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## AUSTIN BAR ASSOCIATION

712 W. 16TH ST · AUSTIN, TX 78701  
TEL 512.472.0279 · AUSTINBAR.ORG

November 12, 2020

Mr. David Beck, Chair  
Texas Commission on Judicial Selection  
Texas Office of Court Administration  
205 W. 14th Street  
Austin, TX 78701  
dbeck@beckredden.com

**Re: Austin Bar Association Judicial Selection Survey**

Dear Chairman Beck:

Considering the work of the Texas Commission on Judicial Selection ("Commission"), the Austin Bar Association conducted a judicial-selection survey. Members of the Austin Bar and Austin Young Lawyers Association were invited to participate in this survey between October 19, 2020 and October 30, 2020. The survey results are attached for the Commission's consideration.

Thank you for your service and for welcoming information like the attached survey results. I look forward to attending the Commission's meeting on November 13, 2020 so that I may observe your deliberations, summarize the survey results, and answer any questions from the Commission.

Best Regards,

Kennon L. Wooten  
Austin Bar Association President

Attachment

cc: Austin Bar Association and Austin Young Lawyers Association  
Boards of Directors

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# Judicial Selection Survey

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Submission to the Texas  
Commission on Judicial Selection

**Kennon L. Wooten,**  
**President**  
Austin Bar Association

**DeLaine Ward,**  
**Executive Director**  
Austin Bar Association

712 W. 16th St.  
Austin, TX 78701

[austinbar@austinbar.org](mailto:austinbar@austinbar.org)

# EXECUTIVE SUMMARY

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In October 2020, the Austin Bar Association conducted an online, anonymous survey for its members and for members of the Austin Young Lawyers Association. The survey addressed judicial selection in Texas and contained eight questions, along with a prompt for respondents to share additional comments for submission to the Texas Commission on Judicial Selection (“Commission”). The survey was open for approximately two weeks—between October 19, 2020 and October 30, 2020. A total of 682 attorneys responded to the survey, reflecting an 18.4% response rate.

## IMPORTANCE OF SPECIFIED ATTRIBUTES

An overwhelming majority of respondents conveyed a belief that it is important to select judges who have relevant experience or qualifications, with over 95% of the respondents ranking relevant experience or qualifications as extremely or very important. Over 60% of the respondents ranked more diversity amongst judges, as well as having judges with high approval ratings from lawyers, as extremely or very important. Popularity with voters was perceived as less important by the respondents—only 10.4% indicated that this is extremely or very important, while 32% indicated it is not at all important and 56.6% indicated that it is slightly or moderately important.

## POLITICAL RELATIONSHIPS AND CONTRIBUTIONS

Respondents expressed a high degree of interest regarding the potential impacts of politics and campaign contributions. Over 75% of the respondents ranked eliminating pressure on a sitting judge from their political party, and eliminating actual or perceived influence of campaign contributions, as extremely or very important. And over 66% of the respondents ranked eliminating the selection of judges based primarily on political relationships as extremely or very important.

## METHODS FOR SELECTION OF JUDGES

The respondents ranked nonpartisan elections as their top choice for selecting both judges seeking open benches and judges seeking another term, with appointment by a bipartisan committee being a close second. For open benches, several respondents expressed interest in combining those options (nonpartisan elections and bipartisan committees), with partisan elections, gubernatorial appointment, and legislative selection as less preferred methods. For judges seeking another term, over 23% of respondents selected retention elections as their top choice of selection. Partisan elections, gubernatorial reappointment, and legislative reappointment were less preferred methods.



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## **BIPARTISIAN COMMITTEE**

72.1% of the respondents stated that Texas should require that a potential judge be approved by a bipartisan judicial qualifications committee as a prerequisite to being either appointed or included on a ballot. While the bulk of respondents expressed confidence in the State Bar's ability to create a bipartisan committee to assist in judicial selection, nearly 30% expressed concern as to whether the committee could be fair and objective in assessing qualifications without regard to political considerations. Additionally, several respondents elaborated in individual comments that they did not feel that a committee could eliminate political influence from the judicial-selection process.

## **IDEAL TERM LENGTHS**

For all courts, a 4-year term was the top choice. But a higher percentage of voters expressed this preference for county courts and district courts than they did for intermediate and top appellate courts, with the following percentages: (1) 75.8% for county courts; (2) 63.9% for district courts; (3) 43.3% for intermediate appellate courts; and (4) 39.4% for the Supreme Court of Texas and the Court of Criminal Appeals. For all Texas appellate courts, a 6-year term was the second choice.

## **INDIVIDUAL COMMENTS**

Respondents expressed many views through comments. These views are nuanced and plentiful. Thus, a full and fair appreciation of the results of this survey requires a review of the comments.

# QUESTION 1

When choosing a system for selecting Texas judges, how important are the following factors to you in the selection process?



## The selection of judges who have relevant experience or qualifications

Not at all important	0.4%	3
Slightly important	0.0%	0
Moderately important	2.8%	19
Very important	23.2%	158
Extremely important	73.2%	499
Not answered	0.4%	3

## More diversity among Texas judges

Not at all important	6.5%	44
Slightly important	7.0%	48
Moderately important	25.2%	172
Very important	34.2%	233
Extremely important	26.1%	178
Not answered	1.0%	7

## QUESTION 1 (Cont.)



### The selection of judges who have a high approval rating from lawyers

Not at all important	1.5%	10
Slightly important	4.4%	30
Moderately important	31.8%	217
Very important	39.9%	272
Extremely important	22.1%	151
Not answered	0.3%	2

### The selection of judges who are popular with voters

Not at all important	32.0%	218
Slightly important	30.9%	211
Moderately important	25.7%	175
Very important	7.2%	49
Extremely important	3.2%	22
Not answered	1.0%	7

## QUESTION 1 (Cont.)



### Eliminating selection of judges based primarily on political relationships

Not at all important	8.4%	57
Slightly important	7.2%	49
Moderately important	16.3%	111
Very important	23.8%	162
Extremely important	42.5%	290
Not answered	1.9%	13

### Eliminating pressure on a sitting judge from his or her political party

Not at all important	4.3%	29
Slightly important	5.9%	40
Moderately important	11.1%	76
Very important	21.8%	149
Extremely important	55.0%	375
Not answered	1.9%	13

## QUESTION 1 (Cont.)



### Eliminating actual or perceived influence of campaign contributions

<b>Not at all important</b>	<b>3.4%</b>	<b>23</b>
<b>Slightly important</b>	<b>5.9%</b>	<b>40</b>
<b>Moderately important</b>	<b>11.9%</b>	<b>81</b>
<b>Very important</b>	<b>23.2%</b>	<b>158</b>
<b>Extremely important</b>	<b>54.7%</b>	<b>373</b>
<b>Not answered</b>	<b>1.0%</b>	<b>7</b>

## QUESTION 2

Please rank, starting with most preferable (1st) to least preferable (6th), each of the following options for selecting Texas judges for open benches (no incumbent):



	1st	2nd	3rd	4th	5th	6th
<b>Non-partisan elections</b>	<b>34.3%</b>	<b>26.0%</b>	<b>17.0%</b>	<b>10.0%</b>	<b>6.3%</b>	<b>1.8%</b>
<b>Selection by a bipartisan committee</b>	<b>34.0%</b>	<b>28.4%</b>	<b>18.3%</b>	<b>7.5%</b>	<b>4.3%</b>	<b>1.3%</b>
<b>A combination of one or more of the above choices</b>	<b>14.5%</b>	<b>14.7%</b>	<b>23.0%</b>	<b>17.4%</b>	<b>6.9%</b>	<b>9.2%</b>
<b>Partisan elections</b>	<b>9.4%</b>	<b>15.4%</b>	<b>12.5%</b>	<b>23.5%</b>	<b>13.0%</b>	<b>18.2%</b>
<b>Gubernatorial appointment</b>	<b>3.2%</b>	<b>5.9%</b>	<b>10.0%</b>	<b>11.9%</b>	<b>23.0%</b>	<b>34.8%</b>
<b>Selection by the Texas Legislature</b>	<b>0.6%</b>	<b>4.8%</b>	<b>11.3%</b>	<b>19.1%</b>	<b>34.6%</b>	<b>18.3%</b>

