THE EVOLUTION OF APPROACHES TO THE JUDICIAL CORPS FORMATION IN THE US (FROM THE IDEAS OF ALBERT M. KALES TO THE PLAN OF SANDRA D. O'CONNOR)

Oleksandr Kulikov
Postgraduate Student, Academy of Advocacy of Ukraine, Ukraine
e-mail: elskrinka@ukr.net, orcid.org/0000-0002-9856-4431

Oleksii Kulikov
Ph.D., Kyiv State University of Trade and Economics, Ukraine
e-mail: alexeykulikov24@gmail.com, orcid.org/0000-0002-5400-4133

Summary

The topic of the article is devoted to the selection of judges in the United States of America, a country that is a good example of the variety of approaches that can be used to form an effective judicial corps. This topic is relevant not only for the US, where even in a relatively recent historical retrospect, individual states tried to choose new models for the selection of judges, but also for other democratic countries, which are currently faced with the issue of building a new or reorganizing the existing format of judicial power on the basis of professionalism, integrity and responsibility to society. The article touches on certain historical moments of the evolution of approaches to the selection of judges in the US. In particular, the path of the development of procedures for the selection of judges is analyzed, which started from the dominant at the beginning of the creation of this state, the gubernatorial appointments of judges to the progressive methods proposed at the beginning of the 20th century by Albert Kales and already in the new millennium by Sandra Day O'Connor, which combined the procedures of individual appointments, popular votes and professional selection by independent bodies. In addition, the article provides a brief author's analysis of the main advantages and disadvantages of the existing methods of selecting judges in the US.

Key words: selection of judges in the US, gubernatorial appointments of judges, partisan elections of judges, non-partisan elections of judges, Missouri Plan, O'Connor Plan, appointment of judges by the legislature.

DOI https://doi.org/10.23856/5522

1. Introduction

The issue of forming an effective corps of judges remained relevant regardless of the historical period of time when it was addressed, or the level of development of the countries to which it concerned. After all, the judiciary and its representatives have always been entrusted with the task of ensuring justice and balance in the complex multiplicity of socio-political, social, economic and other legal relations that millions of citizens, thousands of organizations and companies face every day. Whether a candidate for the position of a judge or an acting judge meets the criteria of professionalism, independence and integrity depends on whether the balance in social relations will be preserved, or, on the contrary, such balance will be lost and the country will take a step towards legal, and as a consequence, social and economic disorder.

Taking into account the key role of judges and the judicial corps in building a fair state and in the formation of developed socio-economic relations, many countries have tried for decades

to find the optimal model for the selection of judges, which would allow selecting professional specialists for the judiciary. The US was no exception. For many years, this country went through its path of search, made successful and unsuccessful attempts, changed one model of selection of judges to another. It should be noted that the federal system of the US state system, caused different paces of legislation development in its various administrative parts. Therefore, some states still have not overcome this journey to the end and continue to improve the mechanisms of selection of judges, "experimenting" with the subjects of appointment of judges (governor or legislative body), with the form of election of judges (electoral procedures or direct appointments), with types electoral procedures (party or non-party) *(William E. Raftery, 2019)*, with the types and composition of bodies whose powers include the selection of candidates for the judicial system (nomination commissions, special councils, or other auxiliary bodies) *(William E. Raftery, 2016)*.

On the other hand, the process of improvement is a process of constant development, therefore it is probably inappropriate to talk about the existence of some final perfect model of the selection of judges.

2. Materials, research methods, results and discussions

The US is an interesting object for researching models of formation of the judicial corps primarily because this country is a unique example of a combination within one state border of fundamentally different approaches to the selection of judges. And although such a situation is explained by the above-mentioned federal nature of the US state system, it still remains surprising how different the approaches to the formation of the judicial corps can be even in neighboring states – administrative parts of the country, which for decades, and sometimes even centuries, had, in addition to common borders, close historical, cultural and economic relations (the state of California uses the gubernatorial appointment model, the state of Nevada – non-partisan elections, and the state of Arizona – the Missouri Plan).

Original English-language sources were used for the analysis, including official electronic resources of the US judiciary, digital libraries, articles, publications and monographs of American scientists, legal scholars and experts. In particular, Albert M. Kales, William E. Raftery, Larry C. Berkson, Chris W. Bonneau and others. On the basis of the mentioned materials, a comparison of the relevant models of the selection of judges in the US was carried out.

