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MEMORANDUM

TO: Judge Hoffman  
FROM: Lilian Marrs  
DATE: June 10, 2019  
RE: Judicial Selection in Texas

I. Introduction

In his State of the Judiciary address, Texas Supreme Court Chief Justice Nathan Hecht called for the state legislature to change the way judges are selected in Texas.<sup>1</sup> Texas is one of two states in the country to use contested partisan for both initial elections and reelections, and it has increasingly seen its judges selected more based on party affiliations rather than merit and experience.<sup>2</sup> The result is a trend of partisan sweeps like this past November, where the courts “lost seven centuries of judicial experience at a single stroke.”<sup>3</sup> Further, studies show that voter confidence in the judiciary’s ability to be impartial has dropped<sup>4</sup>—highlighting the need to reform judicial selection in a manner that increases insulation from political pressure and encourages voter confidence in the judicial branch. The discussion below will address various proposed methods of judicial selection in Texas as well as comparisons to methods used by other states.

II. 86th Texas Legislative Session; Proposed Legislation

House Bill 4504

<sup>1</sup> Nathan Hecht, Chief Justice, Tex. Sup. Ct., State of the Judiciary in Texas: An Address to the 86th Texas Legislature (Feb. 6, 2019).

<sup>2</sup> Mark P. Jones, *The Selection of Judges in Texas: Analysis of the Current System and of the Principle Reform Options*, JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY OF RICE UNIVERSITY, Jan. 2017, at 2.

<sup>3</sup> Hecht, *supra* note 1.

<sup>4</sup> Alicia Bannon, *Choosing State Judges: A Plan for Reform*, Brennan Center for Justice, 2018, at 1.

HB 4504 would have amended both the Election and Government Codes to change the way certain district and appellate judges and justices are selected. The proposed changes would have applied to all state district court and appellate court judges and justices in a judicial district (1) that includes a county with a population of over 500,000,<sup>5</sup> or (2) whose voters have chosen to fill district judge vacancies by gubernatorial appointment. The Judicial Appointments Advisory Board (“Board”) would then have reviewed each appointee’s qualifications and made recommendations to the senate as to whether the appointee was “unqualified,” “qualified,” or “highly qualified” to hold that office. The Board’s assessments would have been provided to the lieutenant governor and the senate committee chair of the committee with jurisdiction over gubernatorial appointments.

The Board composition would have been as follows: three members appointed by the house majority party, two members appointed by the house minority party, two members appointed by the senate majority party, two members appointed by the senate minority party, one member appointed by the chief justice of the Texas Supreme Court, and one member appointed by the presiding judge of the Texas Court of Criminal Appeals. Members would have served staggered terms of six years, limited to a total of twelve years on the Board.

Under HB 4504, all state district court judges and appellate court judges and justices would have been subject to nonpartisan judicial retention elections during the fourth and eighth years of a twelve-year term. Vacancies would have been filled by gubernatorial appointment. The proposed legislation would have defined a “vacancy” as when a justice or judge’s twelve-year term ended, or when a justice or judge failed to file a declaration of candidacy for retention

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<sup>5</sup> These include Bexar, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Hidalgo, Montgomery, Tarrant, Travis, and Williamson County. *Texas Counties: 2018 Population Estimates from the U.S. Census Bureau*, The County Information Program, <http://www.txcip.org/tac/census/morecountyinfo.php?MORE=1044>.

election, withdrew from the retention election, or received less than the necessary majority of votes in the retention election.

Had it passed out of committee, the bill would have taken effect in 2020 contingent upon on voter approval of the corresponding constitutional amendment, HJR 149. This amendment would have provided for appointments to fill vacancies for both courts of last resort, the courts of appeals, and certain district courts. It also would have provided for nonpartisan retention elections every four years for those offices, and for the creation of the Board. Critics point out that this would have replaced every district and appellate judge at the end of their terms in the applicable counties. Critics also point out that HB 4504 may have been in violation of the Voting Rights Act.

#### **House Bill 3040**

HB 3040 has passed both chambers and will take effect September 1, 2019. It establishes the Texas Commission on Judicial Selection (“Commission”) to study and review Texas’s judicial selection methods. The Commission’s review will cover the selection of statutory county court judges, district judges, and appellate court judges and justices. It is required to consider the fairness, effectiveness, and desirability of selecting judges through partisan elections and methods used by other states. Its study must review methods including, but not limited to, nonpartisan elections, varying appointment terms, retention elections, and the merits of using a public member board to nominate or assess judicial candidate qualifications.

The Commission will be composed of the following members: four appointed by the governor; four appointed by the lieutenant governor, including three senators with at least one who is a member of the same political party as the lieutenant governor, and one of a different political party; four appointed by the speaker of the house, including three members of the house

of representatives, with at least one representative belonging to the same political party as the speaker of the house and one belonging to a different political party; one appointed by the chief justice of the state supreme court; one appointed by the board of directors of the State Bar of Texas, and one appointed by the presiding judge of the court of criminal appeals.

The Commission must include both attorneys and non-attorneys. The governor, lieutenant governor, and speaker of the house must also ensure that the Commission members reflect the racial, ethnic, and geographic diversity of the state. Its findings must be submitted in a report to the governor and the state legislature no later than December 31, 2020, and must include any specific constitutional and statutory changes that appear necessary based on its findings.

### **Constitutional Amendments**

The Texas Constitution provides for judicial elections for terms of four or six years, depending on the office.<sup>6</sup> Therefore any proposed reform that would change from the popular election of judges or the terms, would require a constitutional amendment.<sup>7</sup> When the legislature seeks to make reforms deviating from the constitutional text, it must propose a joint resolution which then requires 2/3 approval by both the Texas House of Representatives and the Texas Senate in order to be submitted to the voters.<sup>8</sup>

HB 3040's proposed changes do not require a constitutional amendment because the Texas Constitution is silent on the question of commissions such as the one established in HB 3040, and its provisions do not change any of the judicial selection methods set forth in the constitutional text. On the other hand, HB 4504 necessitates a constitutional amendment because its proposed changes would require certain judicial offices to be selected by methods other than popular election.

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<sup>6</sup> TEX. CONST. art. V §§ 2(c), 4(a), 6(b), 7.

<sup>7</sup> Jones, *supra* note 1, at 17.

<sup>8</sup> TEX. CONST. art. XVII.

### III. Voter Education

In the U.S., a number of states use contested elections to select their judges and justices.<sup>9</sup> Supporters of popular elections cite the benefits of having a judiciary accountable to the public.<sup>10</sup> However, popular elections present the major challenge of low voter information particularly in judicial elections due to the high cost to citizens to research candidates.<sup>11</sup> A number of scholars have proposed and states have enacted various methods to try and address the issue of low voter information. This section will address the specific methods of incumbency designation on the ballot and state-promulgated voter education guides.

#### Incumbency Designation

The use of ballot notations can have a significant effect on voters.<sup>12</sup> Designating a candidate's incumbent status on the ballot is one such type of ballot notation. Six states provide for the general designation of a judge as incumbent on the election ballot.<sup>13</sup>

Arkansas permits a candidate to use the prefix "judge" or "justice" in a judicial election if the candidate is currently serving in the judicial position to which he or she has been elected. In 2013, Arkansas amended its election law to permit use of the judicial office title as a prefix on the ballot for candidates currently serving in judicial office as an appointee who have held that office for at least twelve months.<sup>14</sup> California permits a candidate to be designated as "incumbent" or "appointed incumbent" if the candidate is a candidate for the office he or she

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<sup>9</sup> Contested elections are used in twenty-two states for supreme court justices, eighteen for intermediate courts, and twenty-nine for trial court judges. Jones, *supra* note 1, at 5–6.

<sup>10</sup> *Id.* at 19–20.

<sup>11</sup> Dmitry Bam, *Voter Ignorance and Judicial Elections*, 102 KY. L.J. 563, 566 (2013–2014).

<sup>12</sup> *Id.* at 568.

<sup>13</sup> *Bills in Minnesota Would End Use of Incumbent Designation on Ballots for Judges Seeking Reelection; A Look at States That Use Such Designations*, Gavel to Gavel (last updated Jan. 30, 2017), <http://gaveltogavel.us/2015/03/02/bills-in-minnesota-would-end-use-of-incumbent-designation-on-ballots-for-judges-seeking-reelection-a-look-at-4-states-that-use-such-des>.