## QUESTION 2 (Cont.)



### Comments

Nomination by legislators from district with confirmation by Texas Senate

Selection by local government

A required criteria of qualification, experience, diversity, etc. , then may be eligible for partison ballot

A required qualification of experience, diversity, etc. before being eligible to be on the ballot

Appointment, Confirmation, Retention Elections

Appellate Judges should be elected by District and County Court at Law Judges. District and County Court Judges should be elected by voters in the General election.

appointment followed by retention election after a fe years

Nonpartisan committee vetting with either Gubernatorial appt or nonpartisan election

Missouri Plan

Candidates from a list of qualified individuals nominated by governor and confirmed by senate

Missouri Plan

Merit Selection

Selection by attorneys practicing in the specific court whether or not they reside in county—must be member of bar in good standing

Missouri plan

Selection by Texas Bar Association members

Something else

Selection by committee with retention elections--See Colorado's system

## QUESTION 3

Please rank, starting with most preferable (1st) to least preferable (7th), each of the following options for sitting judges seeking another term:



	1st	2nd	3rd	4th	5th	6th	7th
Non-partisan elections	27.0%	23.9%	18.6%	10.7%	5.6%	5.3%	1.0%
Bipartisan committee reappointment	23.9%	21.6%	17.2%	14.2%	8.2%	2.5%	1.2%
Retention elections	23.2%	19.2%	19.4%	11.7%	10.7%	2.8%	1.2%
A combination of one or more of the above choices	10.6%	8.1%	13.6%	19.2%	13.2%	5.7%	10.0%
Partisan elections	8.1%	13.3%	9.2%	13.3%	16.0%	12.6%	14.5%
Gubernatorial reappointment	1.3%	2.9%	5.0%	8.4%	10.9%	21.8%	32.0%
Texas Legislature reappointment	0.9%	3.5%	5.6%	7.3%	18.2%	30.9%	16.0%

## QUESTION 3 (Cont.)



### Comments

Partisan election but publicly publish results of ongoing surveys of judge's demeanor and knowledge of the law. Like a yelp/google review but only actual litigants have access to survey. One question should be whether litigant won or loss to determine bias.

keep partisan elections, but conduct ongoing confidential survey of judges by litigants that is published and also available online at any time for public review

Appellate Judges should be elected by District and County Court at Law Judges. District and County Court Judges should be elected by voters in the General election.

Bipartisan committee vetting with retention elections

same

Sixteen year tenure for good behavior

Missouri Plan

Merit review by non-partisan committee

Selection by attorneys practicing in the specific court—whether or not they reside in county

Missouri plan

Long terms with no reappointment

[https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Choosing\\_State\\_Judges\\_2018.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Choosing_State_Judges_2018.pdf)

Section by Texas Bar association

Something else

# QUESTION 4

Should trial court judges be selected differently than appellate judges?



<b>Yes</b>	<b>23.5%</b>	<b>160</b>
<b>No</b>	<b>72.7%</b>	<b>496</b>
<b>Not answered</b>	<b>3.8%</b>	<b>26</b>

## Comments

See Indiana
Different jobs.
Voters need a say-so.
Different skill sets.
Local knowledge helps.
Need trial experience.
nonpartisan election only
Appellate can be retained
Need to be more experienced!
go through bipartisan panel first.
They need to have trial experience.
Elect trial judges; appoint appellate judges
They need private practice and trial experience.
Should be selected for temperament and experience
They have different skill sets and different duties.
we need judges that have at least been in a courtroom

## QUESTION 4 (Cont.)



Should be based more on experience and qualifications.

Trial court judges should reflect their local community

Appointment of appellate judges has more state/federal precedent

Trial judge elections should remain partisan elections. No change.

It's more important that appellate judges not be partisan elections

Trial court judges should be chosen by the community where they preside.

Appellate judges should have trial experience and should be non-partisan

Different skill set.

Appellate judges should have trial court experience first.

Appellate review requires specialized knowledge of appellate procedures and laws.

Appellate Court Judges should be purely bipartisan committee appointment for a select term.

Experienced trial lawyers selected as judges insure that trials will run quicker and better.

I believe appellate judges require a higher degree of legal knowledge, experience and approval

I think appellate judges should have trial court experience to be eligible for appellate judgeship.

Committee of attorneys experienced in matters the judges would hear (criminal, civil, probate, etc.)

Trial court judges are in much greater numbers and it is much harder for voters to get to know them.

Trial Judges should definitely be by partisan election even if appellate judges are chosen otherwise.

There is a different skill set required for each kind of judge. Trial experience is essential to both.

Appellate court judges should be more free from politics and have higher standards of skill and experience.

Highest Court and Second highest appeal court should be treated differently than the numerous lower courts.

An appellate judge requires a different level of expertise than a trial judge, especially Supreme Court judges.

B/c they hear and answer to the people in a direct forum. Appellate justices are answering to the trial judges.

they fulfill different roles; trials are very different than appeals, different temperaments are sometimes needed

## QUESTION 4 (Cont.)



People in communities often know the trial judges and have experience. Hardly ever do they know appellate judges

Appellate judges should be even further distanced from political influence that elections of any sort can lead to

If we have to have elections, should be non partisan , retention after gov. Appt. People will know who voting for ..

Appellate judges should have a greater amount of legal experience and expertise and time on the bench as a trial judge

Appellate judges should have the experience of a trial court judge before being able to become an appellate court judge

May be better if appellate judges are selected by and from the sitting trial judges of the district in which they serve.

If elections should continue anywhere, they should be at the lowest level (closest to the diverse communities of the state)

Trial court judges need to show a tenure of having practiced law in the courtroom and a proficiency with the rules of evidence.

I think appellate judges should be appointed from sitting or former district court judges with a minimum of trial court experience

Different skill sets are required. The trial judge should have people skills and judicial demeanor more than an Appellate Judge...

Require broader depth of experience in criminal and civil law, current case law, and more important to be impartial and not opine politically

Their job is different. They definitely need some trial experience, whereas that seems less critical (but still helpful) for appellate judges.

The qualifications should be considered differently. The general electorate isn't qualified to and/or doesn't understand/appreciate the distinction.

Appellate judges should have more years of experience to be eligible and should meet criteria based on appellate experience, including TBLS certification.

Larger, more powerful position that should be subject to more input/requirements than a trial court judge. Maybe select appellate judges from trial court judges?

Probably some sort of trial lawyer committee refers list to governor. Governor appoints. Then confirmed by legislature. Then merit committee renews 12 year terms.

Appellate judges should have more weight considered on their experience with/in the trial courts and any records of how they faired in those courts as a professional.

Appellate Judges need to be qualified by having had extensive years of courtroom and appellate experience-- a Trial Court Judge needs only to have courtroom experience.

## QUESTION 4 (Cont.)



appellate judges need to have more input from the legal community as to their knowledge and whether they can fairly apply legal standards. Trial judges focus more on facts.

It is more important for Appellate Judges to be elected than trial court judges. The work Appellate Judges do is inherently more political and should be subject to the voters.