Indeed, over the past hundred years, approaches to the selection of judges in the US have changed and evolved significantly. They went from individual gubernatorial appointments (popular until the middle of the 19th century), parliamentary appointments, non-transparent party elections (which were actively used until the beginning of the 20th century) *(Ray M. Harding, 1969:1162)*, to well-structured, politically neutral and balanced electoral procedures, which began to be carried out from the middle of the last century in accordance with the Missouri Plan, or completely new in the historical dimension of the procedures provided for by the Plan of Judge Sandra Day O'Connor. To understand the essence of each of these approaches, you should familiarize yourself with them in more detail.

Governor's appointment of judges

The model (or method) of the governor's appointment of judges will be considered first. It is one of the oldest models of selecting judges and originates from the right of the king (queen) to appoint judges, which was a characteristic feature of the formation of the judiciary in Great Britain. The right of the head of state to appoint judges, in fact, was inherited by

the US, as a country whose territories were colonies of Great Britain. It is worth noting that the right of the head of state to appoint judges was characteristic not only of Great Britain. It also existed in many European countries. This right also remains today in the modern US and in modern Europe. Thus, according to the US constitution, the president of the country proposes and appoints candidates for the positions of judges in federal courts *(The Federal Judicial Nominations Process, https://www.acslaw.org).* The democratic nature of American society has formulated requirements for additional approval of presidential candidacies by the second chamber of the US Congress – the Senate *(The Federal Judicial Nominations Process, https://www.acslaw.org)*. At the same time, this does not diminish the role of the president in forming the corps of federal judges.

A similar principle of appointment of candidates for the positions of judges is used at the state level. This method is called the gubernatorial method of appointing judges. According to this method of selection of judges, the governor of the state independently determines candidates for the position of judge. In this matter, he is not bound by proposals that may be offered to him by auxiliary or advisory structures, as it happens in the Missouri plan, when the governor selects candidates only from the list proposed by a special selection (nomination) commission of judges. As at the federal level, candidates for the position of judge determined by the governor require additional approval by another body – legislative or governmental. As a rule, such nominations are approved by the House of Representatives and the State Senate *(William E. Raftery, 2019)*, *(Gubernatorial appointment of judges. https://ballotpedia.org)*. At the same time, the procedure of direct voting in the state senate may be preceded by a preliminary consideration of nominations in a senate commission or committee. In Maine, for example, a nominee proposed by the state's governor must be reviewed by a judicial committee before being approved by a majority vote of the Maine state senate. In New Jersey, a candidate for governor must also receive the support of a majority of the state senate. Before voting in the New Jersey state senate, the proposed nominations are reviewed by the Senate Judiciary Committee *(Gubernatorial appointment of judges. https://ballotpedia.org)*.

In the above examples, the body that approves the nominations proposed by the governor of the state is the senate. Along with this, the approval of candidates for the post of judge can be carried out by another state institution, depending on how it is provided by the legislation of a particular state. Thus, in the state of California, such approval is carried out by a special commission – the California Commission on the Appointment of Judges, which consists of the state attorney general, the chief justice of the Supreme Court of California and the highest judge of the state court of appeals. In the state of Massachusetts, the candidacy proposed by the governor must go through the approval process of a special body called the Massachusetts Governor's Council. It consists of nine members: the lieutenant governor and eight people who are elected every two years in party elections. *(Gubernatorial appointment of judges. https://ballotpedia.org)*.

Analyzing the advantages and disadvantages of this method, it is possible to note the relative organizational simplicity of the selection of judges. Gubernatorial appointments of judges are significantly less resource-intensive compared to party or non-party elections of judges. At the same time, one of the disadvantages of the gubernatorial model of appointing judges is primarily the noticeable concentration of power "in one hand". Regardless of the fact that the proposed candidates for the governor are approved by the legislative body or government commissions, the possibility of using personal connections and acquaintances with the head of state remains extremely high. On the other hand, it seems unnatural to remove the direct residents of the state from the procedure of formation of the judiciary, taking into

account the fact that the US is a country where the ideas of democratic government are actively cultivated. Perhaps the deprivation of the American people from the possibility of direct participation in the formation of the judicial corps and the feeling of its involvement in state affairs reduces sympathy for this model of judicial appointments. And as a result, gubernatorial appointments of judges are not a very popular model for selecting judges in the United States. Thus, "As of December 2021, five states used this method at the state supreme court level and two states used this selection method for at least one type of court below the supreme court level". *(Gubernatorial appointment of judges. https://ballotpedia.org)*.

