

Options for Judicial Selection *continued*

Nonpartisan Elections

Nonpartisan election of judges would prohibit the nomination of candidates for judicial office by a political party, protecting more qualified candidates from losing the election simply because of a heavy straight party vote. Opponents argue that in partisan elections party affiliation reflects judicial philosophy, helping voters to make choices. In a general election, the names of judicial candidates would be listed in a nonpartisan section of the ballot. Thirteen states have nonpartisan elections.

Judicial Campaigns

In the 1995 session of the Texas Legislature, campaign contribution limits were placed on judicial candidates, but it still costs a candidate two to four million dollars to run for a seat on the Texas Supreme Court. Lawyers contribute a sizable amount of contributions to judicial candidates, as do PACs and corporate executives. According to surveys, there is a perception that campaign contributions can impact judicial decision-making at all levels of courts. The American Bar Association and other public interest groups recommend public financing for judicial elections to maintain judicial independence.

Inclusiveness/Diversity

As of September 1, 2002, for example, 84.5% of district court judges in Texas were White, 10.6% Hispanic, 3.1% Black, and .06% American Indian, and no Asian or Pacific Islanders were reported, indicating a problem for minorities to be elected. The 2000 Census population was 53.4% Anglo, 32% Hispanic, 11.5% Black, and the remaining 1.4% American Indian, Hawaiian, and Pacific Islander. Recent governors' appointments of minority judges to fill vacancies have not always resulted in the judges winning when up for election. Some support single-member districts in the merit selection system. Others believe selecting district judges by district instead of countywide would allow for more minority candidates to be elected.

Survey of Texas Judges

A statewide survey of judges by the League of Women Voters of Texas in 2001 disclosed that most judges surveyed preferred elections, but a majority believed elections should be nonpartisan. A substantial number agreed that they had been victims of negative and misleading campaign advertising. They disagreed that campaign contributions had an influence on judicial decisions. Over half opposed public financing of judicial elections in Texas.

Summary

Judicial independence is an important part of the separation of powers between the three branches of government that makes democracy work. Judges should not be influenced by political parties or special interests. Two methods, widely used by many states, that serve to maintain judicial independence are:

1. Merit selection by a bipartisan nominating commission's recommendation to an appointing authority followed by a retention election
2. Nonpartisan elections.

Both methods provide for election by voters, and both reduce the perception of political influence on the judiciary. Any changes to the present system would require voters to approve an amendment to the Texas Constitution.

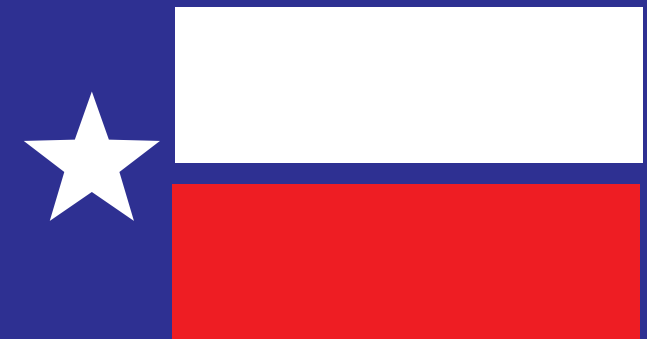
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The Texas Judicial System



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How It Began

Delegates to the Texas Constitutional Convention of 1875, smarting from the excesses of carpetbaggers and Reconstruction following the Civil War, wanted to keep government in the hands of the people. The Texas Constitution, adopted in 1876, provided that all judges were to be elected, including the Supreme Court judges, a system that continues to this day. Texas is one of eight states to elect judges by party affiliation. Judicial candidates must raise money to carry out their election campaigns.

Texas has two high courts: the Supreme Court to hear appeals in civil cases and the Court of Criminal Appeals for criminal cases. The Supreme Court is the final court of appeals statewide for both civil and juvenile cases and is responsible for the efficient operation of the Texas judicial system.

What Kinds of Courts Are There?

Texas Supreme Court

One Chief Justice and eight justices with six-year terms overlapping

Court of Criminal Appeals

One Presiding Judge and eight judges with six-year terms overlapping

Courts of Appeals (14)

One Chief Justice and from two to twelve judges with six-year terms

District Courts (418)

One-member court with four-year terms

Constitutional County Courts (254)

One County Judge per county with four-year terms

Statutory County Courts (in 74 counties)

One-member court with four-year terms



Who Is Qualified?

Texas Supreme Court and Court of Criminal Appeals candidates must be:

- Citizens of the United States and Texas
- 35 years of age or older
- Practicing lawyers or lawyers and judges of courts of record together for at least ten years.

District Court candidates must be:

- Citizens of the United States and Texas
- 25 years of age or older
- Residents of the district for two years
- Licensed to practice law in Texas and a practicing lawyer or judge for four years.

Statutory county judge candidates must be:

- At least 25 years of age
- Residents of the county for two years
- Licensed attorneys who have practiced law or served as a judges for two years.

Constitutional county court judge candidates should be:

- Well informed in the law of the state (law license is not required).

Issues on Judicial Selection

Judicial independence is at the heart of the issue on judicial selection and judicial campaigns. Constitutional democracy depends on the independence of the judicial system to protect the rights of individuals and to decide cases fairly according to law. Among the issues are:

- Maintaining the independence of the judicial system
- Treating judges as politicians with partisan elections
- Financing judicial campaigns
- Diverse representation in the courts
- Voters' lack of knowledge about candidates for statewide top appellate courts.

Options for Judicial Selection

Merit Selection

Under merit selection, a judicial bipartisan nominating commission of lawyers and public citizens recommends judicial candidates to an appointing authority, such as a state governor. After a number of years in office, as determined by law, an election would be held to determine if the sitting judge is to be retained. The system combines both appointment and election. On one hand, candidates would not have to raise money for campaigns, removing the perception that justice is for sale. Opponents say it is hard to remove bad judges from office. Also, the electorate would not be as closely involved with the selection of judges. Twenty-four states and the District of Columbia use this system. The American Bar Association supports merit selection.

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