

Judicial Reform in Texas: The Problems & Possibilities

“It is a broken system. We shouldn’t have partisan elections. I do not like the concept of a Republican or Democratic judge. I think fundraising undermines the confidence in a fair and impartial judicial system.”

– Recently retired Texas Supreme Court Chief Justice Wallace Jefferson

Texas elects judges to the Texas Supreme Court, Court of Criminal Appeals, and lower level state courts through partisan elections. During the elections, judges may accept contributions from people who could (or have already) appeared before them in court, including business groups, lawyers, lobbyists, and other special interests. Weak contribution limits for these elections can allow for hundreds of thousands of dollars, and sometimes millions, to go to the state’s highest judges, who are supposed to be independent arbiters of Texas laws.



Activists, reformers, journalists, judges, and lawmakers from each political party decry the grip of special interests on Texas courts. Attempts at reforming the judicial system in Texas have come and gone since the 1940’s, with multiple special commissions appointed by the Legislature. A new Select Committee of the Texas Legislature is trying again, with a goal of making a new set of recommendations in January 2015 for the next legislative session.

Organizations, activists, elected officials and members of the media who wish to join in the conversation about money and justice in Texas’ courts must consider the following:

- What other options are there for judges to be chosen to serve on Texas courts?
- Is there a way to further limit the role of money in selecting our judges?
- How have other states tackled the selection of judges in their communities?
- Would Texas lawmakers be open to new ideas for judicial reform in Texas?

Lessons Learned in Texas: Attempts to Change the System

The direct election of judges has been a part of Texas since the adoption of our state constitution in 1876. Legislative proposals to change the system of electing judges to a merit-based system came and went in 1946 and 1955, failing to gain enough momentum to pass the Texas Legislature. During the early 1970s, a task force again called for merit-based judicial selection, only for 15 different proposals to fail in the Texas Legislature in a four-year span from 1974 to 1978. It is widely recognized that throughout these thirty years, a Legislature controlled by two factions of Democrats may have recognized the value in merit-based selection, but saw no rush to replace a system that worked for their political party.



The election of William P. Clements as Texas Governor in 1978 – the first Republican governor of Texas since Reconstruction – upended the status quo. For the first time, it would be a Republican who made appointments to fill judicial vacancies. As a result, plaintiff lawyers began contributing money to judicial candidates; in the next election, 1980, Texas “became the first state in which the cost of a judicial race exceeded \$1 million.” Subsequent elections – and the rapid increase in contributions to judges – resulted in a series of nationwide stories about Texas’ system of judicial selection, culminating in a *60 Minutes* feature titled, “Justice for Sale?”

In 1986, a massive undertaking by government leaders in both parties and a 100-person committee to study judicial reform in Texas resulted in a “Texas Plan” that came up with a “merit election” system. However, by then both Democrats and Republicans didn’t want to lose control over a judicial system they each felt created opportunities for their political parties, and the proposal was rejected.

Finally, after a series of court cases and following some controversy from other states’ efforts to switch to a merit-based system, Texas made its first (and only) reform to the judicial selection process. The Judicial Campaign Fairness Act (JCFA) passed the Legislature in 1995 thanks to the efforts of two Senators, Rodney Ellis (D-Houston) and Robert Duncan (R-Lubbock), and State Representative Jerry Madden (R-Plano), as well as a number of good government advocacy groups (including several who are part of the Texas Fair Courts Network today). The law limited individual contributions to statewide candidates, and aggregate contributions from law firms and PACs. It was described by then Chief Justice Tom Phillips as “an excellent first step in comprehensive campaign finance reform.”

Unfortunately, Texas has taken no second step in the 18 years since the 1995 law was passed.

What Are Other States Doing? Judicial Selection Options Across the Country

There is no uniform standard for judicial selection in the United States. Texas is one of only 8 other states in the country that uses partisan elections to select its state judges. 43 states have statewide Supreme Court justices, while 7 divide them into districts or circuits. The chart below examines how other states have set up their judicial selection process - shaded areas are states that utilize a nonpartisan commission in their judicial selection process.