3. Party elections of judges

Party elections of judges in a certain sense were supposed to become a more democratic alternative to the gubernatorial one-person method of appointing judges and were a popular model of judicial elections in the past *(Brandice Canes-Wrone, Tom S. Clark., 2015)*. First, they provided an opportunity to weaken the influence of one political figure on the judiciary. Secondly, many more people were involved in the decision-making process, which is why the professional level of the candidate for the position of judge had to be higher, because it was necessary to meet the requirements of a larger number of "party reviewers". And with the rest, the third, important circumstance that determined the popularity of this method was the granting of the right of the public to elect judges, which was definitely and remains in line with democratic ideas of both the past and the present.

For the first time, the possibility of party elections of judges for lower courts was enshrined in the constitution of the state of Georgia in 1812. Soon after in 1816, Indiana, which became a new US state, also provided for election procedures for associate circuit court judges in its constitution. Along with this, for twenty years, the possibility of electing judges by popular vote was considered only for courts of individual instances. Party-based election of judges for all courts became possible in 1832, when the practice was first introduced in Mississippi. The popularity of the model of party election of judges was growing. And after the end of the Civil War in 1862, 24 of the 34 states that were part of the United States at that time provided for partisan election procedures for the formation of the judicial body. In the future, all new states joining the US adopted election procedures for judges of all or individual judicial branches *(Larry C. Berkson, 1980)*.

Thus, partisan elections were used in the US as the dominant electoral model for judges until 1912, when the non-partisan model of judicial elections was first introduced. Today, the use of party elections has declined significantly. Thus, only 8 states use this model for the election of judges in various instances (Alabama, Illinois, Louisiana, North Carolina, Ohio (intermediate appellate court), Pennsylvania, Tennessee (general jurisdiction), Texas).

According to the current model of partisan elections, candidates for the positions of judges are mainly proposed by the two largest political parties in the United States, the Republican Party and the Democratic Party. At the same time, the model of party elections for judges provides for the possibility of non-party candidates for the post of judge also participating in the elections. Judges who are elected according to the party model must undergo re-election at the end of their term of office in order to continue performing judicial duties for a new term. If a vacancy occurs during the term of appointment of a judge that cannot be filled by candidate from the party list, such vacancy shall be filled by the state governor until the next general election.

Undoubtedly, the main advantage of party elections is the involvement of a wide range of the public in the procedures for forming the judicial corps. This is a strong signal to the judicial

authorities to be objective and professional, because for unsatisfactory performance of their duties, responsibility will come during the next elections.

Disadvantages of party elections can be considered noticeable dependence of the judicial system on political power. Moreover, this dependence of judges is quite noticeable, since they are not appointed for life, but for a certain period. This means that in order to be re-elected to the position of judge, the candidate had to prove "well behavior" during the time during which he occupied the judge's chair. In this case, "well behavior" means also meeting the expectations of a political party, which, among other things, can mean showing loyalty to cases in which the parties are representatives of the relevant political gpoup.

It is worth noting that party elections of judges are accompanied by expensive election campaigns. Thus, in 2000, about 16 million dollars were spent on the election campaign of judges of the Supreme Court of the State of Michigan. US *(Billy Corriher, 2012)*. Such competition of financial resources of the parties may mean that the candidate with the best professional and moral rating may not get the position of judge, but the candidate whose financial capabilities are greater for the party to which he belongs.

On the other hand, the fact that it is important for the party to choose not only candidates loyal to it, but also really good experts and professional lawyers can be used in favor of the party system of selecting judges. After all, the party's reputation and the level of support for the party in the next elections will depend to a certain extent on the quality of the candidates judging.

Despite the fact that at the beginning of the last century, party elections were the most popular tool for forming the corps of judges, today they are inferior in popularity to models of election of judges with the help of non-party elections and elections "on merit" (Missouri Plan) *(Billy Corriher, 2012)*. It is interesting that the popularity of party elections in the USA has also continued to decline recently. Thus, since 2000, three states – Arkansas, North Carolina, and Virginia – abandoned party elections in favor of non-party elections *(Larry C. Berkson, 1980 :9)*. Although North Carolina in 2016 decided to return to the model of party election of judges, the general trend was outlined *(Chris W. Bonneau,2018)*. To date, only eight of the thirty-eight states that use electoral procedures (Alabama, Illinois, Louisiana, New Mexico, North Carolina, Ohio, Pennsylvania, and Texas) use party elections to elect judges to the state's highest courts *(Judicial selection in the states. https://ballotpedia.org)*. And in eight states (Alabama, Illinois, Louisiana, North Carolina, Ohio - intermediate appellate, Pennsylvania, Tennessee -general jurisdiction and Texas), judges are elected in party elections to courts of appeals and courts of general jurisdiction *(Judicial selection in the states. https://ballotpedia.org)*.