I think statewide judges should be selected some other way because of the expense and difficulty of running statewide. Circuit appellate judge should be selected like other judges.

Litigation experience is important for selecting trial court judges. Trial judge experience and/or appellate attorney/judge experience is important for selecting appellate judges.

We need trial judges to be experts on the rules of evidence, trial court and procedure. Too often inexperienced judges overrule objections and/or allow the incorrect application of rules.

Appellate court judges need to have both more experience and more independence from the political process so they can focus on adjudication independent of political pressure for reelection

I would be open to a limited term appointment system or some other non-election alternative for appellate judges. Most voters do not understand the experience needed to be an appellate judge.

Trial judges are the ones with whom most citizens will have contact and experience. How they are selected should reflect that relationship. Very few citizens will have a case go up on appeal.

different qualifications. Trial judges have to make quick decisions, and rule promptly. Appellate judges have time to look at issues in more details. Ideally, all judges should be board certified.

In my opinion, trial judges should always be elected. Appellate judge candidates should be elected by the public from a pool selected by a bipartisan panel, with equal representation from the two major parties.

To be eligible to serve as an appellate judge, a candidate should be required to show extensive experience as an attorney who has handled appeals. The candidate should be board certified, preferably in appellate law.

Trial Judge strengths can be different from those needed in an appellate judge. For instance, time management is important for a trial judge, as is a calm disposition. Neither are as important on the appellate bench.

Both need different levels of minimum experience and certain qualifications. For example, a certain number of years experience, practice within that area of law, and certain bars to running- like no vexatious litigants.

## QUESTION 4 (Cont.)



It's important for trial court to be experienced in trial process and the substantive law. Additionally, managing jury selection, witness examination, and zealous advocacy are unique skills required of a trial judge.

Trial judges should be selected with a heavy emphasis on actual courtroom trial experience. I believe an appellate judge should have some trial experience as well but that it is not as important with an appellate judge.

To the extent voters feel the need to elect judges, it makes the most sense to do so with trial judges, as they are more local, more visible, and more knowable. People just don't know the appellate judges or what they do.

Because trial judges are more local (and appellate judges serve a larger population), the trial judge decision-making should be more local (i.e., potentially retention elections or reappointments by a body that serves that area).

Trial Judges should be selected based on actual trial experience not just because they belong to a political party. For instance, in Travis County all you have to be is a democrat to win and actual experience is not a requirement.

Voters generally know something about their local trial judges but virtually nothing about the Ct of App or S Ct Justices. I would prefer the appellate justices be appointed by a bi-partisan committee subject to retention elections.

A trial court judge is the formation of justice and all of the law many Texans will ever see or experience. It is exceptionally important that the experience of not colored by notions of partisanship but by a sense of justice and fairness.

There is a stronger argument for allowing election (either nonpartisan or partisan) of trial judges than there is for electing appellate judges. Voters have a better chance of having personal experience with or knowledge of a trial judge.

Trial judges have a direct impact on the procedure followed and evidence available at trials on the merits. I believe they should be impeccably equipped to make those ground-level decisions that drive everything that happens at the appellate level.

Trial judges can learn enough to do a good job, even if they didn't start with the knowledge. Appellate judges should be much more well-versed in the law, given that they are making judgment calls on alleged mistakes made by the trial court judges.

Depends on the system -- local judges, including district judges, should be selected locally. The current system of the governor appointing district judges to fill unexpired terms allows for the executive branch in interject politics in lieu of the will of the people.

## QUESTION 4 (Cont.)



Trial court judges should represent the voters in their district, to ensure that their sections align with local mores as reflected by jury verdicts. Appellate judges, particular statewide, should be chosen based on qualifications in as non-partisan a way as is possible.

All of the reasons for electing any judge apply most accurately to trial court judges. Even most lawyers do not understand what appellate judges do, so they should only be selected by those who understand what the job requires and the skill sets needed to address those requirements.

Appellate judges often make decisions and interpret laws in ways that change law and policy. Voters are not likely to know who they are. Trial judges ideally should not be making policy in their decisions, or should do so rarely. Trial judges are more likely to be known in their community.

While trial court judges can be elected, think it would be better for a non-partisan committee to appoint appellate judges would be better. More independence from elections by appellate judges would make more likely that legal issues are decided on neutral grounds rather than a political agenda.

Perhaps, and it would depend on the area the judge serves. In larger-population district (e.g., Harris Co), there should be greater reliance on appellate-type selection methods designed to counter the randomness/partisan downsides of elections. But in very small, rural counties, where "everyone" still knows "everyone", elections might be beneficial.

Because the records of appellate court judge are opaque to most of the public while the public and trial lawyers interact with district court judges. Appellate Court judges also affect the interpretation of law in a way that has a greater impact on the entire public. Essentially appellate judges have a greater impact and are more subject to political bias.

They should be selected differently because they have different roles. Trial judges are on the front lines of the litigation process and are heavily involved in the factfinding process. Whereas, appellate judges are focused on the process, application of law, and standards of review. These differences should be taken into account during the selection process.

Appellate judges should serve the purpose of upholding the rule of law and constitution. Popular and partisan politics undermine that effort. Trial judges serve those same purposes, too, but they also serve the purpose of reflecting the community values. Appellate judges should be akin to senators on the legislative side and immune to the sways of popular politics.

I think it is important for trial level judges to be elected in a system that does not take political party affiliation into account. However, I think they should be elected. I believe appellate judges should be chosen by a bi-partisan committee that evaluates competence and skill in "promoting" trial judges to higher levels. I do not think appellate judges should be elected at all, much less in partisan elections.

## QUESTION 4 (Cont.)



Trial judges handle jury trials which are completely different than appellate proceedings in that they have the most power when it comes to generating new law and being a gatekeeper of the way in which laws are applied to real-life situations. Also trial judges are regional and should reflect the area where they sit to some extent. Both benches should be bipartisan in my opinion or at the very least 50/50 in seats for each party.

Their decisions have more localized effects, so election rather than appointment by Governor is less critical for finding the best qualified. Less important that those judges have particular experience (i.e., appellate experience), although that is not necessarily true for family court judges. Finally, probably more of a fight to change away from electing local judges than it would be for changing the selection of appellate judges.

It makes more sense to have a trial judge elected in the traditional sense. A trial judge has more of a true local flavor and should be connected to the local community and the local community have input via an election. Appellate judges are not local in the same sense. Appellate judges have a different expertise than a trial judge that an ordinary, non-lawyer voter will not understand or appreciate. Appellate courts also benefit from longevity; trial courts do not.

Trial judges should be held accountable by the people because the matters that come before them are more closely related to decision by "a jury of peers." Appellate judges, on the other hand, look primarily at the law (rather than fact). In my opinion, an appellate judge's legal qualifications are more important for the position of appellate judge while a trial judge's ability to understand and empathize with real people is more important for the position of trial judge.

Appellate Judges should be elected by District and County Court at Law Judges from those trial judges. They should serve 6 year terms and then be returned to the trial bench, unless they are then elected to the Supreme Court or Court of Criminal Appeals (see below). District and County Court Judges should be elected by voters in the General election as they are now. Supreme Court and Court of Criminal Appeals Judges should be elected by Courts of Appeals Judges for a 4-year term and then returned to the trial bench.

The job of appellate justices is distinct in that the focus is less on "fairness" in a particular case and more on creating and maintaining a cohesive body of case law, and the job is much less public-facing. Some lawyers can do a great job in both roles, but it seems more common for a lawyer to have a particular strength in one or the other. A different process typically leads to different results, and the different result we should aim for is matching the candidate's skill set to the job, rather than simply rewarding the best campaigner/fundraiser or rewarding party fealty.

