

More than 700 persons almost all more than particular math question.

# September 23, 1973

## Revision Panel Outlines Court Reform Guides

By RICK FISH  
Capitol Staff

Texas Constitution writers laid the keel of a judicial ocean liner, but to avoid mutiny they provided a raft for the justices of the peace.

Meeting here Saturday, the Constitutional Revision Commission decided to recommend that the Texas court system be organized into a unified scheme with central administration by a judicial council—all except for peace justices and municipal courts, which would be the responsibility of their local governments.

Ever since the JP's battled a court reform plan to a standstill in the legislature earlier this year because it would have done away with their

constitutionally-guaranteed office, judicial reorganizers have acknowledged their political power and included them in court reform plans.

Commissioners defeated a motion by Mike Frost of McAllen to do away completely with the office, but they accepted an amendment by Commission Chairman Robert W. Calvert to leave the JP's in the Constitution but cut them off from the unified court system.

The language they wrote would provide for "one or more" justice courts in each county, and left it up to "the governing board of each county" to decide how many there should be, fix their salaries, and pay them.

Also rejected was a proposal that all justices of the peace should be lawyers if lawyers were available to take the job.

Above them, the levels of the unified court system—the Supreme Court, new combined courts of criminal and a civil appeals, district, courts and county courts—would be funded by the state and subject to the administration of the Supreme Court chief justice acting under the authority of a judicial council.

The unified system would provide a single court of last resort, a single level of appellate courts for all types of cases, and trial courts on two levels—district and

county.

Currently, there is a separate court for criminal appeals and 14 courts of civil appeals. There are also varying sorts of jurisdiction for district and county courts.

An attempt by Houston lawyer, James Kronzer to further unify the system by eliminating the county courts and absorbing their functions into the district court level was defeated by the commission.

The commissioners endorsed instead the recommendation of their Judiciary Committee 26-8 and the county courts remained in their proposal.

The Judiciary Committee based its recommendations on an original proposal by the Chief Justice's Task Force for Court Improvement, which Calvert, a former chief justice, headed.

The task force plan would have established the presiding judge of the supreme court as the judicial system administrator.

Houston District Judge Andrew Jefferson, in explaining the Judiciary Committee's recommendations Saturday, said the concentration of power in one man was feared, so they created a judicial council to prescribe rules of administration.

The council would be chaired by the chief justice, and consist of two judges of the courts of appeals, three trial judges, one district clerk and one county clerk each appointed by the Supreme Court) four members of the state bar appointed by its directors and two members of each house of the legislature. The members would have two year terms.

The stage was set for the adoption of the court unification proposals by a day of argument in Friday's revision commission meeting, after which commissioners voted overwhelmingly to recommend a new method of selecting the higher judiciary when they make their report to next year's Constitutional Convention.

The commission voted 23-9 to substitute "merit selection" of the supreme court justices and the courts of appeals judges for the present system of direct election by the people...

The appellate level judges would be named by the governor from a list of nominees provided by an 11-member nominating commission that would be dominated by non-lawyers.

Every six years, the judges so appointed would have to face voters for a "yes" or "no" vote that would determine whether they continue in office. If they were turned out, the merit selection process would select a new judge for the post.

Lower levels of the judiciary would be selected by

non-partisan election, a change from the current method of party-label balloting.

The commission will continue meeting Sunday in Room 3102 of the Joe C. Thompson Conference Center on the University of Texas Campus.

They plan to complete work on the judiciary article and to return for more discussion to areas they talked about earlier, like a pay commission to set officials' salaries, a statement on separation of governmental powers, and constitutional status for the State College and University System Coordinating Board.

## Houston

## Rail Strike Twist Strange

VANCOUVER, B.C. (AP)—The British Columbia rail strike could have an unusual side effect: Officials are warning women of a shortage of birth control pills.

The Family Planning Association said that supplies destined for the province have been held up because of the rail strike and supplies are short.

The association suggested that women wishing to avoid pregnancy use alternate birth control methods.



LWV of Texas  
August 1973

To: State Board  
From: Hunter  
Re: Pre-Board - Judiciary & Executive

### Judiciary

The report on the Judiciary is about ready. I've had some trouble getting information about some provisions for the courts passed in the last Legislature but have nearly all the answers now. Betty A. has suggested "Modernizing the Judicial Branch" for a title and classifying it as background paper for constitutional revision.

I'd like to discuss 2 of our consensus statements and see if it is possible to modify them before the constitutional convention meets. I'm referring to the selection and tenure and retirement of judges. Must we be limited to "appellate judges"? I've found an article in my file that says "This phase of the survey will be limited to judges of the appellate courts because the possibility for attainment of reform is good. If a different method of selection and tenure is adopted and proves itself for appellate courts, it can then be expanded to include the lower courts." from an early League paper.

Is it possible to expand our statement to include all judges of all courts? Many of our statements and materials do not specify appellate judges and I feel that most Leaguers do not realize that we are limited in our statements.

### Executive

We need to further clarify our statement referring to "safeguards prescribed by law" in our consensus on removal of appointees of boards and commissions.

In the consensus background information of May 1969 there were 23 Leagues reporting; 11, Yes, the governor should have the power to remove appointive officer with limitations; such as Legislative or Senate approval; 9, Yes-with no limitations mentioned; 2, yes, own appointees; and 1 no decision. This was a very close consensus. Personally, I'd like to see "safeguards" eliminated. In all of the material I can find on reorganization in other states and the model constitution the governor has the power to remove his appointed officials--they read "appointed by and serving at the pleasure of the governor". I would like to remove the safeguards or add "by legislative (or senate) approval". This would clarify our position.



LWV of Texas  
May 1973

TO: State Board  
FROM: Mrs. Helen Hunter  
RE: Pre Board Report - JUDICIARY

League members in Beaumont who were supporting the nonrecommended item "Administration of Justice" asked if anything could be handled in this area under our Judiciary item. Of course, our present program item would not cover a study of the police department, sheriff's office, jails, or other areas of law enforcement or penal institutions, however, one important phase of the administration of justice must come from the courts. There is a relationship between the courts and the whole structure of society and the rights of all of us to a fair and effective administration of justice.

Material to the local Leagues could examine the inadequacies of our present court system in dealing with the escalating caseload, providing for fair and speedy trials, and insuring impartial justice.

The Senate has passed the substitute bill that would amend rather than rewrite the judiciary article. This amendment amends the top half of the article by providing for the merger of the Supreme Court and the Criminal Court of Appeals, extends jurisdiction of the 14 courts of Civil Appeals to criminal matters and provides a court system of district and county courts. The rest of the article remains the same (J.P.s, Const.s, D.A.s, etc.). Senator Herring referred to the amendment as the "art of the possible" legislation. If this amendment passes the House it will be on the ballot in November and we will support it. We'll work for more in the Constitutional Convention.

Any material such as that on administration of justice, in addition to the updating that has already been done would give League members additional "ammunition" for the November election and the Constitutional Convention.

# JP Life Term Proposed In Court System Change

By RICK FISH  
Capitol Staff

The latest version of a plan to restructure Texas' system of courts has a proposal that would allow justices of the peace and constables to serve for life, without having to run for re-election.

The modified plan, unveiled Friday by former Texas Supreme Court Chief Justice Robert W. Calvert, is a re-write of earlier proposals and is designed to take "legitimate controversy" out of the plan, said Calvert.

Once a justice of the peace died, retired, resigned, or was removed from office his office would cease to exist. The duties of the justice of the peace are then to be absorbed by county-level trial courts under the proposal of the chief justice's task force for court improvement.

This is the eighth draft of the judicial reform proposal in the past 18 months. It is written in the form of a constitutional amendment that would re-vamp the labyrinthine Texas court system.

Objections came immediately from judges and from officials who thought their jobs would be eliminated under judicial re-organization.

The resulting "unfavorable publicity was one of the main problems we had" in trying to write a bill that could be approved by the legislature, said Judge Calvert.

There's a similar job-protection clause for members of the supreme court and the court of criminal appeals, which the task force proposes would be combined into a single court of last resort. Although the combination would originally result in 14 judges of the high court, the number would be dwindled by death and resignation down to nine as optimum.

In their latest draft, the task force has also tried to eliminate another area of controversy by providing for the "election" of sheriffs, county clerks, county attorneys and district attorneys and clerks. An earlier version had them "selected" in a manner prescribed by the legislature.

The task force has also decided to propose that the public decide whether they want appeals-level judges elected originally or appointed by the governor from a list approved by a judicial nominating committee of lawyers and laymen.

Either way, the public will get a chance to vote on whether the judge should stay in office once he has completed his first term. Judicial elections would be on non-partisan ballots.

Calvert said he hopes that if squabbling over the minor points can be eliminated by the changes in the latest draft the legislature will be willing to approve the grand scheme as written.

It includes making a county-level court system — with as many judges as the county needs working in it — the initial trial level court for most cases. Their jurisdiction would include common traffic

cases now handled by city municipal courts.

More important cases would originate in the district court system, again, with a number of judges within the system. All the present courts of civil appeals would become courts of appeals generally and handle both civil and criminal cases.

The concept would allow the assigning of judges to areas where the workload dictated a

need. All judges under the plan would have to be lawyers, and all would be paid by the state.

Calvert told reporters Friday that backers of the plan will try to get it approved by the legislature and submitted to voters before the general constitutional revision attempt in 1974. So that whatever course constitutional revision takes, the judicial reform amendment will become law.



# 1-4-73 Criminal Code's Change Finished

By RICK FISH  
Capitol Staff

The latest attempt to revise Texas criminal law is complete now and it will go to legislators along with endorsements from both sides of the courtroom.

The Texas District and County Attorneys Association, which opposed the proposed revision of the penal code two years ago, now says the State Bar Association's latest attempt is "fair, modern and protective of the rights of both the accused and public."

Their courtroom foes, the Texas Criminal Defense Lawyers Association, say they still disagree with some aspects of the proposed revision, but see it as at least "a good starting point."

As Austin defense attorney

Frank Maloney explained, "This code is a compromise code." A statement by the criminal lawyers said, "We do not consider that the bar's proposed code is a final product."

Maloney, who has defended such prominent clients as former House Speaker Gus Mutscher, amplified that position at a Wednesday press conference: "There are some things we are against, but this is such a giant improvement... that we're going to do everything we can to see it passed."

The biggest change in the proposed revision, said Sen. Charles Herring of Austin who

(See PENAL, Page A6)



JIM BOWMER OF TEMPLE HOLDS A COPY OF NEW PENAL CODE  
The Bar Association president feels acceptance chances are good

AP Wirephoto

## PENAL

(From Page One)

will sponsor the bill in the Senate, is streamlining.

The proposed code is less than 250 sections. The present code is a "hodge-podge" of some 1,600 separate articles, reporters were told.

The proposal also "grades" offenses into three levels of misdemeanors and four levels of felonies — including the capital offense of murder.

Punishments, according to the level of severity of the offense, could then be applied more uniformly, the new code's proponents say.

According to Rep. Jim Nugent of Kerrville, the House sponsor of the bill, "We have gotten special-interest criminal statutes on the books that are so far out of line with the severity of the crime that it's ludicrous."

He noted that presently the theft of a bicycle worth less than \$50 is a misdemeanor, but the theft of a pork chop (a crime called "theft of edible meat") carries a felony penalty.

San Antonio Archie Brown said that the committee that worked on revising the code also "attempted to eliminate all these technicalities that tend to defeat the ends of justice."

As illustration, he told of one perjury case which was dismissed because the elderly clerk that swore the accused in as a witness had forgotten to take his oath of office that term.

Generally, said Judge T. Gilbert Sharpe of the 13th Court of Civil Appeals in Brownsville, "the maximum penalties have been increased over those in the code introduced in 1971."

However, a Bar Association release said the proposed penalties are "still in line with maximum under present law."

Two areas of existing criminal penalty have been purposely left out of the proposed revision — abortion and drugs. The omission has been made to avoid jeopardizing



## Committee asks change in JP requirements

A citizens committee has recommended legislation to require justices of the peace to be lawyers, except for incumbents who would be permitted to continue in office.

The 17-member traffic courts reorganization study committee also recommended that justice of peace courts be made courts of record. This proposal would require a constitutional amendment, which subsequently would allow abolition of the so-called De Novo appeals replacing such complete rehearings with a simple review of the lower court record by the next highest court.

The committee also recommended prohibiting justices of the peace from being compensated on the basis of a fee system of any type.

The committee staff originally suggested that all justices of the peace be required to have a license to practice law, but this approach was amended after committee member Albert Lee, a non-lawyer justice of the peace from Humble, said it would work a hardship on nearly all of the 896 justices of the peace in Texas.

Lee said the original requirement would make it virtually impossible to get the proposal through the legislature. He in-

dicated that justices of the peace could live with a proposal containing a "grandfather clause" added to protect incumbents against being forced out of office for lack of legal qualifications.

Houston Municipal Court Judge Charles R. Judice argued that electing a person untrained in the law was like a town without a doctor electing an untrained person as town physician.

"It's important to have someone at this (justice court) level who knows what constitutional rights are," Judice said, adding that attorneys, judges and the public look down on justice courts even though these courts affect more people than any courts.

Committee Staff Director Robert J. Derby said additional meetings would decide procedures for handling traffic cases.

The committee also will get another chance to offer changes in proposed legislation creating an appeals procedure from justice and municipal court rulings, municipal court reorganization and a system of misdemeanor probation in the justice and municipal courts.



December 4, 1972

To: Hunter cc: SO, Braunagel,  
From: Brasher

Helen, I don't believe I sent you a list of members who belong to the TRAFFIC COURT REORGANIZATION COMMITTEE (SCR 86 - RS). This committee is headed by Supreme Court Judge McGee and this is the study committee that will ask the Legislature to make peace justice and municipal courts courts of record, with appeals to go to district court. This is also the committee that is submitting the plan that would require a motorist to surrender his driver's license when stopped, getting a receipt, to insure he will show for trial....and the plan which was giving Faye Anton, Abilene DMV president fits. Since we have a position on courts of record under the Judicial item, I thought you needed to know who was on this committee: Charles Herring, Max Sherman, Jim Wallace, John Boyle, Steve Burgess, and Elmer Tarbox from the Senate and House, plus Judge William Sears McGee, Austin; Judge Lyle B. Cherry, Wichita Falls; Judge Charles E. Judice, Houston; Judge Leon Douglas, Austin; Judge Albert Lee, Humble; Judge Kenneth Douglas, Corsicana; Sam Gardner, Austin; A. Ross Rommel, Austin; Guy Hardin, Shamrock; B. H. Dewey, Jr., Bryan; Mrs. Leona M. Franklin and George Wm. Perry, address unknown.

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# Sweeping revamp for traffic justice

By **RICHARD MACKENZIE**  
Staff Writer

A report tearing apart Texas' legal system governing traffic cases will be presented to members of the newly elected legislature.

The state government-appointed committee of 18 legal experts and lawmen will recommend a new system to deal with all traffic offenses across Texas, The Times Herald has learned.

Members were meeting in their final session in Austin Friday.

Changes would replace the present "antiquated and rigid" system now operating, the report will propose.

One of the hardest hit offenders in the proposed legislation is the drunken driver. Laws applying to a person guilty of driving while intoxicated are some of many to be changed if the 40-page document is accepted.

The committee is recommending five new acts to upgrade the existing system of traffic courts and their procedures.

Changes include:

- Complete revision of the judiciary article of the constitution, establishing an integrated statewide judicial system with judicial supervision and administration vested in the Supreme Court.
- Requiring a county court to impound a DWI's license for 30 days to six months as a term of probation.
- Making justice and municipal courts into courts of record.
- Insisting that justices of the peace be licensed Texas attorneys in

good standing except those already serving, who must complete a 40-hour training course.

- Allowing each municipality to create as many additional municipal courts and judgeships as necessary to dispose of cases.

- Improving the Traffic Offense Procedure Act, simplifying complaint procedures and facilitating compiling offense statistics.

- Providing a list of "hazardous traffic offenses."

The "hazardous traffic offenses" list includes:

- Offenses that result in a crash—"any event resulting in injury or death to one or more persons or damage to property" under certain circumstances.

- Offenses that are felonies or misdemeanors for which a jail term may be imposed.

- Driving while intoxicated or under the influence of drugs, or permitting another person to drive in the same condition.

With a budget of \$100,000, members of the Traffic Court Study Committee traveled from all corners of Texas to attend their meetings in Austin during the past year.

A Dallas member of the committee, attorney George William Perry, Friday described the report as "excellent." Perry, who flew to Austin Friday, is one of three members representing the Texas public.

Dallas Morning News December 2, 1972

## Meier to Introduce Oral Confession Bill

**Fort Worth Bureau**

FORT WORTH—Attorney Bill Meier, who will represent Tarrant County in the State Senate next year, says he will sponsor bills which would let prosecutors present more evidence in criminal cases.

Meier said one bill would permit officers to testify about oral confessions.

Texas rules of procedure require written confessions under most circumstances now.

"Other states permit the use of oral confessions and I see no reason why Texas should be an exception," Meier said.

Meier said he is also working with constitutional lawyers in the preparation of a bill which would give trial judges discretion to permit jurors to see evidence even though officers may have

committed technical errors in obtaining it.

This evidence is barred now under the "fruit of the poisoned tree" doctrine.

"I think we can draft a bill which would give judges discretion in these cases and still stay within the guidelines set out by the Supreme Court," Meier said. "While we must protect the rights of defendants, we must also consider the rights of society as a whole. I do not think we have the proper balance now."

Meier said he will listen to arguments for and against legalized race track betting before taking a stand on the controversial issue.

"I have mixed reaction at this time," he said. "We could use the tax revenue which we would receive, but there are other factors we must consider."



MEMORANDUM FROM:

*League of Women Voters of Texas*

DICKINSON PLAZA CENTER • DICKINSON, TEXAS 77539

Nov. 28, 1972

Dear Chris;

Apologize to Janice for me for not staying long enough to say hello. Mr. Johnson, from Judge Carter's staff said he would signal me when it was time to leave to make my plane & he said "time to go" so I thought I'd better follow him. He was so nice. Another one of those time when I'm glad I'm not a "Women's Libber". He drove me to the



Hotel, then to the airport, checked my luggage & saw me to the plane. How about that!!

The Houston Group on Judicial Reform is having a meeting Friday. Judge Earle will be here. The purpose of the meeting is to discuss Justice Calvert's plan & the Houston plan & where there are differences & how they could be reconciled. Should be very interesting.

Thanksgiving was not a happy time for us. We spent the week in A.C. as

My Father died Nov. 21.

P.S. just received a letter from Richard Rittely & the topics are being processed. He & Helen promised to send them by the end of the week.



# Judicial Reform Criticized

A former president of the Texas Trial Lawyers Association Wednesday criticized a proposed plan for judicial reform charging that the plan would lead to placing "political hacks on the bench."

William R. Edwards, a Corpus Christi attorney and past association president visited Austin to speak at the Central Texas Lawyers Assembly, being held on the University of Texas campus here.

During the conference, attended by about 60 lawyers and judges, Edwards criticized past state supreme court justices for failing to reform administrative rules for Texas court procedures.

He praised the present supreme court for issuing sweeping rules changes last October concerning deadlines for filing of legal documents as well as changes in the procedures for revealing information obtained by lawyers involved in civil suits.

Outside the conference room, Edwards expanded his criticism to include the proposal for court reform.

He said the proposal calls for appointment of judges through a politically appointed commission and, if adopted, would cause "a fella who is learned in the law and interested in the judiciary . . . to stop studying the law and start studying politicians."

The proposal, included as an alternative constitutional amendment in the Calvert report on court reform, according to Edwards will remove the judiciary from the election process and instead create a "star chamber" selection process for judges.

Noting that "we've got pretty good" elected judges under the present system of selection, Edwards added "that power (of selection) ought not be removed."



TEXAS CITIZENS' CONFERENCE  
ON COURT IMPROVEMENT

Sponsored by the  
Chief Justice's Task Force for Court Improvement

Friday, November 17, 1972  
Joe C. Thompson Conference Center

8:30 - 9:00 A.M.

Registration and Coffee

9:00 A.M.

Conference Convenes  
Presiding:

Hon. Ronald Earle  
Chief Counsel  
Texas Civil Judicial Council

9:00 - 9:30 A.M.

Welcome

Hon. Bill Hobby  
Lieutenant Governor-Elect  
State of Texas

9:30 - 10:15 A.M.

*Problems with the Current  
Texas Judicial System*

Hon. Joe Greenhill  
Chief Justice  
Supreme Court of Texas

10:15 - 10:40 A.M.

Coffee Break

10:40 - 11:10 A.M.

*The Need for Administration  
of the Texas Court System*

Hon. Clarence A. Guittard  
Associate Justice  
Fifth District Court of  
Civil Appeals, Dallas

11:10 - 12:00 noon

*The Administration of  
Criminal Justice in Texas*

Hon. John Onion  
Presiding Judge  
Texas Court of Criminal Appeals

12:00 - 2:00 P.M.

Lunch

*Proposals to Modernize  
Texas Courts*

Hon. Robert W. Calvert  
Former Chief Justice  
Supreme Court of Texas

2:00 - 3:30 P.M.

Question and Answer Session  
Panel:

Judge Calvert  
Mr. Valjean McCoy\*  
Judge Onion  
Professor David Anderson  
Judge Earle

\*Texas Citizens for Court  
Improvement, Inc.



4.88  
5.60  
5.48

Judge Calvert - A ranchman goes striding into the Legislature and a bedraggled mule is dragged out.

TEXAS CITIZENS' CONFERENCE  
ON COURT IMPROVEMENT

Sponsored by the  
Chief Justice's Task Force for Court Improvement

Friday, November 17, 1972  
Joe C. Thompson Conference Center

Legislators must be aware of the  
problems & goals before the  
session starts. Please get information  
on legislation we know will be  
introduced early in the session.

- Requirements for an efficient system of Administration:
1. Responsibility
  2. Enforcement
  3. Adequate Staff
  4. Sufficient Information
  5. Agency to provide rules

Rural crime has increased 20%, urban crime, 18%.

There are 5 judges handling criminal cases, 51 handling civil cases.

Hon. John G. Galt  
Presiding Judge  
Texas Court of Criminal Appeals

Hon. Robert W. Calvert  
Former Chief Justice  
Supreme Court of Texas

Judge Calvert  
Mr. Valjean McCoy\*  
Judge Galt  
Professor David Anderson  
Judge Earle

\*Texas Citizens for Court  
Improvement, Inc.



## Four State Justices Urge Major Reforms

By CLARENCE WEIKEL  
Staff Writer

Four of the state's highest-ranking judges were in Waco Friday urging their listeners to demand a modern, restructured judiciary system for Texas.

They want the legislature to let the people in 1973 vote on an amendment to the Texas Constitution that would provide for such a system. A task force has spent more than two years drafting proposed changes.

"The people are going to have to demand the legislature make the changes," Justice Truman Roberts of the Court of Criminal Appeals said. "The lawyers and the judges are not going to do it."

The meeting, scheduled by the task force for court improvement, was held at the Baylor law school. Similar meetings are being held over the state as people are getting ready to vote on another set of constitutional amendments.

"So I am telling you this: that the only way that meaningful change will be made is through the demands — not of lawyers and judges — but through the demands of individual citizens of the State of Texas telling the legislature of the State of Texas that we will not settle for second best, that we want the best court system that we possibly can have," Roberts said.

Other speakers were former Chief Justice Robert W. Calvert, who recently retired after 22 years on the Supreme Court of Texas; Chief Justice Joe Greenhill of the Supreme Court and Associate Justice Tom Reavley of the Supreme Court.

Judge Greenhill said he hopes some kind of scandal or uprising will not have to occur to force a change. He said under the system today there is no administration over the state system and no one can force a judge to help out in other courts, spend more time on the job and do other things to improve the court system.

"Each judge is a king in his area," he said of the 245 district judges in the state. He said that was fine in 1875 when the Texas Constitution was written but it should not be like that now.

Greenhill said under the proposed changes there would be only one district court in a county or multi-county area. He said there would be one or a number of judges in that district who would be put to work in whatever court was available or wherever a judge was needed.

He said the judge would have an administrator who would relieve the judge of all administrative matters, like a hospital administrator has taken the

doctors out of the business of running a hospital.

He said the whole idea of a streamlined court system is to provide speedier trials, stop a large majority of both criminal and civil appeals at the court of appeals level and let only one combined supreme court be the court of last resort.

Presently the courts of civil appeals do not handle criminal cases.

"Everywhere there has been a major change, there had been a scandal," Judge Roberts said. He cited New Jersey, Illinois, Missouri, Oklahoma and Colorado. "We are now in a scandalous position in regard to criminal justice," he said, referring to long times between arrest, trial and rulings on appeals.

Judge Roberts said the Court of Criminal Appeals, which would be combined with the Supreme Court, had a 26 per cent case load increase the past year and further increases, with longer delays, are upcoming under the present system.

Judge Calvert said there is no way the desired changes can be made without re-doing the judicial section of the legislature.

"We don't have any need for a district court that just tries criminal cases, or domestic relations, or juvenile cases," he said. "We need courts that try all kinds of cases and we need the power to move judges into courtrooms where they are needed."

Judge Calvert said under the proposed changes, judges would run on non-partisan ballots for six-year terms and could be voted out. Under an alternate plan, he said, an appointive system could be used under whatever terms the legislature might provide.

Judge Calvert said the appointive system for appellate and supreme court judges would assure competent people.

"There would be no more political hacks," he said. Under the appointive Missouri plan, he said the judges could be voted out of office even though they had no opposition on the ballot.

Judge Reavley said, "The court belongs to the people . . . the whole public, and the whole public is entitled to a better judiciary system."

Basically, the task force proposal calls for no courts under county court at law. County judges, if not lawyers, would become administrators; justices of the peace and municipal court judges would become magistrates.

Judge Calvert said even if an amendment is presented next year and the people demand a change, it would be at least until 1975 before the legislature could put the change into effect.



# Single Judicial System For State Is Suggested

By JOHNELLA BOYNTON  
HOUSTON (Sp) — A Harris County Citizens Conference studying the Texas court system has recommended that all state courts be organized into a single unified judicial system financed by state funds and operated under the authority of the Supreme Court of Texas.

The 120 conferees named an ad hoc committee to convert their recommendations into action by either introducing them at a Texas Constitution Convention or preferably by submitting them to the Texas Legislature for consideration as constitutional amendments.

The conference, after three days of study, also recommended that the present Supreme Court and the present Court of Criminal Appeals be combined into one Supreme Court and it recommended only one court — rather than the present two courts — to handle intermediate appeals, both civil and criminal.

The conference left it up to the Texas Legislature, upon recommendation of the chief justice of the Texas Supreme Court, to determine the number of divisions of the court of appeals, the number of judges necessary to the proper operation of each division and the number of trial judges within each judicial district.

Other recommendations from the conference included:

—Separation of the duties of managing and judging in the Texas judicial system with the administrative duties of the Texas trial and appellate courts becoming the responsibility of a chief administrator and a subordinate staff of regional administrators. The administrative staff would be under the control of the chief justice of the Supreme Court of Texas.

—Appointment of judges by the governor of the state from a list of qualified nominees submitted by a non-partisan, broadly representative committee or committees. Committees would perhaps be formed on a regional basis. A

majority of members on the committee or committees would be non-lawyers.

—Judicial appointees should be subjected to a probationary period after which they would stand for re-election upon their record without opposing candidates. Some structured "feedback" regarding their performance at fixed intervals was also recommended.

—A last-minute amendment to the conference statement also recommended a mandatory retirement age of 70 for judges. The amendment passed on a close vote.

An amendment to require all judges to have six years minimum membership in the Texas Bar was voted down by the conference.

In drawing up the recommendations and in appointing an ad hoc committee, the citizens who comprised the conference were responding to a call from various judicial and law groups for modernization of the state court system.

Glenn R. Winters, executive director of the American Judicature Society, told the conferees frankly that the legal profession "might be able to

come upon the right answers by themselves," but that it "has little or no chance of getting them implemented without your help."

Winters pointed out that in 27 of the 50 states major judicial reforms are now in the books and in operation "which are directly traceable to the work and effort of citizens' organizations that were established as a result of conferences like this one."

The citizens conference was composed of Harris County citizens, but Winters pointed out that the problems with which it was concerned were statewide "and the muscle for coping with them is going to have to be statewide also."

B. V. Sturdivant, president of the Citizens Association on Arizona Courts, called for a "swinging" approach to the problem.

"From the citizens' point of view, the poor performance of our nation's courts has become intolerable and unacceptable," he said.

But, he warned, quoting the late Sen. Arthur T. Vanderbilt, "Judicial reform is no sport for the short winded."



# Calvert Explains Court Problems

Capitol Staff

Texas has the courts it needs to handle present case loads but the "judges are not where the cases are and the cases are not where the judges are," former Chief Justice Robert Calvert told the annual meeting of the Texas Research League here Friday.

Calvert outlined what he sees as the major problems stemming from the complicated prohibitions of jurisdiction under the judicial article of the constitution and then talked about the solutions proposed by a task force called the Chief Justice Task Force.

Under the present court system, he said, there are nine types of courts below the district level—such as municipal courts, justice of the peace courts, domestic relations courts—each with a limited jurisdiction.

It takes 2,216 judges to fill these benches. Added to that are 215 courts and judges on the district level, more than in New York; 14 intermediate courts with 42 judges handling only civil cases; and two kinds of courts of last resort—one for civil cases with nine judges (the Supreme Court) and one for criminal cases with five judges.

"The trouble is that practically everyone of these more than 2,500 judges sits as a king in his own little kingdom, accountable to no one but the voters at election time," Calvert said.

In spite of the number of judges, Texas faces a serious problem of docket congestion and trial delay, especially in criminal cases, he said. In 1971 there were some 50,000 felony cases pending in district courts—13,800 of them more than two years old—and about 550,000 misdemeanor cases. On the appellate court level, there is a time lag of 26 to 28 months and the problem is getting worse.

Still another problem of the judiciary is an outgrowth of reconstruction when ex-confederate soldiers wrote into the state constitution a control over judges by making them elected through popular vote.

"The civil war has ended, the occupation has ended, and I submit, it is time selection of the judges at popular elections should be ended," he said.

Especially considering the campaigning cost (a minimum of \$50,000 in a contested district

race) and the absence of real campaign issues other than a promise to "be fairer than he'll be fair."

Calvert said the task force has proposed the following revisions:

—Get rid of rigid limitations so the legislature can make changes to keep the system up to date.

Completely restructure and simplify the system, by having one court of limited jurisdiction in each county (a county court at law) with as many judges and magistrates as needed; one district court per territory with as many judges and magistrates as needed; 14 intermediate courts with jurisdiction in criminal as well as civil appeals; and a combined supreme court and court of criminal appeals.

—Make the chief justice the administrator of the entire court system.

—Election of judges either on a non-partisan judicial ballot or merit system, to be decided by the voters.

A parallel citizen's group also has proposed a complete overhaul of the court system, he said.

The need for such reform was accentuated by the Research League's report on Texas' judiciary — one of four issued at the meeting.

The report recommended in addition to reorganization, a central data-collection system to administer the workload, which has been piling up.

In the restructuring, the report points out, the state will have to take over the cost and administration instead of having parts of courts administered by cities and counties.

Although it might be self-supporting on the state level, the report said such a change might result in revenue loss to local governments which get an average of almost \$5 of revenue in fines and court costs for every \$1 spent on court operation.

Another report released by the league estimated it would cost between \$130 million and \$1.4 million more to bring all school districts up to an even level, as implied under the Rodriguez decision on school financing.

The league also issued a report on land use management suggesting problems that might be encountered as the state tries to plan and zone regional growth and a report on the inequities of the state employment system.