4. Non-party elections of judges

Continuing to consider the models of selection of judges used in the US, it is worth noting the fact that popular elections of judges are particularly popular. This situation is probably explained by the fact that in this way society makes an attempt to preserve the responsibility of judges before it. Thus, 87% of state judges meet with voters in one way or another *(Judicial selection in the states. https://ballotpedia.org)*. The above-mentioned party elections became the starting point for the emergence of a new model for the selection of judges – non-party elections. The nonpartisan model of judicial elections in the United States was first introduced in 1912 in the state of Ohio. Non-party elections differed from party elections of judges in that candidates for the position of judges were included in election lists without indicating party affiliation or any other political affiliation. At the

expense of such an approach, the influence of the political preferences of the voters during their decision-making on voting for one or another candidate for the post of judge should have been reduced.

Today, the model of non-partisan election of judges is used to appoint judges to courts of first instance and appeals. In particular, 15 states use this model to elect appellate judges, and 21 states use nonpartisan elections for some or all trial court judges *(Judicial selection in the states. https://ballotpedia.org)*.

An interesting feature of holding elections of judges according to the non-party model is, as a rule, holding elections in two rounds. For example, in the state of Kentucky, elections are held in two rounds, regardless of whether there is a clear winner in the first round (with 50% of the vote) or not *(Nonpartisan election of judges. https://ballotpedia.org)*. In addition, in the states of Arkansas and Idaho, all candidates who expressed a desire to become judges participate in the first round. However, if in the first round one of the candidates gets more than fifty percent of the votes, then he becomes the winner. If there is no clear winner, then the two candidates with the largest number of votes based on the results of the first round take part in the next round *(Nonpartisan election of judges. https://ballotpedia.org)*.

Comparing party and non-party elections, it can be assumed that the latter represent a more successful model of democratic management of the judiciary, because political manipulations that can affect the election process are significantly reduced. At the same time, in order to be a truly effective tool for the formation of a high-quality judicial corps, it is necessary to count on a high level of awareness of voters with the professional and moral portrait of candidates for the position of judges. However, taking into account the fact that voters, as a rule, are not too deeply interested in political elections, it is not necessary to hope for their deep interest in the elections of judges either. In particular, American legal experts Sandra S. Newman and Daniel M. Isaacs believe that voters are often uninformed and apathetic about judicial elections *(Sandra S. Newman & Daniel M. Isaacs,2004:5)*. As a result of the stated circumstances, non-party elections can demonstrate their effectiveness to a greater extent in the case of re-election of a judge for a new term. After all, the positive reputation of such a judge can, firstly, motivate the voter to participate in voting and, secondly, force voters to prefer an already known judge to a new, unknown candidate. Non-partisan elections can be effective in combination with other approaches that allow for professional pre-selection of candidates to be placed on the electoral rolls, such as the Missouri plan.

5. Prerequisites for the creation of a new model of selection of judges based on merit

Around the same time as the first non-party elections were introduced, new ideas about procedures for selecting judges began to develop, which were supposed to find more perfect forms of selecting judges than the party model. Thus, regardless of the progressive nature of party elections for the middle of the 19th century, already for the new 20th century they were far from the exemplary ideas of the formation of a professional judicial corps. The main problem of the party elections was that they maintained a high level of political involvement. Analyzing at that time the defects inherent in the party system of selecting judges, American scientists, one of the founders of the American Society of Judges, Albert Martin Kales tried to take a step forward and propose a new concept of selecting judges. It was supposed to balance political influences on the process of selecting judges. In his work entitled "Unpopular Government in the United States of America", published in 1914, he explained the shortcomings of party elections of judges and consistently criticized this