<sup>14</sup> ARK. CODE ANN. §§ 7-10-103, 7-7-305 (year); S.B. 694, 2013 Leg. (Ark. 2013).

currently holds.<sup>15</sup> Oregon,<sup>16</sup> Georgia,<sup>17</sup> and Michigan<sup>18</sup> require a candidate's incumbency designation on the judicial election ballot. Attempts in both 2008 and 2010 to eliminate Michigan's incumbency designation failed.<sup>19</sup>

Minnesota election law also requires the incumbency designation.<sup>20</sup> Multiple attempts to repeal the incumbency designation have failed.<sup>21</sup> These are often attached to other provisions, such as a proposal in 2011 to repeal the incumbency designation but to correspondingly increase the state's mandatory judicial retirement age.<sup>22</sup> House File 672 has been introduced in Minnesota's current legislative session to repeal the incumbent designation, but so far there have been no hearings on the bill.<sup>23</sup>

Two Minnesota Supreme Court cases have directly addressed incumbency ballot notations. In *Peterson v. Stafford*, a challenge was brought against the state's incumbency designation requirement on the grounds that it violated the Equal Protection Clause.<sup>24</sup> The Court held that the incumbent ballot notation "simply informs the voter of the person who presently holds the position"<sup>25</sup> and that "[i]n assisting voters to cast their votes intelligently for offices unfamiliar to the average voter, it is only a matter of fairness that he be advised who the present judge is."<sup>26</sup> In 2008, the Court again found that the purpose of the incumbency designation statute was primarily to inform voters and that this purpose was sufficient to justify any potential

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<sup>15</sup> CAL. ELEC. CODE § 13107.

<sup>16</sup> OR. REV. STAT. § 245.125.

<sup>17</sup> GA. CODE ANN. § 21-2-285.1.

<sup>18</sup> MICH. COMP. LAWS §§ 168.409b, .424, .426, .433, .467.

<sup>19</sup> H.J.R. 37, 2008–2009 Leg. (Minn. 2008); S.J.R. 21, 2009–2010 Leg. (Minn. 2010).

<sup>20</sup> MINN. STAT. § 204B.36(5)

<sup>21</sup> *Bills in Minnesota Would End Use of Incumbent Designation on Ballots for Judges Seeking Reelection; A Look at States That Use Such Designations*, Gavel to Gavel (last updated Jan. 30, 2017), <http://gaveltogavel.us/2015/03/02/bills-in-minnesota-would-end-use-of-incumbent-designation-on-ballots-for-judges-seeking-reelection-a-look-at-4-states-that-use-such-des>.

<sup>22</sup> *Id.*

<sup>23</sup> H.F. 672, 91st Leg., (Minn. 2019–2020).

<sup>24</sup> *Peterson v. Stafford*, 490 N.W.2d 418 (Minn. 1992).

<sup>25</sup> *Id.* at 423.

<sup>26</sup> *Id.* at 423-24.



intrusion on First Amendment rights of the voter and non-incumbent state Supreme Court candidate who brought the challenge.<sup>27</sup> The Court also ruled that the advantage conveyed by placing the incumbency designation on the ballot is a permissible exception to the statute which generally prohibits a candidate's name from appearing on the ballot in a way that gives him or her an advantage over opponents.<sup>28</sup>

By contrast, Texas does not permit any title to accompany a candidate's name on the ballot, per Election Code § 52.033.<sup>29</sup> Texas does, however, permit the use of titles for otherwise unidentifiable candidates, such as when candidates have similar names that would be otherwise difficult to distinguish.<sup>30</sup>

There is limited scholarship on the use of incumbency designations on judicial election ballots. Proponents of ballot notations argue that the notations are especially important in light of the central role that potentially misleading campaigns can play in judicial elections.<sup>31</sup> They argue that such timing advantages may help overcome the negative effects of things such as misleading advertisements.<sup>32</sup> Proponents of ballot notations additionally argue that the best way to improve the quality of information that voters have in judicial elections is by placing that information directly on the ballot.<sup>33</sup> One scholar suggests that ballot notations could be even more effective than state education efforts, as ballot notations do not require any initiative on the part of the

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<sup>27</sup> *Clark v. Pawlenty*, 755 N.W.2d 293, 307 (Minn. 2008).

<sup>28</sup> *Id.* at 309–310.

<sup>29</sup> “Except as otherwise provided by this subchapter, a title or designation of office, status, or position may not be used in conjunction with a candidate’s name on the ballot.” TEX. ELEC. CODE ANN. § 52.033.

<sup>30</sup> See Christopher M. Childree, Comment, *Cueing Democracy: Replacing the Texas Election Code’s Title Prohibition*, 46 ST. MARY’S L. J. 377, 399 (2015), interpreting the § 52.032 exception to the title prohibition as suggesting that it might be useful to have titles as aids in distinguishing between candidates, and that similar reasoning could be applied to other situations where candidates have dissimilar names but are still in need of such designations to help distinguish between candidates because voters are unlikely to know the difference.

<sup>31</sup> Dmitry Bam, *Voter Ignorance and Judicial Elections*, 102 KY. L.J. 563, 587 (2013–2014).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 584.

voter besides showing up to the polling location.<sup>34</sup> Further, psychological studies have shown that *how* the information is presented may be just as important as general availability of the information itself.<sup>35</sup> Even where the judicial candidate's history is available to the public, voters are unlikely to seek out this information on their own.<sup>36</sup> Therefore, the information included on the ballot can help serve as a shortcut to aid voters in casting more educated votes.<sup>37</sup>

Many voters do not realize they will be voting on judicial positions before going to the polls, making the ballots themselves the primary source of information about the candidates.<sup>38</sup> Further, a primary obstacle to voter education is the fact that opportunity and transaction costs are often too great for voters to research candidates, resulting in increased voter reliance on ballot cues when making choices at the polls.<sup>39</sup> Texas permits only party affiliation on judicial election ballots, making the party affiliation even more salient in a voter's mind at the ballot when considering candidates the voter likely knows nothing else about.<sup>40</sup> This practice of only allowing party affiliation encourages voters to select judges based not on merits or past performance, but on party alignment.<sup>41</sup>

A potential objection to incumbency designation is that it would be unfair to permit one candidate (the incumbent) some type of notation next to his or her name while the challenger has to run on name (and party) alone.<sup>42</sup> One author suggests a possible remedy where the states could create an evaluation commission to provide an evaluation of the challenger, or evaluations for

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<sup>34</sup> *Id.* at 586.

<sup>35</sup> *Id.* at 586–587.

<sup>36</sup> *Id.* at 587.

<sup>37</sup> The timing of information provided in ballot designations is impactful because information received at the time of voting is fresh in the voter's mind and therefore particularly salient. *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Mark P. Jones, *The Selection of Judges in Texas: Analysis of the Current System and of the Principle Reform Options*, JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY OF RICE UNIVERSITY, Jan. 2017, at 14.

<sup>41</sup> *Id.* at 22.

<sup>42</sup> Bam, *supra* note 31, at 598.

both the challenger and incumbent judge via judicial performance evaluation commission to then be included on the ballot.<sup>43</sup>

Another potential solution is California's own system which allows ballot notations for both incumbents and challengers.<sup>44</sup> Prior to 2018, California's election code limited a candidate to three words designating his or her primary profession.<sup>45</sup> Issues arose with candidates who would "take liberties" with their ballot designations, resulting in potentially misleading descriptions which were "beneath the dignity" of the judiciary.<sup>46</sup> SB 235 amended California law to restrict judicial candidates in their designations on the ballot by limiting them to words designating their actual job title or to use generic terms such as "Attorney," "Attorney at Law," "Lawyer," or "Counselor at Law."<sup>47</sup> This reform was geared specifically at judicial candidates because the author and sponsor of the legislation believed judges should "rise above the usual political fray," while opponents argued that the measure unfairly targeted judicial candidates in low-profile elections who relied on ballot designation as a primary way to distinguish themselves.<sup>48</sup> The changes became effective on January 1, 2018.<sup>49</sup>

### **Voter Information Guides**

A number of states seek to address the issue of low voter information by implementing various education efforts including voter pamphlets and sample ballots to help educate voters on their local and statewide elections. Idaho, Massachusetts, and Rhode Island require their respective secretaries of state to publish and mail a pamphlet containing information on ballot

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<sup>43</sup> *Id.*

<sup>44</sup> CAL. ELEC. CODE § 13107 (West 2019).

<sup>45</sup> *Elections: Ballot Designation Requirements, Hearing Before the Assembly Committee on Judiciary, 2017–2018 Leg.* (Cal. 2017).

<sup>46</sup> Judicial candidates would choose titles such as "Hardcore Gang Prosecutor" or "Child Molestation Prosecutor" which the bill's author and sponsor argued went against the nonpartisan nature of judicial elections. *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> CAL. ELEC. CODE § 13107 (West 2019).

measures to every registered voter household in the state.<sup>50</sup> Colorado requires the same, but the pamphlet is distributed by the legislative council staff of the general assembly rather than the secretary of state.<sup>51</sup> Other states provide for the creation of voter information pamphlets containing information on ballot measures, but require merely that the information be made available for the public either through posting in newspapers, distribution to county clerks, or by request. Mississippi requires only that its secretary of state publish the information on ballot info in a newspaper in each county.<sup>52</sup> Montana requires the secretary of state to prepare the pamphlet and publish it in three public locations, as well as distribute it to county clerks and election commissioners who must in turn make the information available at their respective offices.<sup>53</sup> New Hampshire authorizes, but does not require, publication and distribution of a voter guide.<sup>54</sup> Wyoming requires its secretary of state to print a “reasonable” number of voter pamphlets and to provide these upon request by any person or organization.<sup>55</sup>

Seven states publish more extensive voter information guides. These pamphlets include not only ballot measures and the arguments for and against each proposal, but also information on candidates including candidate-submitted statements and photos, information on each office up for election, and, if the state has some form of judicial council, the judicial council’s recommendations on any judicial candidates subject to retention election.<sup>56</sup>

Alaska, Arizona, and California mail the voter guides to each registered voter household., while North Carolina requires that the State Board of Elections distribute the voter guide to “as

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<sup>50</sup> IDAHO CODE § 34-1812C, MASS. GEN. LAWS ch. 54, § 53 (YEAR), 17 R.I. GEN. LAWS § 17-5-3 (2018).