*to Bortette*



# Justice at the Crossroads: Court Improvement in Texas



Chief Justice's Task Force  
for Court Improvement

1972



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Chief Justice's Task Force for Court Improvement	
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1972

The purpose of this report is to provide information to the Justice Council on the current state of the Texas judicial system and to suggest ways to improve it. The report is based on a study of the Texas judicial system and on a survey of other states. The report contains recommendations for the improvement of the Texas judicial system.	
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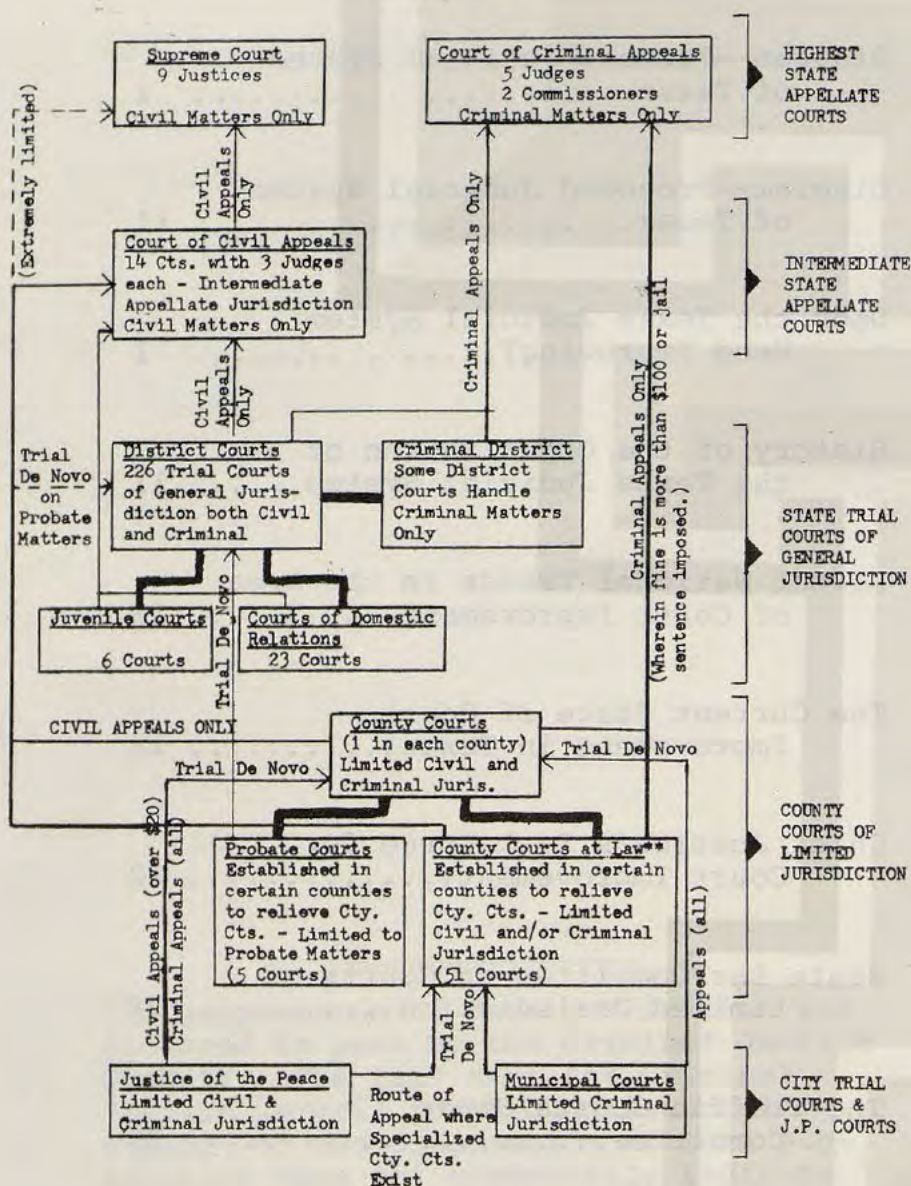
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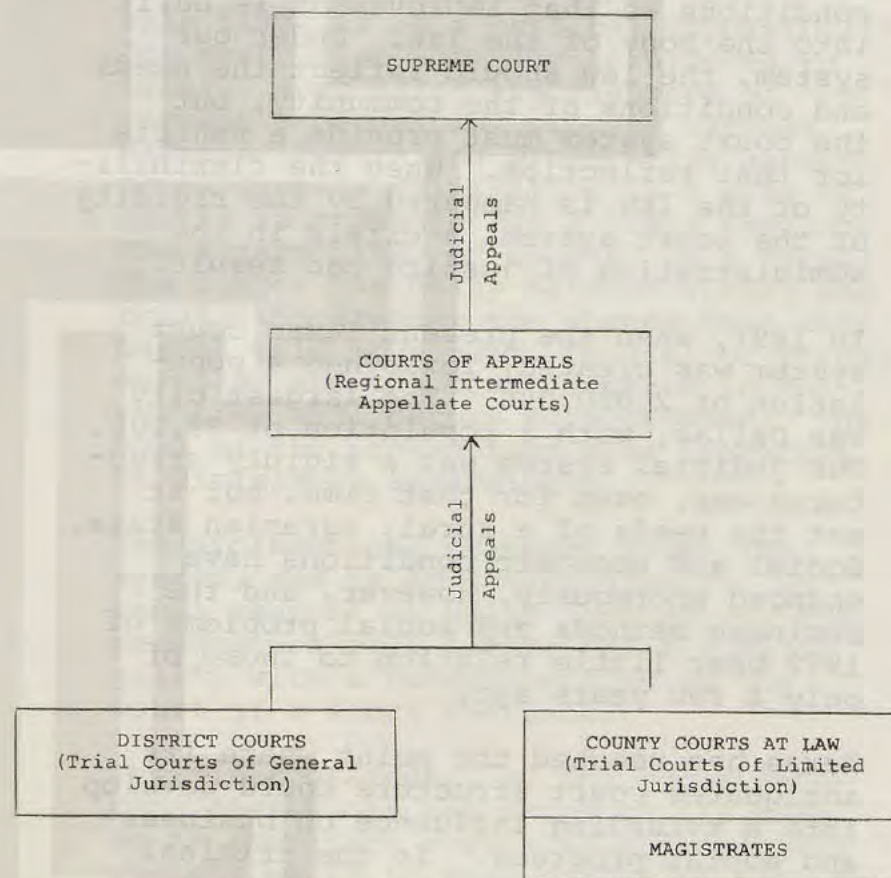


## PRESENT JUDICIAL SYSTEM OF TEXAS



\*\*Some Counties have separate civil & criminal County Courts at Law.  
(34 County Courts at Law, 10 County Criminal Courts at Law, 3 County Civil Courts at Law, 1 County Criminal Court of Appeal, 2 "County Courts")

## PROPOSED JUDICIAL SYSTEM OF TEXAS





DOES THE TEXAS JUDICIAL SYSTEM  
NEED IMPROVING?

The American system of justice is thought to be the best the world has ever seen. Its genius is that it responds to changed conditions so that improvement is built into the body of the law. Under our system, the law should reflect the needs and conditions of the community, but the court system must provide a vehicle for that reflection. When the flexibility of the law is hampered by the rigidity of the court system, a crisis in the administration of justice can result.

In 1891, when the present Texas court system was created, Texas had a population of 2,000,000. The largest city was Dallas, with a population of 38,000. Our judicial system was a rigidly structured one, even for that time, but it met the needs of a rural, agrarian state. Social and economic conditions have changed enormously, however, and the business methods and social problems of 1972 bear little relation to those of only a few years ago.

Texas has reached the point where its antiquated court structure could develop into a retarding influence on business and social progress. In the criminal area, the cumbersome court system may already be a contributing factor in rising urban crime rates.

The criminal dockets of the courts are clogged to the point of crisis in most

cities. Such overcrowding operates at the same time to the advantage of the habitual criminal and the disadvantage of the first-time offender or the innocent person. Crowded dockets mean that the time of the courts and the prosecution is at a premium. Since trials take time, it is a physical impossibility for every case actually to proceed to trial. Most cases are disposed of through a bargaining process between defense lawyers and prosecuting attorneys, usually culminating in a plea of guilty in exchange for a light sentence. The alternative, of course, is a trial. The longer the delay between arrest and trial, the greater the chance that witnesses will move away, or die, or forget details, and the court dockets in the meantime will become more crowded. The zeal of the prosecution will therefore be diminished accordingly.

The professional criminal knows the system, and he acts accordingly. He knows that if he waits long enough the prosecution will settle for a plea of guilty with a recommendation to the court of a short sentence.

The first offender, or the truly innocent person, is not aware of all this. He is therefore more likely, sometimes whether he is in fact guilty or not, to accept a "deal" for a plea of guilty with a short sentence than to proceed to trial with the threat of a long sentence if he is convicted.

A similar problem exists with respect



to bail. Many repeat offenders who are released on bail commit numerous offenses while awaiting trial. A recent example involved a man who had served a penitentiary sentence for burglary. After his release he was arrested and charged with burglary four times within six months; after each arrest he was freed on bail. In one 60 day period he committed 30 burglaries.

The only real alternative to bail is a preventive detention plan, and it must provide for a speedy trial in order to be consistent with constitutional due process requirements. Texas has no preventive detention statute, and even if it did, there still would be no way to guarantee a speedy trial because of the lack of organization of the court system.

The problem is perhaps most acute in the lower courts. Texas has nine different kinds of courts below the district court level. There are county courts, county courts at law, county civil courts at law, county courts for criminal cases, county criminal courts, county courts for criminal appeals, county probate courts, municipal courts, and justice of the peace courts.

One of the most serious offenses tried by the county-level courts is driving while intoxicated. The enormous number of deaths caused by drunk drivers on Texas roads is well known. What is not well known is that many of those who are apprehended and charged with DWI are repeat offenders. In fact, many have

multiple arrest records for DWI. There are cases of drivers with nine convictions for DWI who have never spent more than a few hours in jail.

One reason for such common disregard for the law is that crowded county court dockets result often in probated sentences for persons convicted of DWI. Another reason is that many municipalities charge a drunken driver with the offense of being drunk in a car, which is punishable by a fine payable to the city. The result is that the city gets the revenue, while the driver avoids the loss of his driver's license and other disadvantages of a conviction for DWI. The rest of the driving public, of course, gets no protection from the drunk.

County court dockets are crowded for reasons other than cases awaiting initial disposition. Under our current system, a person who loses a case in a justice of the peace or a municipal court has the right to appeal to the county court or county court at law, where he has a right to a completely new trial, called a trial de novo. This gives the person charged with a crime or involved in a minor lawsuit the right to have his case heard twice. But the person accused of a serious crime or a major civil matter involving large amounts of money has the right to only one trial. If justice is accomplished by allowing only one trial for serious matters, it is a waste of judicial time and money to permit two trials for minor cases.



Moreover, the right of trial de novo permits a defendant to avoid a sentence. If he is not satisfied with his first sentence, he can easily appeal the case. After having the whole thing retried, if he is convicted again, he will be sentenced by a different judge who will probably render a different sentence. Thus the defendant is given a veto over the sentence rendered by the lower court judge. Some judges react to this practice by trying to please the defendant in pronouncing sentence, instead of "truly and impartially administering justice."

Furthermore, the system of de novo appeals has led to disrespect for the law because of abuses in some areas. Some county-level judges, for instance, refuse to hear appeals cases involving traffic citations. Such cases are commonly dismissed without a trial.

The right of appeal de novo was originally instituted to protect the public from unscrupulous, dishonest, or unqualified lower court judges. Current court improvement plans call for the selection of qualified judges, all of whom would be paid by the state. All courts would be courts of record and appeals would simply involve a review of the record to see if the lower court made a mistake. (Presently, Wichita Falls is the only city in Texas with a municipal court of record. It was created in 1969 to deal with a crowded county court appeals docket. The year before it went into effect there were 1,303 cases appealed

to the county court. The year after the municipal court became a court of record, one case was appealed.) Moreover, all judges would be part of a unified judiciary, with centralized administration. The goal is to eliminate administrative and bureaucratic burdens of judges, in order to provide time to properly administer justice as well as provide for uniform application of the law.

The new federal highway safety standards will require some modernization of the lower courts. The Department of Transportation is contemplating the future withholding of federal highway funds from states who do not institute a specified list of traffic court improvements, such as better qualified judges, traffic courts of record, and speedy disposition of cases.

Ninety per cent of the people of Texas have the only court appearance of their lifetime in a lower court. Such a court is in a very real sense an ambassador of the entire judicial system, because impressions formed there are easily transferred to the rest of the judicial system. If the lower court is the picture window of Texas justice, we ought to see that our house is in order.

The district courts are similarly hamstrung by the current rigid system. Proposed court improvement plans would merge the so-called "special" district courts, such as juvenile, domestic relations, and criminal district courts into courts of general jurisdiction.



Presently, a judge of a "special" court is prevented from hearing other kinds of cases even though he may have free time and the regular district judges may be swamped.

Nothing in the proposed improvements prohibits specialization. It is merely provided that all district courts would have to be courts of general jurisdiction; individual judges could continue to specialize.

Problems in the administration of the Texas court system are not limited to the trial courts. The appellate courts are likewise hobbled by the current structure, especially in the criminal area.

Texas is one of only two states with two courts of last resort. The Supreme Court hears only civil cases, while the Court of Criminal Appeals hears criminal cases exclusively. Oklahoma is the only other state with such a system.

Cases are appealed to the Court of Criminal Appeals from the county courts and the county courts at law as well as the district courts. There is no intermediate court of appeals in Texas for criminal cases, as there is in civil cases. The courts of civil appeals have no criminal jurisdiction.

The result is that the Court of Criminal Appeals labors under a crushing workload. For example, 1,328 new cases were docketed in 1971, which represents a 26 per cent

increase over 1970 and a 50 per cent increase over the average caseload of the past five years.

The Chief Justice's Task Force for Court Improvement has proposed a streamlined alternative to this system. Under this plan, the Supreme Court and the Court of Criminal Appeals would be merged into one court with both criminal and civil jurisdiction. The courts of civil appeals would be granted criminal jurisdiction.

Such a system would be less expensive and less administratively complex than the dual court structure. It would also eliminate inconsistencies in the law that have resulted from the present division.

Combining the two high courts and giving criminal jurisdiction to the courts of civil appeals has been criticized by some who say that civil judges are not competent to decide criminal cases. If this is true, Texas lawyers and judges must be unique, because in 48 other states and in the federal system judges of civil courts manage to handle criminal matters competently.

Moreover, criminal law is no more difficult to grasp than other legal specialties, such as oil and gas, antitrust, and tax matters, that are now handled by the courts of civil appeals. There will be a transitional period during which the Supreme Court will have 14 members. The expertise of the incumbent Court of Criminal Appeals judges thus will be



available to help the civil judges orient themselves in criminal law, and vice versa, if indeed any mutual orientation is necessary.

The proposed system would, because of more economical use of judicial resources, reduce the delays in the criminal appellate process. For instance, seven judges now hear all criminal appeals; under the proposed system 56 judges would be available for such cases. Moreover, hearing criminal appeals in regional intermediate courts would be more convenient and less expensive for both defense lawyers and prosecuting attorneys.

There are only two real alternatives to the state of crisis of the criminal appellate process besides that proposed by the Chief Justice's Task Force. Texas can either create intermediate criminal appeals courts or add more judges to the Court of Criminal Appeals. Either of these alternatives adds more judges and expense when we already have enough judges. The problem, as in the lower courts, is organization.

#### CONCLUSION

The organization of the Texas judiciary is presently not responsive to the needs of Texans, particularly in the criminal area. The end result of the war against crime is in the courtroom, where appropriate justice is meted out to convicted offenders. The finest police forces and the most accomplished lawyers

amount to nothing if the courts are not equal to the task.

The deterrence of law-breakers depends in large part less on the severity than the swiftness and certainty of punishment. If punishment is slow, uncertain, and not appropriate to the crime, then we might well ask who will be deterred. Certainly not the guilty, who prosper under the current system. And the innocent, who do not need deterrence, will only suffer, as they do now.



HISTORY OF THE ORGANIZATION OF  
THE TEXAS JUDICIAL SYSTEM

The Texas Constitution prescribes the basic organizational structure of the Texas court system. That structure is essentially the same today as it was under the Republic of Texas. The rigidity of the constitutional structure has led to the development, of necessity, of one of the most complex and fragmented judicial systems of all the states.

It is helpful in considering the current Texas judiciary to review briefly its historical development.

Two basic problems that were central to the administration of justice in an agrarian society confronted the framers of the Constitution of the Republic of Texas. One was an enormous, sparsely settled geographic area and the other was a scarcity of persons trained in the law. The solution to the former problem was the institution of county-level courts and the concept of "one judge per trial court per limited geographic territory." The lack of lawyers of necessity meant that judges could be laymen.

Thus, the Constitution of the Republic of Texas established a Supreme Court and such inferior courts as Congress should create. The Republic was divided into not less than three nor more than eight districts. One judge was provided for each district. The constitution also required the creation of

county courts and justice courts.

The first state constitution, adopted in 1845, was a model of the Constitution of the Republic. The only change in any of the later Constitutions of 1861, 1866, and 1869 was in the Constitution of 1866.

Because of the increase of criminal cases in cities, the Legislature was authorized by the Constitution of 1866 to create criminal district courts in large cities. Jurisdiction of such courts was in the counties in which the cities were located.

The Constitution of 1876 changed the judiciary articles of the preceding constitutions considerably. It set a city population floor of 30,000 as a prerequisite to the establishment by the Legislature of criminal district courts. This constitution also created the Court of Appeals, with all criminal and some civil appellate jurisdiction. The Supreme Court was given jurisdiction of the rest of the civil cases but no criminal appellate jurisdiction. No other changes occurred until 1891, when the judiciary article of the Constitution of 1876 was amended.

The 1891 Judicial Amendment created the present constitutional court organization which has been unchanged since. The amendment renamed the Court of Appeals as the Court of Criminal Appeals and took away its civil jurisdiction. The Courts of Civil Appeals became intermediate appellate courts for civil cases. Trial courts were not appreciably changed.



RECENT NATIONAL TRENDS  
IN THE AREA OF COURT IMPROVEMENT

The exploding crime rate in our nation and the resulting overcrowding in our courtrooms has focused public attention on the workings of our judicial system as never before.

The purposes of the courts are to insure the rights of the individual and protect those of society. In order to accomplish these goals the courts must be both fair and effective. But when the organization of the system can permit the spectacle of an empty courtroom next door to an overcrowded one, when one judge works two days a week and his colleague works seven, when a man is innocent in one courtroom and guilty in another in the same state because of different procedures, when an innocent man must languish in jail for a year without a trial while a guilty one is free on bail to commit other crimes, then there is no organization, and the courts cannot be fair or effective. Perhaps the nation's leading advocate of judicial modernization is Richard M. Nixon. As the President said in an address to the National Conference on the Judiciary:

*Justice delayed is not only justice denied--it is also justice circumvented, justice mocked, and the system undermined.*

There has arisen in recent years a

nationwide demand by citizens that our state court systems be modernized. California, Colorado, Connecticut, Delaware, Idaho, Illinois, Maine, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma and Virginia have taken significant action to make their court systems more responsive.

Most state court systems were established in the 19th century to meet the demands of a largely agrarian, rural society. Such systems have been changed only slightly since then, while society has changed vastly. The current influx of cases, mostly criminal, has had the same effect on the courts as putting rocket fuel in a Model-T.

Chief Justice Burger, in a recent interview, discussed the relationship between crime and the courts:

*If we could see to it that every person arrested would be brought to trial within six weeks or 60 days, you would see a downturn in crime, if for no other reasons than you'd have these people off the street that much sooner and the swiftness of society's response would itself have a deterrent impact.*

*With few exceptions, every level of the judiciary has more work than it can properly handle.*



In attempting to deal with this crisis, most state court reorganization efforts have been directed at reducing the number of courts and combining their jurisdictions. The establishment of a single, unified state court system to hear and dispose of all matters requiring judicial consideration from the most minor to the most serious is favored. Usually such systems provide for a single state supreme court, an intermediate appeals court, and either a single or a two-tier trial court. The result is a vast simplification of the entire court structure which allows the introduction of modern business methods to expedite trials.

The National Conference on the Judiciary, chaired by retired Supreme Court Justice Tom C. Clark, was held in March of 1971 at Williamsburg, Virginia. Attended by 400 delegates, it was sponsored by the American Bar Association, American Judicature Society, Conferences of Chief Justices, Federal Judicial Center, Institute for Court Management, Institute of Judicial Administration, National Association of Attorneys General, National College of State Trial Judges, National Conference of Court Administrative Officers, National Council on Crime and Delinquency and the Virginia State Bar and endorsed by 15 other national legal organizations.

The Conference recommended the following Court structure and administration:

1. *All courts should be*

*organized into a single, unified judicial system financed by and acting under the authority of state government and none should be units of local government;*

2. *All courts should be under the supervisory control of the Supreme Court of the State, whose chief justice should be the chief executive officer of the unified court system;*

3. *The chief justice should be assisted by a state-wide court administrator, charged with the responsibility for developing and operating a modern system of court management;*

4. *The State Supreme Court should possess the power to promulgate rules of procedure and of administration;*

5. *Judges of the unified court system should be available for temporary assignment anywhere in the state, so that judicial manpower could be provided whenever and wherever needed;*

6. *There should be only one level of trial courts with general jurisdiction, but organized into specialized*



departments for the handling of particular kinds of litigation with the state divided into districts of manageable size. Separate specialized courts should be abolished thereby allowing the individual judges to specialize rather than the court itself to be a specialized unit;

7. Only one appeal as of right should be allowed, and that should be only from a final decision of the trial court based on the record, and not a trial de novo; and

8. Further review in the highest court should be allowed only if the reviewing court, in its discretion, deems the question presented to involve an important constitutional or statutory interpretation, a disagreement between the lower courts, or a question in the development of the common law.

The American Bar Association has proposed a Model State Judicial Article which differs only slightly in principle from the one proposed by the National Conference on the Judiciary. It provides that "The judicial power of the State shall be divided into one Supreme Court, one Court of Appeals, one Trial Court of General Jurisdiction known as the District Court, and one Trial Court of Limited Jurisdiction known as the Magistrate's Court."

## THE CURRENT STATE OF COURT IMPROVEMENT IN TEXAS

The movement toward reorganization of the Texas judiciary is spearheaded and coordinated by the Chief Justice's Task Force for Court Improvement. Other groups and individuals who are active in this area include the House Judiciary Committee, under the leadership of Representative DeWitt Hale, Senator Charles Herring's Bar Committee on Courts of Limited Jurisdiction, and the Traffic Courts Study Committee.

Two basic concepts guide the thinking of everyone involved with court reform:

1. The unification of the judicial system under the supervision of the Supreme Court in order to provide for greater efficiency of administration and streamlining of operations, with all judges to be State officers paid by the State.

2. The improvement of the quality of justice in the lower courts.

The necessity for the restructuring of the appellate system is generally recognized. Texas is one of only two states with a separate court for criminal appeals, and the caseload of the Court of Criminal Appeals has long since reached crisis proportions. The accepted proposal is to combine both jurisdictionally and by personnel the Supreme Court and the Court of Criminal



Appeals and to give the courts of civil appeals appellate jurisdiction in criminal cases. Both of these changes are long overdue.

The only real change in the structure of the district courts is the recommendation of the division of the state into geographical districts, each with one district court and as many judges as necessary. Thus, instead of six district courts serving Travis County, there would be only one, but with six district judges. No longer would there be specialized district courts for criminal, juvenile, and domestic relations cases. Such specialization as would be necessary or desirable would be arranged by the local presiding district judge on the basis of specialized judges rather than courts. No changes are contemplated in district court jurisdiction.

The area where modernization is both most needed and most difficult is the lower courts. The situation is particularly acute with courts handling traffic matters, because Texas may find itself losing federal highway money unless those courts are upgraded to meet Department of Transportation guidelines.

The goals of lower court modernization are generally two:

1. to insure that the trial of any contested matter is before a judge who is also a lawyer, and

2. to provide for the uniform administration of justice both within and between counties to prevent the perpetuation of the independent fiefdoms that some lower courts now resemble.

Proposals to modernize the lower courts uniformly stress the establishment of a single county-level trial court below the district court level to hear all contested cases, regardless of amount in controversy or grade of offense. Several names have been proposed for such a court, including court of general sessions, county court at law, justice court, and circuit court. Patterned after the proposed district court, there would be one such court for each county, with as many judges as necessary.

Such a court would perform the judicial functions of the county court and the various types of county courts at law. It would take the place, in contested matters, of the justice of the peace and municipal courts.

It has further been suggested that non-judicial functions now performed by the justice of the peace and municipal courts be performed by a system of magistrates as an adjunct to the county level courts. Non-lawyers could serve as magistrates but would not hear contested cases. Lawyers serving as magistrates could hear contested cases assigned by the presiding judge of the county level court.



It is proposed that the goal of administrative efficiency would best be achieved by professional administrators, both on the local and state level. In the words of President Nixon

*We must make it possible for judges to spend more time judging, by giving them help for administrative tasks.*

Such an administrator would be appointed by the local judges, and the relationship between them would be similar to that between a corporation president and its board of directors.

Since one of the goals of judicial modernization is to simplify the constitutional basis of the judiciary, much of the details of the proposed court system will be left to the Legislature. Jurisdiction of all courts, for example, would be a legislative prerogative.

#### CHIEF JUSTICE'S TASK FORCE FOR COURT IMPROVEMENT

The Chief Justice's Task Force for Court Improvement grew out of the Committee on Judicial Reform of the Judicial Section of the State Bar. Headed by Chief Justice Robert W. Calvert, its goal is to present to the Legislature in January a complete revision of the judiciary article of the Texas Constitution.

Briefly, the proposal of the Task Force is designed to speed the disposition of all cases, including criminal appeals; streamline the court system; assure that every contested case is heard by a qualified lawyer-judge; reduce overlapping jurisdiction and multiple appeals; and provide for modern efficient court administration headed by a court administrator.

The Task Force is composed of the leadership of the State Bar of Texas, the judiciary, and the legislative committees responsible for judicial matters. Its members are:

ROBERT W. CALVERT, Chief Justice, Supreme Court of Texas

JOE GREENHILL, Associate Justice, Chief Justice Nominate, Supreme Court of Texas

JOHN F. ONION, Presiding Judge, Court of Criminal Appeals and former District Judge



THOMAS M. REAVLEY, Associate Justice, Supreme Court of Texas, former District Judge and President of Texas Civil Judicial Council

W. ST. JOHN GARWOOD, Former Associate Justice, Supreme Court of Texas, and former President of Texas Civil Judicial Council

CHARLES F. HERRING, State Senator, Chairman, Senate Jurisprudence Committee, Chairman, State Bar Committee on Courts of Limited Jurisdiction and member of Texas Civil Judicial Council

L. DeWITT HALE, Member, House of Representatives, Chairman, House Judiciary Committee, Chairman, State Bar Committee on Selection, Compensation and Tenure of State Judges and member of Texas Civil Judicial Council

CHARLES W. BARROW, Chief Justice, San Antonio Court of Civil Appeals, former District Judge and chairman of Judicial Section of State Bar of Texas

CLARENCE A. GUITTARD, Associate Justice, Dallas Court of Civil Appeals and former District Judge

JAMES C. WATSON, Immediate Past President, State Bar of Texas

JIM D. BOWMER, President, State Bar of Texas

LUCIUS D. BUNTON, Immediate Past Chairman, Board of Directors State Bar of Texas

MORRIS HARRELL, Former President, State Bar of Texas

WILLIS J. WHATLEY, Director, Judicial Processes and Law Reform, Criminal Justice Council.

The Task Force is assisted by a large Advisory Committee composed of representatives of business, civic, and political organizations whose members are affected by the judicial system. Virtually every facet of Texas life is represented on the Committee. The following is a list of those who formed the nucleus of the Advisory Committee:

JACK BANNER, Attorney, Wichita Falls, Texas Trial Lawyers Association

J. TAYLOR BRITE, District Attorney, Jourdanton, Texas District & County Attorneys Association

ED BURRIS, Houston, Texas Manufacturers Association

WILL CAIN, Houston, Texas Research League

L. S. CARSEY, Attorney, Houston, Texas Association of Defense Counsel

OSWIN CHRISMAN, Judge, Probate Court, Dallas

JOE D. CLAYTON, Attorney, Tyler, State Junior Bar of Texas

JOYCE COX, Attorney, Houston, State Bar of Texas



PETER MICHAEL CURRY, District Judge, San Antonio, Presiding Judge, Fourth Administrative Judicial District

ROBERT J. DERBY, Attorney, Austin, Executive Director, Traffic Courts Study Committee

B. H. DEWEY, JR., Justice of the Peace, Bryan

JOE DRAGO III, Municipal Judge, Fort Worth, Municipal Judges Section of the State Bar of Texas

DALE DYE, Court Reporter, Lubbock, 137th District Court

TOM E. ELLIS, County Clerk, Dallas, County & District Clerks Association of Texas

ROY R. EVANS, Austin, President, Texas AFL-CIO

JACK HEBDON, Attorney, San Antonio, State Bar Committee on Judicial Selection, Tenure and Compensation

RAY HOLBROOK, County Judge, Galveston, County Judges and Commissioners Association of Texas

ROBERT L. LOWRY, Judge, Juvenile Court, Houston

ANDREW L. JEFFERSON, JR., Judge, Court of Domestic Relations, Houston

TOM KING, Judge, County Court at Law, Dallas

FRANK MALONEY, Attorney, Austin, Texas Criminal Defense Lawyers Association

DR. JANICE C. MAY, Austin, Assistant Professor of Government, The University of Texas

JAMES F. MCCARTHY, District Judge, Dallas, 116th Judicial District

ROBERT C. MCGINNIS, Attorney, Austin, Uniform Probate Code Project

RICHARD M. MOREHEAD, Austin, Dallas Morning News

JOHN B. NEIBEL, Houston, Dean, Bates College of Law, The University of Houston

WALTER H. RANKIN, Constable, Houston, Justices of the Peace and Constables Association of Texas

MAX M. ROGERS, Presiding Judge, Second Administrative Judicial District, Huntsville

E. D. SALINAS, District Judge, Laredo, 111th Judicial District

R. E. SCHNEIDER, JR., Attorney, George West, State Bar Texas Constitution Committee

C. C. SMALL, JR., Attorney, Austin, State Bar Legislative Committee

CHARLES E. SMITH, Lubbock, Justice of the Peace, West Texas Justice of the Peace Association



EUGENE L. SMITH, Lubbock, Professor,  
School of Law, Texas Tech University

Staff assistance for the Task Force is provided in part by the staff of the Texas Civil Judicial Council.

In the fall of 1972 the Task Force is presenting seven regional court improvement conferences in cooperation with local sponsors and one statewide court improvement conference in Austin. The invitation list for each local conference will be compiled by the local sponsors in conformance with guidelines set up by the Task Force. Sponsors will seek the attendance of opinion leaders in each region, including members of the bench and bar, business, labor, state, city and county government, educators and housewives.

The program for each conference will be determined by the local sponsors upon the advice of the Task Force. A presentation of the present condition of the Texas court system will be made by local attorneys and judges or by members of the Task Force. Members of the Task Force will explain proposals for modernizing the court system.

Although it is impossible to hold a conference in every city, the Task Force will attempt to reach citizens in every area of the state by inviting residents of smaller cities to attend regional conferences. A conference is scheduled as part of this project in each major geographical area of the state.

STATE BAR COMMITTEE ON  
COURTS OF LIMITED JURISDICTION

The Committee on Courts of Limited Jurisdiction of the State Bar, chaired by Senator Charles Herring, has conducted an in-depth study of modernization of the lower courts.

The members of the Committee are:

Lawrence A. Cullison  
Ralph Elliott  
Harold Entz  
Mrs. Barbara Finney  
Carl W. Friedlander  
Everett J. Grindstaff  
Charles F. Herring  
John A. James, Jr.  
Leroy Jeffers  
Andrew L. Jefferson, Jr.  
Charles Raymond Judice  
Edgar H. Keltner, Jr.  
Fred C. Meyer, Jr.  
John F. Onion, Jr.  
Glenn S. Phillips  
George E. Pletcher  
Thomas M. Reavley  
Luther G. Strange  
George L. Walker  
Phillip Wilson



### THE TRAFFIC COURTS STUDY COMMITTEE

The U. S. Department of Transportation is requiring all states to comply with minimum standards of adjudication of traffic laws and administration of traffic courts as a prerequisite to state receipt of federal highway funds. Consequently, the Traffic Courts Study Committee was directed by S.C.R. 86 to recommend legislation for the proper administration of traffic laws of the state in a system of traffic courts of record.

This mandate necessitated a major study of the Texas system of traffic courts. Such courts are not presently courts of record and have no central administrative control.

The Committee is chaired by Associate Supreme Court Justice Sears McGee. Its members are:

JOHN F. BOYLE, JR., Irving, House of Representatives

STEVE BURGESS, Nacogdoches, House of Representatives

B. H. DEWEY, JR., Justice of the Peace, Bryan, Citizen at Large

KENNETH A. DOUGLAS, Navarro County Judge, Corsicana, Association of County Judges

LEON DOUGLAS, Judge, Court of Criminal Appeals

MRS. LEONA M. FRANKLIN, Houston, Citizen at Large

SAM J. GARDNER, Texas Department of Public Safety, Austin, Texas Police Association

GUY HARDIN, District Attorney, Shamrock, Association of District and County Attorneys

CHARLES F. HERRING, Austin, Senate

CHARLES R. JUDICE, Judge, Municipal Court, Houston, Municipal Judges Association

ALBERT L. LEE, Justice of the Peace, Humble, Justices of the Peace Association

SEARS MCGEE, Associate Justice, Supreme Court of Texas

GEORGE W. PERRY, Attorney at Law, Dallas, Citizen at Large

A. ROSS ROMMEL, Administrator, Traffic Safety Administration, Austin, Office of Traffic Safety Administration

MAX R. SHERMAN, Amarillo, Senate

ELMER L. TARBOX, Lubbock, House of Representatives

JAMES P. WALLACE, Houston, Senate

LYLE B. CHERRY, Attorney at Law, Wichita Falls



# Call Heard For Court Reforms

By WAYNE JACKSON  
Staff Writer

"People are always in favor of reform as long as you don't change anything," former Chief Justice Robert W. Calvert quipped Friday during a speech advocating reform of the Texas judiciary.