The general population has no idea what appellate judges do and there is no reason that such an uninformed population should be voting for them. They at least come in contact with trial judges, so it makes some sense to have the public vote for trial judges, but no

## QUESTION 4 (Cont.)



sense at all for them to vote for appellate judges. The public votes for appellate judges strictly based on party line and so the appellate courts are as partisan as their voting population, which also makes no sense, since the appellate courts can share their caseloads by sending off cases that were tried in their district to be heard by an appellate court in another district -- a court that was not elected by the participating parties. It seems completely unconstitutional to me.

Local judges should be subject to more local control. Appellate judges should face higher scrutiny and vetting. How these goals are accomplished depends on the method of election. Also, this preference poll may not be the best method to determine how to select judges. We are literally electing how to elect judges. There are experts who have studied how best to select judges. Professors who have empirical data on what processes generally select the best judges. We should be listening to those experts and looking for best practices. The general population, and even the attorney population, are ill-informed about most judges, so what use is polling or elections without the data to make informed choices published in a meaningful way that's easy to understand.

A model for state appellate judicial selection can be based in part on the Federal Constitutional Court of Germany. Judges are appointed to that court for a single, 12-year term. Although half of the judges to that court are appointed by the lower house of parliament and half by the upper house, I think the mechanism for appointment to Texas appellate courts (of all levels, including the two high courts) should follow the U.S. federal procedure, namely nomination by the executive (the Governor) and confirmation by the Senate. Nominations should come to the Governor from bipartisan selection committees composed of attorneys and non-attorneys. Those interested in nomination and confirmation should be able to apply to the selection committee for consideration.

Regarding the next questions, I would use "12 years" rather than "10 years." So where I have chosen, in the next questions "10 years," that is really a choice for "12 years."

First, the jobs are entirely different. The criteria for selecting a good trial court judge is markedly different than an appellate court judge (handling a docket, ruling on objections, bedside manner with parties are unnecessary for an appellate court judge but highly important for a trial court.) Perhaps the same methodology is used, but I think the criteria for an appellate court bench is much easier as you can gauge the lawyer's previous briefs to determine their legal research and writing acumen. Second, I would prefer that all judges are appointed through a nonpartisan committee based upon lawyer and public members like the federal magistrate selection committee. However, should an election be required, I am more amenable to elections for trial court benches as there is direct interface with the public than appellate court seats. My preference is for no election, but this is one of the differences I see between trial court benches and appellate court positions. Finally, a trial court judge typically manages his/her own docket and an appellate court judge must work with others. The other judges on the bench should have input in who they want to work with - just like any other job.

## QUESTION 5

What is the ideal term length for the following benches?



<b>County Court</b>		
4 years	75.8%	517
6 years	17.2%	117
8 years	2.9%	20
10 years	1.6%	11
Lifetime Appointment	0.6%	4
Not answered	1.9%	13

<b>District Court</b>		
4 years	63.9%	436
6 years	25.7%	175
8 years	5.0%	34
10 years	2.9%	20
Lifetime Appointment	0.7%	5
Not answered	1.8%	12

## QUESTION 5 (Cont.)



<b>Appellate Court</b>		
<b>4 years</b>	<b>43.3%</b>	<b>295</b>
<b>6 years</b>	<b>35.8%</b>	<b>244</b>
<b>8 years</b>	<b>11.0%</b>	<b>75</b>
<b>10 years</b>	<b>6.7%</b>	<b>46</b>
<b>Lifetime Appointment</b>	<b>1.3%</b>	<b>9</b>
<b>Not answered</b>	<b>1.9%</b>	<b>13</b>

<b>Supreme Court/ Court of Criminal Appeals</b>		
<b>4 years</b>	<b>39.4%</b>	<b>269</b>
<b>6 years</b>	<b>35.3%</b>	<b>241</b>
<b>8 years</b>	<b>10.7%</b>	<b>73</b>
<b>10 years</b>	<b>10.0%</b>	<b>68</b>
<b>Lifetime Appointment</b>	<b>3.2%</b>	<b>22</b>
<b>Not answered</b>	<b>1.3%</b>	<b>9</b>

## QUESTION 6

Should Texas require that a potential judge be approved by a bipartisan judicial qualifications committee as a prerequisite to being either appointed or included on a ballot?



Yes	72.1%	492
No	20.5%	140
Not answered	7.3%	50

## QUESTION 7

Please rate your opinion on the State Bar of Texas being able to create a bipartisan judicial qualifications committee for judicial selection.



Extremely Confident	13.2%	90
Very Confident	23.6%	161
Moderately Confident	31.7%	216
Slightly Confident	13.2%	90
Not Confident at All	12.6%	86
Not answered	5.7%	39

## QUESTION 8

If Texas were to establish a bipartisan judicial qualifications committee, do you believe such a committee would fairly and objectively assess the qualification of potential judges without regard to political considerations?



Yes	58.7%	400
No	28.7%	196
Not answered	12.6%	86

## QUESTION 9

Please provide any comments you would like to be submitted to the Texas Commission on Judicial Selection.



Get politics out of this!
difficult undertaking , good luck
Why are these questions clearly biased?
Judicial elections should be non-partisan.
look at how the state of Massachusetts does things.
Revamp the system to take extremists off the bench.
Texas does not need a Missouri Plan for selecting judges
Term limits for appellate court judges. 2-3 terms at most.
The answer to Question 8 is maybe, but it would be difficult
look to judicial selection in the United Kingdom for guidance
Preserve the election of judges. Let the public voters decide.
Please do not let the governor or legislature choose our judges.
Judges should be selected by the communities in which they serve.

## QUESTION 9 (Cont.)



On #8 it would depend on how the committee members were selected.

Ensuring no one is able to capture the bipartisan committee is vital.

Fund raising for elections is another problem area that needs to be examined.

At a minimum, the legislative requirements to be a judge should be reviewed.

Partisan elections help no one and undermine public confidence in our judiciary.

Change is needed. Our court system is complicated and needs community credibility.

I don't trust the Bar, the legislature, or the governor to do more than play cronyism.

It is hard to believe that the majority party would allow anything to be remotely fair.

I think it is a great disservice to all to have judges elected by political affiliation.

8 is answered "yes" in theory, but devil is in the details of how the committee is set up

What happens in the case of a tie? If there is an uneven number - then one party will dominate.

4 years provide accountability. Particularly if not needing to campaign politically for election.

election of judges works - - tweaking this system with nonpartisan elections would make some sense.

The most important consideration for strengthening the judiciary is ending partisan judicial elections.

How would a bipartisan committee be created/appointed? Its effectiveness and credibility depend on that.

I think the challenge is the selection of the judicial qualifications committee, which isn't addressed here.

to question 8 I answer yes assuming sensible objective criteria are the major portion of the decision making

Judges need to be bipartisan, well-educated, have the appropriate experience for the bench they are to occupy.

I strongly urge the Commission to support bi-partisan pre-qualification and to support non-partisan elections.

Please don't change what we are doing. Yes, sometimes bad judges are elected, but so are bad judges appointed.

I think the Governor and the legislature together should be the one to select members of any bipartisan committee.

I would place a strong emphasis on diversity of personal and professional experience when selecting committee members.

It is nearly impossible to take politics out of the courtroom. We need judges that follow the law and not partisan hacks

## QUESTION 9 (Cont.)



I think a bipartisan evaluation would be useful, but it should have explanation of the pros and cons of approved candidate.

I think the people deserve a actual say in who their judges are. None of the proposed reforms being planned keep a meaningful

the number of years of experience required to be a judge should be raised in the statutes that set out required qualifications

I believe any selection process cannot avoid being political and I trust voters before committees, the governor, or the Legislature.

