

ELECTION COMMITTEE

At the February 11, 2020 Meeting of the Texas Commission on Judicial Selection, the Election Committee, by and through its Chair, Thomas R. Phillips, made the following report on the relative advantages of partisan and non-partisan elections, as follows:

Advantages of Partisan Elections

- Partisan elections can provide an advantage for the voters. The average citizen does not know what qualifications a judge must or should have to serve the public, and does not know how they match to these qualifications
- Partisan elections serve as an asset for voters and may provide a comfort level for them in voting, in that it allows them to align their votes with the party they most align with. If you are a Republican or Democrat you know that if you vote for a candidate who aligns with your chosen party, they will most likely align with your own political views.
- Gives candidates more access to knowledgeable and enthusiastic campaign volunteers and employees
- Enhances access to pre-organized political events with attendees willing to hear a judicial candidate's message
- Gives an opportunity for more diverse sources of funding than just lawyers, litigants, and candidate's friends
- Running in both a primary and a general election enhances accountability
- In urban areas, permits candidates to spend their funds more efficiently and effectively by running joint campaigns or at least joint advertising pieces
- May result in cheaper campaigns, as candidates need not reach those voters who will support or oppose them merely because of party label

- Affords some protection for candidates with unfamiliar or hard-to-pronounce names, or worse, names which are similar to unpopular or notorious public figures.
- In some circumstances, party leaders can exercise influence to dissuade unqualified candidates from seeking office, or can steer potential candidates away from challenging good judges

Advantages of Non-partisan Elections

- Avoids partisan sweeps that have, over the last forty years, driven hundreds of good judges from office
- May enhance the pool of potential judges because candidates for election or appointment will have less fear that their election or retention in office will be affected by political forces unrelated to their job performance
- May attract good candidates who lack partisan affiliations or are affiliated with a party that is unlikely to achieve electoral success in their district
- Candidates need not run in both primaries and a general election, thereby shortening the campaign season and perhaps total campaign expenditures
- Avoids the dangers caused by low turnouts that are increasingly typical for party primaries, where more voters are reportedly driven by extreme ideologies or narrow interests
- Would help the public perceive judicial officers as different from elective policymakers
- Would enhance confidence in the integrity of the judicial process from non-Texans who appear before our courts
- Might make judges less likely to seek political appointments or elective offices

The Chair also offered the following open questions for further exploration and discussion:

- Which system would lead to more expensive judicial races?
- Which system would encourage more good judges to be left unchallenged and more bad judges to be opposed and defeated?
- Which system would lead to more improper pressure on candidates and incumbents from interest groups or litigants?
- Would either system be better served by holding the elections on some date other than the even-year regular primary and general election calendars?
- Would cross-filing maximize the best features of both systems while minimizing some of the worst? If so, should a cross-filing system be mandatory or optional?
- Which system would better allow judicial candidates to educate voters about the distinction between the judicial role and the legislative or executive roles?

Finally, Mr. Phillips circulated a draft of a questionnaire to be sent under cover letter signed by Chief Justice Hecht and Administrator Slayton to the Chief Justices and State Court Administrators of the other 49 states and the District of Columbia. The questionnaire, which was drafted and modified in consultation with the Executive Director and staff of the National Center for State Courts, permits anonymity but also allows respondents to identify themselves provide open-ended guidance about resources and individuals that could assist our work.

The Commissioners agreed to review the draft and make suggestions or raise questions by February 29, 2020. The Commission will then finalize the questionnaire at its March 6 meeting.