In his luncheon speech before the Citizens' Conference on Court Improvement at the Joe C. Thompson Conference Center, Calvert told the approximately 75 laymen attending: "Solution of our judicial problems without constitutional revision is impossible."

"You don't have anything to gain...other than good government" by supporting the proposed court reform, he added.

Calvert is head of a statewide task force which will recommend revision of Article 5 — the judiciary article of the state constitution — when the legislature convenes in January.

Lt. Gov.-elect Bill Hobby told the morning session of the day-long meeting that "this is a very propitious time for this proposal to come forward," saying that the proposed reforms would "speed justice."

Chief Justice Joe Greenhill called for implementation of the proposed constitutional amendment, listing court structure, court administration and judicial selection and tenure as some of the major problems of the Texas judiciary.

Citing delays of up to three years in the resolution of criminal cases, Greenhill said, "We have enough judges, but the judges are not where the cases are and the cases are not where the judges are."

The proposed judicial restructuring would solve this problem, he said.

Greenhill added, "We must get judges out of politics," and should elect them on a nonpartisan ballot.

The task force recommends that Texas voters also be given the opportunity to decide if appellate judges should be appointed by the governor. Under this plan — called the merit plan or Missouri plan after the state where it was first adopted—appellate judges so appointed would go before the voters every six years for rejection or retention.

Judges should be selected "not on political acumen or their ability to raise funds (for campaigns)" but on their ability, as judges, Greenhill said.

Ronald Earle, chief counsel of the Texas Civil Judicial Council told the group that the success of court reform efforts depends on laymen such as themselves, not lawyers and judges.

Other participants in the conference were Clarence A. Guittard, associate justice of the Fifth District Court of Civil Appeals, Dallas, and John Onion, presiding judge of the Texas Court of Criminal Appeals.

The conference was the eighth in a series sponsored by the Chief Justice's Task Force on Court improvement.



PROPOSED JUDICIARY ARTICLE  
OF THE  
TEXAS CONSTITUTION

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Drafted by the  
Chief Justice's  
Task Force for Court Improvement

Published by  
West Publishing Co.  
as a public service for the  
Bench and Bar of the  
State of Texas





# PROPOSED JUDICIARY ARTICLE OF THE TEXAS CONSTITUTION

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Drafted by the  
Task Force for Court Improvement  
organized by  
Robert W. Calvert  
Chief Justice of the Supreme Court of Texas.

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September, 1972

Published by  
West Publishing Co.  
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Bench and Bar of the  
State of Texas





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## PREFACE

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The Chief Justice's Task Force for Court Improvement was organized by Robert W. Calvert, Chief Justice of the Supreme Court of Texas, in October, 1971. It is a voluntary organization whose members receive no compensation and have no interest except improvement of justice in Texas.

This proposed revision of the Judiciary Article of the Texas Constitution is the product of nearly a year of study, debate, drafting, and re-drafting. It reflects the views not only of members of the Task Force, but also the suggestions of the Task Force's thirty-member Advisory Committee and many other laymen, lawyers and judges. Although not every Task Force member agrees with every provision in this proposal, all believe that it will improve the administration of justice in Texas and should be adopted. The Task Force welcomes suggestions for improvement of the proposal.

The Task Force is grateful to West Publishing Company for assistance in publishing this document and to the Texas Civil Judicial Council for staff assistance throughout this project.

ROBERT W. CALVERT, Chairman

August, 1972

### Members:

CHARLES W. BARROW,  
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Chief Justice,  
Court of Civil Appeals;  
Chairman, Judicial Section of  
State Bar of Texas

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President, State Bar of Texas

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Former President,  
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Chairman,  
House Judiciary Committee

MORRIS HARRELL, Dallas  
Past President,  
State Bar of Texas



## PREFACE

### Members—Continued

CHARLES F. HERRING, Austin  
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CHARLES E. SMITH, Lubbock, Justice of the Peace, West Texas Justice of the Peace Association  
EUGENE L. SMITH, Lubbock, Professor, School of Law, Texas Tech University

#### SUMMARY

The following is a list of the major changes made by the proposed new judiciary article:

—The judicial system is unified under the supervision of the Supreme Court. Only two levels of appellate courts (Supreme Court and courts of appeals) and two levels of trial courts (district courts and county courts at law) are permitted.

—Jurisdiction of all courts is left to the Legislature. Throughout the proposed article, many important matters are left to the Legislature, either expressly or by silence. The article is deliberately silent on many matters that are mentioned in the present judiciary article. The intention is to give the Legislature greater flexibility in adapting the judicial system to future needs.

—The Court of Criminal Appeals is merged with the Supreme Court. This will temporarily increase the membership of the Supreme Court to fourteen, but the number will be gradually reduced to nine as incumbents from either court vacate their positions.

—The present courts of civil appeals become courts of appeals. The Legislature is empowered to give the courts of appeals criminal as well as civil jurisdiction, determine the number of civil appeals courts, and increase the membership of any court of appeals to more than three.

—One district court is created in each district, with as many district judges of each court as the Legislature deems necessary. Each district will have a district attorney and one or more district clerks. The method of their selection is left to the Legislature.

—The Legislature is directed to create a system of county courts at law to perform the judicial functions now performed by all courts below the district level, with each county court at law having as many judges, magistrates and other officials as the Legislature deems necessary.

—The article contemplates that all present judicial system personnel, including judges, clerks, prosecutors and other nonjudicial personnel, will be absorbed into the new court system. Members of the Supreme Court and Court of Criminal Appeals become justices of the Supreme Court. Judges of the courts of civil appeals become judges of the courts of appeals. District judges and special domestic relations and



## SUMMARY

juvenile judges become judges of the new district courts. Judges of the county courts at law become judges of the new county court at law system. County judges who are not lawyers become presidents of the county commission; county judges who are lawyers have the option of accepting that position or becoming judges of the county court at law. Justices of the peace and municipal judges are expected to be incorporated by the Legislature into the county court at law system. No judicial office may be abolished during the term of the incumbent who holds the office on the effective date of the article.

—The Chief Justice supervises the administration of all courts through a system of presiding judges and court administrators. Under rules of administration approved by the Supreme Court, the Chief Justice is empowered to transfer cases between courts of the same level (only the full Supreme Court is given power to transfer a case up or down) and assign any qualified lawyer or judge to temporary duty on any court. Presiding judges are designated by the Chief Justice. The Chief Justice may delegate administrative duties to a statewide court administrator who in turn may delegate to regional court administrators working with presiding judges.

—Because of the importance of the administrative duties given to the Chief Justice, provision is made for designation of an acting chief justice during vacancies and periods of temporary disability. The Chief Justice also is permitted to permanently relinquish that office but remain a member of the court.

—A Judicial Council, headed by the Chief Justice, is created to promulgate rules of administration, subject to Supreme Court approval, and perform such other functions as the Legislature may provide.

—All judges are selected by nonpartisan election. However, at the same election at which the proposed new judiciary article is submitted, voters will be given an opportunity to provide for merit selection of appellate judges. Merit selection will be submitted as a separate constitutional amendment. If that amendment is approved, appellate judges will be appointed by the Governor from a list of qualified nominees submitted by a Judicial Nominating Commission consisting of three judges, one lawyer and three laymen. At the expiration of their terms, judges will be subject to approval or rejection by the voters; if approved, they will continue in office for another term; if rejected, the office will become vacant and will be filled by the Governor from a list of nominees submitted by the Nominating Commission. The Legislature is permitted to extend merit selection to trial judges.

—All judges are required to be lawyers, are prohibited from practicing law, and lose their judicial offices if they file as candidates for non-judicial elective offices.

## SUMMARY

—The present Judicial Qualifications Commission and all major provisions of the present judicial retirement, removal, censure, and compensation system, including mandatory retirement of judges at age 75, are retained. Details of that system are removed from the Constitution and left to the Legislature.

—All judicial salaries are to be paid by the state. The Legislature is empowered to provide for use of fines and other revenues generated by the courts to defray this expense.

—The name of county governing board is changed from county commissioners court to county commission to make it clear that that body is nonjudicial.

—Selection and duties of sheriffs, county attorneys, and county clerks are left to the Legislature.

—Detailed provisions are made for the transition to the new court system, with a section permitting these transitional provisions to be removed from the Constitution when their purpose is accomplished. When the transition is completed, the complete article will be approximately 1,000 words in length, compared with approximately 5,000 words in present Article V.



# PROPOSED JUDICIARY ARTICLE

## OF THE

# TEXAS CONSTITUTION

---

### CHIEF JUSTICE'S TASK FORCE FOR COURT IMPROVEMENT

[The following draft replaces all of present Article V]

#### **Section 1. Judicial power**

The judicial power of the state is vested in a unified judicial system composed of a Supreme Court, courts of appeals, district courts, county courts at law, and no others. All courts shall have jurisdiction as provided by law.

#### **Sec. 2. Supreme Court**

(a) The Supreme Court shall consist of the Chief Justice of Texas and eight other justices. It may sit in sections of not less than three justices.

(b) The Supreme Court shall be the highest court of the state. It shall have the duty and authority to provide for the efficient and just operation of the judicial system. It may transfer cases from one court to any other court of the same or a different level.

(c) The Supreme Court shall have power to prescribe rules of procedure, but any rule of procedure expressly disapproved by act of the Legislature shall have no effect. The Supreme Court may prescribe other rules as provided by law.

#### **Sec. 3. Courts of appeals**

There shall be one or more courts of appeals as provided by law, each consisting of a chief judge and two or more judges, of whom not less than three shall sit in any case.



**Sec. 4. Trial courts**

(a) The state shall be divided by law, or by an agency acting under authority of law, into geographical judicial districts. In each district there shall be one district court with one or more district judges to be selected as provided in this Constitution, and district clerks, a district attorney, and such other officials as the Legislature deems necessary, to be selected as provided by law.

(b) The Legislature shall create county courts at law. No county shall have more than one county court at law, and the Legislature may provide for one county court at law to serve two or more counties. Each county court at law shall be staffed with judges, magistrates, and other officials as the Legislature deems necessary.

**Sec. 5. Administration**

(a) The Chief Justice of Texas is the administrative head of the judicial system. Pursuant to rules of administration, he may transfer cases from any court to any other court of the same level, delegate administrative powers to court administrators and active or retired judges appointed by him as presiding judges, and temporarily assign to any court any judge or lawyer who meets the qualifications established for a judge of that court. By such assignments, the membership of any court may be temporarily increased.

(b) If the office of Chief Justice of Texas is vacant, or if the Supreme Court determines that the Chief Justice is temporarily disabled, the Supreme Court shall designate another justice who shall serve temporarily as acting Chief Justice and chairman of the Judicial Council until the vacancy is filled or the disability ends. If the Chief Justice wishes to relinquish that office but remain a member of the Supreme Court, he may do so and the Supreme Court shall designate another of its members to serve as Chief Justice for the remainder of the term.

(c) There is hereby created a Judicial Council, which shall consist of the Chief Justice of Texas as chairman, and the following members, each of whom shall serve a two-year term: two judges of the courts of appeals, three trial judges, and one district clerk, each appointed by the Chief Justice of Texas; four members of the State Bar appointed by its board of directors; two members of each house of the Legislature appointed as provided by that house. Vacancies shall be filled by the appointing authority for the remainder of the term.

(d) The Judicial Council shall prescribe rules of administration for all courts to become effective upon approval by the Supreme Court, and shall perform other functions as provided by law.

**Sec. 6. Selection and tenure of judges**

(a) Justices and judges of all courts, including the Chief Justice of Texas and the chief judges of the courts of appeals, shall be elected on a nonpartisan ballot for six-year terms.

(b) Each justice or judge shall be a citizen of this state, shall be licensed to practice law in this state, and shall have such other qualifications as provided by law.

(c) No active justice or judge may engage in the practice of law, and if any justice or judge files as a candidate for any elective non-judicial office, his judicial office shall immediately become vacant.

(d) The Legislature shall provide benefits for retired justices and judges, and may provide for the payment of benefits upon the death of active or retired justices and judges.

(e) The office of any justice or judge shall become vacant when he reaches the age of seventy-five years or such earlier age as may be provided by law.

(f) Any justice or judge may be removed from office, suspended, or censured by the Supreme Court for willful or persistent conduct which is clearly inconsistent with the proper performance of his duties or which casts public discredit upon the judiciary or the administration of justice. Any justice or judge may be involuntarily retired by the Supreme Court for disability seriously interfering with the performance of his duties, which is, or is likely to become, permanent in nature.

(g) There is hereby established a Judicial Qualifications Commission to consist of four judges, including two judges of the courts of appeals and two district judges, chosen by the Supreme Court; two members of the State Bar chosen by the Board of Directors of the State Bar under regulations prescribed by the Supreme Court; and three citizens not licensed to practice law appointed by the Governor. The term of office of a commissioner shall be six years. The Commission shall operate under rules promulgated by the Supreme Court and shall have the power to recommend to the Supreme Court suspension, removal, retirement, or censure of any justice, judge, or other judicial officer.



**Sec. 7. Financing**

The state shall pay the salaries of all justices and judges and such other expenses of the judicial system as provided by law. The Legislature may by law provide for reimbursement to the state for all or part of such expense from funds collected by the courts.

**Sec. 8. County commission**

The qualified voters of each county shall elect a president of the county commission. Each county shall be divided into four commissioners precincts and the qualified voters of each precinct shall elect one county commissioner. The county commissioners and president shall hold office for four years and until their successors shall be elected and qualified, and shall compose the county commission, which shall exercise such powers and jurisdiction over all county business as may be conferred by this Constitution and the laws of the state.

**Sec. 9. Other officials**

The Legislature shall provide for the selection and duties of such sheriffs, county attorneys, and county clerks as the Legislature deems necessary.

**Sec. 10. Transitional provisions**

(a) On the effective date of this Article, the Chief Justice of the Supreme Court shall become the Chief Justice of Texas. The Presiding Judge and other judges of the Court of Criminal Appeals and associate justices of the Supreme Court shall become justices of the Supreme Court. Each commissioner of the Court of Criminal Appeals shall become a commissioner of the Supreme Court, but when he ceases to hold that position, it shall cease to exist. The officers of the first five justices, other than the Chief Justice, who cease to be members of the Supreme Court after the effective date of this Article shall cease to exist.

(b) Chief justices of the courts of civil appeals shall become chief judges of the courts of appeals; justices of the courts of civil appeals shall become judges of the courts of appeals; each district judge or judge of a criminal district court, domestic relations court, or special juvenile court, shall become a judge of a district court; and each judge of a county court at law, county civil court at law, county court for criminal cases, county probate court, county criminal court, or county court of criminal appeals shall become a judge of a county court at law.

(c) Any participant in a county retirement, disability and death compensation fund who becomes a district judge or judge of a county court at law pursuant to subsection (b) of this section shall have the option of continuing his participation in the county fund or transferring his membership, service credit, and contributions to the state judicial retirement system under such regulations as provided by law.

(d) Judges of the county courts shall become presidents of the county commission; provided, however, that any judge of a county court who is licensed to practice law may, by written notice to the Governor within 30 days from the effective date of this Article, elect to become a judge of a county court at law, and if he does so, the office of president of the county commission shall be vacant and shall be filled by the commission until the next succeeding general election.

(e) No judicial office shall be abolished by the adoption of this Article until the expiration of the term of the person who held the office on the effective date of this Article or until that person ceases to hold the office, whichever occurs first.

(f) All courts, except those authorized by this Article, are hereby abolished, and all matters pending therein shall be transferred to the courts created by or pursuant to this Article. The courts into which such matters are transferred shall assume full jurisdiction of such matters and shall have full power and authority to dispose of them and to execute or otherwise to give effect to all orders, judgments, and decrees issued by the predecessor courts. The courts created pursuant to this Article shall succeed to all records and property of the courts abolished hereby.

(g) Except to the extent inconsistent with the provisions of this Article, all laws and rules of court in force on the effective date of this Article shall continue in effect until superseded as authorized by law.

(h) In the event a transfer or transition has not been provided for by this Article or by law, the Supreme Court shall by rule provide for the orderly transfer or transition.

(i) Members of the Judicial Qualifications Commission on the effective date of this Article shall become members of the Judicial Qualifications Commission created by this Article, and the latter Commission shall succeed to all the functions, powers, duties, and property of its predecessor.

(j) When any subsection of these transitional provisions has been executed, the Supreme Court shall certify that fact to the Secretary of State and thereafter that subsection shall no longer be part of this Constitution.



**AMENDMENT NO. 2**

[This proposition would be submitted to voters simultaneously with the full Article V revision, but as a separate amendment. If approved, it would supersede Sec. 6(a) of the full revision.]

**Section 1. Merit selection of judges**

(a) The provisions of this section shall govern the selection and tenure of all justices of the Supreme Court and judges of the courts of appeals, including the Chief Justice of Texas and the chief judges of the courts of appeals, other provisions of the constitution or statutes of the State of Texas to the contrary notwithstanding, and notwithstanding the provisions of Sec. 6(a) of Article V as proposed by H.J.R. No. — [S.J.R. No. —], 63rd Legislature, Regular Session, 1973.

(b) There is hereby created a Judicial Nominating Commission of seven members, one of whom shall be the Chief Justice of Texas or acting Chief Justice, who shall act as chairman. The other members shall be selected as follows: The board of directors of the State Bar shall appoint a citizen of the state who is licensed to practice law in the state; the Governor, Lieutenant Governor and Speaker of the House of Representatives each shall appoint a citizen of the state who is not licensed to practice law; and the Supreme Court shall appoint one judge of a court of appeals and one district judge.

(c) Terms of office of appointed members of the Judicial Nominating Commission shall be six years, provided that the initial term shall include two two-year terms and two four-year terms, the holders of each to be determined by lot. Vacancies in the offices of appointed members shall be filled by the original appointing authority for the unexpired term.

(d) No member shall hold any other nonjudicial public office or office in a political party, nor be eligible for appointment to a state judicial office during the term to which he was appointed.

(e) Each justice or judge who occupied that office on the effective date of this amendment shall be subject, in the manner provided by law, to approval or rejection at the general election preceding the expiration of the term to which he was elected and every sixth year thereafter.

(f) When any office of justice or judge ceases to be held by the person who held it on the effective date of this amendment, a vacancy in such office shall be filled by the Governor from a list of three nomi-

nees presented to him by the Judicial Nominating Commission. If the Governor fails to make the appointment within sixty days after receiving the list of nominees, the Chief Justice of Texas shall make the appointment. A judge or justice appointed pursuant to this subsection shall be subject, in the manner provided by law, to approval or rejection on a nonpartisan ballot at the first general election held more than ten months after his appointment, and every sixth year thereafter.

(g) Judges of the district courts and county courts at law shall serve six-year terms and shall be selected by nonpartisan election or, if the Legislature so provides, by appointment by the Governor from lists of nominees presented to him by district nominating commissions.



August 30, 1972



CHIEF JUSTICE ROBERT CALVERT  
Favors judicial system reform

## Calvert Says Reform Requires Amendment

By WAYNE JACKSON  
Staff Writer

Chief Justice Robert W. Calvert of the Texas Supreme Court Tuesday called for reform of the judicial system in Texas saying a constitutional amendment is required to obtain necessary changes in the court system.

Speaking at the noon meeting of the Rotary Club of Austin, Calvert reviewed the progress of the 14-member Chief Justice's Task Force for Court Improvement, telling the Rotarians that the proposed revisions will be submitted to the Legislature in January.

One of the main reasons for reform, the chief justice said, was the need to eliminate the backlog of cases facing many courts in Texas.

"The courts are becoming clogged," Calvert said. "It's a shame and disgrace."

According to the chief justice, about 2,000 persons "in Harris County alone" are in jail awaiting trial.

"I don't say that what we propose will eliminate this but it will cut down on it," he explained.

Calvert said that by changing the structure of the court system, the scheduling of cases could be made more flexible, allowing for the assignment of cases to courts which do not have a backlog.

Another facet of the proposed changes would remove the judicial system from the realm of politics, the chief justice told the Rotarians.

The first step would be to elect all judges on a non-partisan ballot, according to Calvert. Presently they are nominated in party primaries and elected in the November general election.

The task force also is calling for the eventual selection of Texas judges under the "merit plan," Calvert explained.

Beginning with appellate court judges and later extending to all judges in the state, the merit plan proposes that judges be appointed by the governor from a list of qualified candidates submitted by a three to five-member commission, Calvert said.

On the expiration of the appointed judge's term, the voters would be asked to decide if he should continue in office, under the proposed plan.

To inform Texas citizens of their proposal the Chief Justice's Task Force is

scheduling a series of six regional conferences around the state this fall, with a state-wide conference set for Austin in November.

"The main purpose is to educate lay people," Calvert noted Tuesday.

Before the proposed constitutional amendment can be adopted, it must be approved by a two-thirds vote of both houses of the legislature and by a majority of Texans casting ballots on the measure.

Calvert said there is a "50-50 chance" that the proposal will become law.

"I think we can get it adopted if we can get it through the legislature," Calvert said.



# Lawyer Suggests Press End Reports of Formally Accused

By CAROLYN BOBO  
Staff Writer

Newspapers should consider the English system, which requires newspapers to stop writing about court proceedings after a person has been formally accused, attorney Frank Maloney told members of the Criminal Law and Procedure section of the Travis County Bar Association Friday. Speaking at a luncheon meeting, Maloney said, "No lawyer ever wants to seek abridgement of a free press. To say any of us ever suggest a limitation on free press rights seems to be cutting off our noses to spite our face."

Maloney, who defended former House Speaker Gus Mutscher in a trial which received a change of venue because of massive media coverage, said attorneys "appreciate a free press — particularly when it's in position to criticize oppression."

Maloney said he disliked the press's abuse of freedom granted by the Supreme Court decision in *Sullivan vs. New York Times*, which gives the news media the right to publish libelous matter concerning a candidate for, or holder of a public office, provided the publi-

cation is without malice and the falseness arises in good faith and not by design.

Maloney said he disliked "the abuse of liberties given by that case," and said media representatives "are under a mandate to write responsibly and utilize that test of libel laws — if you believe what you write is reasonably true and accurate, write it; on the other hand, if no reasonable person would believe it, you're subject to libel."

Maloney said it is "perhaps more colorful to give opinions in a factual story, but most people feel if it's not true it wouldn't be in the newspaper, otherwise someone would sue the newspaper."

Maloney said he "doubted seriously" if *Sullivan vs. New York Times*, will be overruled.

## Royal Air Stories

LONDON (AP) — The fliers of four royal families—including the 85-year-old Infante Don Alfonso of Spain who still pilots his own plane—are combining efforts for a book about royal exploits in the air. The other flying enthusiasts are from Britain, the Netherlands and Thailand.

"so it seems to me we ought to consider the English system — once a person is formally accused, the press is under a mandate to stop writing about him, or they're subject to contempt."

Maloney said there is a "severe conflict" between the First and Sixth Amendments, granting freedom of the press — "which has been translated to the people's right to know" — and providing a fair and impartial jury trial.

He said it is "extremely difficult to try a case" that has been highly publicized.

"I think I've given the press enough of what they want to hear," Maloney said, then discussed proposed amendments to the Texas Constitution, which will, he said, "change the courts of Texas."

The amendments, to be officially announced Tuesday, call for elimination of all lower courts, leaving Texas with a Supreme Court, Court of Civil Appeals, and Courts of General Session. The revamping is to be introduced in the January, 1973 session of the Texas Legislature, Maloney said, and there are numerous proposals and alternatives to be finalized before then.



May 30, 1972

Talked to Ray Holbrook (Galveston County Judge) see clippings. He said that Janice May was at the meeting and made a statement about League position on Judicial reform, but was uncertain as to what points she covered. Whether Janice was there because the state office or Chris asked her to attend, or the Austin president called us, or she went on her own I do not know.

Does the League need to do ~~ax~~ follow up in this matter? I'm sure Calvert is familiar with League position, but should a letter stating League Consensus, etc. go to him and the 30 members of the advisory panel? Should the League ask to be on the agenda for their meeting in the Fall. Is there anything else we can do? If you think a letter is advisable I will ~~dx~~ draft one and send it to the office for copies to be made. Chris, do you have the names and addresses of this group or can you get them. Perhaps, you think we should ~~do~~ nothing. Let me know.

Betty

✓ Checked up Janine May - 926-7385  
✓ Write letter to Robert





# The Galveston Daily News



Texas' Oldest Newspaper, Established in 1842, Dedicated To The Growth and Progress of Galveston and All of Galveston County

VOL. 131, NO. 46

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GALVESTON, TEXAS, FRIDAY MORNING, MAY 26, 1972

The County's Only 7-Day Paper

Single Copy 10c

## Holbrook In Favor Of Court Overhaul, But Not Through Appointments

NEWS AUSTIN BUREAU  
AUSTIN — Texas' court system needs to be overhauled, but appointing local judges is not the way to do it, Galveston County Judge Ray Holbrook told the Chief Justice's task force on court improvement here Thursday.

Holbrook, a member of a 30-man advisory panel to the committee headed by Texas Supreme Court Chief Justice Robert

Calvert, said he would "very strongly" oppose any attempt to make district court and county court-at-law posts appointive.

He also said he would fight any effort to make elections for those courts non-partisan, as he felt both moves would tend to remove local control over the courts.

"I would not oppose the merit (or appointment) system for appellate judges; (but) I would

oppose very strongly the merit system for trial judges; and I think they ought to run on a party basis," Holbrook said.

Later, in an interview after the meeting, Holbrook said he would also oppose a task force proposal to make the office of district clerk appointive.

"It seems like they should not be (appointed) unless you're going to do a wholesale constitutional

revision of all the courthouse offices," he said, adding he felt it would be "ridiculous to say the district clerk should be appointed and keep an elected treasurer."

Proponents of the merit or appointive system and the district clerk proposal argue that making the offices appointive or non-partisan would remove politics from the courtroom.

Holbrook, however, said he

could not see any justification for the idea as electing judges and court officials, like the district clerk, keeps them close to the public and its wishes. "It completely gets away from the federal system where they try to act like they're a king," he said.

Federal judges are appointed by the president for life, subject only to the approval of the U. S. Senate. The merit system under

consideration by the chief justice's task force would not go that far. After a certain number of years (now set at six in the plan) the judges would have to stand for re-election. The voting would be on a simple "yes" he should stay in office, "no" he should not, basis, with no opponent in the race.

Holbrook said he also objected to an idea by State Rep. DeWitt

Hale of Corpus Christi, chairman of the judiciary committee of the Texas House, which would set up only 13 district court districts in the state with judges running for election district-wide. At the present time district judges are elected from smaller areas of the state. For example, Galveston County has three overlapping district court districts.

Holbrook explained his

objection to Hale's idea on the grounds that, in the district Galveston would fall into Houston would be the dominate force and all judges elected under that plan "would all end up from Harris County."

At the same time, Holbrook said he favored the idea of abolishing separate district court districts

See HOLBROOK, Page 8A

## Holbrook Favors Court Overhaul

(Continued From Page 1)

for each judge and putting as many judges as needed in one district.

He said he also was in favor of abolishing the Justice of the Peace and Municipal courts called for in the task force's proposal and replacing them and the county court-at-law courts with what the task force calls "a court of general sessions." However, he said he would keep the name of county court-at-law.

Under the plan, the jps and municipal court judges would be replaced with appointed magistrates who would handle administrative details and non-contested cases for the judge of the court. Jps are presently elected; municipal judges are appointed.

Holbrook has been a long-time supporter of jp court reform, and Thursday he said he definitely felt the magistrate idea was a valid proposal "as long as there are

magistrates who sit in the various areas of the county."

Holbrook also indicated that he would support the idea of abolishing special courts of limited jurisdiction, like juvenile, domestic relations and criminal district courts, which is called for in the plan.

Under the plan, those courts would become regular district courts, although judges holding the specialized court posts might continue to handle the majority of cases falling into their speciality area. The idea behind the proposal, which proponents say has the support of all the 30 judges now holding special court posts in the state, would be to expand their jurisdiction to all kinds of legal matters to take the load off the regular district courts.

The meeting Thursday was one of a series leading towards the preparation of a court-overhaul plan to be presented to the Texas Legislature in 1973.



## TEXAS CONSTITUTIONAL REVISION

Well, it actually happened....a constitutional amendment proposing that the 63rd Legislature act as a Constitutional Convention. H.J.R. 61 by Nelson Wolff of San Antonio was amended and reported favorably on May 13. On May 18 it passed the House with Committee amendment and two floor amendments adopted. Betty Conner, State Resource Chairman, will fill you in on the amendments and what the resolution proposes in full at a later date.

The resolution passed the Senate on May 24. If it is signed by the Governor, we will have a chance to vote on it in the election to be held November 7, 1972. The State Board will consider what direction it will take and you will hear more about this later.

Another amendment to be voted on in the same election will be H.J.R. 68 by Baker of Fort Stockton. This resolution relates to proposing amendments to the Constitution in a more readable form for the voters and regards the method of publishing amendments in the newspapers. It passed the Senate May 28 and is not yet signed by the governor.

Also of interest in the TCR line is the adoption on May 29 of H.C.R. 83, establishing a joint interim committee for a constitutions funds study.

Testimony from the League was presented by Janice May on H.J.R. 61.

Two Senate bills dealing with TCR were also introduced and one House Joint Resolution, but no action was taken on them: H.J.R. 88 by Jones of Taylor; S.B. 723 by Mauzy, prescribing the process for the adoption of a new state Constitution; and S.B. 1033 by Schwartz, creating the Texas Constitution Revision Commission, which was introduced on May 24.

JUDICIAL REFORM

H.B. 168 by Williams. Removal of justices of the peace for incompetency. Signed by the governor May 17. Supported by League.

S.J.R. 43 by Snelson. Merit Plan for Selection of Judges in Texas, which was supported by the League was stalled in the Senate. A similar resolution, H.J.R. 74 by Earthman, never came out of committee.

Of interest in the judicial field was the creation of two interim committees not yet signed by the Governor:

H.C.R. 184 - Creating an Interim Committee to Study the Texas Penal Code. Adopted May 31.  
H.S.R. 527 - Creating an interim committee to study judicial reform. Adopted May 29.

Testified on S.J.R. 43  
1 TFA by special mailing  
2 TFAs via Newsletters



## TEXAS EXECUTIVE DEPARTMENT

S.J.R. 1 Creighton. Four year terms for Governor, Lt. Governor, Attorney-General, etc. We really thought that this resolution would not pass, but lo and behold! it was brought to the floor on the last day of the session and passed in the House with a final vote of 109-38. If signed by the Governor, we will have a chance to vote on it in the November 7, 1972 election.

S.B. 627 by Patman. Organization of the Executive Branch of the Government. Ran into trouble and was filibustered by Sen. Jim Bates of Edinburg. The bill was laid on the table subject to call on May 24. Chances of it being called from the table were remote. An interesting note here is that Tom Craddick of Midland, who had a similar bill in the House (H.B. 1023) which had never come out of committee, also sponsored a resolution in the Special Session....H.S.R. 20 - creating an interim committee on Organization of the Executive Branch. It was reported favorably from the House Committee on Resolutions and Interim Activities and adopted June 4.

S.J.R. 23 by McKool. Providing that the office of Secretary of State be made an elective position, which the League opposed, came close to passing..... it was reported favorably out of the House Const. Amend. Committee, but never came to the floor for a vote.

H.J.R. 92 by Traeger. Providing for an orderly procedure for the preparation of a state budget, which the League opposed, died in subcommittee.

H.S.R. 466 by Floyd and Short. Creating an interim committee to study State Boards, Commissions, Agencies and Regulatory Bodies, was adopted May 31.

Followed 4 House and Senate Joint Resolutions - Opposed 2, FYI 2  
2 Senate and House bills - Supported both  
1 House Concurrent resolution - opposed  
2 House Simple Resolutions - FYI

Testified once (SB 627)  
1 special TFA (SB 627)  
2 TFAs via Newsletters



# Calvert Suggests New State Plan

Capitol Staff

A 14-member task force headed by the Chief Justice of the Texas Supreme Court Monday proposed an amendment to the state constitution which would amount to a complete overhaul of the state court system.

Chief Justice Robert W. Calvert said, "The proposal is designed to speed the disposition of all cases, including criminal appeals; streamline the court system; assure that every contested case is heard by a qualified lawyer-judge; reduce overlapping jurisdiction and multiple appeals; and provide for modern, efficient court administration."

Judge Calvert said the Chief Justice's Task Force for Court Improvement would submit the proposed new constitutional article to the 1973 regular session of the legislature in hopes the lawmakers would pass it in time for submission to the voters in 1973 and 1974.

At the heart of the proposal is a merger of the state's two highest courts into a single supreme court for both civil and criminal appeals. Presently the supreme court handles only civil appeals and criminal cases go to the court of criminal appeals.

Elsewhere in the task force's proposal:

— The 14 courts of civil appeals would be renamed courts of appeals and would also take on criminal as well as civil appeals. Decisions of these courts would be final "in all but the most important cases."

— At the district-court level, overlapping districts would be merged and metropolitan counties would each be given a single district court, with as many judges as necessary.