Under NO CIRCUMSTANCES should the state bar association have anything to do with how our judges or judicial candidates are selected.

The current system works fine. Leave the power with the voters. The process will become even more partisan if judges are appointed.

I find it interesting that all of a sudden when there are electoral shifts we now need to "study" whether to continue to elect judges.

Question 8 answer is no as long as the election process is still partisan. If the election process was bipartisan, then I would answer yes.

bipartisan judicial qualifications committee should be made up of diverse members. Large firms should not exceed 1/4 of the committee members.

Some of the questions were confusing. To be clear, I think Judges should be elected and should clearly state with which party they are affiliated.

The question(s) about the ideal length of judges' terms is impossible to answer because the answer depends on the method by which they are selected.

Selection of the appropriate judicial qualification committee members is as important if not more important than selection of judges in any such scheme

I like this idea in theory, and I think it would have addressed the issue with the 353rd this year, but I am concerned it could potentially be stifling.

Former Chief Justice Robert W. Calvert worked with a committee to come up with a merit selection approach. It could provide an approach for consideration.

I fear gatekeeping that would keep qualified POC out of the process. Also given how partisan Texas is, I'm not sure democrats would be appointed to anything.

Any committee created to select judges should be made up of trial lawyers who have experience appearing in court and know what makes good judges. Not politicians.

Change is needed. We need to take the pressure off of judges to raise money to run as candidates in partisan elections and to have to answer to political parties.

Question 8: I don't have any idea whether such a committee would function as planned. I would have to look at the make-up of the committee and how it was appointed.

Again, ideally, every trial judge should be board certified in the area they will be hearing cases. All appellate judges should be board certified in appellate law.

We should make judges part of a civil service process. This would require judges to earn their positions through merit and not through their political relationships.

## QUESTION 9 (Cont.)



Overall, we just need to be certain that judges have relevant and substantial experience in litigation. Otherwise, how are they making decisions? Personal preference?

Recent attempts by the State Bar to appear to be "woke" demonstrate that any kind of judicial qualifications committee will fall victim to the same sort of silliness.

The creation of a bipartisan judicial qualifications committee is preferable to our current system, however, politics can always rear its head even within that process

Judicial selection reform is long overdue. The impartiality of the judiciary is compromised in appearance and in fact by the influence of partisan politics on the bench.

None of the options is perfect; however the use of Partisan elections in an era of no CIVICS education is failing the State, especially in the more populated areas of the state.

I served as a United States Judge (Chief Judge) by appointment and it is the better way. Too much politics and inappropriate implications of contributions affecting cases in Texas.

Whether a bipartisan judicial qualifications committee would behave fairly and objectively depends on how the committee is selected and whether the members act ethically and fairly.

Bipartisan inherently means that only two parties are being considered, are relevant, and deserve input. Just because that is the way it is doesn't mean we should institutionalize it.

The questions I did not answer were poorly drafted. I believe in election of judges by voters across the board. More voters may generate greater diversity for the court system as a whole.

I believe that a committee would only need to review the qualifications of positions that would serve for 6 years or more, lesser terms would permit the electorate to weed out poor jurists.

A modified version of the federal plan would strike the best balance: gubernatorial nomination, senate confirmation, for the given term. This would allow terms to be longer and would avoid anomalies.

It's difficult to get politics out of picking judges but the system we have now seems to be the worst of all systems. More and more I favor a fixed term of appointment for with just one reappointment.

Please focus on a selection process that is fair and balanced, without regard to ideology and with adherence to superior standards and qualifications.

Thank you for the opportunity to provide input.

The State Bar of Texas should promulgate rules for appointment to the judicial qualification committee that invites broad participation amongst interested Board Certified trial and appellate specialists.

Keep selections anonymous. Do not tie appointments to any monetary compensation system, election or power source. Bipartisan commission should submit secret ballot and not know candidates political views.

## QUESTION 9 (Cont.)



To be candid, it's my belief that the selection of judges will always be a political popularity contest, which is almost never the correct way to select a qualified jurist. The system is so terribly broken.

My only concern would be to ensure diversity on such a committee. If it's going to be filled with big law, then we'll get "friends of Big Law." I don't have the same concern with small/solo/government lawyers.

The system is better served with the citizens electing the judge. However, I do believe a bipartisan committee would be in the best interest of the State of Texas to insure someone is qualified sit as judge.

Thank you for sending the survey. I appreciate feeling included in this process. Please come up with some solution to this if only for appellate judges. Partisan elections have to stop at the appellate level.

I'm not confident that any state agency in Texas can escape the pull of politics. I'm also afraid that giving too much power to a statewide committee would ignore the desires and wishes of the local electorate.

We must move toward a more diverse (African American) judiciary without party affiliations and financial wealth. We need judges who are not wealthy, do not associate with powerbrokers, and sponsored by Big Law.

There is no perfect solution to eliminating ideology from the selection of judges, but we need to eliminate the corrosive effect of money, partisanship, and political favor in all our elections for public office.

If there were to be a "bipartisan judicial qualifications committee", its ability to fairly and objectively accomplish its mission would significantly depend on the person(s) appointing the members to the committee.

Honestly, a good pool of lawyers to become judges would be the Legislative Council and the AG's office. Highly qualified and civic-minded lawyers tend to work for those agencies and have a great understanding of state law.

The people of the State of Texas, the administration of justice in the State, as well as the conduct of business, and access to justice are the beneficiaries of a long-needed correction of our system of selecting our judges.

I have been on such a commission in another state that appointed judges. It works much better than these silly elections where the public has no idea who the judges are.

Also consider having nominations from the state senator.

Whatever it takes to eliminate elected judges. Any confirmation should be a super majority so there is true bipartisan consensus to avoid the problems we see at the federal level. The super majority should be at least 3/5 if not 2/3.

Given that the state bar has tried to remove the duly elected chair of the state bar, this does not strike me as the time to be depriving voters of their right to elect judges--although it is certainly consistent with the state bar's prior action.

## QUESTION 9 (Cont.)



I believe judges should still be elected. However, I think that they should have elections in odd numbered years and be non-partisan. While I understand that not as many people may vote, those who do generally educate themselves on the candidates.

Madeleine Connor is a prime example of why experience and qualifications matter. She is neither qualified nor fit to be sitting on the bench.

<https://www.statesman.com/news/20200117/travis-county-judicial-candidate-blacklisted-for-flurry-of-suits>

There should be additional and more stringent objective criteria, including relevant experience and more years of experience, to be eligible to run for judge, but this should be in statute and not based on a subjective bipartisan committee decision.

because of entrenched party politics, inertia, and no consensus on a new system, change is unlikely

30 years ago I served on a committee of 20 lawyers to devise a new system.

all agreed we needed a change, nobody could agree on what the change should be.

If Texas were to establish a judicial qualifications committee and the State Bar is the means to that establishment, the people appointed need to be partisan-agnostic (i.e. no party affiliations). Otherwise, you just create another place to spend campaign dollars.

The legitimacy of our system rests on the perception of equality under the law. When citizens lose faith in the law as the legitimate and impartial means to resolve disputes or adjudicate criminal matters, it is only a matter of time before the entire republic fails.

I think an approval committee would be an excellent idea. If we are going to elect judges, it is crucial that we ensure all available candidates are qualified to perform the job. There should be some approval process for making it onto a ballot for a judicial position.

I don't know how I feel about more oversight as to judicial selection but at the same time feel like there needs to be some way to take politics out of the bench elections. I would need to know more about this bipartisan committee idea before answering questions 6 and 8.

A bipartisan committee would be better than the system we have now, even if it had flaws. Elections for judges does not work given that the public usually does not know the qualifications of who they are voting for and judges consider their election when making decisions.