<sup>51</sup> COLO. CONST. art. V, § 1(7.5); COLO. REV. STAT. § 1-40-124.5 (2016).

<sup>52</sup> MISS CODE ANN. § 23-17-45.

<sup>53</sup> MONT. CODE ANN. § 13-27-401 et seq. (2007).

<sup>54</sup> N.H. REV. STAT. ANN. § 663:3-a (2015).

<sup>55</sup> WYO. STAT. ANN. § 22-20-105 (2013).

<sup>56</sup> ALASKA STAT. § 15.58.010 et seq. (West 2018); ARIZ. REV. STAT. ANN. §§ 19-123, 16-956 (2012); CAL. ELEC. CODE § 9081 (WEST 2017); N.C. GEN. STAT. §§ 163-278.69, 163-278.99E (2017); OR. REV. STAT. §§ 251.005 et seq., 251.302 et seq.; UTAH CODE ANN. § 20A-7-701 (West 2008); WASH. REV. CODE § 29A.32.010 (2018).

many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective.”<sup>57</sup> Oregon and Washington both distribute the pamphlet to each household in the state and permit their respective secretaries of state to make the information available by other means such as through radio or television broadcasts, or publication in public libraries and other public locations.<sup>58</sup> Utah permits its lieutenant governor to choose between mailing the full pamphlet to voters, mailing a notice that the pamphlet has been produced and providing the website where it may be found, or placing one in an issue of every newspaper of general circulation in the state.<sup>59</sup>

#### **IV. Additional Reform Proposals**

In 1995 the legislature created the Texas Commission on Judicial Efficiency (“Commission”) to study the various aspects of the judiciary including methods of judicial selection and to make recommendations to the legislature.<sup>60</sup> The Commission created multiple task forces to study each area identified by the legislature, including the Judicial Selection Task Force whose purpose was to evaluate how Texas could improve its judicial selection system.<sup>61</sup> The Task Force recommended a comprehensive “Appoint-Elect-Retain” plan (“AER”) or alternatively, four separate reform measures which could be individually implemented should the Commission choose not to approve AER.<sup>62</sup>

Under AER, judicial vacancies would be filled by gubernatorial appointment, but appointees could only take office if confirmed by 2/3 of a special senate committee composed of

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<sup>57</sup> ALASKA STAT. § 15.58.010 (West 2018); ARIZ. REV. STAT. ANN. §§ 19-123, 16-956 (2012); CAL. ELEC. CODE § 9081 (WEST 2017); N.C. GEN. STAT. §§ 163-278.69, 163-278.99E (2017).

<sup>58</sup> OR. REV. STAT. §§ 251.005 et seq., 251.302 et seq.; WASH. REV. CODE § 29A.32.010 (2018).

<sup>59</sup> UTAH CODE ANN. § 20A-7-701 (West 2008).

<sup>60</sup> House Research Organization, *Judicial Selection: Options for Choosing Judges in Texas*, 75th Leg., at 3.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

senators or their designees.<sup>63</sup> The committee's sole purpose would be the confirmation of judicial appointees.<sup>64</sup> After the appointed judge served at least ten months, he or she would run in the next general election as a nonpartisan candidate and could be opposed by anyone meeting the candidacy requirements.<sup>65</sup> If the judge won the initial nonpartisan contested election, he or she would then only be subject to retention elections; if the judge lost the election, then the governor would appoint a replacement judge.<sup>66</sup> This plan was supported by half of the Commission.<sup>67</sup>

The other half of the Commission backed the Modified Bullock-Ellis-Duncan plan ("MBED").<sup>68</sup> This plan recommended gubernatorial appointment and senate confirmation for all appellate court judges and justices, with an initial appointment term of eighteen months followed by a retention election within two years of appointment.<sup>69</sup> Those retained would face retention elections every six years. Any judge or justice rejected by voters would be replaced through gubernatorial appointment.<sup>70</sup> District judges under MBED would be subject to nonpartisan election and subsequent retention elections.<sup>71</sup> MBED was almost identical to a plan originally proposed to and approved by the 1995 senate through SJR 26 and its implementing legislation SB 313.<sup>72</sup> The House Judicial Affairs Committee substituted a version of SJR 26 requiring all appellate judges and justices be elected in partisan elections from single-member districts with gubernatorial appointments for interim vacancies.<sup>73</sup> This substituted version died and was not

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<sup>63</sup> *Id.* at 4.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 4-5.

<sup>67</sup> *Id.* at 4.

<sup>68</sup> *Id.* at 5.

<sup>69</sup> *Id.* at 3.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

considered by the house.<sup>74</sup> MBED was proposed in the 1997 legislative session as SB 409 and SJR 23.<sup>75</sup> SJR 23 was approved without amendments by the Senate Committee on Jurisprudence but died before being considered by the senate.<sup>76</sup>

The Task Force additionally identified four measures Texas could take to improve its judicial selection system should the legislature choose not to adopt a comprehensive judicial reform plan. These were: (1) remove judicial races from the straight-ticket system used for other elected offices; (2) increase the minimum trial judge qualification requirements from four to eight years of experience practicing law; (3) provide automatic recusal for judges who accepted campaign contributions from a party or attorney to a suit in his or her court in excess of a certain amount as set forth in the 1995 Judicial Campaign Finance Reform; or (4) lengthen judicial terms by two years, resulting in eight-year terms for appellate judges and justices, and six-year terms for trial judges.<sup>77</sup>

There are three general categories of judicial term lengths among the states: uniform term lengths regardless of court level, shorter initial term lengths subject to retention elections for longer terms, and term lengths varied by court level. Texas judicial term lengths fall in the third category, with four-year terms for its trial court judges and six-year terms for appellate judges and justices.<sup>78</sup> Fourteen states use a system where judges serve a shorter number of years for their initial term, after which they are subject to retention elections for terms of a longer period.<sup>79</sup> For example, Maryland judges serve an initial one-year term after a merit selection process, after which they are subject to retention elections for terms of either ten or fifteen years, depending on

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 5.

<sup>76</sup> S.J.R. 23, 75th Leg, Reg. Sess. (Tex. 1997).

<sup>77</sup> House Research Organization, *supra* note 52 at 3.

<sup>78</sup> TEX. CONST. art. V §§ 2(c), 4(a), 6(b), 7.

<sup>79</sup> See ALASKA CONST. art. IV; COLO. CONST. art. VI; FLA. CONST. art. V, § 10; FLA. STAT. § 43.291; IND. CONST. art. VII, § 11; IOWA CODE § 46.16 (2008); MO. CONST. art. V, § 19; NEB. REV. STAT. § 24-1101; OKLA. CONST. art. 7, §§ 2, 8; S.D. CONST. art. V, § 7; UTAH CONST. art. VIII, § 9; WYO. CONST. art. V, § 4.

the court level.<sup>80</sup> In Kansas and Arizona, judges serve an initial term of one and two years respectively, followed by a retention election for shorter terms of four or six years depending on the court level.<sup>81</sup>

A number of other states have uniform term lengths for their judges, regardless of court level. Alabama, Minnesota, Nevada, Ohio, Oregon, and Vermont judges serve for terms of six years;<sup>82</sup> Connecticut, Kentucky, North Carolina, and Tennessee judges serve for eight;<sup>83</sup> Hawaii and Pennsylvania judges serve for ten; and Delaware judges serve for twelve.<sup>84</sup> Judges in Massachusetts and New Hampshire serve until the age of 70, and judges in Rhode Island have life tenure.<sup>85</sup>

Finally, eighteen states determine the term length for judicial offices based on the level of court. The shortest of these are the four-year term lengths for trial judges in Georgia, Idaho, Mississippi, Texas, and Washington.<sup>86</sup> New York has the longest judicial term lengths for its trial courts, with county court judges serving ten-year terms and supreme court judges serving fourteen-year terms.<sup>87</sup> At the appellate level, Texas, Washington, Idaho, and Georgia judges and justices serve six-year terms, while New York judges on the court of appeals serve for fourteen years.<sup>88</sup>

In its Interim Report to the 85th Legislature, the Senate Committee on State Affairs made recommendations on removing judicial elections from straight-party voting and encouraging

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<sup>80</sup> MD. CONST. art. IV

<sup>81</sup> ARIZ. CONST. art. VI; KAN. CONST. art. III

<sup>82</sup> ALA. CONST. amend 328; MINN. CONST. art. VI; NEV. CONST. art. VI; OHIO CONST. art. VI; OR. CONST. art. VII; VT. CONST. ch. 2, §§ 32–34.