— In one of the most sweeping changes, all courts below the district-court level — such as justice courts, municipal courts and county courts-at-law — would be replaced with a new system of county-level courts with judges who would be lawyers and magistrates to handle non-judicial functions.

— The chief justice of the supreme court, renamed the Chief Justice of Texas, would be the administrative head of the entire system, with authority to transfer cases and judges as necessary to keep the courts running smoothly. Day-to-day administration would be carried out by a statewide court administrator and his deputies.

— All judges would be elected in non-partisan elections for six-year terms, and the voters would be given the option of adopting the Missouri plan, under which the governor appoints each judge to his first

term and he must be approved by the voters for each succeeding term.

— All judges would be required to be lawyers, they could not practice law or run for another office while serving as judges and they would have to retire at age 75.

The proposal is the most comprehensive judicial-reform plan laid at the legislature's door since the Texas Civil Judicial Council and the State Bar last proposed the merger of the Supreme Court and the Court of Criminal Appeals in the early 1950s.

Judge Calvert expressed confidence that the proposal would receive legislative approval, saying that "The time is good — reform in government is being widely accepted."

"We hope this time," he said, "to be able to bring to bear enough interest from widely divergent groups to indicate to the legislature that the least they could do would be to let the people decide whether they want these reforms."

Sen. Charles Herring of Austin, a member of the task force, said he thought "the public is a little ahead of the legislature in recognizing that a judicial system formulated decades ago cannot meet the needs of present-day society. The public is complaining about our court system in many areas and now is the time to give them a chance."

The task force will meet again May 25 to listen to the ideas of a 30-member advisory committee "composed primarily of representatives of groups that will be affected by the revision" — judges, lawyers, professors, newspapermen, representatives of industry and labor.

tal



May 15, 1972

MEMORANDUM FROM:

*League of Women Voters of Texas*

DICKINSON PLAZA CENTER • DICKINSON, TEXAS 77539

Chris,

Thanks for the notice about the Civil Judicial Council. Unfortunately Friday is already a busy day with meetings for me, and I will not be able to be there.

I am going to call the Austin President and see if she can get someone to cover the Council and get a copy of the proposals for me.

Betty



TEXAS CONSTITUTIONAL REVISION

Bills that League supported that passed:

HJR 61 - by Wolff. 63rd Legislature to Act as Constitutional Convention. \*  
(SCR39)

\* Pursuant to Attorney General's Opinion M-874, dated 5/25/71, the Governor does not have constitutional authority to veto proposed amendments to the Constitution. With the exception of those already signed, all Joint Resolutions adopted were filed directly with the Secretary of State rather than going to the Governor for signature.

Failed: -0-

Amendments of Interest (FYI) that passed:

SJR 21 - Allowing submission of constitutional amendments in special sessions.  
(Defeated in May 18 election.)

HJR 68 by Baker. Relating to proposing amendments to the Constitution.  
(To be voted in November 7, 1972 election.) - Passed.

Interim Committees Created by 62nd Legislature

H.C.R. 83 by Clayton. Joint Interim Constitutional Fund Study.

JUDICIAL REFORM

Bills that League supported that passed:

HB 168 by Williams. Removal of Justices of Peace for Incompetency  
Signed by Governor May 17.

Bills that League supported that failed:

SJR 43 by Snelson. Merit Plan for Selection of Judges  
(HJR 74)

Interim Committees Created

H.C.R. 184 by Calhoun. Interim Committee to Study Texas Penal Code.

H.S.R. 527 Interim Committee to Study Judicial Reform.



TEXAS CONSTITUTIONAL REVISION

May 31, 1971

- ✓ H.J.R. 21 Price. Allowing submission of constitutional amendments in special sessions. No. 2 on May 18 ballot. Failed. FYI  
*Defeated on May 18 ballot. (Amendment No. 2)*
- ✓ H.J.R. 61 Wolff. Sixty-third Legislature to act as Constitutional Convention. 5/13/71 Amended and committee reported favorably. 5/18/71 passed House with Committee amendment and two floor amendments adopted. Rec'd in Senate and referred to Cmte on Const. Amend. 5/19/71. Passed Senate 5/24/71. ~~Not yet signed~~ *to Sec. of State*  
*Election to be held Nov. 7, 1972.* SUPPORT
- S.J.R. 52 Wilson. Same as HJR 61 by Wolff. FYI
- H.J.R. 88 Jones of Taylor. Constitutional Revision. FYI  
Relating to
- ✓ H.J.R. 68 Baker. Proposing amendments to the Constitution. FYI  
Passed House with one floor amendment adopted.  
Reported from Senate Const. Amend. Cmte 5/27/71. Passed 5/28/71.  
~~Not yet signed~~ *Election to be held Nov. 7, 1972.*
- S.B. 723 Mauzy. Prescribing the process for the adoption of a new state Constitution. FYI
- ✓ H.C.R. 83 *by Clayton* Establishing a joint interim constitutional funds study committee. FYI  
Read and adopted in Senate 5/29/71.
- S.B. 1033 Schwartz. Creating the Texas Constitution Revision Commission (State Dept. & Inst.) Introduced 5/24/71.

Judicial Reform

- ✓ H.B. 168 Williams. Removal of justices of the peace for incompetency. SUPPORT  
Passed Senate 5/21/71. Signed by Governor 5/17/71.
- S.J.R. 43 Snelson. Merit Plan for Selection of Judges in Texas. SUPPORT  
Stalled in Senate.
- H.J.R. 74 Earthman. Merit Plan for Selection of Judges in Texas SUPPORT  
Never came out of committee.
- S.B. 796 Wallace. Jurisdiction of district court and to trial by jury in probate matters. FYI
- ✓ H.B. 595 Murray. Providing procedures to be employed by the State Judicial Qualifications Commission in the exercise of its power to censure. FYI  
*Passed but not yet signed. 6/8/71. (Should have been attached to Hale's bill?)*
- H.B. 1375 Hale. Relating to the nomination and nonpartisan election of to trial judges and regulation of those elections. FYI *HB 703*  
*did not pass.*
- ✓ H.C.R. 184 Creating an Interim Committee to Study the Texas Penal Code. FYI  
Adopted 5/31/71.
- ✓ H.S.R. 527 Hale. Creating an interim committee to study judicial reform. FYI  
Adopted 5/29/71.



HJR 21 Altering the procedure for amending the sonstitution.

F4I

This bill deletes the words, "at any biennial session" from the present text of the constitution; and thus provides that the legislature may propose a constitutional amendment at any session of the legislative. I feel the League could support this change because it would be in line with our position on annual sessions. However, it does make amending the constitution slightly easier, and I'm sure some League members would oppose it for this reason. I favor taking no action on this bill because it seems unimportant.

Borg - 2/9/71  
cc: So, Bobis, May



Feb. 14, 1971

To: Bury cc: May, ~~Burke~~, Holmes  
From: Brasher

TCR

I failed to ask if H.J.R. 21 by Price, allowing submission of constitutional amendments in special sessions, fell under the TCR item.

It will be No. 2 on the May 18 ballot.

C  
O  
P  
Y

Put in Newsletter  
as 79 I - *[signature]*

Repealed on May 18 ballot -

®



AMERICAN JUDICATURE SOCIETY  
TO PROMOTE THE EFFICIENT ADMINISTRATION OF JUSTICE



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TREASURER: ROBERT H. HALL

June 29, 1971

I thought you would be interested in this.

W. St. J. G.

Honorable W. St. John Garwood  
P.O. Box 14 904 AUSTIN ANT. BANK BLDG.,  
Austin, Texas 78761-75201

Dear Judge Garwood:

Thanks very much for your June 21 memorandum regarding SJR 43. We appreciate very much that comprehensive summary of the situation to date and are actually gratified at the amount of support for merit selection which showed up. If this experience highlights anything however it is that the only hope of getting such a measure through is mobilization of citizen support in a big way. We of the American Judicature Society have talked with representatives of the State Bar of Texas and of the Texas Judiciary for a couple of years about the desirability of a second Texas citizens conference, and six months ago we thought this was going to be the year it would take place. The most constructive thing to do now regarding judicial selection in Texas, and minor courts as well, is to get together with the new leadership of the state bar following the annual meeting and schedule a well organized well financed citizens conference sometime in 1972.

With very best regards.

Sincerely,

Executive Director

GRW:st



MEMORANDUM FROM:

*League of Women Voters of Texas*

DICKINSON PLAZA CENTER • DICKINSON, TEXAS 77539

TO: BRASHER, LANCASTER, STATE OFFICE, MAY  
FROM: CONNER

Sorry to be so long in answering, haven't been hibernating really! The League has just helped win an election in Galveston which not only took all our time and money, but included a campaign noted for lies, accusations, and some first class political mud slinging.. Not only has the League emerged with it's Halo intact, but shining bright! I hope that all the citizens who were so freee with their praise of the League last week, will be accordingly free with their donations for our Finance Drive next month. Anyway, I have taken one day to rest on my laurels, one day to assure my Husband that he had a living, breathing wife, not just a phantom who taped a note on the oven "T.V. Dinner inside, do not let it burn", one day to clean an extremely dirty house, one day to find some spring clothes for my children, "the 9 year old was making loud complaints about having to wear wool skirts and sweaters in 70 degree weather", and one day to help the new president conduct an orientation meeting for new Board Members. Lo and behold, and finally a functioning, but terrible typist, State Board Member has emerged. Promise to answer in a shorter time from now on.

Betty



THE NEXT THREE BILLS ARE ALL CONCERNED WITH THE NOMINATION AND ELECTION OF JUDGES OF VARIOUS COURTS IN TEXAS. AS YOU READ THE ANALYSIS PLEASE KEEP IN MIND THE POSITION ON JUDICIAL SELECTION AND TENURE ADOPTED IN 1964.

"MODIFICATION OF THE PRESENT APPELLATE JUDGE SYSTEM TO PROVIDE FOR: SELECTION BY A COMBINATION OF COMMISSION NOMINATION, EXECUTIVE APPOINTMENT, AND NONCOMPETITIVE AND NONPARTISAN ELECTIONS, COMPULSORY RETIREMENT; AND NEW AND EFFECTIVE REMOVAL PROCEDURES.

SJR-43  
HJR-74  
HB 1375

SJR 43 -----Constitutional amendment providing for appointment of appellate judges by governor from a list of candidates submitted by a court nominating commission; providing six year terms; providing for elections on the issue of retaining the judges in office and authorizing the Legislature to extend this method of selection and tenure to judges of district and statutory courts.

Selection and Tenure of Judges: Court Nominating Commission of 7 members, who are citizens of state and not holders of or candidates for public office or employed by any political party. 2 appointed by Governor, 1 appointed by Lt Governor, 1 by Speaker of House, one by Chief Justice of Supreme Court, 1 by Presiding Judge of Court of Criminal Appeals, 1 by majority of Board of Directors of State Bar of Texas. Vacancies for unexpired terms to be filled by the original appointing authority and all appointees shall be confirmed by the Senate. 7 initial members appointed for terms beginning the first day of January following adoption of amendment. Regular terms are six years, and until successors qualified. Terms of 2 of initial members for 2 years, 2 for 4 years, 3 for 6 years. Commission elect chairman from its membership. Meeting be held at times and places designated by chairman or majority of commission. Commission shall act by majority vote of membership. Legislature provides appropriations, including compensation, if any, to members.

When vacancy occurs in Supreme Court, Court of Criminal Appeals or Court of Civil Appeals, Commission submits to Governor 3 legally qualified nominees not exceeding 65 and not having served on the Commission during the preceding 2 years. Governor shall appoint for term expiring the first day of January following the first general election after appointment, or if appointment made less than 6 months preceding general election, then for a term expiring the first day of January following the second general election after such appointment. If Governor fails to make an appointment within 60 days from the day it is presented to him, then appointment made by majority of Commission..

From Conner



Not less than 60 day before the last general election before expiration of term, each Judge may file with Secretary of State a declaration of candidacy to succeed himself. If no declaration is filed, the office becomes vacant upon end of his term and shall be filled by nomination and appointment as provided.

If declaration is filed, the name of candidate shall be submitted to voters of state or District by separate ballot, or upon general ballot without party designation.

If majority of voters vote against retention of candidate, then vacancy exists at end of term to be filled by nomination and appointment.. If majority vote in favor of candidate, shall remain in office for term of 6 years beginning on the first day of following January.

Provision of the Section may be extended by Legislature to include the selection and tenure of Judges of the District Courts and all courts created by statute with any of the jurisdiction of district courts and county courts.

This constitutional amendment shall be submitted to a vote at an election to be held on the first Tuesday after the first Monday in Nov., 1972 at which the ballots shall be printed to provide for voting for or against the proposition.

COMMENT: I like this bill. Provides for noncompetitive and nonpartisan election. Also selection by combination of nomination and appointment. Nothing included about retirement and effective removal procedure, but you cannot have everything! Like the fact that some of the commission will be appointed by working Judges and lawyers, as they would probably have a better idea of qualified people in this field. League should support this bill, question is do we have time and women power to do it? Is bill still in committee? Perhaps Leagues with Senators on the committee could write to them. Do you know of any opposition to the bill?



4/20/71

W. St. John Garwood • 204 Austin National Bank Bldg. • GR 8-6421 • Austin, Texas 78701

Dear Mrs. Brasher

Many thanks for yours of the 17th, just now received.

I forget whether I sent you the two attached articles by Richard Dinkels. Sen. Smelson is giving copies of the 4/18 one to every senator, and I am now getting in a few copies of letters (additional ones) from our 16 former State Bar presidents to the various Senators-in and not on the Committee on Const. Amendments.

The Circulars to the FAR membership will be of great help - especially now that we are before the whole Senate.

I plan to try to speak personally to Sen. Jordan this week. FAR support of SJR 43 should be especially helpful with her.

My hope enjoyed very much being with



you. She's a League member and very  
interested in all you are doing.

Please keep me posted - especially when  
I can help.

The FWW Education Fund trustees meet  
next Friday, and I plan to attend.

Best wishes

Arthur Samuel

Mrs Thomas Beadles  
San Marcos



Sunday, April 18, 1971

The Dallas Morning News



## Richard Morehead

### Judicial Reforms and the Laymen

Austin Bureau of The News

AUSTIN — Great judicial reforms are brought about by laymen — lawyers often oppose them — Texas senators were told the other evening by an informed citizen of Kansas City, Mo.

THE VISITOR, Paul Van Osdol, has nothing against lawyers. In fact he is one. As a youth, he spent much of his time helping his father campaign for the office of trial judge, attending box suppers, political rallies and similar events which took up about eight months of the judge's time each election year.

Van Osdol was here urging Texans to adopt Missouri's non-partisan method of choosing appellate judges and those in the big cities where voters are least likely to know the candidates. The visitor has served on his state's commission which nominates three persons for any court vacancy which occurs, and the governor chooses one of the three.

#### Impresses Members

Explaining the so-called "Missouri Plan" to outsiders is a hobby of Van Osdol, and members of the Texas Senate committee on constitutional amendments were impressed by his presentation, along with the endorsements of Chief Justice Robert Calvert of the Texas Supreme Court and others.

Missouri originated the system among states in 1940, over the objection of many lawyers. The campaign to get the courts out of politics was conducted largely by laymen (and women). Some lawyers worked hard for the change, but more tried to stop it.

## Sunday Showcase

Missouri voters several times showed they like its operation.

Since 1940, the plan has attracted wide attention. Twenty states now use this selection method and 13 others have it under consideration.

Sen. W. E. (Pete) Snelson of Midland, an advertising man and minus a law degree, is sponsoring the measure for Texas. The committee, headed by Sen. O. H. (Ike) Harris of Dallas, a lawyer, marked a milestone in the effort to adopt the reform by giving it a favorable report. This still is a long way from enactment, but it represents progress over the reception by previous Texas legislatures which ignored the proposition, beyond having the resolution introduced.

FOR MORE THAN two decades, the change has been urged by the American Bar Association, Texas Civil Judicial Council, State Bar Committee, and others.

Lawyers who help to elect judges like to keep it that way, because it gives them influence in court. Lawyers in the Legislature, being human political creatures, may

favor the present system even more than other attorneys. The horror of a practicing lawyer is to support a losing judicial candidate and later having to practice in the winner's court.

SNELSON'S PROPOSAL, if approved by the Legislature and public, would abolish direct election of all state appellate judges, retaining only a requirement to run on a non-partisan ballot every six years. This means voters could remove a judge (a safety value against the ills of lifetime appointment), but they wouldn't have the responsibility for selecting his successor. More informed persons would do this.

The Texas Legislature would be authorized to extend the non-political selection to district judges if it desired.

#### Adverse Effects

The rising strength of the Republican party in Texas is getting Democratic judges interested in making the change. Judges have long felt the adverse effects of having to campaign for an office where no real issue could exist except the qualifications of individual candidates. Raising large campaign funds and being beholden to the contributors is a bad influence, and wearing party labels should have no standing in court.

Texas judges must look to their political ties, however, fearing the fate of one Missouri Supreme Court judge.

"I was elected to the Supreme Court because Woodrow Wilson promised to keep us out of World War One," the Missourian recalled. "I was defeated for re-election because he failed to keep us out of the war."





## Austin Wire

# College Walks May Be Taboo

Austin Bureau of The News

AUSTIN — State-supported colleges and universities must have written policies regarding faculty members granting "walks" to students, or being absent otherwise from the classroom under a bill approved Wednesday in the House.

The measure also would restrict state payments for sabbatical leave for faculty members to one year at half-salary or six months at full salary.

The bill will go to the Senate for consideration after receiving final action in the House.

Reps. Delwin Jones of Lubbock and Dean Cobb of Dumas sponsored the bill. Legislatures in several states have been considering faculty absence policies, partly as a result of some teachers encouraging students to leave class to participate in demonstrations.

In discussing the sabbatical policy, Cobb said that 67 per cent of all full professors at the University of Texas do not teach any classes, and only one in five full professors teach more than one class.

The bill calls for governing boards to file their written policies at a "central" place, such as the State Coordinating Board.

THE SENATE Committee on Constitutional amendments reported favorably a proposal to change Texas' system of selecting appellate judges, based on the so-called "Missouri Plan."

Paul Van Osdol, Kansas City attorney who formerly served on the Missouri commission which nominated judges for ap-

pointment by the governor, testified for the resolution of Sen. W. E. Sealson of Midland. Before Missouri adopted the plan in 1940, appellate judges had regularly been unseated by turnovers in the 2-party political system, Van Osdol reported.

Also speaking for the Texas proposal were Chief Justice Robert Calvert and former Gov.-Associate Justice Price Daniel of the State Supreme Court; W. St. John Garwood, president of Texas Civil Judicial Council; and Dr. Janice May, University of Texas government teacher who represented the Texas League of Women Voters.

No opposition to the change was voiced at the committee meeting.

Byron Fullerton, Republican candidate for lieutenant governor in 1970, is recuperating in an Austin hospital from a mild heart attack suffered about one week ago. Fullerton is associate dean of the University of Texas Law School.

THE STATE CAPITOL will be closed to visitors Sunday when an antiwar demonstration is scheduled to be held outside the building.

Senate Sergeant at Arms Tommy Townsend announced that uniformed guards will be at all entrances of the Capitol from 11 a.m. until 6 p.m. A University of Texas student group plans a march from the campus to the Capitol Sunday afternoon, part of the war protest movement calling for demonstrations in Washington on April 24.



C  
O  
P  
Y

April 17, 1971  
1408 Highland Drive  
San Marcos, Texas 78666

SJR 43 - (Swelson)

The Honorable Judge W. St. John Garwood  
204 Austin National Bank Building  
Austin, Texas 78701

Dear Judge Garwood:

I have received your communication of April 15 and thank you for your offer to pay for postage, circulars, etc. However, this will not be necessary as our procedure for pushing legislation we support is taken care of by sending Times for Action and asking for support through our Legislative Newsletters. (We have a budget for this.)

I am enclosing the Time for Action that went out on S.J.R. 43 before we knew the hearing had been postponed from April 6 to April 13. I am now in the process of getting out a Newsletter urging support for S.J.R. 43. I will mail you a copy of this also.

I thought the presentation went very well with those members present. However, many members of the Committee were not present, and those are the ones we will have to worry about.

It was a pleasure meeting your lovely wife on Tuesday evening. Please give her my regards.

If you have any more ideas or more information as to how to promote S.J.R. 43, please pass this along to me or to Janice May.

Sincerely,

Mrs. Thomas L. Brasher  
Legislative Chairman

Enc. 1

bc: SO, Lancaster, May, Conner



4/15/71  
Dear Mrs. Brasher - If the League can do anything in this same direction, it would certainly be helpful. I will be glad to pay the cost of postage, circulars etc. I am sending a similar note to Janice May along with copy of this below letter. Cordially W. St. John



TEXAS CIVIL JUDICIAL COUNCIL

CAPITOL STATION - AUSTIN, TEXAS

April 15, 1971

204 Austin National  
Bank Building  
Austin, Texas 78701

OFFICE: SUPREME COURT  
BUILDING

SJR 43 (Snelson)

Dear (To ex-State Bar Presidents)

Excuse this second "shot-gun" letter to you 16 former State Bar Presidents, whose aid has already been so helpful.

Last Tuesday night the Senate Committee on Constitutional Amendments approved SJR 43. This is the nearest step to enactment of the "Merit Plan" ever taken in Texas, although not a long step.

Testifying for the Resolution were Chief Justice Calvert, Justice Daniel, Dr. Janice May (representing the Texas League of Women Voters), myself and a fine Missouri lawyer, Paul Van Osdol of Kansas City, whom I induced to fly down and certify to the good Missouri experience.

Your letter and those of the other 15 Bar leaders were introduced by me, as were also letters from law deans Page Keeton, John Neibel (University of Houston), Richard B. Amandes (Texas Tech) and Angus McSwain (Baylor) and from President Abner McCall of Baylor.

Now the Resolution will come before the whole Senate--with the odds obviously against the necessary 2/3 favorable vote. (The original Judicial Qualifications Commission amendment passed by only one vote!).

I am doing most of the "leg-work" by myself and have no "organization". My secretary is in the hospital! And I don't know any group to contact for further efforts than you 16 gentlemen, aside from the dear Texas League of Women Voters. Alas! time is "of the essence".

If you feel so inclined, will you try to drum up some letters to particular Senators from people--and not necessarily lawyers--whose views might possibly be influential. I imagine that letters from newspaper editors would be quite helpful. Additional letters from yourself to particular Senators would not be wasted. Send me copies of letters, if practical. ✓

You have a list of the abovementioned Committee, and my best guess is that the letters should preferably go to others than these, although it will doubtless help some to write even to Committee members--including Chairman Wilson, who says he is against the Resolution. ✓

Faithfully yours,

W. St. John Garwood

W. St. John Garwood



STATEMENT ON BEHALF OF THE LEAGUE OF WOMEN VOTERS OF TEXAS BY MRS. JANICE  
C. MAY BEFORE THE SENATE CONSTITUTIONAL AMENDMENTS COMMITTEE RE SJR 43 by  
SNELSON 4-13-71

The League of Women Voters of Texas has supported the principles on which SJR 43 is based since 1964. Two years ago the League supported the proposal of the Texas Constitutional Revision Commission for judicial selection, which was very similar to SJR 43.

There are many reasons why the League favors SJR 43, but to be brief I will mention two.

First, the League believes that the nominating commission provided for in SJR 43 is a very desirable innovation. The present Texas judicial selection system relies heavily upon gubernatorial appointments to fill vacancies; some two-thirds of our district and appellate judges initially gain appointment to the bench in this manner. Following appointment, election is usually a shoo-in. The proposed nominating commission would provide a desirable check on the Governor, enlarging the pool of qualified candidates from which he chooses, which is now necessarily circumscribed for political and personal reasons.

Second, the League favors the non-partisan and non-competitive elections provided for in SJR 43. This adds a check by the people not possible under a purely appointive system; and it also avoids the undesirable consequences of partisan and competitive elections. Among these is the need for political campaigning by judicial candidates, which will increase as Texas moves toward a two-party system, with all that this involves in soliciting campaign funds from law firms and others, winning and losing as party fortunes change, and so on. As a matter of principle, the League believes that partisan and competitive elections are not the appropriate method for attaining the ideal of an impartial and independent judiciary.

Thank you for your attention.





April 14, 1971

The Honorable William Moore  
The Senate  
Austin, Texas 78711

RE: S.J.R. 43 Relating to appointment of appellate judges

Dear Mr. Moore:

We urge you to support this resolution for a constitutional amendment adopting the so-called "Merit" Plan of selection and tenure for all Texas appellate judges.

As a member of the Senate Committee on Constitutional Amendments, we hope you will work to get this resolution passed out of committee favorably and will continue to support it on the floor.

Thank you for your time and consideration in this matter.

Sincerely yours,

Mrs. C. A. Phillips, President  
1704 Glade  
College Station, Texas 77840

gv

®



April 10, 1971

To: May cc: SO, Lancaster, Conner  
From: Brasher

C  
O  
P  
Y

Janice, hope you had a nice trip to California. The hearing on SJR 43 by Snelson was postponed to this coming Tuesday evening. I dropped by Snelson's office on Monday, and was told that it was postponed because there probably would not be time enough to bring it up for the hearing. Will check on Monday to see what time and where the hearing will be. Will also return your materials, as I am sure you will want to present the testimony yourself now. Would also like to get your comments on the Constitutional Revision bills which have been discussed by Conner and Lancaster.

Guess you know that the attorney general's office did file notice that it will appeal the federal court ruling regarding the state's voter registration law. Incidentally, the name is Beare v. Smith.

Also, if you think it pertinent, I will include an FYI on H.B. 559 (VR) if you will send me the analysis for the Newsletter.

®



STATEMENT ON BEHALF OF THE LEAGUE OF WOMEN VOTERS OF TEXAS BY MRS. THOMAS BRASHER, LEGISLATIVE CHAIRMAN, BEFORE THE SENATE CONSTITUTIONAL AMENDMENTS COMMITTEE RE SJR 43 BY SNELSON. 4-6-71

The League of Women Voters of Texas has supported the principles on which SJR 43 is based since 1964. Two years ago the League supported the proposal of the Texas Constitutional Revision Commission for judicial selection, which was very similar to SJR 43.

There are many reasons why we favor a change in ~~present~~ the present system of selecting judges in Texas, but to be brief I will talk about two.

First, we believe that the present system gives the Governor too much leeway in selecting judges to fill vacancies. We favor the provisions of SJR 43 that set up a nominating commission to screen candidates and to propose names to the Governor. Presently, most district and appellate judges reach the bench initially by being appointed by the Governor to fill a vacancy. There are too few checks on the Governor at this point in the judicial selection process. Many qualified persons are automatically excluded. For example, no Republican has ever been appointed.

Second, the League favors the non-partisan and non-competitive elections provided for by SJR 43. This adds a check by the people not possible under a purely appointive system; and it also avoids many undesirable consequences of partisan and competitive elections. We expect our judges to be impartial and non-partisan; competitive and partisan elections are hardly the appropriate method for attaining this goal. Also, the technical qualifications required of judges are not well tested by these elections.

For these and other reasons already presented in other testimony before this committee we urge you to report out favorably SJR 43.



*Postponed to April 13 -*  
*Janice*  
*Testified*

I am Mrs. Thomas Brasher, a director of the League of Women Voters of Texas.

The <sup>League</sup> ~~Gov~~ of Texas has supported the principle on which SJR 43 is based since 1964. Two years ago the League supported the proposal of the Texas Constitutional Revision Commission for judicial selection which was very similar to S.J.R. 43.

There are many reasons why we favor a change in the present system of electing judges in Texas, but to be brief, I will talk about two things:

- (1) We believe that the present system gives the Governor too much leeway in selecting judges to fill vacancies. We favor the provision of SJR 43 which would set up a nominating commission to screen candidates and propose names to the Governor. Presently, almost all district and appellate judges reach the bench initially by being appointed by the Governor to fill a vacancy, and there are too few checks on the Governor <sup>on</sup> ~~at~~ this point in the judicial selection process. Many qualified persons are automatically excluded. For example, no Republican has ever been appointed.
- (2) The League favors a non-partisan and non-competitive selection procedure as provided by SJR 43. This adds a check by the people not possible under a purely appointive system; and it also avoids many undependable consequences of partisan and competitive elections. We expect our judges to be impartial and non-partisan; but competitive and partisan elections are hardly the appropriate method for attaining this goal. Also, the professional or technical qualifications of judges are not well tested by these elections.

For these and other reasons already presented by other testimony, we urge you to pass out SJR 43 favorably.

*Contact Judge Howard when Earthman's bill comes up.*

*" Mrs. Lucy Lowe - Austin re hearings*



# Time For

April 3, 1971  
*League of Women Voters of Texas*

## ACTION

S.J.R. 43 by Snelson - Relating to  
appointment of appellate judges.  
Referred to Committee on Constitutional  
Amendments

Senator W. E. (Pete) Snelson has introduced in the Senate S.J.R. 43, a resolution for a constitutional amendment adopting the so-called "Merit" (Missouri) Plan of selection and tenure for all Texas appellate judges, together with a provision authorizing the Legislature to adopt a similar plan for selection and tenure of district judges. The proposed resolution tracks the draft endorsed by the Judicial Section of the State Bar at a recent meeting in Galveston.

There is also a resolution for the Merit Plan pending in the House, H.J.R. 74, Introduced by Rep. Jim Earthman of Houston.

The Senate Constitutional Amendments Committee will consider S.J.R. 43 at 9:30 a.m. Tuesday, April 6, at the Sergeant's Committee Room in the State Capitol. The League has been invited to testify. Testimony will also be presented by Judge W. St. John Garwood and at least one member of the Supreme Court.

MEMBERS HAVING LEGISLATORS ON THIS COMMITTEE ARE URGED TO WRITE OR WIRE IMMEDIATELY URGING THAT THIS RESOLUTION BE PASSED OUT OF COMMITTEE FAVORABLY.

Members on the Senate Committee on Constitutional Amendments are:

Charles Wilson, Chairman  
O. H. Harris, Vice Chairman  
Joe Bernal  
Joe Christie  
Wayne Connally  
Henry C. Grover

D. Roy Harrington  
Charles Herring  
Oscar Mauzy  
William T. Moore  
Max R. Sherman  
W. E. Snelson  
Murray Watson, Jr.

### BACKGROUND

In 1964 the League adopted a study item called Judicial Selection and Tenure as a logical follow-up to the judicial structure study. Consensus was reached the next year and the following position was added to our judicial positions:

- modification of the present appellate judge system to provide for: Selection by a combination of commission nomination, executive appointment, and noncompetitive and nonpartisan elections; compulsory retirement (already accomplished) and new and effective removal procedures.

WHAT THE BILL DOES: Provides for a Commission of seven members, of whom two shall be appointed by the Governor, 1 by the Lt. Gov., 1 by the House Speaker, 1 by the Chief Justice of the Supreme Court, 1 by the Presiding Judge of the Court of Criminal Appeals and 1 by a majority of the Board of Directors of the State Bar. It follows the recommendation of the recent Constitutional Revision Committee. Appointments shall be made from a list submitted by the Commission members by majority vote of the Commission on a non-partisan basis and submitted to qualified voters of the State or appropriate district by a "Yes" or "No" vote on retention.

Judge  
Copy to W. St. John Garwood



TFA

April 2, 1971

H. B. 450 by Stroud - Relating to biennial voter registration

H.B. 450 has now been passed out by the House Elections Committee, Rep. Jim Stroud of Dallas, chairman. The subcommittee to which it had been referred reported out a substitute on March 29 and this was favorably reported by the entire committee. At the March 29 meeting the changes were reviewed; one out of eight or nine changes being of special interest is a provision concerning identification of voters at the polls. It would make it no longer absolutely necessary to have a voter registration card to vote. If the card is lost, a voter may still vote upon personal identification or identification by document, such as a driver's license, social security card, etc. If this is not sufficient, the voter can vote under the challenge provisions. One of the other changes provided for registration by 18-20 year olds. On March 30, the House Elections Committee passed the bill out favorably with these changes.

Representative Stroud says that H.B. 450 will very likely be up for floor debate the week of April 5. So NOW is the time to go into action.

WRITE IMMEDIATELY TO YOUR LEGISLATOR IN THE HOUSE URGING PASSAGE OF H.B. 450. Time is of the essence. In addition, you should write Speaker of the House, Gus Mutscher.

Background

This bill relating to biennial voter registration follows very closely the following League criteria:

- . voter convenience
- . adequate safeguards against fraud
- . clearly defined administrative responsibility

Please refer to Newsletter II, dated March 10, for a description of this bill and more detailed background.

As current Texas law now stands, a person must re-register to vote every year between November 15 and January 31. Recently a decision by the U.S. District Court for the Southern District of Texas (Beare v. Smith) declared this system unconstitutional. The 62nd Texas Legislature must pass new legislation and a new system to take the place of annual registration. Since the present Texas registration system is not achieving the results that must be expected of a registration system and since it adversely affects voter participation in the electoral processes, The League of Women Voters of Texas is supporting measures that call for re-registration by voting.