Don't let there be a repeat of Republicans refusing to confirm Obama's picks, but then ram through all of the Republican's, and then also withhold a SCOTUS pick but ram through a highly unqualified nutjob when the Republicans control the Senate. Court packing should not be A Thing.

if we could establish a truly diverse and independent commission for reviewing candidates I would approve it. The standards could be numerical so there is less ambiguity and favoritism . Maybe candidates just get a score--such as X candidate scored a 90 and Y candidate scored a 75.

The idea of a non-partisan qualifications committee appeals, but I doubt its ability to operate without political considerations and/or cronyism. Perhaps a qualifications ranking

## QUESTION 9 (Cont.)



included in voter information materials would be useful, but I hesitate to make a committee like this a gatekeeper.

Our current political elections are out of step with best practices and what other states do. You should look at the New Mexico model with retention. A fair, bipartisan Bar committee recommendation/selection should be strongly considered as they would know the reputation of the potential judge.

Preventing a bipartisan committee from being captured by one side or the other, or by some interest group, is a difficult challenge, but probably less difficult than the challenge in all the other options. I would have nonrenewable terms of 15 or 20 years, but 10 was the highest option you gave me.

Current system is a failure. I would have a bipartisan commission that has representatives of the Governor, of both parties in the Legislature, with public members -- with ethnic, gender, and geographic diversity. The process should be transparent with all applications and nominations on the internet.

State Bar of Texas currently has many challenges related to diversity, equity and inclusion. Until they get their own house straight, I do not think they are in any position to impact the selection of judges across the state any better than voters. If things were different at the State Bar, I may feel differently.

Judges who make rulings based on their own personal or moral beliefs should be eligible for removal from the bench. Advocate judges who do not follow the law create an image in the public that such conduct is acceptable or even preferred. This leads to distrust in the system and wrongly decided outcomes, which serve nobody.

Thanks for your work on this important topic. The current system is among the worst of the options, and recent elections have shown what happens--people who don't know much about judges vote for their party, and we either lose well-respected, well-qualified jurists or we can't elect more qualified people from minority parties.

There is an unopposed candidate who is highly unqualified and potentially should be disbarred for being a vexatious litigant who will now be a district court judge. She beat out a highly qualified incumbent judge despite fervent campaigning by local lawyers probably because she is a woman and she was running against a white man.

I'm worried about a committee from the State bar making calls on whether or not someone can run for office. Often times, committees and active members of the bar cling together and it could become a sort-of popularity contest, with candidates being the most active in the Bar, and not necessarily the most active in their careers.

We MUST stop the mercurial changes in the composition of our appellate courts, losing years and years of judicial experience and wisdom simply because of a change in the identity of the prevailing party. Appellate court decisions should be viewed as impartial, and cannot be when we continue to elect judges in a partisan fashion.

The problem with judicial selection in Texas is more the nature of Texas and its judicial (particularly at the appellate levels) and state bar culture than any particular selection

## QUESTION 9 (Cont.)



method. Both (judicial and the bar) are too insular and self-satisfied. The Texas Supreme Court in particular is the problem; it borders on being its own worst joke.

I changed my response to Q7 to moderately confident due to my concern over President Larry McDougal's comments about Black Lives Matter. If he or someone who thinks like him is appointing the bipartisan committee than we would likely not get a diverse committee who would make sure that the potential judges reflect also the demographics of our State.

As a lawyer, I can have confidence in a bipartisan committee of other lawyers, because I know that the vast majority of us hold ethical standards highly, and most of us attorneys want simply the best referees of the law with the best temperaments in judicial positions. The question is: How do you create the same confidence in the general public? That's the trick.

Tim Sulak is an excellent judge. Madeleine Connor not only isn't fit for the bench, she should probably be disbarred. But she was elected and we're stuck with her for what, if she's not removed, is going to seem like an eternity to parties, lawyers, and the appellate courts. The present system doesn't work in the current polarized political environment making a committee an absolute necessity.

Judicial elections are not ideal, but lifetime appointments are worse. It is obvious what is going on here. After using Karl Rove to take over the courts through elections in the 1980s and 1990s, Republicans are terrified of the voters throwing out the right-wingers. There are good ideas for reform, but I have little faith in current Texas elected officials' ability to depoliticize judicial selection.

Concern that the Bar have appropriate safeguards to optimize likelihood of achieving non-partisanship, a committee that reflects the diversity of the state, e.g., race, gender, age, legal specialty/practice area, type of practice, as well as occupation--i.e., non-lawyers.

One resources for ideas, includes:

[https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Choosing\\_State\\_Judges\\_2018.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Choosing_State_Judges_2018.pdf)

The State Bar of Texas cannot even handle it's own internal politics, much less create or maintain a bipartisan anything; but especially not a bipartisan judicial qualifications committee. The bar melodrama about the audit, missing funds, political back-biting, and censorship is immature and reflects a lack of leadership. Hopefully another avenue exists for creating a bipartisan judicial qualifications committee.

We need a better system that reduces politics, fundraising pressure, and the importance of partisan affiliation. To me, the best system would include a bipartisan judicial qualifications committee approving the candidates who advance to the next level (e.g., a nonpartisan election or selection by another body). I've heard that the Austin municipal court judges go through, or have gone through, a process like the one described here.

desperately need a different system. good judges get tossed out by partisan elections and unqualified people get voted in. this has happened on both sides over the last 20 years. the problem will be deciding who is on qualification committees b/c having a partisan actor

## QUESTION 9 (Cont.)



(gov, leg, etc.) appoint those folks makes the committee another political arm of the party in power. we need a truly non partisan (more than bipartisan) solution.

I started practicing law in MO which followed the Missouri Plan - selection of 3 potential judges by a committee, from which the governor selected the finalist. Review was by retention election every 4 or 6 years - do not recall which. Seemed to work fairly well but I do not recall any trial or appellate judges being not retained in my 8 years there. General public and voters have no clue as to qualifications for removal or retention.

Objective qualifications to run for judge should be added to the Texas Constitution as qualifications. Any attempt to apply subjective qualifications is subject to abuse. There are too many examples of counties where existing partisan "machines" have gone to great lengths to exclude others from running for office.

Election of judges has its disadvantages, but its greatest strength is the transparency it affords in terms of financial reporting.

The number of incompetent judges that have been voted into office is appalling. Most voters have no idea who they're voting for, they just pick a name. Of course politics will play a role if we switch to a different system, but that's true of any system, including the one we currently have. And there should be some minimum experience/qualifications to get on the bench. As it is, any crazy person with a law license can become a judge, and several have.

Anytime you remove the voters from the process of selecting judges, the process becomes rotten. Given recent events where the State Bar tried to oust a duly elected President because the clique did not agree with his political opinions is Exhibit 1 in support of this opinion. I have ZERO faith in the Bar or any political group taking away the public's right to choose judges. And there is no such thing as "non-partisan." Those days are gone, if they ever existed.

It is important to have a diversity of viewpoints for a robust discussion of interpretation of the law. If there is a judicial selection committee, I hope that the criteria to qualify a person to become a judge would not be based on whether a person is a strict constructionist or not but instead based upon criteria outlined in the Judicial Code of Conduct. Having a variety of judicial styles ultimately makes for more thoughtful opinions and interpretation of the law.

Judges should always be elected, but measures do need to be put in place to ensure judges are qualified. Appointment by a single individual is not the answer -- including the system of the governor appointing unexpired terms we have now. Yes, the legislature must "approve" the appointment, but the approval process coincides with legislative session, and can amount to a significant amount of time where the appointed individual is performing their duties prior to legislative approval.