model, seeing in them, in particular, great opportunities for manipulation by political parties *(A.M. Kales,1914:227)*. Thus, in order to get on the election list of candidates for the post of judges from a certain party, the candidate had to, as a rule, first receive the support of the local party branch, and then go through internal party elections (primaries) *(A.M. Kales,1914:227)*. In both – the first and second cases, the candidate, wishing to fill a vacant judicial position, actually was posted in dependence on the favor of representatives of the relevant political force. It is difficult to say what kind of arguments should have convinced the head of the local party branch to choose one candidate instead of the other, but the corruption component should obviously not be excluded. On the other hand, A. Kales was also skeptical about the primaries. He also indicated the lack of transparency of such procedures as a disadvantage of this approach *(A.M. Kales,1914:235)*. Indeed, party primaries were closed from voters. The confidentiality of internal party elections meant that the party representatives independently decided who should be included in the list of candidates for the position of judge, who could be recommended for popular vote *(A.M. Kales,1914:235)*. There should be no doubt that during such a selection, party representatives were not always guided by the criteria of professionalism and independence of the future candidate for the post of judge. Therefore, a judge loyal to one or another political force is always a better option for protecting party interests than a truly independent judge.

It was because of the strong party influence on the procedure for selecting judges that A. Kales considered alternative options for selecting (appointing) judges. Thus, he discussed an approach that provided for the possibility of transferring the right to appoint judges to the chief of justice of the corresponding metropolis *(A.M. Kales,1914:251)*. After all, this official, as the head of the office of judges, is responsible for the work of the candidates appointed by him, and he was personally interested in the selection of professional and honest judges. At the same time, in order to increase the guarantees of conscientious performance of the chief justice's duties, the procedure for his re-election after a certain period in national elections was foreseen. Thus, according to the opinion of A. Kales, a sufficient term of office of the chief of justice of the corresponding metropolis could be a term of 4 or 6 years *(A.M. Kales,1914:239-243)*.

Another interesting approach, which essentially became a prototype for judicial councils popular in the world today, was the principle of forming special commissions of judges from different judicial jurisdictions headed by the chief justice of the metropolis. *(A.M. Kales,1914:248-250)*. However, the formation of a list of candidates by a special commission for their subsequent appointment to the relevant position was a revolutionary idea. The revolutionary nature of this opinion consisted in the possibility of selecting candidates for the positions of judges (in particular, from among practicing lawyers), based primarily on the level of merit and professional qualities of such candidates, without taking into account their party affiliation. It is because of this feature that this approach was later called merit selection.

Other issues were discussed by A. Kales, which made it possible to improve the system of good judges. Thus, he considered the possibility of conducting a trial period for judges who were appointed for the first time. He believed that such a period could be a three-year term, after which judges had to go through elections to confirm the possibility of further tenure *(A.M. Kales,1914:246)*.

It took almost thirty years to implement the concepts proposed by A. Kales. Only in 1940, the procedure for selecting judges based on merit, which contained the ideas proposed by A. Kales, was introduced at the legislative level for the first time in the state of Missouri.

6. Missouri plan or selection of judges "on merit" (merit selection)

The Missouri plan, or the merit-based judicial selection plan, may be considered a more sophisticated approach to judicial formation than partisan or nonpartisan elections. Given the primacy of introducing such an approach in the state of Missouri, it was later named the Missouri Plan. In the scientific and journalistic literature, this approach can also be found under the names of the Kales plan, the "merit" selection plan, or the "commission" plan *(Assisted appointment (Hybrid). https://ballotpedia.org)*. Later, it was the Missouri Plan that became one of the most popular models for selecting judges in the United States. Its prevalence is due to the fact that, on the one hand, it does not exclude elective procedures as such. It leaves to the people the right to decide on the appointment of judges, which is an important condition for American society. At the same time, it contains effective additional procedures to help the public make informed decisions when selecting judicial candidates. In particular, the help of special selection commissions is used and an appropriate analytical basis is provided, which reduces the part of the irrational component (political sympathies, subjective preferences, etc.) in voters' decisions.

Therefore, the Missouri Plan provides for the following procedure for electing judges. At the first stage, special bodies for the selection of judges – nomination commissions – are created. They usually consist of representatives of the legal community, judges and the public. At the same time, public representatives should not be related to the legal sphere. Depending on the specific state, the majority of nomination commissions can be formed either by the governor of the state (Governor-controlled majority), or by the bar association of the state (Bar-controlled majority) or by public representatives (Hybrid) *(Assisted appointment (Hybrid). https://ballotpedia.org)*. Such nomination commissions can be created separately to select judges for courts of different instances *(Judicial selection. https://yourmissourijudges.org)*. That is, one composition of the commission is created for the courts of first instance, the other composition – for the appeals courts of the state). At the second stage, the collegial nomination commissions must select candidates for the position of judge, prepare a list of the best candidates (usually three people) based on the evaluation of experience, professional and moral qualities of the candidates, and propose such lists to the governor of the state. In the next step, the state governor must choose one candidate from the list proposed by the nomination commission and appoint him to the position. The first appointment of a judge is for a short period, which is essentially a probationary period. For example, in the state of Missouri, the first appointment of a candidate for the position of judge is carried out for a period of twelve months. While the full tenure of a judge can vary from state to state. Thus, the term of office of an appellate judge in the state of Missouri is 12 years, the term of office of a district judge is 6 years. In the state of Arizona, appellate court judges are appointed for 6 years, Superior court judges for 4 years *(Selection of Judges. Arizona Judicial Branch https://www.azcourts.gov)*.