Tues. April 13 - 7:00 SJR - 43 - Snelson

Judge Garwood ✓

Paul Van Osdale

Janice May

Price Daniel ✓

Kansas City, Mo. Justice  
Pol. <sup>Chief Sup. Ct.</sup>  
Judge Calvert

Endorsed nationally by ABA, Inducture Society  
Am. Assembly of 1965

& 7 of jurists.

John L. — 3 of

HJR - 429 of 60th Legislature - 1968  
report of Const. Rev. Com.

16 past <sup>state</sup> bar presidents - Introduced letters  
to ~~Bar~~ <sup>Bar</sup>

Bitter  
than  
Missouri

Provision for appointing in case Gov.  
does not make appts. or 60 days.

Basic that  
Commission looks at it in a ~~political~~  
non-political way.

Bar makes recommendations on judges  
& publishes before ~~election~~ ballot poll.

Missouri includes district judges -

1941 - 1960

Out of

72 judges,  
42 were chosen  
from law offices  
of less than  
13 offices -

or come from 4 to 9 -  
10 to 13.

How does a man run against himself?  
Gen. election when term expires



Almost duplicate of Oklahoma system.

Popularity of plan  
Very popular with laymen.

Present elective Committee 5 28 =  
1896.

Commended Wilson / presentation -

Rec. "Do pass" -





TEXAS CIVIL JUDICIAL COUNCIL

CAPITOL STATION - AUSTIN, TEXAS 78701  
204 Austin National Bank Building

Tel  
512-478-6421

March 30, 1971

OFFICE - SUPREME COURT  
BUILDING

Mrs. Thomas Brasher  
[REDACTED]

Dear Mrs. Brasher:

I am now advised that the Senate Committee will consider S.J.R. No. 43 at 9:30 A.M. Tuesday, April 6, at the Sergeant's Committee Room at the State Capitol and certainly hope the League will be represented.

I am now in touch with Representative Jim Earthman (*Republican*) about his H.J.R. No. 74, but have not gotten around to discussing details. He says that there has yet been no meeting of the appropriate House Committee scheduled to consider this Resolution.

I now have in hand letters from ten past State Bar Presidents endorsing S.J.R. No. 43 and should hear shortly from at least two more who are undoubtedly favorable.

I expect to testify myself and understand that there will be favorable testimony from at least one member of the Supreme Court, probably Justice Price Daniel. I believe the Chief Justice will also attend if only to certify that S.J.R. 43 has been overwhelmingly endorsed by the Judicial Section of the State Bar.

I suppose some opposition will be heard from representatives of the Texas Trial Lawyers Association, the members of which represent largely personal injury claimants and seem to believe, for some reason which I have never understood, that judges selected otherwise than by competitive popular election will be less favorable to their clients than those selected under the present system. Some of these opponents of the Merit Plan may also make an affirmative recommendation that judges of the Supreme Court and Court of Criminal Appeals be selected from separate geographical districts of the State. I doubt that this suggestion will get very far.

Cordially yours,

*W. St. John Garwood*

W. St. John Garwood

WSJG:A

cc: Mrs. Frances B. May  
[REDACTED]





TEXAS CIVIL JUDICIAL COUNCIL

CAPITOL STATION - AUSTIN, TEXAS 78701

204 Austin National Bank Bldg.

3/26/71

OFFICE: SUPREME COURT  
BUILDING

Dear Mrs. Brasher,

Further to my letter of today to Mrs. M. May, of which I sent you a copy, I am now advised that the hearing on SJR 43 before the Senate Committee on Const. Amendments will be at 9<sup>30</sup> a.m. on Tuesday, April 6. I am advising Mrs. May and certainly hope a representative of the League will be present to testify. I don't yet know the room at which the hearing will be held but am sure most any of the Senate attendants will be able to direct witnesses to the proper one.

Cordially

John Garwood

Mrs. Thomas Brasher, Chairman  
San Marcos





*Sent to 18 former State Bar presidents. About 9 favorable replies  
so far. None* W. ST. JOHN GARWOOD *unfavorable.* *WJG*

LAWYER

204 AUSTIN NATIONAL BANK BUILDING

AUSTIN, TEXAS 78701

March 22, 1971

Dear Former State Bar President,

S. J. R. No. 43  
(Snelson)

Please excuse the "shot gun" form of this letter which goes to all of the former State Bar Presidents who have served during the past ten or so years.

Senator W. E. (Pete) Snelson has introduced in the Senate the above resolution (copy attached) for a constitutional amendment adopting the so-called "Merit" ("Missouri") Plan of selection and tenure for all Texas appellate judges, together with a provision authorizing the Legislature to adopt a similar plan for selection and tenure of district judges. The proposed resolution tracks the draft endorsed by the Judicial Section of the State Bar by a vote of over three to one at its recent meeting at Galveston.

As you may know, the Merit Plan has been endorsed by the Texas Civil Judicial Council from time to time over the past twenty years or so, although with slightly varying details at different times. It has also been endorsed by the Texas League of Women Voters some five years back. It also was recommended for the Supreme Court and Court of Criminal Appeals by the relatively recent Constitutional Revision Committee appointed pursuant to a resolution of the Texas House of Representatives. It also obtains today in fairly complete form in some eight states and in less complete form in some eight additional states.

The resolution as now introduced differs from drafts heretofore endorsed by the Texas Civil Judicial Council and some others with respect to the composition of the Nominating Commission in that it provides for a Commission of seven members, of whom two shall be appointed by the Governor, one by the Lieutenant Governor, one by the Speaker of the House, one by the Chief Justice of the Supreme Court, one by the Presiding Judge of the Court of Criminal Appeals and one by a majority of the Board of Directors of the State Bar. Personally, I think this change from earlier drafts is unobjectionable. Moreover, it follows the recommendation of the abovementioned Constitutional Revision Commission. There will doubtless be a hearing on the resolution shortly before the Senate Committee on Constitutional Amendments, at which I expect to testify, as will either Chief Justice Calvert (who strongly favors the resolution) or some other member or members of the Supreme Court. Naturally a good showing at this hearing is desirable, if the resolution



Former State Bar President

-2-

March 19, 1971

is to get a favorable report.

In this latter connection, I was wondering if you would, as a former President of the State Bar, care to write (and send to me) a letter directed to the Senate Committee urging approval of the resolution. A suggested draft of such a letter is attached but only by way of mere suggestion.

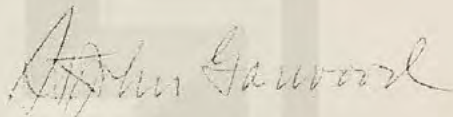
While doubtless the odds are against getting the necessary two-thirds vote of the Legislature in favor of the resolution, and, indeed, it might not even get by the Committee, I do believe that it will be approved by the people if submitted to them and I am prepared to devote a lot of my own time and other resources to this end. Actually, I think the only organized or otherwise effective opposition to the measure comes from the Texas Trial Lawyers Association, composed largely of lawyers representing personal injury claimants, and even some of these lawyers do not oppose it.

If you feel inclined to write a letter along the lines of the attached, would you kindly do so and send it to me so that I can see that it is presented to the Committee at the proper time.

There is also attached a list of the committee members. Needless to say, a personal letter to any of these you happen to know - as well as to any other Senator of your acquaintance would be helpful.

I would also welcome any suggestions you may have in the premises. So far Chief Justice Calvert and I are the only people doing anything about the matter, aside from Senator Snelson.

With personal best wishes.



W. St. John Garwood

WSJG:A

Enclosures





Senator Charles Wilson, Chairman  
Senate Committee on Constitutional Amendments  
State Capitol  
Austin, Texas 78711

S.J.R. No. 43

Dear Senator Wilson:

As a former President of the State Bar of Texas, who has given much thought to the subject of selection and tenure of the Judiciary, I believe the constitutional amendment proposal by the above Resolution to be highly desirable for the better administration of justice in this State and that it has not only the approval of our judges but will probably also be welcomed by most of our lawyers and by a majority of the voters.

Sincerely yours,





SENATE COMMITTEE ON CONSTITUTIONAL AMENDMENTS

Charles Wilson, Chairman	Corboll, Texas
O. H. Harris, Vice Chairman	Dallas "
Joe Bernal	San Antonio "
Joe Christi	El Paso "
Wayne Connally	Floresville "
Henry C. Grover	Houston "
D. Roy Harrington	Port Arthur "
Charles Herring	Austin "
Oscar Mauzy	Dallas "
William T. Moore	Bryan "
Max R. Sherman	Amarillo "
W. E. Snelson	Midland "
Murray Watson, Jr.	Waco "



*Sargent's Court Rm.*

By Snelson

S.J.R. No. 43

A JOINT RESOLUTION

Proposing a constitutional amendment providing for the appointment of appellate judges by the governor from a list of candidates submitted by a court nominating commission; providing six - year terms; providing for elections on the issue of retaining the judges in office; and authorizing the Legislature to extend this method of selection and tenure to judges of district and statutory courts.

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

Section 1. That Article V, Constitution of the State of Texas, be amended by adding a new Section 28-a to read as follows:

"Section 28-a. SELECTION AND TENURE OF JUDGES. (a) There shall be a Court Nominating Commission of seven members, who shall be citizens of this State and not holders of, or announced candidates for, any public office or employment of remuneration or office of employment in any political party. The members of the Commission shall be selected as follows: two shall be appointed by the Governor, one appointed by the Lieutenant Governor, one by the Speaker of the House of Representatives, one by the Chief Justice of the Supreme Court, one by the Presiding Judge of the Court of Criminal Appeals and one by a majority of the Board of Directors of the State Bar of Texas, vacancies for unexpired terms in any of such places to be filled by the original appointing authority; and all appointees shall be subject to confirmation by the Senate. The seven initial members shall be appointed for terms beginning the first day of January following adoption of this amendment. The regular terms of the members shall be six years and until their successors shall be duly qualified. The terms of two of the initial members shall be two years; the terms of two initial members shall be four years; and the terms of three initial members shall be six years. The terms of the initial members shall be chosen by lot. No member shall be eligible for reappointment. The Commission shall elect a chairman from its membership. Meetings shall be held at such times and places as may be designated by the Chairman or by a majority of the Commission. The Commission shall act by majority vote of the entire membership. The Legislature shall provide the necessary appropriations for operation of the Commission, including the compensation, if any, of the members.

"(b) When a vacancy occurs in the Supreme Court or the Court of Criminal Appeals, or any of the Courts of Civil Appeals, the Court Nominating Commission shall submit to the Governor three legally qualified nominees of age not exceeding 65 years, and not having served on the Commission during the preceding two years, from whom the Governor shall fill the same by appointment for a term expiring the first day of January following the first



general election after such appointment, or, if the appointment be made less than six months preceding a general election, then for a term expiring the first day of January following the second general election after such appointment. If the Governor shall fail to make an appointment from the list within sixty days from the day it is presented to him, then the appointment shall be made from the list by majority vote of the Commission.

*Butter  
then  
Missouri*

"(c) Not less than 60 days before the last general election before expiration of his term, each Justice of the Supreme Court or any of the Courts of Civil Appeals and each Judge of the Court of Criminal Appeals may file with the Secretary of State a declaration of candidacy to succeed himself. If no such declaration is filed, the office shall become vacant upon expiration of his term of office, and shall be filled by nomination and appointment as above provided.

"(d) If such declaration is filed, the name of such candidate shall be submitted to the qualified voters of the State or the appropriate district by separate ballot, or upon the general ballot, if convenient, without party designation, adapted to the office and styled in substance as follows:

"Shall Associate Justice

\_\_\_\_\_ of the

\_\_\_\_\_ Court be retained in  
office?"

"Yes"

"No"

"(e) If a majority of those voting on the question shall vote against the retention of the candidate, then a vacancy in such office shall exist on the expiration of his term of office, which shall be filled by nomination and appointment as above provided. If a majority of those voting on the question shall vote in favor of the candidate, he shall remain in office for a term of six years beginning on the first day of the following January.

"(f) Notwithstanding any other provisions of this Constitution concerning election of judges, the provisions of this Section may be extended by the Legislature to include the selection and tenure of judges of the District Courts and all courts created by statute with any of the jurisdiction of district courts and county courts, or to any of such courts, under such regulations and with such modification of the method of selection and membership of the Court Nominating Commission as may be prescribed by law.



"(g) To the extent of any conflict with the foregoing, all existing constitutional provisions are hereby repealed."

Sec. 2. The foregoing constitutional amendment shall be submitted to a vote of the qualified electors of this state at an election to be held on the first Tuesday after the first Monday in November, 1972, at which election the ballots shall be printed to provide for voting for or against the proposition: "The constitutional amendment providing for the appointment of appellate judges by the governor from a list of candidates submitted by a court nominating commission; providing six -year terms; providing for elections on the issue of retaining the judges in office; and authorizing the Legislature to extend this method of selection and tenure to judges of district and statutory courts."



SENATE COMMITTEE ON CONSTITUTIONAL AMENDMENTS

Charles Wilson, Chairman

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Murray Watson, Jr.





By Snelson

S.J.R. No. 43

A JOINT RESOLUTION

Proposing a constitutional amendment providing for the appointment of appellate judges by the governor from a list of candidates submitted by a court nominating commission; providing six - year terms; providing for elections on the issue of retaining the judges in office; and authorizing the Legislature to extend this method of selection and tenure to judges of district and statutory courts.

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

Section 1. That Article V, Constitution of the State of Texas, be amended by adding a new Section 28-a to read as follows: "Section 28-a. SELECTION AND TENURE OF JUDGES. (a) There shall be a Court Nominating Commission of seven members, who shall be citizens of this State and not holders of, or announced candidates for, any public office or employment of remuneration or office of employment in any political party. The members of the Commission shall be selected as follows: two shall be appointed by the Governor, one appointed by the Lieutenant Governor, one by the Speaker of the House of Representatives, one by the Chief Justice of the Supreme Court, one by the Presiding Judge of the Court of Criminal Appeals and one by a majority of the Board of Directors of the State Bar of Texas, vacancies for unexpired terms in any of such places to be filled by the original appointing authority; and all appointees shall be subject to confirmation by the Senate. The seven initial members shall be appointed for terms beginning the first day of January following adoption of this amendment. The regular terms of the members shall be six years and until their successors shall be duly qualified. The terms of two of the initial members shall be two years; the terms of two initial members shall be four years; and the terms of three initial members shall be six years. The terms of the initial members shall be chosen by lot. No member shall be eligible for reappointment. The Commission shall elect a chairman from its membership. Meetings shall be held at such times and places as may be designated by the Chairman or by a majority of the Commission. The Commission shall act by majority vote of the entire membership. The Legislature shall provide the necessary appropriations for operation of the Commission, including the compensation, if any, of the members.

"(b) When a vacancy occurs in the Supreme Court or the Court of Criminal Appeals, or any of the Courts of Civil Appeals, the Court Nominating Commission shall submit to the Governor three legally qualified nominees of age not exceeding 65 years, and not having served on the Commission during the preceding two years, from whom the Governor shall fill the same by appointment for a term expiring the first day of January following the first



general election after such appointment, or, if the appointment be made less than six months preceding a general election, then for a term expiring the first day of January following the second general election after such appointment. If the Governor shall fail to make an appointment from the list within sixty days from the day it is presented to him, then the appointment shall be made from the list by majority vote of the Commission.

"(c) Not less than 60 days before the last general election before expiration of his term, each Justice of the Supreme Court or any of the Courts of Civil Appeals and each Judge of the Court of Criminal Appeals may file with the Secretary of State a declaration of candidacy to succeed himself. If no such declaration is filed, the office shall become vacant upon expiration of his term of office, and shall be filled by nomination and appointment as above provided.

"(d) If such declaration is filed, the name of such candidate shall be submitted to the qualified voters of the State or the appropriate district by separate ballot, or upon the general ballot, if convenient, without party designation, adapted to the office and styled in substance as follows:

"Shall Associate Justice

\_\_\_\_\_ of the

\_\_\_\_\_ Court be retained in  
office?"

"Yes"

"No"

"(e) If a majority of those voting on the question shall vote against the retention of the candidate, then a vacancy in such office shall exist on the expiration of his term of office, which shall be filled by nomination and appointment as above provided. If a majority of those voting on the question shall vote in favor of the candidate, he shall remain in office for a term of six years beginning on the first day of the following January.

"(f) Notwithstanding any other provisions of this Constitution concerning election of judges, the provisions of this Section may be extended by the Legislature to include the selection and tenure of judges of the District Courts and all courts created by statute with any of the jurisdiction of district courts and county courts, or to any of such courts, under such regulations and with such modification of the method of selection and membership of the Court Nominating Commission as may be prescribed by law.



"(g) To the extent of any conflict with the foregoing, all existing constitutional provisions are hereby repealed."

Sec. 2. The foregoing constitutional amendment shall be submitted to a vote of the qualified electors of this state at an election to be held on the first Tuesday after the first Monday in November, 1972, at which election the ballots shall be printed to provide for voting for or against the proposition: "The constitutional amendment providing for the appointment of appellate judges by the governor from a list of candidates submitted by a court nominating commission; providing six -year terms; providing for elections on the issue of retaining the judges in office; and authorizing the Legislature to extend this method of selection and tenure to judges of district and statutory courts."



March 21

From the desk of . . .

JANICE MAY

Re - Judicial Reform.

Sen Snelson has intro.  
a bill providing for The  
Mo. Plan. Judge Garwood  
definitely wants us to  
testify. Me - if possible -  
but I may be in California  
when it comes up.

A unified court system  
proposal and judicial  
redistricting by a board  
are proposals already in  
bills, I gather -

I'm to sit in on Senate committee  
hearings this week in regard thereto



*League of Women Voters of Texas*

612 NORTH 18TH STREET ◦

WACO, TEXAS

POST BOARD REPORT -

April 1965

TO: Local League Presidents, Vice Presidents and Publications Chairmen  
FROM: Mrs. Francis B. May  
RE: Judicial Selection and Tenure

Those of you who attended the State Convention in Corpus Christi a year ago know HOW and WHY State Current Agenda Number two -- Judicial Selection and Tenure -- was adopted. For those of you who were not there, I will briefly summarize the story.

Judicial Selection and Tenure was a non-recommended item at the State Convention last year. It was necessary, therefore, to get a majority vote for consideration of the item and then a two-thirds vote to get it adopted. Both votes were obtained.

The delegates at the Convention expressed a wish to study Judicial Selection and Tenure in order to finish an earlier study of the Texas Courts. This earlier study, begun in 1959, concerned the organization and administration of the Texas Courts. It excluded a study of the selection and tenure of judges.

The delegates at the Convention also thought that we could finish a study of Judicial Selection and Tenure in one year because we have good background for it. It was finally decided that the limited nature of the study of judicial selection and tenure would make it a good second Current Agenda item, one that would be an unreasonable burden on the Local Leagues.

So much for the HOW and WHY of Judicial Selection and Tenure.....

Judicial Selection and Tenure has proved to be a short, sharp, and significant study sufficient to stimulate and scintillate.

By December 1964, we arrived at consensus. All but two local Leagues participated by sending in consensus reports. These reports were evaluated by the State Board at its January meeting.

Based on the evaluation of the consensus reports the State Board approved the following general statement of League position on JS&T:

"Support of constitutional provisions modifying the present system of electing appellate judges to provide for: - selection by a combination of commission nomination, executive appointment, and non-competitive and non-partisan elections; - compulsory retirement; - and new and effective removal procedures."

An explanatory statement follows the general statement in your Workbook.

We have been able to put our newly acquired support position to work already in the Texas Legislature.

On Monday, a week ago, we testified before the House Constitutional Amendments Committee, in favor of HJR 57, a proposal to amend the Texas Constitution to provide for involuntary retirement and new removal procedures for all district and appellate judges. This proposal is identical to SJR 10

Our testimony was sandwiched in among that of some really big witnesses - W. St. John Garwood, President of the Texas Civil Judicial Conference and former member of the Texas Supreme Court; Clint Small, Jr., Present-elect of the Texas State Bar Association; and anchor man, Robert W. Calvert, Chief Justice of the Texas Supreme Court. Mr. Small, for the Bar, pointed out that the membership of the Bar had approved by a wide margin in its February referendum, the proposed amendment contained in HJR 57 and SJR 10. Our testimony, incidentally, was confined to the application of the proposed joint resolutions to appellate judges.



The State Board has recommended that Judicial Selection and Tenure be transferred from the Current Agenda to Continuing Responsibility Number Three. A notice to this effect was sent to all local Leagues in January pursuant to our Bylaws.

The reasons for transferring the JS&T Item to CR are as follows: (1) the work on JS&T has been completed; (2) the program statement should reflect this fact; (3) the item will be protected on CR and action can be taken on it in the same manner as action is now taken on Texas Constitutional Revision and Election Laws; (4) the State Board and local League Boards can remove the JS&T portfolio from their respective Boards, and the workload redistributed accordingly.

One final word on Judicial Selection and Tenure....The American Judicature Society has generously offered to send to each member -- at no cost to the League -- at no cost to the League -- a copy of the December issue of the Society's Journal. This issue is chock-full of information on Judicial Selection and Tenure and Judicial Organization and Administration. You should be receiving your copy shortly.

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HJR 74---Constitutional amendment providing a procedure for nonpartisan nomination and appointment of judges of the Supreme Court, Court of Criminal Appeals, Courts or Civil Appeals and District Courts, Provides for rejection or retention of judges by voters and prohibits political activity by Judges.

Supreme Court shall consist of Chief Justice and 8 Associate Justices, 5 of whom shall constitute a quorum, agreement of 5 necessary for a decision. Not eligible for Supreme Court unless citizen of U.S. and Texas, 35 years old, practicing lawyer or a lawyer and judge together at least 10 years. Justices be appointed and 3 of them ~~with every 2 years~~ subject to retention or rejection every 2 year.

Hold office for 6 years, and receive compensation as provided by law. Justices of Supreme Court who may be in office at time amendment takes effect will continue in office until end of their term

Court of Criminal Appeals-----Shall consist of 5 judges, 1 be presiding judge, majority a quorum, concurrence of 3 judges necessary for decision. Have same qualifications and receive same salaries as associate justices of Supreme Court. Be appointed and either 1 or 2 of them subject to retention or rejection every 2 years. Hold office for 6 years.

Legislature will divide the state into judicial districts and establish Court of Civil Appeals in each district which consists of chief justice and 2 associate justices. Court of Civil Appeals have appellate jurisdiction with the limits of their districts which extend to all civil cases of which the District Courts or County Courts have original or appellate jurisdiction.

Court of Civil Appeals---be appointed, hold sessions at place in district designated by legislature, time prescribed by law. 1 judge subject to retention or rejection every 2 years, term of office-6 years. Salary provided by law.

District Judges-----citizen of US and State, practicing lawyer or judge of Court or combined for 4 years. Reside in district for 2 years. Term of office -4 years. Annual salary fixed by legislature. Is appointed and subject to retention or rejection every 4 years.

Vacancies-----Governor fill vacancy by appointing 1 of 3 person who possess the qualifications for office and whose names are submitted to governor by nonpartisan judicial commission established and organized as provided in Constitution. Vacancy created by death, resignation or removal from office shall be filled for the unexpired term.

DECLARATION OF CANDIDACY FOR RETENTION, FORM OF BALLOT, RETENTION OR REJECTION:

Not less than 60 days before general election candidate may file in office of Secretary of State, declaration of candidacy. If declaration not filed, judge than be appointed as provided. If declaration filed, name submitted at election on separate judicial ballot without party designation. If not voted into office, vacancy is filled by appointment.

NONPARTISAN JUDICIAL COMMISSION:-----duty to nominate and submit to governor,



names of people for appointment as judges.

for filling vacancies in the office of judge of district courts, there is one judicial commission for each judicial district in the state.

Commission includes Chief Justice of Supreme Court, who acts as chairman. Members of state bar residing in each judicial district shall elect one of their number to serve as a member of commission from that district. Governor appoints 1 citizen, not a member of the Bar, from among residents of each district to serve as member of commission.

Each district court judicial commission includes the ~~presiding~~ presiding judge of the judicial district who acts as chairman. Members of state bar residing in counties in district elect 2 of their number to serve as member of commission. Governor appoints 2 citizens, not members of Bar, who are residents.

Terms of office of commission is fixed by Supreme Court and may be changed, but not so as to shorten or lengthen the term of any member than in office. No member, other than chairman shall hold public office, or hold official position in political party. Members of commission receive no salary but shall receive travel and other expense incurred.

No Judge shall make contribution or hold any office in a political party or take part in a political campaign.

Constitutional Amendment submitted to voters on the first Tuesday after the first Monday in November, 1972.

COMMENT: Bill meets criteria of nomination and appointment of Judges, noncompetitive and nonpartisan elections. Once again nothing about compulsory retirement, and effective removal procedures, short of voting Judge out of Office. The method of appointing members of the judicial commission leaves me cold for some reason. To many people involved and too confusing. Perhaps after reading the 3 bills, I am the one that is confused! If the League decides to support any Bill I would like the first one----SJR 43. Seems to be a better bill.





ROSCOE, SNYDER & PACIFIC R.WY.

J 5+T - May 1964  
Voter

July 1964  
Voter



WATER TRICKLES

HJR #74  
Earthman

In September of 1966, authorities stated that probably no legislation on water was to be expected in our 28th Legislature. As the Federal Water Quality Act of 1965 became better understood, the advantages of water legislation on the state level became apparent to these authorities, to politicians, to conservationists, and to just plain citizens like us. The result was a deluge of water bills.

League members were present at many of the hearings and came away with the impression that the real power in New Mexico's Establishment is water power. Over 40 bills, memorials, and resolutions were introduced dealing with everything from the brackish water under our southeast corner to the political quicksand under our State Engineer.

Leaguers of course were most interested in those bills having to do with implementation of the Federal Water Quality Act. (We sent copies of the Federal Acts and Guidelines to every legislator early in the session. Copies were provided to us by the Federal Water Pollution Control Administration, Dept. of Interior). The real problem seemed to concern the formation of some sort of Water Commission for New Mexico. Various plans were proposed and sloshed about. The one which finally passed was included in the so-called Water Pollution Bill and provided for a commission made up of agency heads. The bill really pleased no one, but offended few. The Governor calls it an important first step.

Other legislation concerned agricultural water uses, secondary recovery of oil, wells used for irrigation, all sorts of water problems. Watch for our report on the Water Resources Research Institute's annual meeting in Las Cruces--- we could write a book! In fact the National League has. It's called THE BIG WATER FIGHT, and is good reading for everyone.

REMEMBER THE STATE JUDICIARY STUDY?

We support a unified court system with, among other things, an advisory judicial council. HB 241 (Norvell - For the Judicial Systems Study Committee) provided for a judicial council with advisory functions. It passed the House but not the Senate Judiciary Committee.

All is not lost, however, as the State Judicial Systems Study Committee was continued for another two years.

A proposed constitutional amendment was introduced (HJR 18 - Fettinger, by request) which did not get out of committee. This provided for Judicial Selection, Tenure, Discipline and Removal. Selection was based on the ABA plan and discipline and removal procedures were nearly identical with another proposal which passed - HJR 2 (Norvell).

HJR 2 was introduced under the auspices of the Judiciary Study Committee and it set up a judicial standards commission with power to investigate and recommend discipline, removal or retirement of any judge, to the Supreme Court. This will be on the November ballot this fall. Some think judicial standards are more important, or just as important as the method of selection.





TEXAS CIVIL JUDICIAL COUNCIL

~~CAPITOL STATION~~ - AUSTIN, TEXAS 78701  
204 Austin National Bank Building

478-6421  
(Home) 476-4465

OFFICE: ~~SUPREME COURT~~  
~~BUILDING~~

March 26, 1971

Mrs. Frances B. May  
[REDACTED]

Dear Mrs. May:

Thanks for yours of March 25.

Both Mrs. Brasher and you will be interested to know that there is also a resolution for the Merit Plan pending in the House (H.J.R. 74), about which I learned only yesterday. It was introduced by Representative Jim Earthman of Houston.

I hope to get in touch with him promptly in order to discuss ironing out the differences between the two resolutions, although these differences do not seem at all fundamental.

I am attaching a copy of H.J.R. 74 and am also sending Mrs. Brasher a copy of S.J.R. 43 in case she does not have one.

So far the Senate Committee on Constitutional Amendments has not set a date for a hearing on S.J.R. 43.

Cordially,

*W. St. John Garwood*

W. St. John Garwood

WSJG:A

Enclosures

Mrs. Thomas Brasher (with copies of HJR 74 and SJR 43)  
[REDACTED]

✓ League of Women Voters of Texas Legislative Office  
Austin, Texas (Same attachments as for Mrs. Brasher)



1 By

Earlman

A J.R. No. 74

2  
3  
4 A JOINT RESOLUTION

5  
6  
7 proposing a constitutional amendment providing a procedure for  
8 the nonpartisan nomination and appointment of judges of the  
9 Supreme Court, Court of Criminal Appeals, Courts of Civil Appeals,  
10 and District Courts; providing for the subsequent rejection or  
11 retention of the judges by qualified electors; and prohibiting  
12 political activity by those judges.

13  
14 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

15  
16 Section 1. That Sections 2, 4, 6, and 7, Article V, Con-  
17 stitution of the State of Texas, be amended to read as follows:

18 "Sec. 2. Supreme Court; justices; sections; eligibility;  
19 election; vacancies

20 "The Supreme Court shall consist of a Chief Justice and  
21 eight Associate Justices, any five of whom shall constitute a  
22 quorum, and the concurrence of five shall be necessary to a deci-  
23 sion of a case; provided, that when the business of the court may  
24 require, the court may sit in sections as designated by the court  
25 to hear argument of causes and to consider applications for writs  
26 of error or other preliminary matters. No person shall be eli-  
27 gible to the office of Chief Justice or Associate Justice of the  
28 Supreme Court unless he be, at the time of his election, a citi-  
29 zen of the United States and of this state, and unless he shall  
30 have attained the age of thirty-five years, and shall have been  
31 a practicing lawyer, or a lawyer and judge of a court of record  
32 together at least ten years. Said Justices shall be appointed,  
33 and three of them subject to retention or rejection every two  
34 years, as provided by Sections 28a-28c of this Article; shall  
35 hold their offices six years, or until their successors are  
36 appointed and qualified; and shall each receive such compensa-  
37 tion as shall be provided by law. The Justices of the Supreme  
38 Court who may be in office at the time this amendment takes  
39 effect shall continue in office until the expiration of their  
40 term of office under the present Constitution, and until their  
41 successors are appointed and qualified."

42 "Sec. 4. Court of Criminal Appeals; judges

43 "The Court of Criminal Appeals shall consist of  
44 five Judges, one of whom shall be Presiding Judge, a majority of  
45 whom shall constitute a quorum, and the concurrence of three  
46 Judges shall be necessary to a decision of said court. Said  
47 Judges shall have the same qualifications and receive the same  
48 salaries as the Associate Justices of the Supreme Court. They  
49 shall be appointed, and either one or two of them subject to  
50 retention or rejection every two years, as provided by Sec-  
51 tions 28a-28c of this Article; and shall hold their offices for  
52 a term of six years."

53 "Sec. 6. Courts of Civil Appeals; transfer of causes;  
54 terms of judges

55 "The Legislature shall divide the State into Supreme judi-  
56 cial districts and shall establish a Court of Civil Appeals in



1 each of said districts, which shall consist of a Chief Justice  
2 and two Associate Justices, who shall have the qualifications as  
3 herein prescribed for Justices of the Supreme Court. Said Court  
4 of Civil Appeals shall have appellate jurisdiction co-extensive  
5 with the limits of their respective districts, which shall extend  
6 to all civil cases of which the District Courts or County Courts  
7 have original or appellate jurisdiction, under such restrictions  
8 and regulations as may be prescribed by law. Provided, that the  
9 decision of said courts shall be conclusive on all questions of  
10 fact brought before them on appeal or error.

11 "Each of said Courts of Civil Appeals shall hold its ses-  
12 sions at a place in its district to be designated by the Legis-  
13 lature, and at such time as may be prescribed by law. Said  
14 Justices shall be appointed, and one of them subject to retention  
15 or rejection every two years, as provided by Sections 28a-28c of  
16 this Article; shall hold office for a term of six years; and  
17 shall receive for their services a salary provided by law. Said  
18 courts shall have such other jurisdiction, original and appellate  
19 as may be prescribed by law. Each Court of Civil Appeals shall  
20 appoint a clerk in the same manner as the clerk of the Supreme  
21 Court which clerk shall receive such compensation as may be fixed  
22 by law."

23 "Sec. 7. Judicial districts; district judges; terms or  
24 sessions; absence, disability or disqualification of judge

25 "The State shall be divided into as many judicial districts  
26 as may now or hereafter be provided by law, which may be  
27 increased or diminished by law. For each district there shall be  
28 a Judge, who shall be a citizen of the United States and of this  
29 State, who shall be licensed to practice law in this State and  
30 shall have been a practicing lawyer or a Judge of a Court in this  
31 State, or both combined, for four (4) years next preceding his  
32 election, who shall have resided in the district in which he was  
33 elected for two (2) years next preceding his election, who shall  
34 reside in his district during his term of office, who shall hold  
35 his office for the period of four (4) years, and shall receive  
36 for his services an annual salary to be fixed by the Legislature.  
37 He shall be appointed, and subject to retention or rejection  
38 every four years, as provided by Sections 28a-28c of this arti-  
39 cle. The Court shall conduct its proceedings at the county seat  
40 of the county in which the case is pending, except as otherwise  
41 provided by law. He shall hold the regular terms of his Court at  
42 the County Seat of each County in his district at least twice in  
43 each year in such manner as may be prescribed by law. The Legis-  
44 lature shall have power by General or Special Laws to make such  
45 provisions concerning the terms or sessions of each Court as it  
46 may deem necessary.