Judicial Selection in All 50 States	
# of states	Method the states use for selecting judges
26	Governor appoints the judges
13	<ul style="list-style-type: none"> Governors appoint based on nominations from a commission
5	<ul style="list-style-type: none"> Governors appoint based on nominations from a commission, with the State Senate and/or State House confirming their nominee or, at least, giving consent
1	<ul style="list-style-type: none"> Governor appoints, must get approval from a judicial selection commission
1	<ul style="list-style-type: none"> Governor nominates based on individuals chosen by a judicial selection commission, and the legislature makes the final appointment
1	<ul style="list-style-type: none"> Governor nominates based on individuals chosen by a judicial selection commission, and an executive council makes the final appointment
4	<ul style="list-style-type: none"> Governors make an appointment, and the State Senate confirms
1	<ul style="list-style-type: none"> Governor appoints, must get approval from the governor's council
14	Judges chosen by nonpartisan elections
8	Judges chosen by partisan elections, including Texas
2	Judges chosen by an election within the state's legislature/assembly

The Path Forward in Texas: Key Proposals to Consider

Across the country, 537 state Supreme Court candidates raised more than \$206.9 million for their partisan elections from 2000 to 2009. Concerns about special interests influencing judges have lingered for nearly 70 years in Texas, yet change remains elusive.

What are some options for a path forward for the Texas judicial selection process? The following are a few key proposals used throughout the country:

Merit-based selection - A judicial commission creates a nomination process for recruiting and suggesting qualified judicial candidates. The state's governor can then only select judges from this pool of candidates. Merit-based selection is typically limited to higher-level courts. This system of nonpartisan, independent commission has led to courts that some say are among the most trusted and least biased, while others contend they bypass the will of the voters.

Retention elections - Traditionally coupled with merit-based selection, a retention election serves as a referendum for a sitting judge. Coinciding with regular general elections, a retention election allows voters to determine if a judge should continue to serve in his or her seat. If a majority of voters approve, the judge remains. If a majority of voters disapprove, the seat is vacated and filled through appointment and/or a merit-based process overseen by a judicial commission.

Financial disclosure - Strengthening existing campaign finance laws for judges in Texas (and possibly moving to publicly financed campaigns for judges) would remove the power of special interests to influence Texas judges if disclosure showed who is supporting which issue.

Tougher recusal standards - Texas could also pursue policies that toughen recusal standards for judges, so judges do not have to try any case if a conflict of interest exists.

House Bill 2772

by Rep. Justin Rodriguez



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. HB 2722 passed the Legislature, creating a joint committee of 6 members of the Texas State Senate and 6 members of the Texas State House. Committee meetings are expected to be held throughout 2014.

By January of 2015, before the next legislative session convenes, the committee must consider the “fairness, effectiveness, and desirability” of the options for judicial selection.

Judicial Reform in Texas: How to Learn More and Stay Involved

The judicial selection in process been hotly debated for decades. Yet little has changed over the years despite consistent and repeated efforts by legislators, activists, and organizations to try something new – not to mention public opinion polls that regularly reflect a desire for reform.

As the Texas Legislature begins another examination of the judicial selection question, it is important for Texas voters to stay educated, stay informed, and take action on this issue.

WRITE YOUR LEGISLATOR

Texas' elected officials respond to direct letters from their constituents, and when an issue as important as this comes up, they respond. We encourage you to write your State Senator and State Representative and urge them to seriously consider reforming the process for judicial selection in Texas. You can download an electronic copy of this report at www.TexasResearchInstitute.org, and e-mail it to your State Representative or State Senator.

STAY ACTIVE

The following groups played a key role in developing this report and will continue following judicial selection issues in the coming months. Join their organizations and learn more about how you can get involved:

- Brennan Center for Justice
- Clean Elections Texas
- Common Cause Texas
- Common Ground for Texans
- Justice at Stake
- Public Citizen Texas
- Texans for Public Justice
- Texas Civic Engagement Table
- Texas Research Institute

Money and Justice: Is Texas Ripe for Judicial Reform?

A 2013 Public Policy Evaluation by the Texas Fair Courts Network



This report builds off existing research and contains original research. Citations and further reading regarding the material in this report may be found at www.TexasResearchInstitute.org.

We would like to thank the Center for Politics and Governance at the LBJ School of Public Affairs, for sponsoring our event and discussion on the issue.