At the end of the probationary period, the judge must confirm the possibility of tenure by re-election in popular elections. If the voters vote positively for the judge, he is appointed for a full term. Also, a judge must pass a popular vote if he wishes to remain in office for a new full term.

The Missouri plan is a good example of building a responsible and open relationship between the judiciary and the public from another perspective. Yes, in addition to direct voting for a candidate for the position of judge during the elections, this procedure also provides for such a democratic tool as the judges' previous speeches before the voters. This approach allows voters to get to know a potential judge better, to get more information from him about

his activities and personality. Another important feature of voting for the extension of judges' tenure is that voters are offered information on the activities of judges during their tenure and their effectiveness. Such information is collected and prepared by the nomination committee.

The versatility of the Missouri Plan, which, as already noted, provides for the possibility of combining features of the professional selection of judges with democratic control over this process had a synergetic effect, which contributed to its wide popularity. Thus, in the period from 1940 to 1994, 23 states introduced one or another option for selecting judges based on merit *(Judicial selection in the states. https://ballotpedia.org)*. The last state to implement an appointment system using a nominating commission was Rhode Island in 1994. After that time, further implementation of the Missouri plan was halted *(Judicial selection in the states. https://ballotpedia.org)*.

7. Appointment of judges by the legislative body (parliamentary appointment)

The next method of selecting judges is the parliamentary model of selecting judges. It is another type of formation of judicial power, which has also been known since the founding of the United States *(Assisted appointment (Hybrid). https://ballotpedia.org.)*. Its essence is that judicial candidates are first proposed and then confirmed, essentially, only by representatives of the state legislature. Formally, the Judicial Merit Selection Commission, which is formed by the legislative body (from the members of such a body and members of the public elected by parliamentarians) and provides it with proposals regarding future candidates, also participates in the procedure for the selection of judges. However, despite this, the entire process of selecting judges is under the control of the state legislature *(D.Keith, L.Robbins, 2017)*. In this case, neither the governor nor the voters are involved in the procedures for selecting judges.

If we compare the parliamentary method of selecting judges with gubernatorial appointments, as the two oldest methods of selecting judges in the US, the latter may be more transparent due to the fact that a larger number of subjects are involved in the selection procedure. After all, in the model of gubernatorial appointments of judges, both the governor and the legislative (or other government body) take part in the appointment of judges.

Trying to determine the positive sides of this method, they can be considered the presence of indirect democratic control over the judiciary through conditional popular representation of the legislative body during the election of judges. After all, the legislative body is an elected body that was chosen by the residents of the respective state, and within the framework of this logic, they delegated to the legislators their right to form the judiciary.

Along with this, it must be said that this method of selecting judges has been repeatedly criticized by experts and the public due to its lack of transparency *(D.Keith, L.Robbins, 2017)*. From the experience of using this method, many cases were known, which indicated the possibility of abuse of appointment procedures. If one were to characterize the main shortcomings inherent in this method of selecting judges, the following should be highlighted among them. Such elections of judges are closed to the public, which provokes cases of corruption. After all, before their names are included in the electoral lists, candidates, as a rule, conduct "familiarization" meetings with representatives of the legislative body. During such meetings, issues regarding voting conditions for the candidacy of such a judge may be discussed. In addition, the procedure for appointing judges depends on the capacity of the parliament. Thus, in the absence of a quorum or other political reasons that will not allow the legislative body to work normally, the process of appointing judges will also be postponed until the relevant obstacles are removed *(D.Keith, L.Robbins, 2017)*. Another serious drawback of the specified method of selecting

judges is the dependence of judges on the legislative body, which contradicts the basic constitutional principles of independence of the branches of state power from each other. Yes, one reason is that legislators have the right to appoint judges an unlimited number of times, court decisions made not in favor of the legislative body can affect the further tenure of the court. Another reason may be that legislators are also practicing lawyers and decisions taken in court cases not in their favor may also lead to the deprivation of the support of judges during the next re-election. Both the first and second reasons can make judges significantly dependent on representatives of the legislative body *(D.Keith, L.Robbins, 2017)*.

