

TEXAS COURTS Judicial elections:

Texas reformers eye next effort in judicial reforms

By [Chuck Lindell](#) - American-Statesman Staff

Few state controversies have been debated longer, with so little effect, than efforts to insulate Texas judges from the corrosive effects of money and politics.

Even so, the debate will heat up again over the next year as a special committee of the Legislature tackles, once again, the vexing question of how best to select impartial judges in Texas — one of the minority of states that requires its judiciary to run in partisan elections.

Complaints about Texas' system abound, particularly related to fundraising. Many donors to judicial candidates are lawyers or businesses that later appear in the judges' courtrooms. Judges complain about the indignity of asking for that money. And voters, believing Texas justice is being sold to the highest bidder, are losing faith in the system, polls show.

Texas has been spared, thus far, from third-party political action committees like those that have poured millions of dollars into judicial races in other states, often to buy negative ads. If Texas becomes more of a two-party state, those PACs will come, reformers warn.

The legislative study committee has yet to begin its work, but reform groups are getting ready.

Last Thursday, about 45 activists who typically focus on campaign-finance issues met in Austin to begin building a "bigger, stronger, wider network" in favor of changing the state's judicial selection system, said Craig McDonald, executive director of Texans for Public Justice and an organizer of the gathering.

Much of the meeting focused on perceived problems with the state's current system — a message that will have to resonate with voters and political leaders if there is to be any chance of reform, McDonald said.

Toward that end, participants heard from Bert Brandenburg with Justice at Stake, a Washington-based advocate for a range of judicial reforms.

"We want judges to be accountable to the law and the Constitution, not to special interests and partisans. The money can flip that equation, and that's the risk," Brandenburg said in an interview before the meeting.

"If the system is so politicized that they have to be politicians first and judges second ... you'll have a lot of good people who say they'll pass. Conversely, you start to encourage a category of people who view the judiciary as just another steppingstone to a political career," Brandenburg said.

Potential solutions, he said, include:

- Appointing judges based on merit, with voters later deciding whether to keep or oust them in retention elections.

Such proposals often bog down over who does the appointing and how potential candidates are screened. But, Brandenburg said, merit selection and retention plans typically attract less political money and put less financial pressure on judges.

- Providing public financing of elections. Because the U.S. Supreme Court determined that mandatory public financing is improper, any plan has to offer enough money to provide an attractive alternative for candidates.

“Judges like it because they get to spend more time with voters, not donors,” Brandenburg said.

- Creating stronger recusal rules requiring judges to step aside if a major donor appears in their court.
- Making judicial races nonpartisan by dropping party affiliation from the ballot.
- Increasing voter information efforts, including voter guides and judicial performance evaluations provided by lawyers, court staff, academic leaders and other third parties.

Reformers have been trying since the 1960s to introduce some form of appointed-judges system in Texas, without success.

The state’s Democratic and Republican parties have opposed efforts to change the system. Influential groups, including the Texas Trial Lawyers Association, have pressed for continued partisan election of judges. And despite voter discomfort with money in judicial elections — including a 2011 national survey in which 83 percent said campaign contributions influence a judge’s rulings — polls also show Texas voters don’t want to give up the right to vote for their judges.

The numbers are difficult, potential reformers acknowledge. Changing the way Texans elect judges would require a constitutional amendment that needs approval by two-thirds of the state Senate and the House and a majority of voters.

The current system is also far simpler than many of the alternatives, which can require a committee to screen applicants, providing the governor with a list of potential candidates, followed by elections in which candidates, running unopposed, are given an up or down vote.

And, at the very least, partisan elections provide voters with a clue about judicial philosophy based on a candidate’s affiliation with the Republican, Democratic and Libertarian parties, a clue that would be lost in nonpartisan elections.

But pressure for change keeps bubbling, fed lately by support from the past three chief justices of the Texas Supreme Court, who used the prestige of their office to decry what former court leader Wallace Jefferson called an irrational, illogical system.

Jefferson, who left the court in October, included passionate calls for change in several State of the Judiciary speeches before the Texas Legislature. Too often, he said, party affiliation trumps a candidate’s qualifications, while the influence of campaign money destroys public confidence in judges.

In the Legislature, the leading proponent for reform has been state Sen. Robert Duncan, R-Lubbock, who has filed bills to change the way Texas selects judges in every session since 1993. None have passed.

Last session, Duncan got behind a bill by a freshman Democrat from San Antonio, Rep. Justin Rodriguez, to create an interim study committee in hopes of finding a consensus toward a more transparent, impartial system. The bill easily passed both chambers.

Rodriguez called the committee, which must deliver a report of its findings before the Legislature begins the 2015 session, a “happy medium.”

“I thought it had some chance because a study is benign, and it gives us a bit of a runway to get things done,” Rodriguez said. “I don’t know if there is a perfect system out there. But I think the hyperpartisan rhetoric we engage in as state representatives and senators need not be part of the rhetoric of a judicial race. They’re supposed to be impartial arbiters of law, yet they have to engage in political warfare every four to six years. That to me is contradictory.”

The 12 committee members — equally divided between Republicans and Democrats, senators and representatives — have yet to be named.