<sup>83</sup> CONN. CONST. art. V; KY. CONST. § 117–119; N.C. CONST. art. IV; TENN. CONST. art. VI.

<sup>84</sup> HAW. CONST. art. VI; PA. CONST. art. V

<sup>85</sup> N.H. CONST. arts. 46, 73; R.I. CONST. art. X.

<sup>86</sup> GA. CONST. art. VI; IDAHO CODE § 1-2404 (2018); MISS. CODE ANN. § 9-4-5; TEX. CONST. art. V; WASH. REV. CODE §2.06

<sup>87</sup> N.Y. CONST. art. VI

<sup>88</sup> GA. CONST. art. VI; IDAHO CODE § 1-2404 (2018); N.Y. CONST. art. VI; TEX. CONST. art. V; WASH. REV. CODE §2.06.



individual consideration of judicial candidates by voters.<sup>89</sup> The report noted that the nationwide trend has been to move away from permitting straight-party voting, with just nine states who still allow it in elections.<sup>90</sup> Proponents of straight-ticket voting argued that it allows voters to cast votes more quickly, resulting in voting booth lines to move more quickly.<sup>91</sup> They noted that the convenience is more appealing to voters, and that an increasing number of voters have utilized the straight-party voting option.<sup>92</sup> Opponents of straight-ticket voting responded that it should be eliminated from the ballot in order to encourage voters to give individual consideration to the candidates.<sup>93</sup> After the passage of HB 25 by the 85th Legislative Session, Texas will no longer permit the straight-ticket voting option on its ballots beginning September 1, 2020.<sup>94</sup>

Former Texas Supreme Court Chief Justice Wallace Jefferson and current Chief Justice Nathan Hecht have asserted that the elimination of the straight-party voting option will not fully address the issues created by partisan judicial elections.<sup>95</sup> Judicial candidates will still retain the party alignment designation on the ballot and voters, who often have low information on the judicial candidates, will likely continue to vote based on the party label.<sup>96</sup> The State Affairs Committee Report recommendation merely states that judicial candidates should be given individual consideration by the voters in order to help preserve public confidence in the state judiciary.<sup>97</sup>

## V. Conclusion

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<sup>89</sup> Senate Committee on State Affairs, Interim Report to the 85th Legislature, at 11 (Tex. 2016).

<sup>90</sup> Since 2006, seven states have chosen to abolish straight-ticket voting, and an additional state only permits it for overseas and military voters. *Id.* at 17.

<sup>91</sup> *Id.* at 17–18.

<sup>92</sup> Based on data from various county clerk websites, almost 64% of total votes in the ten largest Texas counties were cast by straight-ticket ballots in 2016. <https://www.texastribune.org/2016/11/11/texas-2016-straight-ticket-ballots/>

<sup>93</sup> House Research Organization, *supra* note 52, at 46.

<sup>94</sup> H.B. 25, 85th Leg., Reg. Sess. (Tex. 2017).

<sup>95</sup> Senate Affairs, *supra* note 70, at 19.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

Texas's method of judicial selection has been criticized for its tendency to facilitate partisan sweeps on the bench, driven by higher-profile races and voters selecting candidates down party lines.<sup>98</sup> However, proposed reforms such as gubernatorial appointment or merit selection commissions have been similarly criticized as too partisan and insufficient for ensuring diversity.<sup>99</sup> It is unlikely that Texas will adopt nonpartisan elections or merit selection systems. However, smaller, more targeted measures may be taken to help ameliorate the issues Texas currently faces with judicial selection. These include reforms such as extending judicial term lengths, removing judicial elections from the straight-ticket voting option on ballots, and permitting an incumbency designation to help better inform voters at the polls. Texas could implement any of these measures while keeping the popular election methods as prescribed by the state constitution. As Chief Justice Hecht noted, "No method of judicial selection is perfect,"<sup>100</sup> but as discussed above, Texas has a number of options it may consider to amend its judicial selection process and bolster the independence of the judiciary.

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<sup>98</sup> Mark P. Jones, *The Selection of Judges in Texas: Analysis of the Current System and of the Principle Reform Options*, JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY OF RICE UNIVERSITY, Jan. 2017, at 22.

<sup>99</sup> John F. Kowal, *Judicial Selection for the 21<sup>st</sup> Century*, BRENNAN CENTER FOR JUSTICE, 2016, at 2–3.

<sup>100</sup> Nathan Hecht, Chief Justice, Tex. Sup. Ct., *State of the Judiciary in Texas: An Address to the 86th Texas Legislature* (Feb. 6, 2019).

2

## MEMORANDUM

From: Judge Martin Hoffman  
Date: January 6, 2020  
Re: Proposed Legislation on Judicial Elections

---

### Purpose

The purpose of this memo is to supply you with information regarding my proposed legislation that would provide sitting judges with the option to designate their incumbency status on the ballot. It is my hope that you would consider carrying the legislation.

Additionally, this memo provides information regarding the Interim Committee on Judicial Selection. As a member of the select committee, you have a great opportunity to initially expose the proposed bill to the critical legislators addressing judicial election issues.

### Background

As you are well aware, Texas' system of partisan judicial elections negatively impacts the judiciary. In less than a decade as an elected official, I have personally witnessed the direct impact of special interest groups and sweeping political movements on judicial elections. Both have contributed to the increased volatility of the electorate and resulted in the removal of some of our most qualified jurists.

Additionally, public confidence in our nation's courts is at a crisis point. Americans show increasing concerns over the influence of politics and campaign contributions on the courts. Three in every four Americans believe campaign cash affects courtroom decisions.<sup>1</sup>

Despite its negative impact on the judiciary, Texas continues to follow the minority approach to judicial selection by using partisan elections. The vast majority of states favor some form of gubernatorial or legislative appointment (merit based selection) to select judges. Additionally, several states use nonpartisan elections.

However, Texas is unlikely to completely remove partisan judicial elections in favor of nonpartisan elections or merit based selections. Subsequently, I believe a strategic method to address these problems is through legislation that seeks to insulate judges from inappropriate political pressures.

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<sup>1</sup> <http://www.brennancenter.org/issues/fair-courts>

## Proposed Legislation

Currently, Texas ballots fail to provide any information on judicial candidates other than their names. It is my belief that an incumbency designation will provide judges with a level of insulation from inappropriate political pressure. Because of the unique nature of the judiciary, I believe that the voters are less likely to take the "anti-incumbency" stance towards the judges.

Below is a description of my two proposed bills:

- 1) Requires ballots to list the designator of incumbent next to a judge's name. Additionally, the bill would provide a judge with the option to include the number of years served on the bench. The bill would also allow a judicial candidate to include their number of years licensed by the State Bar of Texas.
- 2) Provides judges with the option to include the incumbency designator next to their name on the ballot.

In 2009, a similar bill, S.B. 563, passed the Senate. It required primary ballots to designate the incumbent. Additionally, in the 2013 session, a bill authored by Senator Duncan, S.B. 577, attempted to implement a judicial selection system that would require partisan elections for all judicial offices and nonpartisan elections for retention of all judicial offices (an approach similar to New Mexico and Illinois).

Further, the problems surrounding partisan elections provided the context that led to the authoring and eventual passage of H.B. 2722. The bill created an interim committee to study the current judicial selection system in Texas, as well as alternative judicial selection methods (this binder includes copies of each of these bills).

With Americans' current attitude about the court, the problems facing the judiciary, and now, the creation of the Texas Commission on Judicial Selection, I believe the time is optimal to advocate for strategic legislation to address the problems created by Texas' partisan judicial selection process.

As a member of the Texas Commission on Judicial Selection, I believe you have a unique opportunity to greatly influence the future of Texas' judicial selection process.

## Key Facts

### Seven States Allow Incumbency Designation in Judicial Elections

- Arkansas (similar to my bill; option to include designator)
- California
- Georgia
- Idaho
- Michigan
- Minnesota
- Oregon

29 states use some form of gubernatorial or legislative appointment (merit-based selection).

19 states use nonpartisan elections for at least some of their judicial offices.

**Only 6 states hold partisan elections for all judicial offices.**

In the first full election cycle since *Citizens United*, special interest groups and political parties spent an unprecedented parties spent \$24.1 million on state courts races in 2011-2012 – an increase of over \$11 million since 2007-08.

### H.B. 3040 & the Texas Commission on Judicial Selection

H.B. 3040 established a commission on judicial selection to study and review the method by which district judges and appellate justices and justices are selected for office in Texas. The bill required the study to consider the fairness, effectiveness, and desirability of selecting district judges and appellate justices and justices through partisan elections; the fairness, effectiveness, and desirability of judicial selection methods proposed or adopted by other states; and the relative merits of alternative methods for selecting district judges and appellate judges and justices, including certain specified methods.