In addition to or instead of a judicial qualifications committee, perhaps we could amend the Constitution to require some more rigorous qualifications than just age, being a lawyer, and citizen/resident. It would seem to me a vexatious litigant should not be eligible, nor someone who's had their law license suspended for disciplinary reasons, or convicted of a

## QUESTION 9 (Cont.)



crime. Leaving it up to elections and popular voting does seem to present problems without more stringent requirements in place.

Regarding term length for judicial appointment, I believe that if, for example, a judge is selected for a four year appointment, I do not think that appointment would necessarily need to end at four years, or six, or eight, whatever the chosen time frame. I do think a reevaluation of the judge should occur, with the opportunity for an additional term. I have a difficult time saying that a term should be for a lifetime, as people change, like their ideas and values and way they perform in their job.

I would very much like to believe that a bipartisan judicial qualifications committee would fairly and objectively assess the qualification of potential judges without regard to political considerations, but with the political atmosphere these days, I'm not confident. I also believe that the general public has no idea what makes a good or bad judge, nor do they research anything to try to find out a judge's history and experience. Most importantly, a judge should not be put into office based on their political beliefs.

If Texas had experienced practitioners ruling on cases within his or her specific areas of experience, we would have more consistency in the courts and more predictability for parties. This is a good thing. It's how Delaware took over the corporate litigation world, and it is also why Texas will never get to that level without changes. Courts should produce consistent results - not simply "a result." To do otherwise is to either endorse inconsistent rulings in this state as acceptable or, at a minimum, to be consciously indifferent to them.

The racist and politicized comments made by the State Bar of Texas' current president, Larry P. McDougal Sr., have diminished the legal community's confidence in the ability of the current leadership to establish a bipartisan judicial qualifications committee that could fairly and objectively assess the qualification of potential judges without regard to political considerations. Any such committee that is established should seek the endorsements of the minority and affinity bar associations in addition to bipartisan support from other organizations.

There isn't enough information to do the rankings of partisan, non-partisan, committee or combo so I didn't rank them. I find it appealing that someone can decide to run themselves without seeing approval from any committee or be reviewed by some committee. Maybe judicial selection can focus on finding a way to help fund candidates or create a better forum for judicial candidates to present themselves. I don't like the idea that you have to be vetted by some committee that is "fair" and will "objectively" assess qualifications. What standards would be used?

I'm grateful that you are looking into this and asking people. The current way that we select judges is a problem. And it is a major problem to have current, sitting judges asking for contributions from attorneys and law firms, knowing who gave or didn't give, and then later continuing to sit either on their current bench spot or on a higher bench spot. Even if they claim to not take that into account, it is impossible to believe that there isn't some

## QUESTION 9 (Cont.)



implicit bias remaining from knowing who supported them in the past. Eliminating money from these elections would be very welcome.

I believe it is a fallacy to focus on how judges are selected. More important, I think, is how they are removed. Every method of selection, I think, can be made to work. But for some people, assuming the bench corrupts them, and there is no way to weed these folks out of the selection, I fear. So I am in favor of methods to quickly remove bad judges. The SCJC does not work. Elections, if the public were educated, could work. My problem with retention elections is that it discourages worthy competitors from entering the race. So far, the best method of removal is elections, I believe.

My answers to 7 and 8 are qualified by further questions -- who is selecting the members of the committee, and how are votes determined? Also, how would it work in an uncontested election when determining whether the person running is qualified? If that person isn't qualified, does the person remain on the ballot or get appointed? Also, what are the qualifications? I have some concerns on how the process can be manipulated to push forward candidates based on political preferences. I do applaud the Austin Bar for taking the initiative on this, and I look forward to further information in the future.

This is the most biased poll I have ever been asked to respond to. There was not even the option to object to the idiotic idea of term limits. The questions presume that political parties influence or control judges. Questions in a poll should be neutral unless this is a mere propaganda tool. So I have to assume that is what this is and that supports my natural concern that I would be foolish to ever think the State Bar has the capacity to form a committee to accomplish any screening that would not just be insider protectionism. 40 years of observation of the SBOT has taught me to be wary of their motives.

With regard to question 8, I think such a committee would have to be given explicit instructions to avoid political considerations in assessing qualifications of potential judges.

In the current system, the average voter knows nothing about the judicial candidates in an election. Even lawyers don't necessarily know anything about judicial candidates outside their geographical area of practice. This makes it almost impossible to vote knowledgeably.

If the state changes its method of selecting judges, I think the new method should be phased in with appellate judges first, perhaps as a pilot, to see how well it works out.

This survey seems designed (at maybe a subconscious level) to produce a specific result so this Commission can later claim that Texas lawyers favor selection of judges by a "bipartisan judicial qualifications committee," which I do not believe is the case, nor should it ever be the way our judges are selected. The goal of any selection process should always be to increase the legitimacy of the process in the minds of those to be judged. Designing a process so that the selected come from a small cadre of lawyers destroys the legitimacy of the process itself in the Public's mind, even if you try to euphemistically label that cadre as "bipartisan."

1. These questions are outrageously biased. Both appointments and partisan elections are overtly political and subject to the appearance of impropriety. The least biased method would be appointment by a supermajority of the legislature which is inherently

## QUESTION 9 (Cont.)



nonpartisan--we know based on concrete data that voters make uninformed decisions along party lines that are not based on a person's actual competence for the bench.

2. The most important "qualification" in judicial selection is ensuring judges are qualified to practice law. Arbitrary qualification determinations by the bar are inherently political unless they include a quiz on the rules of evidence.

I am on the fence with this committee idea. On the one hand, I believe that lawyers are the most qualified to vet judges, and so I want there to be some kind of oversight by the Bar. On the other hand, I am concerned that it will ultimately become entirely political if checks aren't placed on the committee. One suggestion that might allay some of my concerns might be an absolute bar on any inquiries into the potential judge's political opinions. And I mean that literally - if a candidate has participated in a political organization in the past, that information should be redacted from what is presented to the committee. And if some sort of hearing is held, questions on a candidates political opinions should be disallowed.

The phrasing of the initial questions seem tilted towards soliciting answers that will support changing the way trial court judges are selected (e.g., "The selection of judges who are popular with voters" [this makes elections sound like a "popularity contest": why not simply "The selection of judges who win the majority vote"; and, "Eliminating pressure on a sitting judge from his or her political party" [this presupposes that political party pressure is a problem for sitting judges; and that gubernatorial appointment, legislative appointments and other alternatives have less political party pressure].

Additionally, the survey responses should somehow weight the responses from those lawyers who actual spend time litigating and trying cases in our trial courts rather than Austin Bar members who have little experience in our trial courts.

The underlying issue is that it's important to take politics out of the judicial selection process but there is a lack of confidence that even a bipartisan selection committee would be able to put personal politics aside. Texas does not have a good history on creating bipartisan/nonpartisan committees that truly function as such. So, while I hope a committee would be able to function accordingly, I think it would be wise to create a process where the bipartisan selection committee is regularly reviewed to see if they are functioning in a nonpartisan way AND to create a process where the public weighs in on whether the bipartisan selection committee is conducting its work appropriately to ensure public confidence in the process. Perhaps, a public vote on the confidence of the committee or a review committee comprised of public members, and/or others, to monitor their work.