Parliamentary appointment is extremely rare among US states. Only two states use this model of judicial elections for courts of general jurisdiction, intermediate courts of appeals, and supreme courts (South Carolina, Virginia) *(Legislative election of judges. https://ballotpedia.org)*.

8. The O'Connor Plan

The evolution of approaches to the selection of judges in the United States did not end in 1940 with the adoption of the Missouri Plan. It was continuing, as did the search for new effective ways of forming the judiciary. The Missouri approach to the formation of the US judicial corps was developed in the mid-2000s by the Institute for the Advancement of the American Legal System and former member of the US Supreme Court Justice Sandra Day O'Connor. (the first woman to become a judge of the US Supreme Court) *(Abigail Perkiss, 2022)*, who formed a new and improved model of organizing the selection of judges, which became known under the eponymous O'Connor Plan *(IAALS, 2014)*.

O'Connor's plan consisted of four stages or steps in the selection of judges. At its core, it contained the main elements of the concept of the Missouri Plan, somewhat specified and supplemented the general procedure for the formation of the judicial corps. In particular, according to the O'Connor Plan, such a new organizational aspect as periodic evaluation of judges was added. So, at the first stage of the procedure for selecting judges, the formation of judicial nominating commissions took place. The composition of these commissions had to necessarily reflect the interests of the public, which was achieved by including representatives from the non-legal sphere in their composition. The second stage provided for the appointment of a candidate selected by the nomination commission for the position of judge by the decision of the state governor or another official (Gubernatorial appointment). The third stage provided for periodic evaluation of judges' activities (Judicial performance evaluation). Thus, in the states of Arizona, Colorado, New Mexico and Utah, judges are evaluated at least twice during the term in order to improve their own work and prepare for re-election for a new term *(IAALS, 2014)*. Such an assessment should be conducted by a special commission, the majority of which should be members of the public *(IAALS, 2014)*. And the last, fourth stage involved voting (elections) among the residents of the relevant administrative-territorial unit for the possibility of prolonging the stay of judges in their positions (Retention elections).

This is the overall structure of the judicial selection process under Judge O'Connor's plan. As can be seen from its content, it actually proposes to use enhanced external control over the selection of candidates at each stage. And a mandatory component of almost every stage is public participation, which should ensure an increase in the level of accountability of judges to society and reduce the risks of influence from other branches of government or professional associations. Judge O'Connor's plan appears to be the most thoughtful and progressive approach to judicial selection. In its entirety, with all its components, it is used at least for judges of individual

instances in only seven states (Arizona, Colorado, New Mexico, Utah, Alaska, Missouri, and Tennessee) *(IAALS, 2014)*. In other states, it is used partially for the selection of judges of various instances. In total, individual components of the plan are used in 33 states *(IAALS, 2014)*. At the same time, it is worth hoping that it will certainly gain his greatest popularity in the near future.

Thus, five main models for selecting judges are used in the US today: non-partisan elections, party elections, gubernatorial appointments, the Missouri plan, and parliamentary appointments. Each state independently decides which model of selection of judges it will use and for which level of courts. Judge O'Connor's plan is not considered a separate model because it contains a substantial part of the Missouri plan at its core. At the same time, it is also definitely of interest as the most modern approach to the formation of the judicial corps.

9. Conclusion

The complexity of choosing the optimal model for the formation of the judiciary is confirmed by the numerous changes in legislation that many US states are going through, and the hope that there is only one correct universal method of selecting judges is a misleading point of view. Thus, in recent years, legislative procedures have been initiated to review the issues of using the method of selecting judges, including regarding: increasing the number of candidates for the position of judge that can be proposed by nomination commissions (Arizona, Missouri, Rhode Island, South Carolina, Tennessee), *(William E. Raftery, 2016)* adopting system of electing judges using nomination commissions (Minnesota, Pennsylvania), changes in the composition of nomination commissions (Alaska, Arizona, Florida, Indiana, Kansas and others), regarding the transition to party elections (Arizona, Georgia, Kansas, Montana, North Carolina), regarding transition to nonpartisan elections (Maryland, Missouri, Washington, West Virginia), etc.