H.B. 3040 set out the composition of the committee, which consists of senators appointed by the Lieutenant Governor, members of the House of Representatives appointed by the Speaker of the House, members appointed by the Governor, and the chairs of specified committees. The bill requires the Governor, Lieutenant Governor and the Speaker of the House to each ensure that the appointed members reflect the racial, ethnic and geographic diversity of this state and includes individuals who are attorneys and who are not attorneys. Additionally, the bill requires the Governor to designate a presiding officer and requires the commission to convene at the call of the presiding officer.

H.B. 3040 requires the commission, not later than December 31, 2020, to report the

committee's findings and recommendations to the Governor and the legislature. The bill requires the committee to include in its recommendations specific constitutional and statutory changes that appear necessary from the results of the committee's study.

### Committee Members

#### Ex Officio

Wallace B. Jefferson (Texas Supreme Court)  
Thomas R. Phillips (Texas Court of Criminal Appeals)  
Lynne Liberato (State Bar of Texas)

#### Appt. by Governor Abbott

Charles "Chip" Babcock  
David Beck (Chair)  
Martha Hill Jamison  
David Oliveira

#### Appt. by Speaker Bonnen

Rep. Todd Hunter (Corpus Christi)  
Rep. Brooks Landgraf (Odessa)  
Rep. Ina Minijarez (San Antonio)  
Sen. Carl Sherman (DeSoto)

#### Appt. by Lt. Gov. Patrick

Sen. Joan Huffman (Houston)  
Sen. Juan "Chuy" Hiniyosa (McAllen)  
Sen. Brian Birdwell (Granbury)  
Robert Nichols (Jacksonville)

3



By: West

S.B. No. 286

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to additional primary election ballot information for  
3 judicial candidates.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter D, Chapter 172, Election Code, is  
6 amended by adding Section 172.0861 to read as follows:

7 Sec. 172.0861. ADDITIONAL BALLOT INFORMATION FOR JUDICIAL  
8 CANDIDATES. (a) This section applies only to a judicial office  
9 that appears on the primary or runoff primary election ballot. This  
10 section does not apply to a constitutional county judge.

11 (b) A candidate for a judicial office who is the incumbent  
12 for the office may request that the ballot indicate the candidate's  
13 incumbency adjacent to the candidate's name.

14 (c) The secretary of state shall prescribe the method and  
15 manner for including the information described by this section on  
16 the ballot.

17 SECTION 2. This Act takes effect September 1, 2015.

4

## FACT SHEET ON JUDICIAL SELECTION METHODS IN THE STATES

### State High Courts:

For state high courts (which are called supreme courts in 48 states) a total of 38 states have some type of judicial elections. The breakdown of selection systems for state high courts is as follows:

- **Six (6) states have partisan elections** (AL, IL, LA, NC, PA, TX; All judges in both Illinois and Pennsylvania run in uncontested retention elections for additional terms after winning a first term through a contested partisan election)
- **Fifteen (14) states have nonpartisan elections** (AR, GA, ID, KY, MI, MN, MS, MT, NV, ND, OH, OR, WA, WV, WI)
- **Seventeen (17) states have uncontested retention elections after initial appointment** (AK, AZ, CA, CO, FL, IN, IA, KS, MD, MO, NE, NM, OK, SD, TN, UT, WY)
- **The remaining 12 states grant life tenure or reappointment of some type for their highest courts** (CT, DE, HI, ME, MA, NH, NJ, NY, RI, SC, VT, VA)

### Intermediate Appellate Courts:

Forty-two (42) states have intermediate appellate courts. The breakdown of selection systems for intermediate appellate courts is as follows:

- **Six (6) states have partisan elections** (AL, IL, LA, NC, PA, TX)
- **Eleven (11) states have nonpartisan elections** (AR, GA, ID, KY, MI, MN, MS, OH, OR, WA, WI)
- **Fourteen (14) states have uncontested retention elections after initial appointment** (AK, AZ, CA, CO, FL, IN, IA, KS, MO, NE, NM, OK, TN, UT)
- **Eleven (11) states grant life tenure or use reappointment of some type for their intermediate appellate courts** (CT, DE, HI, MD, MA, NJ, NY, ND, SC, VT, VA)
- **Eight (8) states do not have intermediate appellate courts** (ME, MT, NV, NH, RI, SD, WV, WY)

### Trial Courts:

A total of 39 states hold elections – whether partisan, nonpartisan, or uncontested retention elections – for trial courts of general jurisdiction. The breakdown of selection systems for trial courts of general jurisdiction is as follows:

- **Seven (7) states have partisan elections for all general jurisdiction trial court judges** (AL, IL, LA, NY, PA, TN, TX)
- **Twenty-one (21) states have nonpartisan elections for all general jurisdiction trial court judges** (AR, CA, FL, GA, ID, KY, MD, MI, MN, MS, MT, NV, NC, ND, OH, OK, OR, SD, WA, WV, WI)
- **Seven (7) states have uncontested retention elections for all general trial court judges** (AK, CO, IA, NE, NM, UT, WY)
- **Four (4) states use differing types of elections – partisan, nonpartisan, or retention – for general jurisdiction trial courts in different counties or judicial districts** (AZ, IN, KS, MO)
- **Eleven (11) states grant life tenure or use reappointment of some type for all general jurisdiction court judges** (CT, DE, HI, ME, MA, NH, NJ, RI, SC, VT, VA)

5

By: Hunter

H.B. No. 3040

Substitute the following for H.B. No. 3040:

By: Geren

C.S.H.B. No. 3040

A BILL TO BE ENTITLED  
AN ACT

relating to an interim study by the Texas Commission on Judicial Selection regarding the method by which certain trial and appellate judges are selected.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. COMMISSION; STUDY. (a) The Texas Commission on Judicial Selection is established to study and review the method by which the following judges and justices are selected for office in this state:

- (1) statutory county court judges, including probate court judges;
- (2) district judges;
- (3) justices of the courts of appeals;
- (4) judges of the court of criminal appeals; and
- (5) justices of the supreme court.

(b) The study conducted under this section must consider:

- (1) the fairness, effectiveness, and desirability of selecting a judicial officer described in Subsection (a) of this section through partisan elections;

- (2) the fairness, effectiveness, and desirability of judicial selection methods proposed or adopted by other states;

- (3) the relative merits of alternative methods for selecting a judicial officer described in Subsection (a) of this section, including:

- (A) lifetime appointment;
- (B) appointment for a term;
- (C) appointment for a term, followed by a partisan election;
- (D) appointment for a term, followed by a nonpartisan election;
- (E) appointment for a term, followed by a nonpartisan retention election;
- (F) partisan election for an open seat, followed by a nonpartisan retention election for incumbents; and

- (G) any other method or combination of methods for selecting a judicial officer described in Subsection (a) of this section; and

- (4) the merits of using a public member board to nominate or assess the qualifications of candidates for judicial office.

(c) The Texas Commission on Judicial Selection consists of 15 members appointed as follows:

- (1) four members appointed by the governor;
- (2) four members appointed by the lieutenant governor, including three senators, with at least:

- (A) one senator who is a member of the political party with which the lieutenant governor is affiliated; and

- (B) one senator who is a member of a political party other than the political party with which the lieutenant governor is affiliated;

- (3) four members appointed by the speaker of the house of representatives, including three members of the house of representatives, with at least:

- (A) one representative who is a member of the

political party with which the speaker of the house is affiliated;  
and

(B) one representative who is a member of a political party other than the political party with which the speaker of the house is affiliated;

(4) one member appointed by the chief justice of the Supreme Court of Texas;

(5) one member appointed by the presiding judge of the Texas Court of Criminal Appeals; and

(6) one member appointed by the board of directors of the State Bar of Texas.

(d) The governor, lieutenant governor, and speaker of the house of representatives shall coordinate to ensure that the members appointed to the Texas Commission on Judicial Selection reflect, to the extent practicable, the racial, ethnic, and geographic diversity of this state and include individuals who are attorneys and individuals who are not attorneys.

(e) The governor shall designate the presiding officer of the Texas Commission on Judicial Selection.

(f) The Texas Commission on Judicial Selection shall convene at the call of the presiding officer.

(g) A member of the Texas Commission on Judicial Selection is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in serving as a member of the commission.

(h) The Office of Court Administration of the Texas Judicial System shall provide necessary administrative support to the Texas Commission on Judicial Selection.

(i) Not later than December 31, 2020, the Texas Commission on Judicial Selection shall submit to the governor and the legislature a report on the commission's findings and recommendations on a method or methods for selecting for office judges listed in Subsection (a) of this section that ensure a fair, impartial, qualified, competent, and stable judiciary. The commission shall include in its recommendations specific constitutional and statutory changes that appear necessary from the results of the commission's study.

SECTION 2. ABOLITION OF COMMISSION. The Texas Commission on Judicial Selection is abolished and this Act expires January 2, 2021.