47 "The Legislature shall also provide for the holding of Dis-  
48 trict Court when the Judge thereof is absent, or is from any  
49 cause disabled or disqualified from presiding.

50 "The District Judges who may be in office when this Amend-  
51 ment takes effect shall hold their offices until their respective  
52 terms shall expire under their present election or appointment."

53 Sec. 2. That Article V, Constitution of the State of  
54 Texas, be amended by adding Sections 28a-28d to read as follows:

2#2227



1 "Sec. 28a. Manner of Filling Vacancies

2 "When a vacancy occurs in the office of justice or judge of  
3 the Supreme Court, the Court of Criminal Appeals, a Court of  
4 Civil Appeals, or a District Court of this state, the governor  
5 shall fill the vacancy by appointing one of three persons who  
6 possess the qualifications for the office and whose names are  
7 submitted to the governor by a nonpartisan judicial commission  
8 established and organized as provided in this constitution. A  
9 vacancy created by death, resignation, or removal from office  
10 shall be filled for the unexpired portion of the term.

11 "Sec. 28b. Declaration of Candidacy for Retention; Form of  
12 Ballot; Retention or Rejection

13 "(a) Not less than 60 days prior to the holding of the  
14 general election next preceding the expiration of his term of  
15 office, any judge whose office is subject to the provisions of  
16 Sections 28a-28d of this article may file in the office of the  
17 secretary of state a declaration of candidacy for election to  
18 succeed himself. If a declaration is not so filed by any judge,  
19 the vacancy resulting from the expiration of his term of office  
20 shall be filled by appointment as provided by Section 28a of this  
21 article. If such a declaration is filed, his name shall be sub-  
22 mitted at the next general election to the voters eligible to  
23 vote within the geographic jurisdictional limit of his court, on  
24 a separate judicial ballot, without party designation. The bal-  
25 lots shall be printed to provide for voting for or against the  
26 proposition: 'Retention of \_\_\_\_\_ as \_\_\_\_\_  
27 \_\_\_\_\_,' filling in the name of the incumbent and the title of  
28 the office.

29 "(b) If a majority of those voting on the question vote  
30 against retention, on the expiration of the term of office a  
31 vacancy shall exist which shall be filled by appointment as pro-  
32 vided by Section 28a of this article. Otherwise, the incumbent  
33 unless removed for cause remains in office for another full term,  
34 and at the expiration of each full term he is eligible for reten-  
35 tion for another term.

36 "Sec. 28c. Nonpartisan Judicial Commissions

37 "(a) Nonpartisan judicial commissions, the duty of which  
38 it shall be to nominate and submit to the governor names of per-  
39 sons for appointment as provided by Sections 28a-28d, are estab-  
40 lished and shall be organized in accordance with the provisions  
41 of this section.

42 "(b) For filling vacancies in the office of judge or jus-  
43 tice of the Supreme Court, Court of Criminal Appeals, or any  
44 Court of Civil Appeals, there is one judicial commission.

45 "(c) For filling vacancies in the office of judge of any  
46 District Court, there is one judicial commission for each Admin-  
47 istrative Judicial District in the state. If any District Court  
48 has jurisdiction in more than one Administrative Judicial Dis-  
49 trict, the presiding judges of the administrative districts  
50 affected shall determine which administrative district includes  
51 the District Court for purposes of judicial commission adminis-  
52 tration.

53 "(d) The appellate judicial commission created under Sub-  
54 section (b) includes the Chief Justice of the Supreme Court, who

2#2227



1 shall act as chairman. The members of the State Bar residing in  
2 each Administrative Judicial District of this State shall elect  
3 one of their number to serve as a member of the commission from  
4 that administrative district. The governor shall appoint one  
5 citizen, not a member of the bar, from among the residents of  
6 each administrative judicial district, to serve as a member of  
7 the commission from that administrative district.

8 "(e) Each district court judicial commission includes the  
9 presiding judge of the administrative judicial district, who  
10 shall act as chairman. The members of the state bar residing in  
11 the counties included within the administrative judicial district  
12 shall elect two of their number to serve as members of the com-  
13 mission. The governor shall appoint two citizens, not members of  
14 the bar, from among the residents in the counties included within  
15 the administrative judicial district, to serve as members of the  
16 commission.

17 "(f) The terms of office of the members of the commission  
18 shall be fixed by the Supreme Court and may be changed from time  
19 to time, but not so as to shorten or lengthen the term of any  
20 member then in office. No member of any commission, other than  
21 the chairman, shall hold any public office, and no member may  
22 hold any official position in a political party. Every commis-  
23 sion may act only on the concurrence of a majority of its mem-  
24 bers. The members of the commissions shall receive no salary or  
25 other compensation for their services as such, but they shall  
26 receive their necessary travel and other expenses incurred while  
27 actually engaged in the discharge of their official duties. All  
28 commissions shall be administered, and all elections provided for  
29 under this section shall be held and regulated, under such rules  
30 as the Supreme Court shall promulgate.

31 "Sec. 28d. Prohibition of Political Activity by Judges

32 "No justice or judge of the Supreme Court, Court of Crimi-  
33 nal Appeals, any Court of Civil Appeals, or any District Court  
34 shall directly or indirectly make any contribution to or hold any  
35 office in a political party or organization, or take part in any  
36 political campaign." *except this one*

37 Sec. 3. The foregoing constitutional amendment shall be  
38 submitted to a vote of the qualified electors of this state at an  
39 election to be held on the first Tuesday after the first Monday  
40 in November, 1972, at which election the ballots shall be  
41 printed to provide for voting for or against the proposition:

42 "The constitutional amendment providing a procedure for the non-  
43 partisan nomination and appointment of judges of the Supreme  
44 Court, Court of Criminal Appeals, Courts of Civil Appeals, and  
45 District Courts; providing for the subsequent rejection or reten-  
46 tion of the judges by the qualified electors; and prohibiting  
47 political activity by those judges."  
48  
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TEXAS CIVIL JUDICIAL COUNCIL

CAPITOL STATION - AUSTIN, TEXAS 78701  
204 Austin National Bank Building

OFFICE: SUPREME COURT  
BUILDING

March 26, 1971

*Also Mrs Brasher  
Believe you will be  
interested in the attached.  
Sincerely  
W. St. John Garwood*

Mrs. Frances B. May  
[REDACTED]

Dear Mrs. May:

Thanks for yours of March 25.

Both Mrs. Brasher and you will be interested to know that there is also a resolution for the Merit Plan pending in the House (H.J.R. 74), about which I learned only yesterday. It was introduced by Representative Jim Earthman of Houston.

I hope to get in touch with him promptly in order to discuss ironing out the differences between the two resolutions, although these differences do not seem at all fundamental.

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So far the Senate Committee on Constitutional Amendments has not set a date for a hearing on S.J.R. 43.

Cordially,

W. St. John Garwood

WSJG:A

✓ Enclosures

Mrs. Thomas Brasher  
[REDACTED]

League of Women Voters of Texas Legislative Office  
Austin, Texas



1 By

Earthman

HJ.R. No. 77

2  
3  
4  
5 A JOINT RESOLUTION

6  
7 proposing a constitutional amendment providing a procedure for  
8 the nonpartisan nomination and appointment of judges of the  
9 Supreme Court, Court of Criminal Appeals, Courts of Civil Appeals,  
10 and District Courts; providing for the subsequent rejection or  
11 retention of the judges by qualified electors; and prohibiting  
12 political activity by those judges.

13  
14 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

15  
16 Section 1. That Sections 2, 4, 6, and 7, Article V, Con-  
17 stitution of the State of Texas, be amended to read as follows:

18 "Sec. 2. Supreme Court; justices; sections; eligibility;  
19 election; vacancies

20 "The Supreme Court shall consist of a Chief Justice and  
21 eight Associate Justices, any five of whom shall constitute a  
22 quorum, and the concurrence of five shall be necessary to a deci-  
23 sion of a case; provided, that when the business of the court may  
24 require, the court may sit in sections as designated by the court  
25 to hear argument of causes and to consider applications for writs  
26 of error or other preliminary matters. No person shall be eli-  
27 gible to the office of Chief Justice or Associate Justice of the  
28 Supreme Court unless he be, at the time of his election, a citi-  
29 zen of the United States and of this state, and unless he shall  
30 have attained the age of thirty-five years, and shall have been  
31 a practicing lawyer, or a lawyer and judge of a court of record  
32 together at least ten years. Said Justices shall be appointed,  
33 and three of them subject to retention or rejection every two  
34 years, as provided by Sections 28a-28c of this Article; shall  
35 hold their offices six years, or until their successors are  
36 appointed and qualified; and shall each receive such compensa-  
37 tion as shall be provided by law. The Justices of the Supreme  
38 Court who may be in office at the time this amendment takes  
39 effect shall continue in office until the expiration of their  
40 term of office under the present Constitution, and until their  
41 successors are appointed and qualified."

42 "Sec. 4. Court of Criminal Appeals; judges

43 "The Court of Criminal Appeals shall consist of  
44 five Judges, one of whom shall be Presiding Judge, a majority of  
45 whom shall constitute a quorum, and the concurrence of three  
46 Judges shall be necessary to a decision of said court. Said  
47 Judges shall have the same qualifications and receive the same  
48 salaries as the Associate Justices of the Supreme Court. They  
49 shall be appointed, and either one or two of them subject to  
50 retention or rejection every two years, as provided by Sec-  
51 tions 28a-28c of this Article; and shall hold their offices for  
52 a term of six years."

53 "Sec. 6. Courts of Civil Appeals; transfer of causes;  
54 terms of judges

55 "The Legislature shall divide the State into Supreme judi-  
56 cial districts and shall establish a Court of Civil Appeals in



1 each of said districts, which shall consist of a Chief Justice  
2 and two Associate Justices, who shall have the qualifications as  
3 herein prescribed for Justices of the Supreme Court. Said Court  
4 of Civil Appeals shall have appellate jurisdiction co-extensive  
5 with the limits of their respective districts, which shall extend  
6 to all civil cases of which the District Courts or County Courts  
7 have original or appellate jurisdiction, under such restrictions  
8 and regulations as may be prescribed by law. Provided, that the  
9 decision of said courts shall be conclusive on all questions of  
10 fact brought before them on appeal or error.

11 "Each of said Courts of Civil Appeals shall hold its ses-  
12 sions at a place in its district to be designated by the Legis-  
13 lature, and at such time as may be prescribed by law. Said  
14 Justices shall be appointed, and one of them subject to retention  
15 or rejection every two years, as provided by Sections 28a-28c of  
16 this Article; shall hold office for a term of six years; and  
17 shall receive for their services a salary provided by law. Said  
18 courts shall have such other jurisdiction, original and appellate  
19 as may be prescribed by law. Each Court of Civil Appeals shall  
20 appoint a clerk in the same manner as the clerk of the Supreme  
21 Court which clerk shall receive such compensation as may be fixed  
22 by law."

23 "Sec. 7. Judicial districts; district judges; terms or  
24 sessions; absence, disability or disqualification of judge

25 "The State shall be divided into as many judicial districts  
26 as may now or hereafter be provided by law, which may be  
27 increased or diminished by law. For each district there shall be  
28 a Judge, who shall be a citizen of the United States and of this  
29 State, who shall be licensed to practice law in this State and  
30 shall have been a practicing lawyer or a Judge of a Court in this  
31 State, or both combined, for four (4) years next preceding his  
32 election, who shall have resided in the district in which he was  
33 elected for two (2) years next preceding his election, who shall  
34 reside in his district during his term of office, who shall hold  
35 his office for the period of four (4) years, and shall receive  
36 for his services an annual salary to be fixed by the Legislature.  
37 He shall be appointed, and subject to retention or rejection  
38 every four years, as provided by Sections 28a-28c of this arti-  
39 cle. The Court shall conduct its proceedings at the county seat  
40 of the county in which the case is pending, except as otherwise  
41 provided by law. He shall hold the regular terms of his Court at  
42 the County Seat of each County in his district at least twice in  
43 each year in such manner as may be prescribed by law. The Legis-  
44 lature shall have power by General or Special Laws to make such  
45 provisions concerning the terms or sessions of each Court as it  
46 may deem necessary.

47 "The Legislature shall also provide for the holding of Dis-  
48 trict Court when the Judge thereof is absent, or is from any  
49 cause disabled or disqualified from presiding.

50 "The District Judges who may be in office when this Amend-  
51 ment takes effect shall hold their offices until their respective  
52 terms shall expire under their present election or appointment."

53 Sec. 2. That Article V, Constitution of the State of  
54 Texas, be amended by adding Sections 28a-28d to read as follows:

2#2227



1 "Sec. 28a. Manner of Filling Vacancies  
2 "When a vacancy occurs in the office of justice or judge of  
3 the Supreme Court, the Court of Criminal Appeals, a Court of  
4 Civil Appeals, or a District Court of this state, the governor  
5 shall fill the vacancy by appointing one of three persons who  
6 possess the qualifications for the office and whose names are  
7 submitted to the governor by a nonpartisan judicial commission  
8 established and organized as provided in this constitution. A  
9 vacancy created by death, resignation, or removal from office  
10 shall be filled for the unexpired portion of the term.  
11 "Sec. 28b. Declaration of Candidacy for Retention; Form of  
12 Ballot; Retention or Rejection  
13 "(a) Not less than 60 days prior to the holding of the  
14 general election next preceding the expiration of his term of  
15 office, any judge whose office is subject to the provisions of  
16 Sections 28a-28d of this article may file in the office of the  
17 secretary of state a declaration of candidacy for election to  
18 succeed himself. If a declaration is not so filed by any judge,  
19 the vacancy resulting from the expiration of his term of office  
20 shall be filled by appointment as provided by Section 28a of this  
21 article. If such a declaration is filed, his name shall be sub-  
22 mitted at the next general election to the voters eligible to  
23 vote within the geographic jurisdictional limit of his court, on  
24 a separate judicial ballot, without party designation. The bal-  
25 lots shall be printed to provide for voting for or against the  
26 proposition: 'Retention of \_\_\_\_\_ as \_\_\_\_\_  
27 \_\_\_\_\_,' filling in the name of the incumbent and the title of  
28 the office.  
29 "(b) If a majority of those voting on the question vote  
30 against retention, on the expiration of the term of office a  
31 vacancy shall exist which shall be filled by appointment as pro-  
32 vided by Section 28a of this article. Otherwise, the incumbent  
33 unless removed for cause remains in office for another full term,  
34 and at the expiration of each full term he is eligible for reten-  
35 tion for another term.  
36 "Sec. 28c. Nonpartisan Judicial Commissions  
37 "(a) Nonpartisan judicial commissions, the duty of which  
38 it shall be to nominate and submit to the governor names of per-  
39 sons for appointment as provided by Sections 28a-28d, are estab-  
40 lished and shall be organized in accordance with the provisions  
41 of this section.  
42 "(b) For filling vacancies in the office of judge or jus-  
43 tice of the Supreme Court, Court of Criminal Appeals, or any  
44 Court of Civil Appeals, there is one judicial commission.  
45 "(c) For filling vacancies in the office of judge of any  
46 District Court, there is one judicial commission for each Admin-  
47 istrative Judicial District in the state. If any District Court  
48 has jurisdiction in more than one Administrative Judicial Dis-  
49 trict, the presiding judges of the administrative districts  
50 affected shall determine which administrative district includes  
51 the District Court for purposes of judicial commission adminis-  
52 tration.  
53 "(d) The appellate judicial commission created under Sub-  
54 section (b) includes the Chief Justice of the Supreme Court, who

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1 shall act as chairman. The members of the State Bar residing in  
2 each Administrative Judicial District of this State shall elect  
3 one of their number to serve as a member of the commission from  
4 that administrative district. The governor shall appoint one  
5 citizen, not a member of the bar, from among the residents of  
6 each administrative judicial district, to serve as a member of  
7 the commission from that administrative district.

8 "(e) Each district court judicial commission includes the  
9 presiding judge of the administrative judicial district, who  
10 shall act as chairman. The members of the state bar residing in  
11 the counties included within the administrative judicial district  
12 shall elect two of their number to serve as members of the com-  
13 mission. The governor shall appoint two citizens, not members of  
14 the bar, from among the residents in the counties included within  
15 the administrative judicial district, to serve as members of the  
16 commission.

17 "(f) The terms of office of the members of the commission  
18 shall be fixed by the Supreme Court and may be changed from time  
19 to time, but not so as to shorten or lengthen the term of any  
20 member then in office. No member of any commission, other than  
21 the chairman, shall hold any public office, and no member may  
22 hold any official position in a political party. Every commis-  
23 sion may act only on the concurrence of a majority of its mem-  
24 bers. The members of the commissions shall receive no salary or  
25 other compensation for their services as such, but they shall  
26 receive their necessary travel and other expenses incurred while  
27 actually engaged in the discharge of their official duties. All  
28 commissions shall be administered, and all elections provided for  
29 under this section shall be held and regulated, under such rules  
30 as the Supreme Court shall promulgate.

31 "Sec. 28d. Prohibition of Political Activity by Judges

32 "No justice or judge of the Supreme Court, Court of Crimi-  
33 nal Appeals, any Court of Civil Appeals, or any District Court  
34 shall directly or indirectly make any contribution to or hold any  
35 office in a political party or organization, or take part in any  
36 political campaign."

37 Sec. 3. The foregoing constitutional amendment shall be  
38 submitted to a vote of the qualified electors of this state at an  
39 election to be held on the first Tuesday after the first Monday  
40 in November, 1972, at which election the ballots shall be  
41 printed to provide for voting for or against the proposition:

42 "The constitutional amendment providing a procedure for the non-  
43 partisan nomination and appointment of judges of the Supreme  
44 Court, Court of Criminal Appeals, Courts of Civil Appeals, and  
45 District Courts; providing for the subsequent rejection or reten-  
46 tion of the judges by the qualified electors; and prohibiting  
47 political activity by those judges."

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2#2227



HB 1375----relating to the nomination and nonpartisan election of trial judges and regulation of those elections, prescribing the qualifications of candidates and providing penalties.

Trial judges mean: all district judges, all judges of courts of domestic relations and juvenile courts, judges of criminal district courts, judges of county courts at law, county criminal courts, and statutory probate courts, Judges of all courts established by the Legislature in accordance with the authority granted in Sections 1 and 22 except municipal, corporation courts, justice of the peace courts, constitutional county courts, and justices and judges of the Supreme Court, Court of Criminal Appeals and Courts of Civil Appeals.

Election of Trial Judges: Trial Judges shall be nominated and elected in Judicial nonpartisan primaries and judicial nonpartisan elections for all judicial offices for which the term of office expires on or after December 31, 1972.

Oath of Candidate: Every candidate for judicial office is required to take an oath or affirmation in writing in which he shall state: That he was registered to vote in Texas in the last preceding general election. The title of the office for which he is a candidate. That he is a qualified elector of the state and of the territorial jurisdiction of the court to which election is sought. The name of the county of his legal residence. That he is qualified under the constitution and laws of the state of Texas to hold the judicial office for which he desires to be nominated and elected. That he has not violated any of the laws of the state relating to elections or registration of electors. The statement shall be filed at the time and with the officer before whom said person qualifies as a candidate.

Qualification and Filing Fee: Candidates for the office of district judge in a district that includes more than one county shall qualify for election to office with the Secretary of State on forms provided by him and shall pay a qualifying fee of the lesser of \$1000.00 or 5 percent of the annual salary of the office to which he seeks election. Candidates for all other judicial offices covered by the Act shall qualify for election to the judicial offices with the county clerk of the county of such offices and shall pay to him a qualifying fee of the lesser



of \$1000.00 or 5 percent of the annual ~~tax~~ salary of the office to which he seeks election. Such fees to be used for expenses of a nonpartisan primary if ~~required~~ required, otherwise for the general election.

Time of Qualifying: Must file the necessary statement and filing fee and qualifying form no later than the last day for which candidates are required to file for nomination in primary elections.

Form of Ballot: Judicial nonpartisan primary and general election ballot shall, where paper ballots are used, be separate and apart from any other ballot and shall contain the names of all the candidates and the respective judicial offices for which they are candidates. Where voting machines are used the candidate shall be on a separate line or column and shall be clearly designated as such. The name of the incumbent candidate shall appear first on the ballot and be identified by the word incumbent. If there is not an incumbent or after the name of the incumbent if there is one, the candidates shall be listed in alphabetical order.

Determination of Nomination for Judicial Office: Should only one candidate qualify for a particular judicial office, such candidate's name shall be placed on the judicial nonpartisan ballot for the next general election. Should 2 candidates qualify, the names of both candidates shall be placed on the ballot. Should 3 or more candidates qualify, the names of such candidates shall be placed upon the judicial nonpartisan ballot for the first primary election and each political party required to hold a primary election. The name of the candidate receiving a majority of the votes in the primary shall be placed on the judicial ballot for the next general election. Should no candidate receive a majority then names of the candidates having the highest and second highest votes, shall be on the ballot for the general election.

POLITICAL ACTIVITY OF CANDIDATES LIMITED:-----Candidate of judicial office shall not participate in any partisan political party activities, endorse any candidate, make political speeches other than in his own behalf, make contributions to political party funds, solicit contribution to political party funds, accept political party funds, attend or participate in political party meetings, rallies, or conventions, or accept or retain a place on any political party committee.

PENALTY FOR POLITICAL ACTIVITY BY A CANDIDATE:-----Candidates found to have violated provisions shall in a judicial proceeding, brought by a voter in the district court of the county in which the candidate resides, be declared ineligible to hold the office sought for the term for which he is a candidate.

POLITICAL ACTIVITY IN BEHALF OF A CANDIDATE FOR JUDICIAL OFFICE LIMITED:--- No political party or partisan political organization shall endorse, support or assist any candidate in a campaign for election to judicial office.

PENALTY FOR POLITICAL ACTIVITY IN BEHALF OF A CANDIDATE FOR JUDICIAL OFFICE:-----

Any person or organization who knowingly violates provisions of preceding section shall upon his conviction be guilty of a misdemeanor and shall be subject to a fine of \$200.00 or jail sentence of not more than 60 days.

TIME FOR BRINGING ACTION FOR VIOLATION OF THIS ACT FIXED:----- Any civil action or criminal charge against a candidate for judicial office arising out of an alleged violation of this act shall be commenced prior to the execution of the certificate of election by the secretary of state.

CAMPAIGN CONTRIBUTION AND EXPENSE:-----Candidates may accept contributions. If opposed shall keep record of their contributions and expenses and file reports on the same bases as required of candidates for state and county offices.

VACANCY OCCURRING BEFORE GENERAL ELECTION:-----If vacancy occurs more than 5 days before deadline for filing for nomination, nominations for the unexpired term can be made in the same manner and under same rules as apply to nominations for full term.

Should vacancy occur on or after the fifth day preceding filing deadline and more than 30 days before the primary election, or should candidates who have qualified for the primary die or withdraw within such period, candidates shall have until the end of the 25th. day before the primary to qualify for the primary. Should vacancy occur on or after the 30th. day before primary and more than 20 days before the general election or should all candidates die or withdraw, any candidate may qualify, without other wise being nominated by filing the oath and paying the fee.



If no candidate receives a majority of votes than governor, or county judge, in the case of county offices, shall call a special judicial election to be held within 30 days after general election, in which names of candidates having highest and second highest number of votes will be on ballot. Candidate who receives highest number of votes is winner.

CONFLICTING LAWS REPEALED:-----All lase and parts of laws in conflict with this Act are repealed to the extent of such conflict.

EMERGENCY:-----Constitutional rule requiring bills to be read on 3 several days in each house is suspended. Act takes effect upon passage.

COMMENT: Bill states Judges should be nominated by ~~commission~~, but makes no reference to how, who or why? ~~Is very good~~ Goes to great length establishing procedures for nonpartisan elections, no political affiliations, etc. but I do not see how these provisions could realistically be enforced. Bill would not be bad, but is nothing to get excited about. Suggest we leave it alone, and concentrate efforts on something more worth while.

---



Buster  
TR

TEXAS LEGISLATIVE SERVICE  
3/23/71  
Introduced by Hale  
Referred to Committee on Elections

H. B. 1375

9-8-10-26--240

A BILL TO BE ENTITLED

AN ACT

relating to the nomination and nonpartisan election of trial judges and regulation of those elections; prescribing the qualifications of candidates; providing penalties; and declaring an emergency.

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

Section 1. SHORT TITLE. This Act may be cited as the Nonpartisan Nomination and Election of Trial Judges Act of 1971.

Sec. 2. DEFINITIONS. (1) As used in this Act, the term "trial judges" means:

(A) all district judges;  
(B) all judges of courts of domestic relations and juvenile courts;

(C) all judges of criminal district courts;  
(D) all judges of county courts at law, county criminal courts, and statutory probate courts; and  
(E) judges of all courts established by the Legislature in accordance with the authority granted in Sections 1 and 22, Article V, of the Constitution of the State of Texas, except municipal, corporation courts, justice of the peace courts, constitutional county courts, and justices and judges of the Supreme Court, Court of Criminal Appeals, and Courts of Civil Appeals.

(2) In this Act, "judicial office" means the office in which a trial judge serves as judge.

Sec. 3. ELECTION OF TRIAL JUDGES. Trial judges shall be nominated and elected in judicial nonpartisan primaries and judicial nonpartisan elections for all judicial offices for which the term of office expires on or after December 31, 1972.

Sec. 4. OATH OF CANDIDATE. (a) Every candidate for judicial office is required to take an oath or affirmation in writing in which he shall state:

(1) that he was registered to vote in Texas in the last preceding general election;  
(2) the title of the office for which he is a candidate;  
(3) that he is a qualified elector of the state and of the territorial jurisdiction of the court to which election is sought;  
(4) the name of the county of his legal residence;  
(5) that he is qualified under the constitution and laws of the State of Texas to hold the judicial office for which he desires to be nominated and elected; and  
(6) that he has not violated any of the laws of the state relating to elections or registration of electors.  
(b) The statement shall be filed at the time and with the officer before whom said person qualifies as a candidate.



1 Sec. 5. QUALIFICATION AND FILING FEE. Candidates for the  
2 office of district judge in a district that includes more than  
3 one county shall qualify for election to said office with the  
4 secretary of state on forms to be provided by him and shall pay  
5 to him a qualifying fee of the lesser of \$1,000 or five percent  
6 of the annual salary of the office to which he seeks election.  
7 Candidates for all other judicial offices covered by this Act  
8 shall qualify for election to the respective judicial offices  
9 with the county clerk of the county of such offices and shall pay  
10 to him a qualifying fee of the lesser of \$1,000, or five percent  
11 of the annual salary of the office to which he seeks election;  
12 such fees to be used for expenses of a nonpartisan primary if  
13 required, otherwise for the general election.

14 Sec. 6. TIME OF QUALIFYING. Each candidate for judicial  
15 office covered by this Act shall qualify by filing the necessary  
16 statement and filing fee and qualifying forms no later than the  
17 last day for which candidates are required to file for nomination  
18 in primary elections held by any party required to hold a primary  
19 election under the laws of this state.

20 Sec. 7. FORM OF BALLOT. The judicial nonpartisan primary  
21 and judicial nonpartisan general election ballot shall, where the  
22 paper ballot is used, be separate and apart from any other ballot  
23 and shall contain in addition to the formal parts and instructions  
24 to voters, the names of all the candidates and the respective  
25 judicial offices for which they are candidates. Where voting  
26 machines are used, the name of the candidate in the judicial non-  
27 partisan primary or judicial nonpartisan general election shall  
28 be on a separate line or column and shall be clearly designated  
29 as such. The name of the incumbent candidate, if there be one,  
30 shall appear first on the primary and general election ballot for  
31 the judicial office being filled and shall be identified by the  
32 word "incumbent." If there be no incumbent, and after the name of  
33 the incumbent, if there be one, the names of the qualifying  
34 candidates shall be listed in alphabetical order of the first  
35 letter of the candidates' surnames. In any judicial nonpartisan  
36 primary and judicial nonpartisan general election, provisions  
37 shall be made for the elector to write in the name of a qualified  
38 person for whom he desires to vote.

39 Sec. 8. DETERMINATION OF NOMINATION FOR JUDICIAL OFFICE.

40 (1) Should only one candidate qualify for a particular judicial  
41 office, such candidate's name shall be placed on the judicial  
42 nonpartisan ballot for the next general election by the official  
43 required by law to prepare such ballot;

44 (2) Should two candidates qualify for a particular judicial  
45 office, the names of such candidates shall be placed on a judicial  
46 nonpartisan ballot for the next general election;

47 (3) Should three or more candidates qualify for a partic-  
48 ular judicial office, the names of such candidates shall be placed  
49 upon the judicial nonpartisan ballot for the first primary elec-  
50 tion and each political party required to hold a primary election  
51 by the laws of this state shall provide judicial nonpartisan  
52 ballots for each qualified voter who desires to vote on such  
53 judicial candidates, whether or not such voter votes or desires  
54 to vote in the primary of such party. The name of the candidate

1 receiving a majority of the votes cast in the judicial nonpartisan  
2 primary shall be placed on the judicial nonpartisan ballot for  
3 the next general election. Should no candidate in the first  
4 judicial nonpartisan primary receive a majority of the votes for  
5 such office, the names of the candidates having the highest and  
6 second highest number of votes in the nonpartisan judicial primary  
7 shall be placed on the judicial nonpartisan ballot as candidates  
8 for such judicial office in the next general election.

9 Sec. 9. DETERMINATION OF ELECTION FOR JUDICIAL OFFICE.  
10 The candidate for each judicial office who receives the highest  
11 number of votes in the judicial nonpartisan general election for  
12 such office shall be declared elected and shall be issued a  
13 commission for such judicial office for the term thereof fixed by  
14 law by the Secretary of State of the State of Texas.

15 Sec. 10. THOSE QUALIFIED TO VOTE. All qualified electors  
16 shall be eligible to vote in all judicial nonpartisan primaries  
17 and judicial nonpartisan general elections.

18 Sec. 11. POLITICAL ACTIVITY OF CANDIDATES LIMITED. A  
19 candidate for judicial office shall not participate in any par-  
20 tisan political party activities; endorse any candidate; make  
21 political speeches other than in his own behalf; make contribu-  
22 tions to political party funds; solicit contributions to political  
23 party funds; accept political party funds; attend or participate  
24 in political party meetings, rallies, or conventions; or accept  
25 or retain a place on any political party committee. A candidate  
26 for judicial office shall not, by the use of any news media,  
27 campaign literature or paraphernalia, or in public appearances,  
28 be identified as presently or formerly a member of any political  
29 party.

30 Sec. 12. PENALTY FOR POLITICAL ACTIVITY BY A CANDIDATE.

31 Any candidate for judicial office who is found to have violated  
32 the provisions of Section 11 of this Act, or any applicable pro-  
33 visions of the elections code, shall, in an appropriate judicial  
34 proceeding, brought by any elector in the district court of the  
35 county in which the candidate resides, be declared ineligible to  
36 hold the office sought for the term for which he is a candidate.

37 Sec. 13. POLITICAL ACTIVITY IN BEHALF OF A CANDIDATE FOR  
38 JUDICIAL OFFICE LIMITED. No political party or partisan political  
39 organization shall endorse, support, or assist any candidate in  
40 a campaign for election to judicial office.

41 Sec. 14. PENALTY FOR POLITICAL ACTIVITY IN BEHALF OF A  
42 CANDIDATE FOR JUDICIAL OFFICE. Any person in his individual  
43 capacity or as an officer of an organization who knowingly vio-  
44 lates the provisions of the preceding section shall, upon his con-  
45 viction, be guilty of a misdemeanor and shall be subject to a  
46 fine of \$200, or imprisonment in the county jail for a period of  
47 not more than 60 days, or both.

48 Sec. 15. TIME FOR BRINGING ACTION FOR VIOLATION OF THIS  
49 ACT FIXED. Any civil action or criminal charge against a candi-  
50 date for judicial office arising out of an alleged violation of  
51 this Act shall be commenced prior to the execution of the certifi-  
52 cate of election by the secretary of state.

53 Sec. 16. CAMPAIGN CONTRIBUTION AND EXPENSE. Candidates  
54 for judicial office may accept contributions, shall incur only



1 such expenses as are authorized by law, and if opposed shall keep  
2 an accurate record of their contributions and expenses and shall  
3 file reports thereof on the same basis as required of candidates  
4 for state and county offices.

5 Sec. 17. VACANCY OCCURRING BEFORE GENERAL ELECTION.

6 (a) Should a vacancy in a judicial office occur more than five  
7 days before the regular deadline for filing for nomination as  
8 provided in Section 6 of this Act, nominations for the unexpired  
9 term shall be made in the same manner and under the same rules  
10 applicable to nominations for full terms.