Each of the methods has its advantages and disadvantages. The question is which method has more advantages or disadvantages and how critical they can be for the formation of an effective judiciary. Certain classical models, such as party and non-party elections, correspond to traditional ideas about the democratic power of society over the processes of formation of state power, including judicial power. Because of this, they do not lose their popularity, because the US is primarily a democratic state. At the same time, more sophisticated and complex methods of selection of judges, such as the Missouri plan or the plan of Judge O' Connor, are more adapted to modern conditions and they try to combine the best principles of other models of selection of judges. In view of the mentioned circumstances, it is worth hoping that the future lies precisely in these new methods and they will really live up to all the expectations placed on them by their authors and society.

References

1. William E. Raftery. (2019). States Continue to Experiment with Partisan Judicial Elections. Judicature. Spring 2019. Volume 103 Number 1. Retrieved from: https://judicature.duke.edu/articles/states-continue-to-experiment-with-partisan-judicial-elections/

2. William E. Raftery. (2016). Trends in judicial selection methods published by the bolch judicial institute at Duke law. Duke University School of Law. All rights reserved. Judicature. duke.edu. Vol. 100, No. 1.

3. Ray M. Harding. The Case for Partisan Election of Judges. American Bar Association Journal. Vol. 55, No. 12 (December, 1969), pp. 1162–1164 (3 pages). Published By: American Bar Association. Retrieved from: https://www.jstor.org/stable/25724988
4. The Federal Judicial Nominations Process. Retrieved from: https://www.acslaw.org/wp-content/uploads/2018/10/The-Federal-Judicial-Nominations-Process-1.pdf
5. Gubernatorial appointment of judges. Retrieved from: https://ballotpedia.org/Gubernatorial_appointment_of_judges
6. Brandice Canes-Wrone, Tom S. Clark. Judicial independence and nonpartisan elections. Wisconsin law review. Retrieved from: https://biblioteca.cejamericas.org/bitstream/handle/2015/2258/judicial-independence-and-nonpartisan-elections.pdf?sequence=1&isAllowed=y
7. Larry C. Berkson, Judicial Selection in the United States: A Special Report, 64 JUDICATURE 176, 176 (1980) (documenting the various procedures across the states in the postcolonial era). Retrieved from: https://www.ojp.gov/ncjrs/virtual-library/abstracts/judicial-selection-united-states-special-report
8. Billy Corriher. Partisan Judicial Elections and the Distorting Influence of Campaign Cash. Center for American Progress. OCT 25, 2012. Retrieved from: https://www.americanprogress.org/article/partisan-judicial-elections-and-the-distorting-influence-of-campaign-cash/
9. ChrisW. Bonneau. (2018). The Case for Partisan Judicial Elections. The Federalist Society. Retrieved from:https://fedsoc-cms-public.s3.amazonaws.com/update/pdf/o8VChonmzhbztS9cPcXH78MFaAoH3mEzyk1sZS8k.pdf
10. Judicial selection in the states. Retrieved from: https://ballotpedia.org/Judicial_selection_in_the_states
11. Nonpartisan election of judges. Retrieved from: https://ballotpedia.org/Nonpartisan_election_of_judges
12. Sandra S. Newman & Daniel M. Isaacs, Historical Overview of the Judicial Selection Process in the United States: Is the Electoral System in Pennsylvania Unjustified, 49 Vill. L. Rev. 1 (2004). Retrieved from: https://digitalcommons.law.villanova.edu/vlr/vol49/iss1/1
13. A.M. Kales. (1914). Unpopular government in the United States. University of Chicago press. P. 263.
14. Assisted appointment (Hybrid). Retrieved from: https://ballotpedia.org//Assisted_appointment_(Hybrid)
15. Judicial selection. Retrieved from: https://yourmissourijudges.org/the-missouri-plan/judicial-selection/
16. Selection of Judges. Arizona Judicial Branch. Retrieved from: https://www.azcourts.gov/guidetoazcourts/Selection-of-Judges
17. D.Keith, L.Robbins. (2017, september). Legislative Appointments for Judges: Lessons from South Carolina, Virginia, and Rhode Island. Brennan center for justice.
18. Legislative election of judges. Retrieved from: https://ballotpedia.org/Legislative_election_of_judges
19. Abigail Perkiss. (2022) A look back at Justice Sandra Day O'Connor's court legacy. July 1, 2022. Retrieved from: https://constitutioncenter.org/blog/a-look-back-at-justice-sandra-day-oconnors-court-legacy
20. IAALS. (2014). The O'Konnor judicial selection plan. 20 p. Retrieved from: https://iaals.du.edu/projects/o-connor-judicial-selection-plan