I strongly feel we need a combo of bipartisan committee + election or appointment, and that we need to significantly restrict campaign contribs to judges. I despise the constant pressure to donate to judges, which gets very expensive and is not equal among big firms vs. solos. (I.e., V&E gave \$45k to EACH incumbent on SCOTX this cycle!) We should not

## QUESTION 9 (Cont.)



have to fear getting an adverse ruling b/c we did not donate or donated to the opponent. We also need a committee to vet the candidates. In the last few years we've had too many candidates get on the ballot - and several elected - who are not qualified. It seems the general voting population has no clue about who these candidates are. Rather than increasing the amount of campaign finance, we can solve this problem through a bipartisan committee. I have never voted straight ticket; I always chose judicial candidates based on qualifications and temperament. I trust a bipartisan committee of lawyers to make wise and fair choices.

While partisan election of judges has its problems, it is still the best way to ensure that the judiciary remains responsive to the collective view of the electorate on how justice should be administered in this state. The suggestion that voters will not select the best judge, regardless of partisan affiliation, is an insult to the intelligence, integrity, and free-agency of the voters. In my view, the fact that the questions about partisanship are phrased in terms of "eliminating" it, evidences an extreme bias in the survey, and is just the type of insult to the integrity of the voters that I am addressing. It suggests to me that the whole process is some kind of dog and pony show to put window dressing on a pre-determined outcome, if you will allow me to mix my metaphors. The reasons that the founders of this government determined that judges should be elected are as relevant in the 21st century as they were in the 19th. The need for the People to be active participants in their government is just as compelling now as it was then.

These last few questions are really tough. I live in Austin, am in court at least 1x/week on the CPS docket, and our judges are overwhelmingly D. I think most of our district and associate judges are extremely well qualified, but also believe that R judges would be good as well. I worry more about the deep political divide affecting judicial candidates. I do not believe most voters have a clue about judicial races and really just want to know whether a candidate is "good." I also do not want to put appointment power in the hands of the governor - especially this one - who hates Austin (and Travis county) or the legislature because Texas is too big and it would just become politicized. I like the idea of a bipartisan committee, but wonder how politicized it would be or become. And, frankly, what criteria would be used to determine who would be a good judge. Some people are excellent, ethical and hard working lawyers, but would not be/are not good judges and should be removed or not get the job. Also, as a court regular, I do not donate or publicly endorse judicial candidates because I believe that it creates all sorts of ethical issues, but yet, I have vast experience and opinions about the judges that I appear in front of. My concerns: we should decrease the amount of politicization in judicial races. The system needs a re-haul. Thanks for starting this conversation; it is an important one.

Draining partisanship from the judiciary will increase the respect for the judiciary. In Germany it is thought that 12-year terms for judges of the Federal Constitutional Court also contribute to reducing the influence of partisanship and contribute to the independence of the judiciary. Texas currently has an outstanding Supreme Court, and one modification of the use of 12-year terms could be a lifetime appointment for the Chief Justice. Having a lifetime appointment for the Chief Justice, with other justices having 12-year terms would

## QUESTION 9 (Cont.)



allow for both continuity and re-ignoration (through new members other than the Chief Justice). In addition to adjudicatory duties, the Chief Justice has administrative duties that the other justices do not have.

Recently, the Texas Legislature heard proposals for combining the Texas Supreme Court and the Texas Court of Criminal Appeals. Both Courts of course are the highest state level for review of state and federal constitutional claims. But the two high courts deal with differing bodies of statutory law. If the two high Courts are ever combined (reducing to 9 members by attrition) it will be important for the 9-member, combined high court, to have some membership with experience in civil law and some membership with experience in criminal law. A selection process that has bipartisanship at the initial nomination step and that is non-electoral can achieve that balance.

I have no confidence that Texas partisan politics will not pervade almost any method for selecting judges, but a bi-partisan committee is likely one of the best chances for objectively selecting qualified judges. There may need to be multiple committees. Local judges should be subject to more local control. Appellate judges should face higher scrutiny and vetting. Also, the fact that our judicial appointments have been partisan for so long means that the current judiciary may have incentive to misalign their appointments to bias the selection process. To the extent we are able to remove bias, we should.

Also, this preference poll may not be the best method to determine how to select judges. We are literally electing how to elect judges. There are experts who have studied how best to select judges. Professors who have empirical data on what processes generally select the best judges. We should be listening to those experts and looking for best practices.

One of the most important things such a committee might do is assess the candidates objectively and transparently publish the results. The general population, and even the attorney population, are ill-informed about most judges, so what use is polling or elections without the data to make informed choices published in a meaningful way that's easy to understand. It can't be all case closure rates or hours logged, but some meaningful measures to show what a judge is doing compared to others would be tremendously helpful.

Having served on two of the federal magistrate selection committees, I cannot begin to tell you how wonderful the experience was - and how hard we worked. One thing an election can never do is interview all of a candidates opposing counsel; interview former clients; interview judges they appeared before; review their body of work. In selecting a judge, you do not want to know their temperament on the campaign trail, you want to know what they're like under pressure and under stress. How do they treat people when nobody is watching? How will they handle power? What is their sense of integrity? We spent months debating these questions for the candidates we screened - with far greater rigor than what is accomplished if a person simply votes based upon a political party. At no point in our process did political affiliation ever arise; we were simply looking for the best candidate in an exceptionally talented candidate pool. Compare to other professionals and industries.

## QUESTION 9 (Cont.)



Do we elect generals? Do we elect a school superintendent? Do we decide who is the best heart surgeon for our child based upon two doctors that competed in an election? Results and experience matter, and a representative democracy recognizes that democratic infrastructure requires more than just campaign promises. Too many wonderful judges have lost re-election because they worried more about the cases on their docket than running a campaign. This is public service, and should be treated as such. Please - whatever this committee needs I would do anything I can to support it.

For the most part, the lawyers I know who should be a judge, do not want to be one, which means they would probably be pretty good judges.

If you've read this far you know I've thought a lot about this, and I have a lot more to say. Feel free to call if you'd like to talk more.

Before going any further, I need to disclaim that I know nothing of the criminal judicial system, I've spent my entire 14 years at the bar in the civil system.

Our system is broken. Period. Perhaps irredeemably. There are many places to park the blame. But I believe the majority of the broken system blame lies first in money (campaign contributions) and second in partisanship/governor appointments. Y'all have these separated in the poll, but they really should be analyzed together.

**BLAME ONE:** I've had a lawyer on the opposite side of a case tell me that while I would win a jury trial, their industry "bought and paid for" the Texas Supreme Court. I'm not even a personal injury lawyer and that was almost a decade before the Texas Tribune article came out earlier this year featuring Salem Abraham. The only way to change this is to have blind contributions or state only funded elections. I can't see how that can possibly happen given the current state of the law and the spending of money on campaigns and PACs being an extension of 1st amendment rights.

**BLAME TWO:** In higher level thought, judicial and political philosophies are separate thought processes. When a judge has their judge hat on, they should carry their judicial philosophy to its natural end, regardless of the political outcome. Though a bit idealistic, every candidate for the bench should be able to at least say that out loud even if they fall short from time to time. There's no room in the current system to think it, much less say it. Instead, the electorate is bombarded with catch phrases like "constitutional conservative" and accusations of "legislating from the bench."

## QUESTION 9 (Cont.)

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Just because the system is broken doesn't mean we shouldn't try. The solution is a three-part solution that works together. (1) take money out of judicial elections; (2) take party affiliation out of judicial elections and appointments; & (3) create this commission you polled about to vet and be a gatekeeper for potential candidates. These three things are idealistic big dreams and face insurmountable problems to even get off the ground, but I think our profession should try anyhow.

A quick fix in the broken system around appointments might be to make the appointment process completely open and require the governor's office not see or ask about political affiliations (i.e. what primary the candidate voted in) and have to take candidates from the judicial commission only. A judicial candidate commission is a bigger problem. The commission needs to be regional and not beholden to the state bar, and not have the same old faces that are seen in all the State Bar committees etc.