SECTION 3. IMPLEMENTATION TRANSITION. The Office of Court Administration of the Texas Judicial System is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the Office of Court Administration of the Texas Judicial System may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 4. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

6

**OFFICIAL BALLOT**  
 Republican Primary and Non Partisan Judicial Election  
 Carroll County, Arkansas - May 20, 2014

A	B	C	D
CARROLL COUNTY		STATE OF ARKANSAS	MAY 20, 2014
<p><b>INSTRUCTIONS TO VOTER</b></p> <p>1. Vote by placing an appropriate mark beside the person for whom you wish to vote. Vote on amendments, acts, issues, and measures by placing an appropriate mark below the measure either FOR or AGAINST.</p> <p>2. Use the marking device provided to mark the ballot.</p> <p>3. If you vote for more than one person, measure, or issue in a race, your vote in that race will not count. If you make a mistake on your ballot, return it to an election official for a replacement ballot. You may replace up to two ballots in an election.</p> <p><b>ABSENTEE VOTERS</b>                  If you vote for more than one person, measure, or issue in a race, your vote in that race will not count. The instructions at the top of the ballot regarding correcting such a ballot direct the voter to return his/her ballot to an election official for a replacement ballot. This is often not possible for absentee voters. If you make a mistake on your absentee ballot, you may either receive a replacement ballot or clarify the mistake by making an additional mark, such as an arrow pointing to your preferred choice.</p>	<p><b>AUDITOR OF STATE</b> Vote For One</p> <p><input type="radio"/> Ken Yang</p> <p><input type="radio"/> Representative Andrea Lea</p>	<p><b>STATE SUPREME COURT ASSOCIATE JUSTICE POSITION 2</b> Vote For One</p> <p><input type="radio"/> Court of Appeals Judge Robin Wynne</p> <p><input type="radio"/> Tim Cullen</p>	
<p><b>ARKANSAS GOVERNOR</b> Vote For One</p> <p><input type="radio"/> Asa Hutchinson</p> <p><input type="radio"/> Curtis Coleman</p>	<p><b>STATE REPRESENTATIVE DISTRICT 98</b> Vote For One</p> <p><input type="radio"/> Ron McNair</p> <p><input type="radio"/> Jeff Boggs</p>	<p><b>CIRCUIT JUDGE, DISTRICT 19-EAST, DIVISION 1</b> Vote For One</p> <p><input type="radio"/> District Judge Scott Jackson</p> <p><input type="radio"/> Circuit Judge Kant Crow</p>	
<p><b>ARKANSAS LIEUTENANT GOVERNOR</b> Vote For One</p> <p><input type="radio"/> State Rep. Andy Mayberry</p> <p><input type="radio"/> Representative Deora Hobbs</p> <p><input type="radio"/> Congressman Tim Griffin</p>	<p><b>CARROLL COUNTY SHERIFF</b> Vote For One</p> <p><input type="radio"/> Jack R. Gentry, Jr.</p> <p><input type="radio"/> Sheriff Bob Grudek</p>	<p><b>UNOPPOSED CANDIDATES - NONPARTISAN JUDICIAL</b></p> <p><input type="radio"/> UNOPPOSED CANDIDATES</p>	
<p><b>ATTORNEY GENERAL</b> Vote For One</p> <p><input type="radio"/> Leslie Rutledge</p> <p><input type="radio"/> Patricia Nation</p> <p><input type="radio"/> David Sterling</p>	<p><b>UNOPPOSED CANDIDATES - REPUBLICAN</b> Vote For One</p> <p><input type="radio"/> UNOPPOSED CANDIDATES</p> <p>U.S. SENATE: Tom Cotton; U.S. CONGRESS, DISTRICT 3, Congressman Steve Womack; SECRETARY OF STATE, Secretary of State Mark Martin; COMMISSIONER OF STATE LANDS, Commissioner John Thurston; STATE SENATE DISTRICT 5, Senator Bryan B King; STATE REPRESENTATIVE DISTRICT 83, Rep. David L. Branscum; STATE REPRESENTATIVE DISTRICT 97, Representative Bob Ballinger; CIRCUIT CLERK, Betty Neal; CONSTABLE-CARROLLTON TOWNSHIP, Ed Mikese; CONSTABLE-CEDAR TOWNSHIP, Jim Butler; CONSTABLE-HICKORY TOWNSHIP, R. Niles Rains; CONSTABLE-OSAGE TOWNSHIP, Walter Followill; CONSTABLE-POLO TOWNSHIP, Clyde O. Thomas; CONSTABLE-WINONA TOWNSHIP, Rocky Whiteley; JUSTICE OF THE PEACE DISTRICT 2, Charles G. Olson; JUSTICE OF THE PEACE DISTRICT 4, Ron Flake; JUSTICE OF THE PEACE DISTRICT 5, Matt Phillips; JUSTICE OF THE PEACE DISTRICT 6, Joe Lee Mills; JUSTICE OF THE PEACE DISTRICT 7, Andrew J. Wilhelm; JUSTICE OF THE PEACE DISTRICT 8, Donald W. McNeely; JUSTICE OF THE PEACE DISTRICT 9, Roger Hall</p>	<p><b>STATE SUPREME COURT ASSOCIATE JUSTICE POSITION 6, Justice Karen R. Baker; STATE SUPREME COURT ASSOCIATE JUSTICE POSITION 7, Court of Appeals Judge Rhonda Wood; COURT OF APPEALS ASSOCIATE JUDGE-DISTRICT 03-POSITION 02, Kenneth S. Hixson; PROSECUTING ATTORNEY-DISTRICT 19-EAST, Prosecuting Attorney Tony Rogers</b></p>	
<p><b>STATE TREASURER</b> Vote For One</p> <p><input type="radio"/> Representative Duncan Baird</p> <p><input type="radio"/> Circuit Clerk Dennis Milligan</p>			

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# BARTOW COUNTY

## OFFICIAL ABSENTEE/PROVISIONAL/CHALLENGED BALLOT

### OFFICIAL DEMOCRATIC PARTY PRIMARY AND NONPARTISAN GENERAL ELECTION BALLOT OF THE STATE OF GEORGIA MAY 20, 2014

To vote, blacken the Oval (●), next to the candidate of your choice. To vote for a person whose name is not on the ballot, manually WRITE his or her name in the write-in section and blacken the Oval (●), next to the write-in section. If you desire to vote YES or NO for a PROPOSED QUESTION, blacken the corresponding Oval (●). Use only blue or black pen or pencil.

Do not vote for more candidates than the number allowed for each specific office. Do not cross out or erase. If you erase or make other marks on the ballot or tear the ballot, your vote may not count.

If you change your mind or make a mistake, you may return the ballot by writing "Spoiled" across the face of the ballot and return envelope. You may then mail the spoiled ballot back to your county board of registrars, and you will be issued another official absentee ballot. Alternatively, you may surrender the ballot to the poll manager of an early voting site within your county or the precinct to which you are assigned. You will then be permitted to vote a regular ballot.

I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law. (OCGA 21-2-284(a), 21-2-285(h) and 21-2-383(a))

<p><b>For United States Senate</b> (Vote for One)</p> <p><input type="radio"/> O. "STEEN" MILES</p> <p><input type="radio"/> M. MICHELLE NUNN</p> <p><input type="radio"/> BRAWKO "RAD" RADULOVACKI</p> <p><input type="radio"/> TODD ANTHONY ROBINSON</p>	<p><b>For State School Superintendent</b> (Vote for One)</p> <p><input type="radio"/> TARNISHA L. DENT</p> <p><input type="radio"/> MARION SPENCER "DENISE" FREEMAN</p> <p><input type="radio"/> JURITA FOREHAND MAYS</p> <p><input type="radio"/> ALISHA THOMAS MORGAN</p> <p><input type="radio"/> R. "RITA" ROBINZINE</p> <p><input type="radio"/> VALARIE D. WILSON</p>	<p style="text-align: center;">- 3 -</p> <p>Should the Constitution of Georgia be amended to create an independent ethics commission, not tied to the Governor's office, legislature, or other elected office, to more effectively police potential ethics violations by elected officials?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p><b>For Governor</b> (Vote for One)</p> <p><input type="radio"/> JASON J. CARTER</p>	<p><b>For Commissioner of Labor</b> (Vote for One)</p> <p><input type="radio"/> ROBBIN K. SHIPP</p>	<p style="text-align: center;">- 4 -</p> <p>Should the Constitution of Georgia be amended to make the education budget Georgia's first funding priority?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
<p><b>For Lieutenant Governor</b> (Vote for One)</p> <p><input type="radio"/> CONNIE J. STOKES</p>	<p><b>For Public Service Commissioner</b> (To Succeed Lauren McDonald) (Vote for One)</p> <p><input type="radio"/> DANIEL A. BLACKMAN</p>	<p style="text-align: center;"><b>NONPARTISAN GENERAL ELECTION</b></p> <p><b>For Justice, Supreme Court of Georgia</b> (To Succeed Robert Benham) (Vote for One)</p> <p><input type="radio"/> ROBERT BENHAM (Incumbent)</p> <p><input type="radio"/> _____ Write-in</p>
<p><b>For Secretary of State</b> (Vote for One)</p> <p><input type="radio"/> GERALD B. BECKUM</p> <p><input type="radio"/> DOREEN CARTER</p>	<p><b>For State Representative in the General Assembly From 15<sup>th</sup> District</b> (Vote for One)</p> <p><input type="radio"/> DYLAN L. PATRICK</p>	
<p><b>For Attorney General</b> (Vote for One)</p> <p><input type="radio"/> GREGORY K. "GREG" HECHT</p>	<p><b>DEMOCRATIC PARTY QUESTIONS</b></p>	
<p><b>For Commissioner of Agriculture</b> (Vote for One)</p> <p><input type="radio"/> CHRISTOPHER JAMES IRVIN</p>	<p><b>For Commissioner of Insurance</b> (Vote for One)</p> <p><input type="radio"/> KEITH G. HEARD</p> <p><input type="radio"/> ELIZABETH N. "LIZ" JOHNSON</p>	<p style="text-align: center;">- 1 -</p> <p>Should Georgia raise the state minimum wage above the current \$5.15 an hour?</p> <p><input type="radio"/> YES</p> <p><input type="radio"/> NO</p>
		<p><b>For Justice, Supreme Court of Georgia</b> (To Succeed Keith R. Blackwell) (Vote for One)</p> <p><input type="radio"/> KEITH R. BLACKWELL (Incumbent)</p> <p><input type="radio"/> _____ Write-in</p>
		<p><b>For Justice, Supreme Court of Georgia</b> (To Succeed P. Harris Hines) (Vote for One)</p>

