri there has been one instance where a judge was not retained by popular vote. In Jackson County in the election of 1942, a judge who was actively opposed by the bar was not retained when he ran for retention. Douglas, supra note 62, at 1172.
cision.\textsuperscript{76} If the former method is adopted, the risk is assumed. The "Missouri Plan" does effect a much better insulation from pressure groups than a system of non-partisan election. Where a judge runs solely "against his record" in the re-election process, he does not lose the substantial number of votes which would otherwise accrue to a live opponent merely because the latter's name appears on the ballot\textsuperscript{77} and greatly diminish the margin of votes which must be taken from the incumbent to achieve his defeat. More important, the longer term of office which has traditionally accompanied the "Missouri Plan" subjects the judge to interest group pressures less frequently than other plans. Being able to establish a record on the bench over a longer period, he is less vulnerable to the displeasure of the offended group—displeasure that will naturally dissipate with time. Finally, it is possible that where politics and campaigning are eliminated from a system of judicial selection, the public will view the decisions of an able judiciary with the solemn respect to which they are entitled, rather than as fickle opinions another judge might well discard.

Another objection to the apppointive-elective system is that it is possible for the governor to appoint a large majority of or only those nominees from his political party. Although this possibility has not always been a reality in Missouri,\textsuperscript{78} the opportunity does exist. Even so, the ob-

\textsuperscript{76} In view of the past legislative history in the area of judicial reform in Indiana, it is likely that the State will indefinitely retain a system of judicial selection which will allow some degree of popular participation in the selection process rather than an appointive system such as that by which the federal judges are selected. For that reason, a comparative analysis of the appointive system is not made in this note.

\textsuperscript{77} Chief Justice Hickman, who had held high judicial office with distinction for many years, was widely known and came as near to being popular as a good judge can. His opponent was a septuagenarian, whose only claim to fame was that he had once been suspended for six months from the practice upon jury findings of dishonorable and unprofesional conduct duly affirmed on appeal. That opponent carried his home county, which was the third or fourth most populous county of the state, came within some 400 votes of carrying a still more populous one adjoining it and got about 40 per cent of all the votes cast in the state. On the Texas Supreme Court we had a saying that "any opponent is a dangerous opponent." There is another Texas saying that in a state-wide race any name (including that of a dead man) is worth about 400,000 votes!

Garwood, \textit{supra} note 18, at 23.

\textsuperscript{78} Former Governor Philip Donnelly, though a Democrat, named seven Republicans in making 15 appointments during his second term, although he could have named all from his own party. This shattering of party lines sets a precedent in American judicial history and far excels the record of our federal judiciary. It represents appointments of only 53.3 per cent from his own party, while from President Cleveland to President Truman partisan appointments to the federal judiciary ranged from a high of 98.7 per cent to a low of 82.2 per cent.

Harris, \textit{supra} note 70, at 346.
jection is irrelevant. If the man appointed is a truly competent judge, it cannot really matter whether he belongs to one party or the other. He cannot be asked to have no party. What is important is that the judge is divorced from party activity and freed from political influence in the performance of his judicial duties. The Constitution of Missouri expressly prohibits political activity by a judge whose office is subject to the appointive-elective system, such as contributing financial support to the party, holding office in the party or taking part in any political campaign. The "Missouri Plan" has taken the judge out of politics as well as the campaign.

The appointive-elective system paved the way for an improvement of judicial administration in Missouri. It has not only permitted those judges who remained upon the bench after adoption of the plan to become better judges by freeing them from partisan pressure but additionally, "lawyers with successful practices but no political bent have been induced to give up the practice and come to the bench." Consequently, there is every reason to believe that the prestige and efficiency of the Missouri courts and judges has grown.

IV. Conclusion

In Indiana, a better system of judicial selection must be adopted if the courts are to enjoy the position of eminence they once occupied. "Long ago, before the modern idea of nominating judges on party tickets and voting for a supreme court whose names were identified on the ballot by an eagle or a rooster, the reports of Isaac Blackford were quoted throughout the United States and cited as authorities in the English courts." To regain that position Indiana's system of judicial selection and tenure must allow only the most capable persons to be elevated to the bench, and once in office they should be disturbed only if incapable. A system of non-partisan election cannot achieve these seemingly lofty, yet necessary and attainable objectives. It would attract the capable only incidentally to its primary purpose of removing political influence from judicial selection. The non-partisan elective plan cannot insure that highly qualified persons will be selected for the bench, nor can it guarantee the necessary security of tenure. The legislation offered in Indiana for non-partisan election has only been a weak attempt to patch up an irreparable system of judicial selection, and if that legislation had become law Indi-

79. Mo. Const. art. 5, § 29(g).
81. This criticism of "the modern idea" was spoken a half century ago. Moore, Conference Report 129.
ana today would still have only a second-rate method of selecting its judges.

The great attraction of the non-partisan election for those who would improve the present system was that it could be placed in effect without the need for a constitutional amendment, and therefore require some four years less time to adopt than the appointive-elective system. But this advantage of expediency has been nullified by the continued defeat of the non-partisan election plan at the hands of the legislature. The truth is that a constitutional amendment cannot be avoided if Indiana is to elevate its judiciary. The appointive-elective system, because it can insure both the independence of the judiciary and occupation of its ranks only by the capable, should prove acceptable to those opposed to the non-partisan election proposals. Perhaps after thirty years of rejection of non-partisan plans, those who would improve the administration of justice in Indiana will be persuaded to re-evaluate the suitability of the appointive-elective system for selection of judges.

82. The total period of time required for adoption of a constitutional amendment in Indiana is approximately four years, provided the process is not shortened through special sessions of the General Assembly or special elections to secure ratification by the voters. An amendment is adopted by agreement of the majority of the members of both houses of the General Assembly in two consecutive biennial sessions and subsequent ratification by the electors of the State. IND. CONST. art. 16, § 1. For example, the typical timetable for adoption would be as follows: January, Year 1—first agreement; January, Year 3—second agreement; November, Year 4—effective upon voter ratification.

However, to consider the adoption process in reference to the legislative framework of 1964, an amendment providing for judicial selection cannot feasibly be adopted prior to 1970, because the Indiana Constitution provides: "... while an amendment or amendments, which have been agreed upon by one General Assembly, shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed." IND. CONST. art. 16, § 2. There were several proposed amendments agreed upon by the General Assembly in the 1963 session which cannot be ratified by the voters until 1966. Assuming that any one of those proposals is carried to the voters, an amendment providing for judicial selection cannot be introduced until 1967. Thus, the timetable would be: January, 1967—first agreement; January, 1969—second agreement; November, 1970—effective upon ratification.

83. S. 378, 92d Sess. (1961) was defeated by a vote of 34 to 16. S. 135, 77th Sess. (1931) was defeated by a vote of 34 to 11. See Senate Journals for the respective years.

84. Throughout this note the appointive-elective system as adopted in Missouri has been referred to as a model for comparison. This does not infer that the appointive-elective plan as adopted in Missouri is the ideal variation among such plans. The ABA Model Judicial Article, note 59 supra, deserves special attention both for its appointive-elective features and for its integration of judicial selection in a framework of overall court reform.
## APPENDIX

### How Indiana Voted 1930-1962

|-----------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|

Source: Indiana Year Book for respective years.