

JUDICIAL SELECTION (and the quality of justice)

Texas Commission on Judicial Selection

The Texas Commission on Judicial Selection (TCJS) was created in 2019 by the 86th Texas Legislature to study and review the method by which statutory county court judges, including probate court judges, district judges, and appellate justices and judges, are selected for office in Texas.

The study must consider **the fairness, effectiveness, and desirability** of selecting a judicial officer through partisan elections; the fairness, effectiveness, and desirability of judicial selection methods proposed or adopted by other states; the relative merits of alternative methods for selecting a judicial officer.

The TCJS is required to submit a report on its findings and recommendations to the governor and the legislature no later than December 31, 2020.

<https://www.txcourts.gov/tcjs/reports>

Chart 26: Summary of Advantages and Disadvantages of Judicial Selection Methods

Method	Advantages	Disadvantages
Appointment Followed by Retention Election	<ul style="list-style-type: none"> • Judicial independence • Reduces substantially the need for judges to raise money • Preserves the role of the electorate to vote on judges • Increases the pool of qualified judges who would consider appointment but not run for election • Avoids partisan sweeps • Reinforces the public's perception of judges as different from other office seekers 	<ul style="list-style-type: none"> • Judicial accountability • Political considerations
Commission Selection	<ul style="list-style-type: none"> • Increases the likelihood of appointing qualified judges • Balances the appointment power of the Governor • Retention election acts as an electoral public accountability 	<ul style="list-style-type: none"> • Commissions don't necessarily produce highest rated judges • Commissions don't disrupt partisan consideration • Removes voter participation during the initial nomination • Bestows power to an unelected commission • Commissions can be co-opted by interest groups
Nonpartisan Election	<ul style="list-style-type: none"> • Removes judicial elections from political considerations • Subjects judges to the electoral process • Avoids partisan sweeps • May enhance pool of potential judges because their time in office will be less tied to political considerations • May attract candidates who lack partisan affiliations or are affiliated with party that is unlikely to achieve success in a particular district • Candidates do not need to run in both primaries and general election, potentially reducing campaign 	<ul style="list-style-type: none"> • Fails to separate from political parties • Voters do not have sufficient information and knowledge of candidates

<p>information to voters</p>	<ul style="list-style-type: none"> • Subjects judges to electoral process • Voters have direct say • Judicial candidates required to appear before voters and consider community feedback • Candidates run in both primary and general elections and enhance accountability 	<p>than independent popular will</p> <ul style="list-style-type: none"> • Voters do not have sufficient information and knowledge of candidates, and therefore results are often based on political affiliation • Voters' perception is that judicial function is mainly political rather than based on the rule of law • Judges may lack basic qualifications for office like experience in trial or appellate courts, although they may be able to learn on the job
------------------------------	---	--

Retention elections theoretically provide voters the ability to hold judges accountable for their performance. A constitutional amendment would be required to adopt a judicial selection system based on merit selection with retention election. Such system would mainly rely on the duties of the Judicial Selection Commission, which could include either of the following approaches:

1. Provide the Governor a list of recommended nominees; the Governor must select from this list.
2. Rate the Governor's chosen nominees as highly qualified, qualified, or unqualified.

In any event, any Judicial Selection Commission should be nonpartisan or bipartisan and could include the following members (or in some instances their representatives):

1. The Governor
2. The Lieutenant Governor
3. The Speaker
4. A senator from the minority political party
5. A representative from the minority political party
6. The president of the State Bar of Texas
7. A constitutional county judge
8. Public non-lawyer members

Even though the main method of judicial selection in Texas today is through partisan elections, a significant portion of judges are still appointed. This occurs because the Governor appoints district court and higher level judges to fill vacant posts.²⁰ Indeed, the Governor appointed the majority of appellate judges to their offices before the previous election. Appointment was also the method of selection for more than a third of district judges and more than a fifth of county judges in the same time frame.²¹

A common concern across various judicial selection methods is identifying and measuring judicial quality.²² One main obstacle for measuring judicial quality is that a single metric representing quality does not really exist. Several measures of quality have been discussed in the literature. These include whether judges are representative of the local population, have the maturity, competence, experience, and

Everything in politics is a party sweep.

The perception of money, as opposed to reality,
is a huge problem.

“You cannot take politics out of selecting judges. You can take politics out of deciding whether to keep a judge in office or not.”

The most persistent finding that emerges from the research is that the forces and influences at work in the process seem to have a way of making themselves felt irrespective of the specific selection mechanism. What emerges from the research is that the forces and influences at work in the process seem to have a way of making themselves felt irrespective of the specific selection mechanism.

“Who rules” is ALWAYS A POLITICAL DECISION.

Studies of other states fail to show that the Missouri Plan has resulted in the selection of better (or even different) judges.

The Missouri Plan's combination of committee-level politics and limited voter participation in retention elections has the effect of obscuring the judicial selection process from public scrutiny and debate. This is probably the most significant effect the Missouri Plan has on our political and legal system, and it is hard to see how this obscuring of the issues is supposed to improve the legal system.