11 (b) Should a vacancy in a judicial office occur on or  
12 after the fifth day preceding the regular filing deadline and  
13 more than 30 days before the general primary election, or should  
14 all candidates who have qualified for the judicial nonpartisan  
15 primary die or withdraw within such period, candidates shall  
16 have until the end of the 25th day preceding the day of the  
17 general primary in which to qualify for the judicial nonpartisan  
18 primary in the same manner as provided in Sections 4 and 5 of  
19 this Act.

20 (c) Should a vacancy in a judicial office occur on or  
21 after the 30th day preceding the day of the general primary and  
22 more than 20 days before the general election, or should all  
23 candidates for such office die or withdraw within such period,  
24 any candidate may qualify to have his name placed on the judicial  
25 nonpartisan ballot for such general election, without being  
26 otherwise nominated, by filing the oath and paying the fee pro-  
27 vided in Sections 4 and 5 of this Act more than 20 days before  
28 the date of such election, and any candidate who receives a  
29 majority of the votes in such general election shall be declared  
30 elected, and if no candidate receives a majority of such votes,  
31 then the governor, or the county judge in the case of county  
32 court offices, shall call a special judicial nonpartisan election  
33 to be held within 30 days after such general election, in which  
34 the names of the candidates having the highest and second highest  
35 number of votes shall appear on the ballot, and the candidate who  
36 receives the highest number of votes in such special judicial  
37 nonpartisan election shall be declared elected.

38 Sec. 18. CONFLICTING LAWS REPEALED. All laws and parts of  
39 laws in conflict with this Act are repealed to the extent of such  
40 conflict.

41 Sec. 19. EMERGENCY. The importance of this legislation  
42 and the crowded condition of the calendars in both houses create  
43 an emergency and an imperative public necessity that the Consti-  
44 tutional Rule requiring bills to be read on three several days in  
45 each house be suspended, and this Rule is hereby suspended, and  
46 that this Act take effect and be in force from and after its  
47 passage, and it is so enacted.





ROSCOE, SNYDER & PACIFIC RWY.

✓  
H.B. 595 - Relating to  
the State Judicial  
Qualifications Commission.  
Judiciary Comte.

Comte reported favorable  
4/15/71

Get copy of bill.

Was the right to  
Assure given  
them due to  
Ethics Commission?



*Brooker*

TEXAS LEGISLATIVE SERVICE

H. B. 595

2/18/71

Introduced by Murray

Referred to Committee on Judiciary

18-9-8-10--220

A BILL TO BE ENTITLED

AN ACT

providing procedures to be employed by the State Judicial Qualifications Commission in the exercise of its power to censure, as provided in Article V, Section 1-a, Subsection (6), of the Texas Constitution; amending Chapter 516, Acts of the 60th Legislature, Regular Session, 1967 (Article 5966a, Vernon's Texas Civil Statutes), by adding a new Section 6A; and declaring an emergency.

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

Section 1. Chapter 516, Acts of the 60th Legislature, Regular Session, 1967 (Article 5966a, Vernon's Texas Civil Statutes), is amended by adding a new Section 6A to read as follows:

"Section 6A. Procedures to be employed by the commission in the exercise of its power of censure, as provided in Article V, Section 1-a, Subsection (6), of the Texas Constitution, will be determined by the commission following a hearing held before it as provided in Article V, Section 1-a, Subsection (8), of the Texas Constitution."

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

*Received in Senate 4/30/71*

*Signed by Gov. 6/8/71.*



HB 595 by Murray----- providing procedures to be employed by the State Judicial Qualification Commission in the exercise of its power to censure.

Procedures will be determined by the commission following a hearing held before it as provided in Article V, Section 1-A, Subsection 8

Constitutional Rule requiring bills to be read on three several days in each house is suspended. Act take effect upon passage.

COMMENT: Could support this bill, but it is terrible vague. What procedure?

Would like to know more specifics before League would commit itself. With time running out, I would suggest to let the bill struggle along without us.



Newsletter III  
April 19, 1971

-9-

TEXAS CONSTITUTIONAL REVISION

SUPPORT (Judiciary)

- H. B. 168 Williams. Removal justices of peace for incompetency.  
3/18/71 - Committee Report Favorable by House Rules Committee, Nugent of Kerr, Chairman.
- S.J.R. 43 Snelson. Resolution for a constitutional amendment adopting the so-called "Merit" (Missouri) Plan for selection and tenure for all Texas appellate and district judges.

A Time for Action dated April 3, 1971 was sent prior to a hearing originally scheduled for April 6 but postponed to April 13. Background information was given in this TFA.

At the hearing held on April 13, a distinguished group presented testimony in favor of the proposed amendment: Judge St. John Garwood (our friend from JS&T study days), Chief Justice of the Supreme Court Robert Calvert, Justice Price Daniel, a distinguished judge from Missouri (I believe his name is Paul Van Osdel) and our own Janice May, who testified for the LWV of Texas. (right...of Kansas City, Mo.)

Judge Garwood stated that the system known as the Missouri or Merit Plan has been endorsed nationally by the American Bar Assn., the Judicature Society, the American Assembly of 1965 and groups of jurists, besides being recommended by the Constitutional Revision Commission established by HSR 429 of the 60th Legislature. He also introduced letters from 16 past state bar presidents, recommending SJR 43.

It was pointed out that the proposed has a provision for appointing in case the Governor does not make the appointments within 60 days, which is better than the present Missouri Plan. It is basic that the Commission makes the appointments in a non-partisan, non-political way. The State Bar makes recommendations on the judges and publishes this information before it goes to the ballot. The gentleman from Missouri spoke of the popularity of the plan in his state, particularly with laymen.

There was no opposition at the hearing, and the committee recommended it with a "do pass." Following is the statement presented for the League by Dr. May:

STATEMENT ON BEHALF OF THE LEAGUE OF WOMEN VOTERS OF TEXAS BY MRS. JANICE MAY BEFORE THE SENATE CONSTITUTIONAL AMENDMENTS COMMITTEE RE SJR 43 by SNELSON 4-13-71

The League of Women Voters of Texas has supported the principles on which SJR 43 is based since 1964. Two years ago the League supported the proposal of the Texas Constitutional Revision Commission for judicial selection, which was very similar to SJR 43.

There are many reasons why the League favors SJR 43, but to be brief I will mention two.

First, the League believes that the nominating commission provided for in SJR 43 is a very desirable innovation. The present Texas judicial selection system relies heavily upon gubernatorial appointments to fill vacancies; some two-thirds of our district and appellate judges initially gain appointment to the bench in this manner. Following appointment, election is usually a shoo-in. The proposed nominating commission would provide a desirable check on the Governor, enlarging the pool of qualified candidates from which he chooses, which is now necessarily circumscribed for political and personal reasons.

Second, the League favors the non-partisan and non-competitive elections provided for in SJR 43. This adds a check by the people not possible under a purely appointive system; and it also avoids the undesirable consequences of partisan and competitive



elections. Among these is the need for political campaigning by judicial candidates, which will increase as Texas moves toward a two-party system, with all that this involves in soliciting campaign funds from law firms and others, winning and losing as party fortunes change, and so on. As a matter of principle, the League believes that partisan and competitive elections are not the appropriate method for attaining the ideal of an impartial and independent judiciary.

Thank you for your attention.

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TIME FOR ACTION

- TIME FOR ACTION

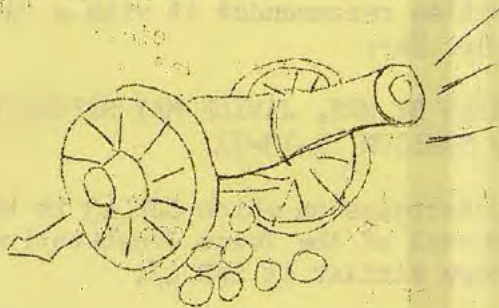
TIME FOR ACTION

A letter from Judge Garwood states that this is the nearest step to enactment of the "Merit Plan" ever taken in Texas, "although not a long step."

He says, "Now the Resolution will come before the whole Senate--with the odds obviously against the necessary 2/3 favorable vote. (The original Judicial Qualifications Commission amendment passed by only one vote!)"

You were sent a list of the Senate Constitutional Amendments Committee that heard the bill. However, several members of the Committee were not present at the hearing, including Chairman Wilson, who says he is against the Resolution.

Write immediately to your members in the Senate urging passage of SJR 43. Put your own personal reasons why you would like to see this system adopted in Texas. The present elective system came into existence in 1876. We are the only country in the world that has the elective system for judges. Try to drum up some letters from persons you know whose views might possibly be influential...not necessarily lawyers. Letters from newspaper editors would be quite helpful. Get out your old Judicial Selection and Tenure file, brush up on the merits of the selection plan, then talk it up among your acquaintances and even use it as material for your Speakers Bureau.



GET OUT YOUR AMMUNITION AND START FIRING !

Let's get the Merit System for Judicial Selection in Texas!

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CONSTITUTIONAL CONVENTION "BIZ"

At State Convention your legislative chairman announced that H.J.R. 61 by Nelson W. Wolff of San Antonio had been introduced (3/11/71). Since then two more resolutions and one bill have been introduced concerning the state constitution. We are waiting to hear from the complete committee before making a decision on which resolution or bill we will support. If you have any definite ideas or recommendations on TCR, you may write to the executive legislative committee--the President, Program V-P, TCR Resource Chrm., and the Legislative Chairman. Analyses on the TCR proposals follow:

H.J.R. 61 by Wolff, et al. Proposing an amendment to Article XVII of the Const. to provide that the 63rd Legislature elected in Nov. 1972, act as a constitutional convention to propose a revised Constitution to the voters of Texas, retaining the bill of rights of the present Constitution.



H.J.R. 61 provides for a constitutional convention in 1974. The 63rd Legislature will sit as a constitutional convention in 1974, and may appoint a constitutional commission in 1973 if it wishes. Number and qualifications of commission to be determined by the Legislature. Commission will work with Texas Legislative Council in studying and recommending changes. It shall report to the Legislature no later than November 1, 1973. A two-thirds vote of the convention would be required for the passage of each section. Per diem and expenses for legislators while serving as convention delegates would be the same amount as they receive while the Legislature is in session. If this bill is passed and becomes a proposed constitutional amendment, it will be submitted to the voters at the general election in November 1972. (Referred to Constitutional Amendments Cmte.)

S. B. 723 by Mauzy. A bill prescribing the process for the adoption of a new constitution. The 63rd Legislature will convene on the second day of October 1973 as a constitutional convention. The new constitution will be submitted to the voters at the general election in November 1974. This bill does not provide for a constitutional commission nor is it as specific as H.J.R. 61. This bill was introduced March 15 and referred to Committee on State Affairs.

H.J.R. 88 by Jones of Taylor. Proposing an amendment to provide that a proposed constitutional amendment may revise all or part of the constitution. Legislature by a two-thirds vote may propose amendments for total or partial revisions, provided that all of a proposal to amend part of the constitution be voted upon as one question. Proposed amendments shall be published once a week for four weeks, at least three months before the election. Bill introduced March 16 and referred to Committee on Constitutional Amendments.

S.J.R. 52 by Wilson. Proposing an amendment to Article XVII of the Constitution to provide that the 63rd Legislature elected in November 1972 act as a constitutional convention to propose a revised Constitution to the voters of Texas, retaining the bill of rights of the present constitution. When the Legislature convenes in regular session in January 1973, it may appoint a Constitutional Commission, whose number and qualifications shall be determined by the Legislature. The Commission shall work with the Texas Legislative Council in studying the Constitution and recommending changes. It shall report to the members of the Legislature no later than November 1, 1973. A two-thirds vote of the delegates to the Constitutional Convention shall be required for the passage of each section. Per diem and expenses for legislators while serving as members of the Con-Con shall be the same as the amount they receive in regular session.

#### REPRESENTATIVE GOVERNMENT

##### SUPPORT

S.C. R. 1 by Mauzy. Memorializing Congress to disregard S.C.R. 24 of the 59th Legislature relating to apportionment of the Legislature.  
2/2/71 - Reported favorably by Committee on Legislative, Congressional and Judicial Districts.

CORRECTION: Under VOTER REGISTRATION: H.B. 39 - Kubiak. The Jones on the sub-committee should be Delwin Jones of Lubbock and not Grant Jones of Abilene. This was checked with Mr. Kubiak's secretary.



8-9--180

A BILL

TO BE ENTITLED

AN ACT relating to the jurisdiction of the district court and to trial by jury in probate matters; amending Sections 5 and 21, Texas Probate Code; making effectiveness of this Act contingent upon passage of a constitutional amendment; and declaring an emergency.

BE IT Enacted by the Legislature of the State of Texas:

Section 1. Section 5, Texas Probate Code, is amended to read as follows:

"Section 5. Jurisdiction of District Court With Respect to Probate Proceedings

"The district court shall have original control and jurisdiction over executors, administrators, guardians and wards under such regulations as may be prescribed by law.

"In those counties in which there is no statutory probate court, county court at law or other statutory court exercising the jurisdiction of a probate court, the district court, concurrently with the county court, shall have the general jurisdiction of a probate court. In those counties it shall probate wills, appoint guardians, of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law. The Supreme Court shall have power to adopt rules governing the filing, distribution and transfer of all such cases and proceedings as between district courts and county courts, and may provide that all appeals in probate matters shall be to the courts of civil appeals.

"In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in such courts, rather than



in the constitutional county courts, unless otherwise provided by the legislature, but the county judge may hear any of such matters sitting for the judge of any of such courts. In such counties all final orders in such matters shall be appealable to the Courts of (Civil) Appeals."

Sec. 2. Section 21, Texas Probate Code, is amended to read as follows:

"Section 21. Trial by Jury

"In all contested probate and mental illness proceedings in the district court or in the county court or statutory probate court, county court at law or other statutory court exercising probate jurisdiction, the parties shall be entitled to trial by jury as in other civil actions."

Sec. 3. This Act takes effect only if a constitutional amendment deleting the constitutional requirement that district courts shall have only appellate jurisdiction and general control over probate matters is submitted by the 62nd Legislature and is adopted by the qualified electors of this state.

Sec. 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.



SB 796-----Relating to District and County Court as concurrent general jurisdiction probate Courts and providing that the Supreme Court shall have power to adopt rules governing the filing, distribution and transfer of all such cases and proceedings. Supreme Court may provide that all appeals in such matters shall be to the Courts of civil appeals.

District , concurrent with County Court shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis (what is that, I will have to get a legal and a latin dictionary) common drunkards, grant letters testamentary and of administration, settle accounts of executors.

Senate Committee Substitute for SB 796-----relating to jurisdiction of District court and to trial by jury in probate matters, making effectiveness of this Act contingent upon passage of a constitutional amendment.

District court shall have original control and jurisdiction over executors, administrators, guardians and wards under regulations as may be prescribed by law. In counties which there is no statutory probate court, county court and the district court concurrently with the county court, shall have the general jurisdiction of a probate court. Supreme Court shall have power to adopt rules governing the filing, distribution and transfer of all such cases and proceedings and may provide that all appeals in probate matters shall be to the courts of civil appeals.

In counties where there is a statutory probate court all applications, petitions, etc. shall be filed and heard in these courts. The county Judge may hear any of such matters sitting for the judge of any of such courts. This act takes effect only if a constitutional amendment deleting the requirement that district courts shall have only appellate jurisdiction and general control over probate matters



is submitted by the 62nd. legislature and is adopted by the qualified electors of this state.

COMMENT: Guess this could be supported under the position of a "uniform code of civil and criminal procedure formulated by the Supreme Court, with legislative approval". I feel this is stretching it a bit. There are more important bills to be concerned about, so in my opinion let's forget it.

*From Corvex*



8-9--180

A BILL

TO BE ENTITLED

AN ACT relating to the district court and county court as concurrent general jurisdiction probate courts and providing the jurisdiction thereof and further providing that the Supreme Court shall have power to adopt rules governing the filing, distribution and transfer of all such cases and proceedings as between district courts, county courts, and other courts having jurisdiction thereof, and providing that the Supreme Court may provide that all appeals in such matters shall be to the courts of (civil) appeals; amending Section 5, Texas Probate Code, as amended; and declaring an emergency.

BE IT Enacted by the Legislature of the State of Texas:

Section 1. Section 5, Texas Probate Code is amended to read as follows:

"Section 5 Jurisdiction of District Court with Respect to Probate Proceedings. The District Court, concurrently with the County Court, shall have the general jurisdiction of a probate court. It shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law, and the Supreme Court shall have power to adopt rules governing the filing, distribution and transfer of all such cases and proceedings as between district courts, county courts, and other courts having jurisdiction thereof, and may provide that all appeals in such matters shall be to the courts of (civil) appeals.

Section 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

®



CB  
TEXAS LEGISLATIVE SERVICE  
2/16/71  
Introduced by Hale, et al  
Referred to Committee on  
State Affairs

H. B. 556

Same as SB 340

9-8-10-2--285

A BILL TO BE ENTITLED

AN ACT

*Passed  
but vetoed  
5/8/71*

effecting reform in the trial of civil actions; establishing a system of comparative negligence and abolishing contributory negligence as a bar to recovery under certain conditions in civil suits by providing for recovery of damages on the basis of comparison of causal negligence; providing for the necessary procedures relative to instructions to the Jury by the court of the law, the burden of proof, the effect of their answers and submission of issues; rendering of verdicts by a majority of nine members concurring; and the contribution to the award of damages in case of multiple defendants, repealing all laws in conflict therewith including Article 2212, Revised Civil Statutes of Texas, 1925; providing for severability; and declaring an emergency.

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

Section 1. Causal contributory negligence shall not bar recovery in any action by any plaintiff or cross-claimant, or his legal representative, to recover damages for negligence resulting in the death, personal injury, or general and special damages, if such causal negligence was not greater than the causal negligence of the defendant or defendants, but damages awarded shall be diminished by the Jury in proportion to the amount of causal negligence attributed to the plaintiff, and the Court shall so instruct the Jury in his charge on damages.

Sec. 2. In all cases where liability is based on fault (fault is negligence, or the breach of a statutory duty, or an intentional wrong), only the basic issues will be submitted to the Jury for consideration, such as:

- (1) Which of the parties was at fault in causing the accident or event? (Answer to be by checking from the written names of the parties or a written statement that none of the parties was at fault.)
- (2) If any of the parties were at fault in causing the accident or event, what was their specific fault? (Answer to be by checking from written specific grounds of fault that have been raised by the pleading and proof for each party.)

4/15/71 - Passed to third reading. Two floor amendments adopted in lieu of committee amendment.  
4/21 - Committee Report favorable.  
Senate (Jurisprudence)



(3) If more than one party is at fault, what is the percentage that each contributed to cause the accident or event?

(4) What are the legal damages sustained by the injured and/or damaged parties? (taking into consideration all appropriate elements of damages, including any reduction in proportion to any contributing fault of the injured or damaged party in negligence and breach of statutory duty cases.)

There will be no inferential rebuttal issues. The basic issues will be followed by simplified explanatory instructions by the Court of the Jury's role in answering the issues, the law applicable to the case, and the effect of the Jury's answers, but the Court will not comment directly on the evidence or the weight to be given the evidence. The burden of proof of fault causing damages, and the extent of either, shall be on the party claiming same.

Sec. 3. In all cases where liability is based on the fault of more than one defendant and the plaintiff or cross-claimant's causal negligence is not greater than the total causal negligence of all the defendants, contribution to the damages awarded shall be in proportion to the percentage of negligence attributable to each defendant, provided however, that each shall remain jointly and severally liable for the whole amount of damages awarded, and provided further that such defendant shall be entitled only to an off-set from the whole award for any amount paid in settlement to the plaintiff by any other tortfeasor who is then not a party to the suit; provided, further, all claims for contribution and indemnity between defending parties must be determined in the primary suit; however a cross-claimant's recovery shall not be taken as an off-set to the recovery of any plaintiff or other cross-claimant. All other acts in conflict herewith and an Act of the Legislature of 1917, page 360 (Article 2212, Vernon's Texas Civil Statutes) are repealed hereby.

Sec. 4. In all civil cases tried in the District Courts or Domestic Relations Courts of this state, the Jury may render a verdict upon the concurrence of as many as nine of its members and when such verdict is less than unanimous it shall be signed by each member concurring therein.

Sec. 5. If any word, phrase, clause, provision, sentence, part or parts of this Act shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining

parts of this Act and all remaining parts shall be valid. The Legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such word, phrase, clause, provision, sentence, part or parts thereof would be declared invalid or unconstitutional.

Sec. 6. All laws or parts of laws in conflict herewith are expressly repealed to the extent of such conflict; including Article 2212, Revised Texas Civil Statutes, 1925.

Sec. 7. The fact that many Court calendars of this state are crowded, congested and delay is prevelant, trials have become lengthy and too much time is expended in preparing the Court's charge and Jury deliberation, and further grave injustice is constantly being worked upon persons in this state injured in person and property by the negligence or fault of others due to the fact that under existing law there can be no recovery of damages by the person so suffering injury or damage if he be in any degree contributorily negligent, and Juries are submitted a large number of technically-worded issues without being advised of the law or the effect of their answers, and all twelve Jurors are required to agree unanimously on a multitude of granulated special issues, without understanding the effect of their answers, resulting in mistrials, deadlocked juries and re-trials, creates an emergency and an imperative public necessity that the Constitutional Rule requiring Bills to be read on three several days in each House be suspended, and this Rule is hereby suspended, and that this Act shall take effect and be in force for all causes of tort action arising after the date of its passage, and that such portion of this Act providing in civil cases for less than unanimous Jury verdicts shall take effect and be in force for all civil causes of action the trial of which shall begin after the date of its passage, and it is ~~so~~ enacted.



2-8-9-10--285

AMENDMENT No. 1

Amend H. B. 556, by striking all below the enacting clause and substituting in lieu thereof the following:

"Section 1. Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributable to the person recovering; provided that where recovery is allowed against more than one defendant, each such defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed.

Section 2. The Supreme Court of the State of Texas, under its rule making power governing the practice and procedure in court action shall, on or before September 1, 1971, promulgate rules which shall simplify the issues to be submitted to the jury for consideration in all court cases where liability is based on fault (fault is negligence, or the breach of a statutory duty or an intentional wrong).

Section 3. In all civil cases where liability is based on fault, tried in district courts, the jury may render a verdict upon the concurrence of as many as 10 of its members and when such verdict is less than unanimous it shall be signed by each member concurring therein.

Section 4. All laws or parts of laws in conflict are expressly repealed to the extent of any conflict. However, nothing herein shall be construed to repeal Chapter 225, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 6701b, Vernon's Texas Civil Statutes).

Section 5. The importance of this legislation and the crowded condition of the calendar in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted."

AMENDMENT No. 2

Amend H. B. 556, by striking all above the enacting clause and substituting in lieu thereof the following:

A BILL  
TO BE ENTITLED

AN ACT establishing a system of comparative negligence and abolishing contributory negligence as a bar to recover under certain conditions in civil suits by providing for recovery of damages on the basis of comparison of negligence; providing for simplification of issues to be submitted to the jury for consideration in certain cases; rendering of verdicts by a majority of ten members concurring; repealing all laws in conflict therewith; declaring an emergency.



also positioned

March 9, 1971

To: Brasher, cc: SO, Bubis

From: Bury

Re: SB 355 Texas Probate Code, Letter fr. student about TCR, HBL68, etc.

Chris, I agree that the League has no position concerning SB 355 which provides for changes in the Texas Probate Code.

I have an extra copy of TC Review and Revision Quo Vadis that I will send to the student who asked for information on the subject. I will send him the booklets and suggest he send money for them to SO. In the future it would be best to send such requests to SO because I don't have any more extra copies of Revision Quo Vadis.

If you have time, Chris, I think it would be nice to call on Rep. Williams to tell him the League supports his HB 168 relating to removal of Justices of the Peace. It would be easier for you to explain why we can't do much to help than for me to write a letter.

®



TEXAS LEGISLATIVE SERVICE  
2/18/71  
Introduced by Mauzy  
Referred to Committee on  
Jurisprudence

S. B. 355

8-9--180

A BILL TO BE ENTITLED

AN ACT

amending Section 36 of the Texas Probate Code relating to the duty and responsibility of county and probate judges; and declaring an emergency.

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

Section 1. Section 36 of the Texas Probate Code is amended to read as follows:

"Section 36. Duty and Responsibility of Judge

"It shall be the duty of each county and probate court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court, guardians of the persons of wards, and other officers of the court, perform the duty enjoined upon them by law pertaining to such estates and wards. The judge shall annually, if in his opinion the same be necessary, examine the condition of each of said estates, the well-being of each ward of the court, and the solvency of bonds of personal representatives of estates and guardians of persons. He shall, at any time he finds that the personal representative's bond is not sufficient to protect such estate or ward, require such personal representative to execute a new bond in accordance with law. In each case, he shall notify the personal representative, and the sureties on the bond, as provided by law; and should damage or loss result to estates or wards through the gross neglect of the judge to use reasonable diligence in the performance of his duty, he shall be liable on his bond to those damaged by such neglect."

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.



# Law Officials Not Happy With Penal Code Revision

DENTON, Tex. (AP) — If a group of state law enforcement officials has its way, the proposed revision of the Texas Penal Code, five years in the writing, will have to wait another two.

The code's sponsors and several of its drafters defend the revision to varying degrees—some are all for it and others only partially.

But there is no diversity in its opposition.

Dallas Dist. Atty. Henry Wade, in a letter to Denton Chief of Police Wayne Autrey, put that opposition into words.

"The committee which drafted this proposed code has worked under a cloak of secrecy," Wade wrote, "keeping its work product confidential."

"In early December 1970, the product was presented at a seminar in Austin but until the middle of January copies of this code were not made available to interested members of the general public, the State Bar or law enforcement agencies."

In light of that, Wade said, "I urge that the legislature postpone voting upon this bill until all interested parties have had a fair opportunity to make an in-depth study of this proposal."

Wade's remarks, although backed by statements of several law enforcement officers in a survey by the Denton Record-Chronicle, were quickly opposed by the bill's sponsors, another district attorney and the director of the Penal Code Revision Board.

Rep. James Nugent, House sponsor of the bill, said he "figured the bill was reasonably fair to both sides. 'We want a bill favorable to society... our society has to exist.'"

Nugent, from Kerrville, said he has heard little opposition to the penal code revision and has received no adverse communications.

"The bill is the work of about five years using the skill of outstanding attorneys, judges, district attorneys and scholars," Nugent said. "What we have attempted to do is rewrite a document, parts of it 100 years old and originally written to serve a rural society."

Sen. Charles Herring of Austin, Senate sponsor of the bill, said as a whole the revision is a good one.

"There are some sections I would like to change and which probably will be changed. I don't think postponing it for two years will do the job," Herring said.

Seth S. Searcy, director of the project, is a little more direct.

"He (Wade) had representatives there," Searcy said. "He knew what was going on."

"The bill is a good one and what problems it has can be worked out this legislature. It makes no sense to wait until 1973."

Fort Worth Dist. Atty. Frank Coffey and Houston Dist. Atty. Carroll Vance have slightly different ideas.

"I think the legislature should move slowly on this thing," Vance, a member of the revision board, said. "I don't think it should be passed now but just delaying it until the 83rd Legislature isn't the right thing. It would do no good to wait two years and bring the bill back up... Public hearings and interim hearings should be held first."

Coffey, who said he was not in opposition, noted that "if we start picking it to pieces we are going to get it hacked up just

like the Code of Criminal Procedure."

"The bill has gone through years of drafting by a cross section of legal minds. I think they pretty well made the proper corrections," Coffey said.

But despite the bill's support, Wade still has friends in the opposition of quick passage.

Among them are the Texas Law Enforcement Legislative Council—to a degree—the North Texas Police Chiefs Association, Autrey and state Rep. Walt Parker.

"I'll have to have time to look at it before I make up my mind," Parker said. "We won't be in any hurry to pass it because I won't vote for it and I know others won't either until they have had a chance to study this thing."

Among the reasons cited by law enforcement officials for delay if not actual defeat of the bill are changes in:

—Penalties. Generally, Wade says, all minimum and maximum penalties have been greatly reduced.

—New defenses. Under the proposed code intoxication and ignorance could be defenses to crimes committed if such defenses are reasonable.

—Additional appeals. The pro-

posed code contains some rules which would lengthen trial procedure and cause additional appeals.

Under the proposed code, Autrey said, a man who raped a child (under 14) could receive as little as one year in prison or a \$1 fine.

Wade said that under the proposed code, criminals would be eligible for parole more quickly. He said a defendant serving a 30-year sentence could be paroled when he had credit for the minimum which could be as little as one year.



TCR & Rep Gov't.

Copy for office

February 22, 1971

To: <sup>✓</sup>Brasher cc: Bubis, SO, May

From: Bury

Re: Bills SCR 1, SJR 13, HB 271

The LWVUS has put the responsibility for examining and evaluating the various redistricting proposals on the state boards. I don't take that to mean that we must take a definite stand. As on all bills there are 3 options available to us - support, oppose, or do nothing.

However, SCR 1 isn't concerned with redistricting the Texas Legislature. It has to do with amending the U. S. Constitution so that one house of a state legislature could be apportioned on a basis other than population.

I haven't seen SJR 13, but it sounds as though we don't have a position on that one. I think you don't need to watch it, Chris.

I also don't have enough information on HB 271 (jurisdiction of Co. Courts at Law). I doubt that we have a position on it. Since judicial bills have such low priority, we could probably forget about HB 271.

Re: Analysis of H B 201 Removal of elective public officers of the state

I think we don't have a position on this bill.

Chris - I sent copies of letters to  
Sen. Word & Mauzy to Legis.  
office.

Ann

®



cc: SØ, Bubis, Brasher, May, Murphree

January 15, 1971

State Bar of Texas  
[REDACTED]

Dear Sir:

The League of Women Voters of Texas is very interested in judicial reform. We understand that the State Bar of Texas has recently recommended some judicial reforms to the legislature.

The League is eager to help push a unified court structure and other reforms. I would appreciate it very much if you would tell me what bills will be introduced and by whom. It would also be good to know whether there are other ways the League can be helpful in promoting judicial reform.

Would it be possible for the League to receive regularly the "Bulletin of the State Bar of Texas"?

Very sincerely yours,

Mrs. Richard Bury, Chairman  
Texas Constitutional Revision  
[REDACTED]

®

C  
O  
P  
Y



LWV of Texas  
January 1971

To: State Board

From: Mrs. Richard Bury

Re: Pre-Board Report - TCR and Representative Government

I've been going through the voluminous TCR files trying to learn more about the League's judicial studies. I haven't actually written anything yet because I haven't found out what judicial reform will be proposed in the legislature. I wrote to Congressman DeWitt Hale, chairman of the House Judiciary Committee, asking what bills he planned to introduce. He replied that he didn't know yet. Apparently his committee can't agree.

I'll write something before the Board meeting for the February TEXAS VOTER, but I plan to hold off on the rest of the background material until I see what direction the legislature will take. Hope that's all right with everyone.

I also wrote to Associate Justice Clyde E. Smith who retired December 31 from the State Supreme Court. He plans to devote his time to promoting judicial reform. He would be happy to speak to any group on the "Need for Judicial Reform in Texas." Should we tell the local Leagues about his offer in the Post Board Report or do you feel that too many local Leagues depend too heavily on outside speakers?

I'd like to talk at our committee meeting about apportionment. Everyone feels this is going to be such a "hot" issue this session. What part should the League play?

Senator Oscar Mauzy spoke at Texas A&M a few weeks ago about automobile insurance. Afterwards I asked his opinion of the chances for judicial reform in 1971. He was very pessimistic. However, he said, "We certainly appreciate the good work the League has done on voter registration. I really think we'll get it through this time."

\* \* \* \* \*



December 2, 1970

C  
O  
P  
Y  
  
The Honorable Clyde R. Smith  
Texas Supreme Court  
Austin, Texas

Dear Justice Smith:

I read in the November 10 Houston Chronicle of your resignation and plans for the future. I am glad you want to devote much of your time to judicial reform and constitutional revision.

The League of Women Voters of Texas has been interested in constitutional revision for over fifteen years. The League also has studied the judicial system in Texas, and the members have agreed upon some ways of improving the judiciary. I am enclosing a copy of the League's State Program folder for 1970-71 which lists our judicial support positions.

I hope you will keep the League informed about your activities concerning either judicial reform or constitutional revision. We will be most happy to cooperate with you in achieving these goals.

Sincerely yours,

Mrs. Richard Bury, Chairman  
Texas Constitutional Revision  
1100 Pershing Drive  
College Station, Texas 77840

Encl.

cc: SO, Bubis, Boller, Brasher

®



December 2, 1970

The Honorable L. Dewitt Hale  
House of Representatives  
Austin, Texas 78711

My dear Mr. Hale:

The League of Women Voters of Texas has long been interested in judicial reform. I understand that you, as chairman of the House Judiciary Committee, plan to introduce some bills in the next legislative session which would help modernize our courts. Could you briefly tell me the nature of the bills you plan to introduce?