# Sample Ballot-Lincoln County, Oregon | May 20, 2014

Official Primary Nominating Ballot for the Democratic Party  
Lincoln County, OR - May 20, 2014

National	Nonpartisan State Judiciary	Nonpartisan County
<p>United States Senator Vote For One</p>	<p>Judge of the Supreme Court, Position 1 Vote For One</p>	<p>Lincoln County Commissioner, Position 1 Four Year Term Vote For One</p>
<p><input type="radio"/> Pavel Goberman</p>	<p><input type="radio"/> Thomas A Balmer <i>incumbent</i></p>	<p><input type="radio"/> Doug Hunt</p>
<p><input type="radio"/> Jeff Merkley</p>	<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> James B Patrick</p>
<p><input type="radio"/> William Bryk</p>	<p>Judge of the Supreme Court, Position 7 Vote For One</p>	<p><input type="radio"/> Write-in</p>
<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> Martha L Walters <i>incumbent</i></p>	<p>Lincoln County Commissioner, Position 3 Four Year Term Vote For One</p>
<p>Representative in Congress, 5th District Vote For One</p>	<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> Joe Hitselberger</p>
<p><input type="radio"/> Anita Brown</p>	<p>Judge of the Court of Appeals, Position 1 Vote For One</p>	<p><input type="radio"/> David N Allen</p>
<p><input type="radio"/> Kurt Schrader</p>	<p><input type="radio"/> Chris Garrett <i>incumbent</i></p>	<p><input type="radio"/> Dick Anderson</p>
<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> Terry N Thompson</p>
<p>State</p>	<p>Judge of the Court of Appeals, Position 4 Vote For One</p>	<p><input type="radio"/> Write-in</p>
<p>Governor Vote For One</p>	<p><input type="radio"/> Timothy Sercombe <i>incumbent</i></p>	<p>Lincoln County Assessor Four Year Term Vote For One</p>
<p><input type="radio"/> Ifeanyichukwu C Diru</p>	<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> Rob Thomas</p>
<p><input type="radio"/> John Kitzhaber</p>	<p>Judge of the Court of Appeals, Position 11 Vote For One</p>	<p><input type="radio"/> Write-in</p>
<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> Joel DeVore <i>incumbent</i></p>	<p>City of Yachats</p>
<p>State Representative, 9th District Vote For One</p>	<p><input type="radio"/> Write-in</p>	<p><b>21-155 City Purchase of Real Property to Serve Visitors and Citizens</b></p>
<p><input type="radio"/> Caddy McKeown</p>	<p>Judge of the Court of Appeals, Position 12 Vote For One</p>	<p>Question: Should City purchase real property for parking total cost not to exceed \$400,000?</p>
<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> Erin C Lagesen <i>incumbent</i></p>	<p>Summary: This measure was referred to the voters by the Yachats City Council. The City Charter requires voter approval for the purchase of real property.</p>
<p>State Representative, 10th District Vote For One</p>	<p><input type="radio"/> Write-in</p>	<p>During heavy visitation, parking in the core area of town is inadequate. Shop owners, visitors, and citizens are inconvenienced and commerce is limited.</p>
<p><input type="radio"/> David Gomberg</p>	<p>Judge of the Court of Appeals, Position 13 Vote For One</p>	<p>If this measure passes, the City would identify willing sellers of properties in the core area of town for the purpose of providing additional parking to better address the need. This measure authorizes the City to expend up to \$400,000 for the described properties. The funds will come from hotel room taxes in the Visitor Amenities Fund and/or other existing reserves. Properties will be identified by an assessment of those available to meet the need and purchased at no more than fair market value when approved and prioritized through normal budget processes.</p>
<p>Nonpartisan State</p>	<p><input type="radio"/> Doug Tookey <i>incumbent</i></p>	<p><input type="radio"/> Yes</p>
<p>Commissioner of the Bureau of Labor and Industries Vote For One</p>	<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> No</p>
<p><input type="radio"/> Brad Avakian</p>	<p>Judge of the Oregon Tax Court Vote For One</p>	<p><b>WARNING</b></p>
<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> Henry C Breithaupt <i>incumbent</i></p>	<p>Any person who, by use of force or other means, unduly influences an elector to vote in any particular manner or to refrain from voting is subject to a fine. (ORS 254.470)</p>
<p><input type="radio"/> Write-in</p>	<p>Judge of the Circuit Court, 17th District, Position 1 Vote For One</p>	<p><b>WARNING</b></p>
<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> Sheryl M Bachart <i>incumbent</i></p>	<p>Any person who, by use of force or other means, unduly influences an elector to vote in any particular manner or to refrain from voting is subject to a fine. (ORS 254.470)</p>
<p><input type="radio"/> Write-in</p>	<p><input type="radio"/> Write-in</p>	<p><b>WARNING</b></p>

# SAMPLE BALLOT

STEELE COUNTY

STATE OF MINNESOTA

NOVEMBER

## STATE GENERAL ELECTION BALLOT

### INSTRUCTIONS TO VOTERS:

To vote, completely fill in the oval(s) next to your choice(s) like this:

SCHOOL DISTRICT OFFICES	JUDICIAL OFFICES	3RD DISTRICT CO	
<p style="text-align: center;"><b>SCHOOL BOARD MEMBER INDEPENDENT SCHOOL DISTRICT NO. 2168 (N.R.H.E.G.) VOTE FOR UP TO THREE</b></p> <p><input type="radio"/> PEGGY RADJENOVICH</p> <p><input type="radio"/> MIKE MOEN</p> <p><input type="radio"/> LORI ROUTH</p> <p><input type="radio"/> MICHELE (SHELLY) MOXON</p> <p><input type="radio"/> JAY CRABTREE</p> <p><input type="radio"/> write-in, if any</p> <p><input type="radio"/> write-in, if any</p> <p><input type="radio"/> write-in, if any</p>	<p><b>SUPREME COURT</b></p> <p><b>CHIEF JUSTICE VOTE FOR ONE</b></p> <p><input type="radio"/> LORIE SKJERVEN GILDEA <i>Incumbent</i></p> <p><input type="radio"/> DAN GRIFFITH</p> <p><input type="radio"/> write-in, if any</p>	<p><b>JUDGE 15 VOTE FOR ONE</b></p> <p><input type="radio"/> JOSEPH F. CHASE <i>Incumbent</i></p> <p><input type="radio"/> write-in, if any</p>	
	<p><b>ASSOCIATE JUSTICE 1 VOTE FOR ONE</b></p> <p><input type="radio"/> DEAN BARKLEY</p> <p><input type="radio"/> BARRY ANDERSON <i>Incumbent</i></p> <p><input type="radio"/> write-in, if any</p>		
	<p><b>ASSOCIATE JUSTICE 4 VOTE FOR ONE</b></p> <p><input type="radio"/> TIM TINGELSTAD</p> <p><input type="radio"/> DAVID R. STRAS <i>Incumbent</i></p> <p><input type="radio"/> write-in, if any</p>		
	<p><b>SCHOOL BOARD MEMBER INDEPENDENT SCHOOL DISTRICT NO. 2172 (KENYON-WANAMINGO) VOTE FOR UP TO THREE</b></p> <p><input type="radio"/> KARLA BAUER</p> <p><input type="radio"/> GREG DOTSON</p> <p><input type="radio"/> DOUGLAS KYLLO</p> <p><input type="radio"/> write-in, if any</p> <p><input type="radio"/> write-in, if any</p> <p><input type="radio"/> write-in, if any</p>	<p><b>COURT OF APPEALS</b></p> <p><b>JUDGE 6 VOTE FOR ONE</b></p> <p><input type="radio"/> RENEE L. WORKE <i>Incumbent</i></p> <p><input type="radio"/> write-in, if any</p>	
		<p><b>JUDGE 7 VOTE FOR ONE</b></p> <p><input type="radio"/> JILL FLASKAMP HALBROOKS <i>Incumbent</i></p> <p><input type="radio"/> write-in, if any</p>	
	<p><b>SCHOOL BOARD MEMBER INDEPENDENT SCHOOL DISTRICT NO. 763 (MEDFORD) VOTE FOR UP TO FOUR</b></p> <p><input type="radio"/> ANNE HEMANN</p> <p><input type="radio"/> JACKIE BERG</p> <p><input type="radio"/> GARY WIERSMA</p>	<p><b>3RD DISTRICT COURT</b></p> <p><b>JUDGE 1 VOTE FOR ONE</b></p> <p><input type="radio"/> CHRISTINA K. STEVENS <i>Incumbent</i></p> <p><input type="radio"/> write-in, if any</p>	
		<p><b>JUDGE 2 VOTE FOR ONE</b></p> <p><input type="radio"/> JOHN T. CAJACOB <i>Incumbent</i></p>	

