



**Money & Justice Forum
Is Texas Ripe for Judicial Reform?
Texas Fair Courts Network
November 21, 2013
Breakout**

During the 83rd Texas Legislature in 2013, State Rep. Justin Rodriguez (D-San Antonio) authored House Bill 2722, establishing a select committee to study opportunities for reforming judicial selection in Texas. Several committee leaders brought together about 45 activists who focus on campaign-finance issues to begin building a “bigger, stronger, wider network” in favor of change. What might that change look like? That was the topic of the day.

Several state and national leaders opened the forum and provided attendees information about the state of judicial reform in Texas and in other states, and the current challenges and trends impacting the judicial selection system. Presenters included:

Wallace Jefferson, former Chief Justice of the Texas Supreme Court
Bert Brandenburg with Justice at Stake
David Lyle with the American Constitution Society
Ware Wendell with Texas Watch
Steven Kirkland, former Harris County District Judge
Tom “Smitty” Smith with Public Citizen Texas

Participants then distributed themselves into four breakout groups each with a facilitator and a recorder. Each group was asked to consider two main questions regarding potential options for judicial selection reform in Texas:

1. What options (or parts of options) do you favor and why?
2. What options (or parts of options) do you NOT favor and why?

After considering these questions, the group was asked to reflect on something they learned, something that surprised them or something that they struggled with.

Facilitators encouraged the group to be deliberative in their thinking and explore the pro’s, con’s and tradeoffs of the various options. Recorders captured the comments of participants during the approximately hour and fifteen minute discussion. Following the event, facilitators were asked to describe the general tone or “vibe of their group. Their comments:

The group was passionate and eager.

The group was genuinely concerned and cautiously optimistic.

Several in the group thought through their own pre-conceived ideas and formed hybrid solutions (consensus) and learned new things or were surprised.

Executive Summary of Breakout Sessions

The status quo of partisan elections of judges is unacceptable because:

1. of the influence of money, whether real or perceived, on judicial decisions,
2. it makes it possible and even likely for less qualified judges to serve on the bench

The goal of judicial reform is for judges to be well qualified, fair, impartial, and beholden only to the law.

Several themes emerged:

Options for reform

1. **Merit selection with retention elections that are publicly funded with financial disclosure.**

Important considerations

- Judges achieve office based on their record rather than their party.
- Voters hold judges accountable.
- Public funding curbs the influence of money. It works in Maine and Arizona. It is desirable to limit “dark” money; public funding would provide transparency. Public funding opens the door to a more diverse pool of candidates especially in statewide elections.
- Disclosure brings money into the sunlight.
- Retention elections require would require less funding.

Potential drawbacks

- Retention election without public funding is the status quo.
- Retention election without a detailed voters guide on a judge’s performance by an impartial source like the Texas Legislative Council or a separate Judicial Performance Commission is the status quo.
- Public funding cannot be mandated.
- Merit selection requires a state constitutional amendment.

2. **Judicial Nominating Commission** should be independent of the executive and legislative branch of government. Its makeup should be diverse. Require minimum qualifications to serve.

Important considerations

- Look to Arizona for a Judicial Nominating Commission that seems to work well. A vetted nomination process is more likely to yield judges that are well qualified, fair, impartial, and beholden only to the law rather than the status quo.
- Our constitution established a separation of powers – an executive, a legislative and a judicial branch of government. To retain impartiality, a Judicial Nominating Committee’s membership should be without influence from the other branches of government.
- There should be minimum requirements to serve on the Commission. How long can one serve on the Commission?

Potential drawbacks

- Who appoints the Nominating Commission?
- How does this prevent cronyism?

3. **Performance evaluation** is necessary and should be shared with the public through a **voter guide** possibly published by the Texas Legislative Council or a Judicial Performance Review Commission.

Important considerations

- Statutory requirements to qualify need to be strengthened.
- There is a strong need to create an informed voter culture. Better-informed voters move us in that direction.

Potential drawbacks

- Who appoints the Performance Commission?

4. **Tougher recusal standards** must be implemented – transparency is essential for this to be implemented.

Important considerations

- Especially in cases involving big contributors.

Potential drawbacks

- Would be ineffective without full contribution disclosure requirements.

Current challenges:

5. Influence of money, whether real or perceived, on judicial decisions is causing a decline in the confidence of our judicial system.
6. Partisan and nonpartisan election of judges are no longer acceptable.

Important considerations of 5 and 6

- Former Chief Justice Wallace Jefferson expressed the sentiments of the groups: “When a judge’s victory is based on party over principle, money over merit, cynicism over the rule of law, voters lose.”
- Judges hearing cases of people who donated to them is not good.
- Influence of money in nonpartisan elections is even greater than in partisan elections.
- Influence of out-of-state money in judicial campaigns is increasing.

Potential drawbacks

- Criticism of nonpartisan elections - at least in partisan elections, party affiliation says something about the philosophy of the candidate.

Next steps:

1. Participants were encouraged to stay involved by
 - writing to the members of the Interim Select Committee on Judicial Reform; especially if they are in a committee member’s district, to urge their State Senate and State Representative to seriously consider reforming the process for judicial selection in Texas.
 - by joining one of the Texans for Fair Courts Network organizations that is following this reform effort.
2. This Breakout Report will be distributed to
 - the Interim Select Committee on Judicial Reform.
 - the Texans for Fair Courts Network organizations.
 - all Money & Justice Forum participants.
3. After considering participant evaluations, the Texans for Fair Courts Network will discuss whether to seek funding to host a similar event in other large cities in Texas including Dallas, Houston and San Antonio.

Participant Reflections:

- “We need more conversations like this; more discussion; more people need to know.”
- “I came in thinking nonpartisan elections would be good but the money issue negated this option.”
- “The fundamental issue is money.”
- “I am optimistic about the interim committee. Public comment is essential as they move forward.”
- “Surprised by the amount of people interested in merit-based selection.”
- “Learned that retention elections were a viable option for judges.”
- “Newfound awareness of Judicial Selection Commissions.”
- “Writing legislation is not an easy process.”
- “One solution isn’t enough; there are many moving parts.”
- “Importance of persuading the merits of merit based selection to minority groups.”
- “Struggles with what is do-able as opposed to what is ideal. No option is perfect.”
- “Struggle with having to wait for a crisis to occur before change can be implemented.”

Forum sponsors: Texas Fair Courts Network [Common Cause Texas, Common Ground for Texans, Clean Elections Texas, Public Citizen Texas, Texas Civic Engagement Table, Texas Research Institute, and Texans for Public Justice] and the Center for Politics and Governance, LBJ School of Public Affairs.