OFFICIAL NONPARTISAN PRIMARY ELECTION BALLOT

UFLODPVOLZ TLEUFPGEBI P NBZ131-13

INSTRUCTIONS TO VOTER

To vote, fill in the oval (●) next to the candidate of your choice.

To vote a "Write-in", fill in the oval next to the blank write-in line and write the name of your choice on the blank write-in line.

If you make a mistake, request a new ballot from an election worker.



Official Judicial Nominating Election Ballot

JUSTICE OF THE SUPREME COURT

TO SUCCEED JUSTICE

Joel Horton (Vote for One)

- Joel Horton
William "Breck" Seiniger

TO SUCCEED JUSTICE

Warren E. Koofert (Vote for One)

- Warren E. Koofert

JUDGE OF THE COURT OF APPEALS

TO SUCCEED JUDGE

Sergio A. Gutierrez (Vote for One)

- Sergio A. Gutierrez

SEVENTH JUDICIAL DISTRICT COURT JUDGES

TO SUCCEED JUDGE

Darren B. Simson

TO SUCCEED JUDGE

Joel E. Tingey (Vote for One)

- Randy Neal
Joel E. Tingey

TO SUCCEED JUDGE

Jon J. Shindurling (Vote for One)

- Scott J. Davis
Bruce L. Pickett
Stevan H. Thompson

TO SUCCEED JUDGE

Dane H. Watklot (Vote for One)

- Dane H. Watklot

SPECIAL SEBB & BEEF LEVY ELECTION

Shantia B. Bobsel Dpvoz
Don n jt j pof st lpg Uf upol Dpvoz lbbi p
of lbvu ps (f elup lrvz lbolpw sjef lrvz
qvst vbouplbbi plDpef 174.913)4 lboe
bbi plDpef 151.912-ljolu f lbn pvoutpgvq
up 192-111-111 lqf szf bstgsblqf sjpelpgux p
zf bst ldon n f oqohlxju lu f lgt dartz bs
of hjooh!Pdull2-13125-lgsu f lqvscpt f
pgin qspvjch!dpvoz!jogst us/dv f
n bjoujof elcz!u f lSpobelboe!Qsjehf
Ef qbsn f ou lpgUf upol Dpvoz-lboelpgu f
qjrt lpgEshht -Vjdpstboe!Uf upojb-lbmtot
qspvjef eljolu f lSf t prvjoolbepqu elcz
u f lQobselpgDpvoz!Don n jt j pof st lpg
Uf upol Dpvoz!polNbsd 121-13125/

- DGBVPS!PG authorizing the levy in the amount of \$1,000,000 per year for two years
BHB,OTU authorizing the levy in the amount of \$1,000,000 per year for two years

TCFD,BMMCSBSZ!MFVZ!

Vtrnz!pgu f lUf upot lly

Tl brntu f lQobselpgu f lVtrnz!
Uf upot lly!bsbz!cf lbvu ps (f el
pvf sjef lrvz!qvst vbouplbbi
74.913)4-ljolu f lbn pvoutpgvq
zf bstgsblqf sjpelpgux plzf bst
dqn n f oqohlxju lu f lgt dartz
of hjooh!Pdull2-13125-lgsu f
pgf t ubcjtj johl!bsbod lrvz sbx
bbi plbt lqspvjef eljolu f lSf t p
Qobselpgu f lVtrnz!pgu f lUf
bepqu elpol!Kbovbsz!8-13125/

- DGBVPS!PG a the levy in the ar \$220,000 per ye years

- BHB,OTU autho the levy in the a \$220,000 per ye years

**JUDICIAL**  
**JUDGE OF THE SUPERIOR COURT**

Office No. 76 Vote for One	ALISON MATSUMOTO ESTRADA Government Corruption Prosecutor	158 → ○
	HELEN KIM Criminal Prosecutor	159 → ○
Office No. 82 Vote for One	ANN H. PARK Criminal Prosecutor	161 → ○
Office No. 87 Vote for One	STEVEN P. SCHREINER Gang Homicide Prosecutor	163 → ○
	ANDREW M. STEIN Gang/Homicide Attorney	164 → ○
	TOM GRIEGO Criminal Gang Prosecutor	165 → ○
Office No. 90 Vote for One	SERENA R. MURILLO Sexual Predator Prosecutor	167 → ○
Office No. 97 Vote for One	SONGHAI "SUNNY" ARMSTEAD Supervising Criminal Prosecutor	169 → ○
	TERESA P. MAGNO Gang Murder Prosecutor	170 → ○
Office No. 107 Vote for One	EMMA CASTRO Superior Court Commissioner	172 → ○
	JOAN M. CHROSTEK Major Narcotics Prosecutor	173 → ○
Office No. 113 Vote for One	STEVEN KLAIF Superior Court Referee	175 → ○
	STACY WIESE Criminal Homicide Prosecutor	176 → ○
Office No. 117 Vote for One	CAROL NAJERA Violent Crimes Prosecutor	178 → ○
	JAMES B. PIERCE Judge of the Superior Court	179 → ○

CONTINUE VOTING ON NEXT PAGE





7

QUESTION	YES	% YES	NO
Do you support HB 4504?	5	24%	10
Do you favor incumbency designation in general election ballots?	13	62%	6
Do you favor voter information pamphlets being published and mailed to every registered voter in Texas?	16	76%	3
Do you favor public financing of judicial elections?	16	76%	3
Do you favor enhanced judicial candidate qualification requirements such as requiring that all judges be board certified?	3	14%	18
Do you favor enhanced judicial candidate qualification requirements such as increasing the required number of years of licensure?	11	52%	9
Do you favor increasing district judge and other trial judges' terms to 6 years?	15	71%	5
Do you favor increasing appellate justices' terms to 8 years?	11	52%	10
Do you favor nonpartisan election of judges?	15	71%	6
Do you favor retention election of judges after appointment?	8	38%	9
If you answered "Yes" to No. 9, please summarize the type of appointment system you favor.	N/A	N/A	N/A
Do you favor retention elections after an initial partisan contested election of judges?	7	33%	9
Do you favor requiring judicial candidates to file in both primaries?	11	52%	8



% NO	NO RESPONSE	% NO RESPONSE
48%	6	29%
29%	2	10%
14%	2	10%
14%	2	10%
86%	0	0%
43%	1	5%
24%	1	5%
48%	0	0%
29%	0	0%
43%	4	19%
N/A	N/A	N/A
43%	5	24%
38%	2	10%

COMMENT(S)
"Not completely"
"In same form"
"Yes if non-partisan and limited to explanation of scope of each court's jurisdiction, i.e. description of type(s) of legal issues within court's authority"
"Depending on who writes them, and isn't that the issue?"
"Non-partisan"
"Not sure if public financing is the answer but politically placed/endorsement and fundraising adversely affects the integrity of the judiciary"
"Maybe"
"Not at this time"
"Under the current system—Yes. Under the HB 4504 system—No."
"Yes—Less time campaigning"
"Under the current system—Yes. Under the HB 4504 system—No."
"Yes if appointed"
"Usual election cycle"
"Merit selection by governor from commission recommendations with senate confirmation before taking office"
"Under any method"
"Governor nominate. Senate confirm."
"By partisan committee."
"Missouri Plan"
"Non partisan judicial council"
"Removes voters decision and increases costs of candidacy"
"Simply adds to cost of being a candidate and "masks" partisan position"
"Maybe. Need to know more."
"Yes if non-partisan"
"Yes but no primaries!"