The League of Women Voters of Texas has positions on several aspects of our judiciary, but the members need a review of these positions. I plan to write some background material for each League in Texas but want to concentrate first on the issues that are apt to be discussed in the 62nd Legislature.

Sincerely yours,

Mrs. Richard Bury, Chairman  
Texas Constitutional Revision  
1100 Pershing Drive  
College Station, Texas 77840

cc: Bubis, SO, Brasher, Hansler





*cc Bureau of Public Relations*  
*11-10-70*  
*Austin - American*

# Texas Supreme Court Judge Announces His Resignation

By GLEN CASTLEBURY  
Capitol Staff

Associate Justice Clyde E. Smith announced Monday that he will resign from the Texas Supreme Court as soon as a successor is chosen by the governor and confirmed by the Texas Senate.

The 73-year-old judge tendered his resignation to Gov. Preston Smith in a lengthy letter in which he pledged to devote his retirement years to working for judicial reform.

He called for constitutional revision of the judiciary, non-partisan election of judges, creation of a judiciary administrator system and higher pay for district attorneys.

Smith, whose public service over five decades includes 20 years on the Supreme Court and seven years on a district bench, has two years remaining on his present six-year term but said he has "definitely concluded" to retire early.

Smith's long letter to the governor was written in the soft, easy-going, story-telling style which has marked many of his opinions and has made him a favorite in social circles,

conventions and the banquet circuit.

He told the governor that "what this state really needs is a constitutional convention. . . before it is too late. . . to rewrite our 'Joseph's Coat' present constitution." But, he said, this hasn't come about because some fear "that one faction will get in control."

"If the time is not ripe for such a progressive movement, then I respectfully suggest a complete revision of Article V, the judicial department of our constitution," Smith wrote.

Smith, born in Medina County in South Texas, went into law by studying in the law office of the late Judge R. A. Shivers of Woodville, father of former Gov. Allan Shivers. He was admitted to the bar in 1919 at the age of 20.

In 1920, he was elected county attorney of Tyler County, a job he kept for two years before

going into private practice. In 1926, he was elected district attorney of a four-county district in Southeast Texas. He served in that job until 1935 when he came to Austin as assistant secretary of state.

But he returned to Woodville in 1936 and was in private law practice until 1943 when he was appointed district judge. He was elected and re-elected to that job until 1950 when Gov. Shivers named him to the Supreme Court vacancy created when Judge James P. Hart resigned to become chancellor of the University of Texas.

Smith is a member of several professional legal organizations and has long been active in First Baptist Church affairs in Austin and Woodville. He is active in Boy Scout work, Lions Club, the Red Cross and many local civic groups in Austin and Woodville.



cc. Bury  
Dallas Morning News 10/4/70

# Texas Judges Want Court Reform

Austin Bureau of The News

GALVESTON — A sense of urgency over the need for court reforms pervaded last week's Conference of Texas Judges at this resort isle.

Their Honors were unusually attentive to the discussions of the problem and possible solutions. The conference hall overflowed during business sessions.

Some of the proposals for change which will be presented to the Legislature in January have been booting around for years, while most judges and lawyers adopted attitudes ranging from indifference to hostility.

## Resentment Felt

Now they feel a rising resentment from the public—not directed in most part against the state court judges meeting here. But the fallout may affect them all, the Texas judges realize.

Most public ire has come from decisions of the U.S. Supreme Court, from the dilatory tactics of lawyers rather than judges, and from trying to dispose of mounting thousands of cases—many resulting directly from the Automobile Age—under court procedures established a century ago for a rural economy using the horse and wagon.

To most citizens, a judge is a judge, whether he is a Justice of the Peace or a justice of the Supreme Court. The shortcomings of one reflect on the whole judiciary.

Actually, many Texas judges are very progressive in attempting to improve the system. While this is especially true of younger judges—many of whom are in their thirties and forties—among the most effective advocates for reform are such

## Richard Morehead

respected veterans as Chief Justice Robert W. Calvert of the Supreme Court and K. K. Woodley, who is retiring this year as presiding judge of the Court of Criminal Appeals.

**THE RISE OF 2-PARTY POLITICS** really is a catalyst activating the judges into efforts toward satisfying the public's main complaints.

Even in today's inflated system, state court judges receive comfortable salaries and retirement benefits. None is paid less than \$20,000 annually and a large number is in higher brackets up to \$29,000.

Some populous states pay more, but the upcoming Legislature isn't likely to be asked for a judicial pay raise.

## GOP Opposition

As long as only Democrats became judges in Texas, the political system seemed to be all right with them. But two Republicans were elected to the district bench in 1968—R. C. McKim of Odessa and John Furrh of Marshall. We met these gentlemen at the convention here after writing recently that Texas has no Republican judges "so far as we know." We have learned differently.

The state employs nearly 300 elected judges, and several Democratic incum-

bents face Republican opponents in November. When a judge loses an election, it can cost him retirement benefits as well as a comfortable salary and throw him back into private employment at an awkward age.

"Court congestion is so great the legal system may cease to function at all," remarked Dean W. Page Keeton of the University of Texas Law School, quoting others on the situation facing America's courts.

## Able Leadership

Able leadership has emerged to seek reforms in Texas. Chief Justice Calvert, a former legislator, will help seek legislative action next year on proposals drafted by his committee and generally approved here. Most of the draftsmanship on this program is by Dist. Judge Clarence A. Guitard of Dallas.

State Rep. L. DeWitt Hale of Corpus Christi expects to introduce more far-reaching proposals, following hearings the House Judiciary Committee has held around the state this year under his chairmanship.

**LT. GOV. BEN BARNES** and Speaker Gus F. Mutscher promised cooperation in getting action on the court legislation. An unusual number of candidates this fall are talking about the courts, along with the handling of automobile damage disputes and delays in punishing lawbreakers.

Many of the judges didn't like what they heard here, but they listened attentively. Most seem in the mood to step out of the role where Chief Justice Calvert described them and lawyers as being "notorious status quo-ers."



10-23-70

To: Mrs. Robert Coffman, Legislative Chairman  
Dallas League of Women Voters  
From: Mrs. Thomas L. Brasher, State Legislative Chairman

Dear Mrs. Coffman:

The Dallas Morning News of 10-4-70 had an article written by Richard Morehead on "Texas Judges Want Court Reform". Could you possibly get me a couple of copies of this to put in our legislator's file and for the Capitol Corps members who will be handling TCR? Please send me any articles on any of the legislators that you may come across (2 if possible) that deal with League issues.

Hope all of you from the Dallas League enjoyed the Lobby School.

Chris Brasher

cc: SO  
Bubis  
Lanz





MODERNIZATION OF STATE GOVERNMENT  
Grace Heck

The Texas Constitution provides the Judicial Branch of state government to include the following: SUPREME COURT (Chief Justice and Associate Justice), COURT OF CIVIL APPEALS (Chief Justice and two associates), COURT OF CRIMINAL APPEALS (three judges), DISTRICT COURTS, COUNTY COURTS, and COURTS OF JUSTICE OF PEACE.

In the modernization of the state government, the League gives support of the Executive, Legislative and Judicial reform to be accomplished through Constitutional revision and legislative action of an effective judicial structure in the following six areas, keeping in mind that the League study only included appellate judges.

1. "A single system of centrally administered state wide courts with a uniform fiscal policy."

Quoting Charles P. McCormick, of the Institute of Public Affairs, University of Texas, May 1957----"It is believed that the judicial department could administer more swiftly and economically if it were given a unified organization with a single administrative head. This would contemplate, instead of a court for every judge as now, except in the appellate courts, a single court of justice of the State of Texas. Every judge in Texas would be a judge of this court. Local systems would be organized similar to the state: the Trial Division and the Appellate Division."

2. "A Unified Code of Civil and Criminal Procedure formulated by the Supreme Court, with Legislative approval."

Again quoting Mr. McCormick, "A new Judiciary Article should provide, or authorize the legislature to provide the machinery for a unified administration of the state court system."

3. "Assignment of judges according to special training and docket needs," (such as probate, juvenile, trial, etc.)

4. "A full time judiciary whose members qualify to practice law in Texas."

5. "Integration of Justice of the Peace functions into courts of record."

6. "Modification of the present appellate judge system to provide: selection by combination of commission nomination; executive appointment; and noncompetitive and nonpartisan elections; compulsory retirement; and new and effective removal procedures."

From the excerpts of the "Judicial Selection in Texas", April, 1964, an Exploratory Study of University of Houston, we lift the following information: Questionnaires sent to 570 judges and lawyers, 392 replies revealed that most trial and appellate judges were appointed by the Governor for the first time. Judges appointed to the bench are rarely ever defeated in the election that follows...when they are opposed 98% were reelected.

The tenure of office for a district judge is 4 years, and 6 years for an appellate judge.

Resignation and retirement usually accounts for the change on the bench.



MODERNIZING STATE GOVERNMENT  
"THE LEGISLATURE"

The following is a description of the legislature as is. At the unit meeting we will go into how it could be improved.

No one would suppose that the task of guiding the public destiny of ten million people is an insignificant one. That is precisely the function of the Texas legislature.

I. Representation in the Texas Legislature

A. The Texas Senate has 31 members each elected for a 4 year term from one of the 31 senatorial districts into which the state is divided on the basis of qualified voters. According to the state constitution, no county may have more than one senator.

B. The Texas House has 150 members elected for 2 years from 94 districts. A county is limited to 7 representative until its population exceeds 700,000.

C. The task of redistricting after each census belongs to the legislature. However, if the legislature fails to do this, there automatically comes into existence a Legislative Redistricting Board.

II. Members

A. Senators must be 26 years old, United States and Texas citizens and a resident for five years in the state and 1 year in the district.

B. Representatives must be 21, a U.S. and Texas citizen and a resident for 2 years in the state and 1 year in the district.

III. Sessions and Salaries

A. Biennial sessions of a maximum of 140 days. Special sessions called by the Governor for a maximum of 30 days. During these sessions, it is the Governor's prerogative to specify the subjects to come before the legislature.

B. Annual salary as set by the state constitution consists of \$4800 plus a daily allowance of \$12.00 for 120 days of regular session and 30 days of special session. A mileage allowance of 10¢ per mile going to and from Austin once, and a contingency allowance are also given.

IV. Organization

A. House members elect the Speaker from their own ranks after much campaigning. The Speaker appoints all members and chairmen of committees, interprets House rules, and refers bills to committees. All bills must be referred to a committee. Bills not blessed by a majority of the committee die automatically unless at least four committee members sign a favorable minority report. Committee chairmen have powers affecting date, time and place of meetings; the agenda; appointment of subcommittees; reference of bills to subcommittees; etc. Bills are numbered and heard in the order in which they are introduced.

B. The Lieutenant Governor presided over the Senate. He appoints all committees. Bills are placed on the calendar in the order in which they come out of committees unless the regular calendar order is suspended. In order to move for suspension it is necessary to prearrange with the Lt. Governor to be recognized.



C. Since a bill must pass both houses in identical form, it is sometimes necessary to reconcile differences. The conference committee, made up of ten majority members of each house, appointed by the presiding officer, is designed to do this.

#### QUESTIONS

1. To what extent would additional facilities and increased services assist legislators?
2. What aids would be useful?
3. Is it desirable to favor the Senate over the House?
4. Do legislators have sufficient research and information available?



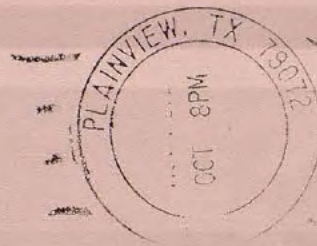


Support Your . . .

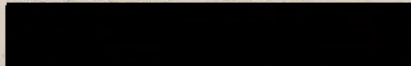
PROVISIONAL LEAGUE OF WOMEN VOTERS  
OF PLAINVIEW - HALE COUNTY

912 WEST 9th

PLAINVIEW, TEXAS 79072



Mrs. Thos. Brasher



1. To determine the present status of the organization and its activities;

2. To determine the extent of the organization's financial resources;

3. To determine the organization's membership;

4. To determine the organization's objectives;

5. To determine the organization's relationship with other organizations;

6. To determine the organization's future plans;

7. To determine the organization's present and future needs; and  
8. To determine the organization's present and future plans.



To: Standing Order  
From: Mrs. Richard Bury  
Re: Background Material for Constitutional Amendment #1

LWV of Texas  
September 1970  
Standing Order

## CONSTITUTIONAL AMENDMENT #1

### Background Material for Speaker's Bureau and VOTER Articles

The League of Women Voters of Texas supports Amendment #1 on the November ballot because it helps to improve the judicial system of Texas by providing for the removal of all incompetent judges in the state. At a time when our creaky court system is coming under fire as inadequate to cope with rising crime rates, we need safeguards against incompetent judges.

The Judicial Qualifications Commission has nine members; four are appointed by the Supreme Court, two by the Board of Directors of the State Bar, and three by the Governor all with the advice and consent of the Senate. Their term of office is six years, and they receive no compensation.

The Commission serves as a clearing house for complaints against judges. After preliminary investigation, the Commission may order a hearing to be held concerning the removal or retirement of a judge. If five of the nine members concur, the Commission may recommend to the state Supreme Court that the individual be removed from office. The Supreme Court then reviews the case and may seek additional evidence before deciding whether or not to order the removal of the judge in question.

A constitutional amendment in 1965 created the Judicial Qualifications Commission. It serves as a safeguard against some incompetent judges, but at present the Commission has jurisdiction over only judges and justices of the Appellate Courts and the District and Criminal District Courts. This is not enough. Amendment #1 provides that all local and state judges and justices will be included--that means county judges, municipal court judges, justices of the peace, and all others.

The Commission has been able to recommend removal from office for conduct which is clearly inconsistent with the proper performance of his said duties or for casting public discredit upon the judiciary or the administration of justice. Under Amendment #1 the Commission may also issue a private reprimand without a hearing, or public censure after a hearing for the above reasons.

#### SUMMARY:

The Judicial Qualifications Commission may recommend that some judges be removed for misconduct or retired for incompetence. Amendment #1 permits the Commission to make these recommendations for any judge in the state. The Amendment also authorizes the Commission to issue a private reprimand or public censure for any judge. Every judge is assured of due process.

Note to VOTER editors: It is suggested that you try to include the first paragraph and the Summary in your local VOTER.

\* \* \* \* \*



MAKE A WISE  
DECISION



**VOTE FOR**

CONSTITUTIONAL  
AMENDMENTS

**No. 1 and No. 7**

NOVEMBER 3, 1970





## AMENDMENT NO. 7

Texas voters have passed constitutional amendments permitting governmental units in several of the larger counties to consolidate services, in order to save money and operate more efficiently. Amendment No. 7 extends this option to *all* county and local governments. Legislative action and local voter approval would still be necessary before any consolidation could take place.

### AMENDMENT NO. 7 IMPROVES COUNTY AND LOCAL GOVERNMENT BY PERMITTING:

- Consolidation of local governmental offices and functions, subject to local approval.
- Intergovernmental contracts.

Your vote **FOR AMENDMENT NO. 7** will help reduce the cost of your local governments by permitting them to eliminate duplication and overlapping of services.

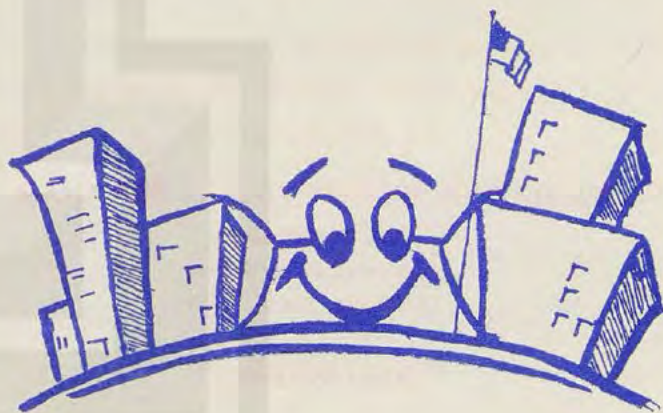
## AMENDMENT NO. 1

The Judicial Qualifications Commission in Texas has the power to recommend to the Texas Supreme Court that incompetent judges in the appellate and district courts be removed. Amendment No. 1 extends the authority of the Commission to cover *all* judges and justices in Texas. The Commission now may recommend only removal or retirement for misconduct. Amendment No. 1 allows the Commission to recommend censure also. The accused judge is assured of due process.

### AMENDMENT NO. 1 PERMITS THE JUDICIAL QUALIFICATIONS COMMISSION TO:

- Include all Texas judges and justices under its authority.
- Censure judges for misconduct.

Your vote **FOR AMENDMENT NO. 1** will help improve the judicial system in Texas.





The League of Woman Voters is a nonpartisan organization that works to promote political responsibility through informed and active participation of citizens in government. The League supports only those governmental issues in the public interest which it has studied and reached agreement upon.

The League of Women Voters of Texas strongly recommends a vote FOR Constitutional Amendments No. 1 and No. 7 on the November 3, 1970 ballot. The League does not support or oppose any other proposed amendment, but encourages voters to give thoughtful consideration to all ballot issues.

## YEAR OF THE VOTER

**LEAGUE OF WOMEN VOTERS OF TEXAS**

**3401 Gulf Freeway  
Dickinson Plaza Center  
Dickinson, Texas 77539**

**AUGUST, 1970**



LWV of Texas  
August 1970  
Dup. Pres. Mailing

To: Local League Presidents

From: Mrs. Richard Bury, Texas Constitutional Revision Chairman  
Mrs. W. E. Morehead, Voter Registration Chairman

Re: Constitutional Amendment Flyer on #1 and #7

Enclosed is a copy of a flyer prepared by the League of Women Voters of Texas as a special tool for encouraging the adoption of two amendments that will appear on the November 3, 1970 ballot: #1, Judicial Qualifications Commission, and #7, Consolidation of county and local government.

The League has advocated improvement in these areas for some time. We feel certain you will find this simple, colorful flyer a great help in persuading concerned citizens of Texas to vote for the much needed reforms.

A statement supporting the amendments will be sent to the Texas newspapers when it can be most effective.

Background: material can be found in TEXAS CONSTITUTIONAL REVIEW, STATE-LOCAL RELATIONS: County Government, "What Kind of County?" and "The County That is, or What Kind of County?", STATE BOARD REPORT, June, 1970.

#### SUGGESTIONS FOR USE

The flyers can be distributed to members, contributors, registered voters, civic and governmental groups. Your legislators may wish to have some for their own distribution. These flyers should not be distributed with VOTERS GUIDES. If you customarily place VOTERS GUIDES in certain banks, grocery stores, or libraries, distribute the flyers separately. Please refer to the Voters Service vs Program ACTION memo sent you in June, 1969 for further explanation.

You can make the difference. Make full use of the short time before November 3. Order your flyers now. They are small, lightweight, and inexpensive.

\$ .04 per copy  
\$3.50 per 100

\*\*\*\*\*

League of Women Voters of Texas      IN A HURRY? PHONE YOUR ORDER --AC713-534-4755  
Dickinson Plaza Center  
Dickinson, Texas 77539      Flyer for Amendment #1 and #7

League of Women Voters of \_\_\_\_\_

Number of copies \_\_\_\_\_

Mail copies to: Name \_\_\_\_\_

Address \_\_\_\_\_

\*\*\*\*\*



LWV of Texas  
September 1970

To: State Board

From: Mrs. Richard Bury

Re: Pre-Board Report - Texas Constitutional Revision

As you all know the Constitutional Amendment Flyer has been printed and copies have been sent to local Leagues. If we still have a lot left, perhaps we should talk about other ways to promote their use.

I have written one page of background information on Amendment #1 to be used by Speaker's Bureaus and VOTER editors. Hope this can be mailed before state Board meeting.

Do you have good ideas about how to publicize LWVT's support of these Constitutional Amendments?

There probably will be several bills introduced in the legislature concerning the judiciary. I plan to study my Judicial Selection and Tenure files because I know absolutely nothing about this subject. How many local Leagues in Texas have been organized since our 1964 consensus on J S & T? I feel it might be appropriate to give these Leagues some background on this subject. Do we want to do something different by way of review for the older Leagues? What about new members in the older Leagues?

Did any of you see the quote about the League from federal District Judge Sarah Hughes on page 10 of the Sept. 18 "Texas Observer"? She said, "I'm a member of the LWV, but I sure do get tired of their studyin'. I'm for action and I think you've got to be aggressive to be successful." I wonder why League members didn't receive invitations to the Governor's Committee on the Status of Women?

\* \* \* \* \*

®



August 27, 1970

A legislative committee is sampling recommendations for sweeping court reforms, including creation of judicial system administrators with authority to send judges wherever they are needed.

Judicial section of the State Bar will detail its proposals at an October meeting in Galveston.

Judges and practicing attorneys gave the House judiciary sub-committee, at a hearing in the capitol, their ideas for improving and speeding up court machinery.

Sample recommendations include:

- \*Strong court administration, including authority to ignore present district lines in assigning judges to duty where the action is.

- \*Giving 14 Courts of Civil Appeals power to handle intermediate appeals of criminal, as well as civil, cases to ease load on overworked Court of Criminal Appeals (which now receives appeals direct from district courts all over the state).

- \*Creation of a "unified" court system (a variety of plans have been suggested) to insure an even work load on courts, again by shifting judges to areas where dockets are overloaded.

- \*Automatic judicial redistricting by a five-member board if the Legislature refuses to do the job.

- \*Removing judges from politics.

- \*Stiffer fines and jail sentences for contempt of court to help prevent court disruptions like those which have shocked the nation in recent months.

- \*Simplification of the judicial article of the state constitution so the Legislature can make necessary changes without having to submit constitutional amendments.

"The climate for judicial reform was never so good," Supreme Court Associate Justice Jack Pope told the committee members. "But if reform is passed up this session of the Legislature, it may be too late."



8-6-70

AUSTIN, Tex.--Campaigns are shaping up on some of the seven proposed constitutional amendments to be voted on by Texans at the General Election on November 3.

While public interest centers on the liquor-by-the-drink amendment, there are other major alterations in the state's laws to be considered by the voters.

In their order on the ballot, these are:

1. Enlarge the powers of the Judicial Qualification Commission to censure or remove lower court judges of the peace as district and appellate judges.

2. Authorize the legislature to enact a law on the sale of mixed drinks.

3. Provide for legislative establishment of a uniform method of tax assessment on ranch, farm and forest lands based on the capability of the lands to support the raising of livestock or production of farm and forest crops.

4. Make the State Building Commission a three-member appointive agency.

5. Permit counties to issue road bonds up to one-fourth of their assessed real property valuation on a majority vote.

6. Make town or city homesteads of \$10,000 and less exempt from school sale (presently set at \$5,000).

7. Allow the legislature to provide for consolidating offices and functions of government and for performance of governmental functions by contract between the political subdivisions in any county.

Texas voters have adopted 195 amendments to the 1876 constitution, over the years, and rejected 125.

DESEGREGATION SUBCOMMITTEE





By GASTLEBURY

A pair of efforts to upgrade justice of the peace courts, coming as a constitutional amendment and a legislative proposal, would go a long way in improving the limited experience most people have with the judicial system — the traffic courts.

The amendment would put justices of the peace under jurisdiction of the Judicial Qualifications Commission, a watchdog agency which manages to accomplish some good though its powers are more threat than real.

The legislative proposal, from such an unlikely source as the governor's traffic safety committee, would require the JP Courts and municipal courts to be courts of record.

The JP courts have a firmly established reputation as hanging courts, and there are many who believe the JP system should be abolished. Although it is a holdover from the days when the courthouse was more than a day's ride away, abolition of the system is hardly politically feasible.

The Judicial Qualifications Commission, directed by Maurice Pipkin, now has jurisdiction over only district judges and is saddled with having only power of removal — a rather drastic remedy which Pipkin thinks has tended to weaken the commission's efforts.

The amendment would extend the agency's authority to the JPs, county-courts-at-law, appellate judges and county judges in the quasi-judicial aspects of the office.

The amendment also would give the commission powers of reprimand and censure — which would assist the political system in the selection of justices of the peace.

There are no professional qualifications required of JPs by the Constitution or statutes, and Pipkin doesn't foresee any campaign to write qualifications into law if the amendment passes. Nor does he expect to be flooded with business involving the more than 1,000 JPs in Texas.

"Just the fact that we're here seems to be salutary," he says. "The people tried by JPs and city courts — and they usually aren't criminals — are just as interested in having someone to complain to as those tried by district courts, and I think the JPs would understand that."

Making courts of record of the JP courts, where appeals would be on the record instead of trial de novo, should tend to cut down the highhandedness found all too often in rural and suburban JP courts.

The state used to make strides in upgrading the JP system a few years ago by abolishing the fee system and putting JPs on salaries set by the commissioners court. But the fee system now simply works more subtly — salary set in relation to revenue produced from fines as a measure of the court's workload.

The effort to make courts of record of city courts probably isn't feasible because of the costs, the majority of which would be borne by citizens who don't need to appeal traffic cases. Wichita Falls has the only city court of record in Texas, and it has been acclaimed widely, but it is costly.

Once around the dome, Gov. Smith's people must have worked all night on the statement supporting the firing of Smith's Mexican American specialist Humberto Aguirre: "The problems of the Mexican Americans are too important to go through an intermediary; they should deal directly with the governor."

an-Statesman





## Richard Morehead

### Court System Improvement Sought

4-16-70 D. M. N.

Austin Bureau of The News

AUSTIN—Joe Greenhill, president of the State Bar of Texas' judicial section, has joined Chief Justice Warren Burger of the U.S. Supreme Court in a campaign for prompt and vast improvement in the court system.

Since courts, especially appellate courts, are the final bulwark of the "government of laws" on which our republic was founded, the success of the judicial reform campaign may determine the survival of the system by which this country has been governed almost 200 years.

**UNDER ATTACK** from such diverse sources as the Chicago Seven and the U.S. Congress, the courts are embroiled in "a real emergency," says Greenhill, an associate justice of the Texas Supreme Court.

"... 'The silent majority' is dissatisfied with the administration of justice generally. We ourselves recognize a need for improvement," Greenhill told Baylor law students the other night in Waco.

The judicial system may be better equipped to cope with the disrupters like the Chicago Seven than it is with such everyday problems as automobile accident litigation.

The U.S. Supreme Court recently has handed down what Greenhill declared to be "the most encouraging legal pronouncement in the last 10 years," Justice Greenhill noted. It decided that defendants who insist on disrupting trial proceedings can be removed from the courtroom.

Burger, Greenhill and others attempting seriously to achieve real and broad improve-

ment in our courts will encounter much opposition in high places, if past experience is repeated.

#### Lawyers Resist

Legislators, judges and lawyers have been resistant to court reform. Texas district courts haven't been reapportioned in all the state's history, although the need has been widely recognized for decades. How long can we afford a judiciary that wastes time, talent, and money and frequently thwarts justice by delay?

Several studies are under way to make courts more efficient and the results more prompt and fair. Greenhill has some ideas which drew rebuffs from a good many lawyers almost as soon as he uttered them. By suggesting simplification of procedures for settling automobile accident claims, Greenhill was accused almost immediately of attacking the "adversary" system which lawyers generally hold sacred so long as it favors them.

**AT ITS CONVENTION** in Galveston in October, the Texas Bar judicial section will be asked to help "get as many reforms adopted as quickly as possible," Greenhill said.

Proposals will include constitutional reform, a unified judiciary, better court administration and "an independent judiciary selected under a merit system," Greenhill said.

The rise of 2-party politics is stimulating interest among Texas elective judges in changing to a less partisan system of selection. So long as the Democrats always won,

a judge could have job security belonging to that party. Only 18 states still elect judges by political party ballots, and most of these are in the South.

Sixteen other states have nonpartisan no-party ballots for judicial candidates and the other states have various plans of appointment.

"Perhaps in 1875 when our Constitution was drafted and our population was just over one million, it was possible for a sizable part of the population to get to know, or know about, the people they elected to the judiciary," Greenhill observed.

**"HOW DIFFERENT NOW!** Only a very small percentage of the people can cast an intelligent vote in a judicial race, especially at the appellate level.

"Texas is rapidly becoming a 2-party state. Shall judges be elected or turned out just because they are Democrats or Republicans?"

#### Efforts Ignored

With its 11 million people, Texas already has about 600 judges above the justice of peace level. England, where the quality of justice is considered at least equal to ours, has 220 judges for 54 million people. Much of the cumbersome procedure of American courts has been eliminated by the British.

The Texas Legislature so far has largely ignored efforts to modernize the court system, and these attempts until now have really been half-hearted.

With courts under attack both from inside and outside, perhaps desirable changes are about to happen.





# memorandum

The League of Women Voters of the United States

This is going on  
Duplicate Presidents Mailing  
June 12, 1970

TO: Local and State League Presidents

FROM: National Office

RE: OUTLOOK FOR THE 70's -- State Constitutional Revision  
FACTS & ISSUES -- Revenue Sharing -- The Three-Way Stretch

In a recent mailing from the national office, you received copies of two new publications: OUTLOOK FOR THE 70's -- State Constitutional Revision and FACTS & ISSUES -- Revenue Sharing -- The Three-Way Stretch. Since they were mailed out to you during the time of the national League Convention, the covering Memo did not go out with them.

## OUTLOOK FOR THE 70's -- State Constitutional Revision

Since almost every state League is engaged in study and action on state governmental issues requiring state constitutional revision as a step to their resolution, we thought both state and local Leagues would find a publication about lessons from the 60's and outlook for the 70's helpful to them in their decisions about roads to constitutional revision.

The pamphlet also contains some suggestions about mounting a campaign for whatever route interested citizens wish to take, whether it be for or against a convention, for or against a gateway amendment, partial revision, or a new constitution.

Uses for State Constitutional Revision pamphlet. If your League is working for an amendment, a constitutional convention call, a commission, or a new constitution, it will no doubt be working with other groups. The pamphlet is geared to the citizen's stake in revision. Therefore it is useful in a campaign not only for its suggestions about techniques but also for its citizen slant, which should provide ideas for how to interest the citizen. Distribution and sale to League members and members of other groups working with you will be useful.

High School social studies classes, libraries, colleges will also find State Constitutional Revision a timely reference.

## FACTS & ISSUES -- Revenue Sharing, The Three-Way Stretch

This F&I is designed to pose some questions about the current issue, unrestricted federal revenue sharing, which has implications for many League concerns. Last August, President Nixon outlined in his New Federalism speech a proposal for tax-sharing as an important companion to his welfare reform proposal. The League will be discussing and seeking consensus this Fall on Alternatives to Welfare and while we will not be seeking consensus on revenue-sharing, this Facts and Issues can help provide useful background on the question of sources of funds for welfare programs.



Should the federal government return to the states funds to be used without federal conditions or restrictions, there are implications for all state and local Leagues, who would be concerned about how this money would be spent: Would state and local governments improve services in areas of League interest, reduce taxes or at least not improve current revenue raising practices, or spend the money in some other way? What effect would such sharing have in both the long and short run on categorical grants, for example, in areas of concern to all Leagues such as Environmental Quality and Human Resources.

The FACTS & ISSUES, then, is designed as a general information piece and for use in conjunction with other program discussions, such as Alternatives to Welfare, but not as a program issue in and of itself. The League is not working toward a position on revenue sharing per se.

Uses for Revenue Sharing -- The Three-Way Stretch. In addition to the interest Leaguers will have in reading this F&I in conjunction with League program items, many people in your community will find the publication interesting. Contributors, other organizations, citizens, schools, libraries are potential users. Its format and the bright logo will make it attractive as a piece that might be read in waiting rooms of doctors' or dentists' offices, beauty shops, or like places.

Local Leagues might find it a good public relations tool, especially if they stamp their names and addresses and telephone numbers in the white space, page 4.

Uses for State Constitutional Revision pamphlet. If your League is working for an amendment, a constitutional convention call, a commission or a new constitution, it will be useful to have this pamphlet. The pamphlet is geared to the citizen's stake in revision. Therefore it is useful in a campaign not only for its suggestions about techniques but also for the citizen's right, which should provide ideas for how to interest the citizen. Distribution and sale to League members and members of other groups working which you will be useful.

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## CONSTITUTIONAL AMENDMENTS

Two of the proposed amendments on the November 1970 ballot involve League State Program. The State Board has decided that we will support these two amendments:

HJR 30 - Support position under TEXAS CONSTITUTIONAL REVISION, relating to the Judicial Department. The amendment increases the powers of the Judicial Qualifications Commission and enlarges the number of judges and justices under its control.

HJR 22 - Support position under STATE-LOCAL RELATIONS. Permitting counties to consolidate offices and functions and to make intergovernmental contracts.

By Sept. 1st we will be provided with flyers urging citizens to vote for these amendments. This is PROGRAM material.

It is important for Leaguers to understand the difference between League Program and support positions on the one hand, and Voters Service and non-partisanship on the other. On the VOTERS SERVICE side of the coin, the State VOTERS GUIDE will provide pros and cons on all proposed amendments, but the Voters Guide will NOT make any mention of League position.



YEAR OF THE MEMBER

TALENT HUNT

This year we are going to emphasize the role of the MEMBER!!

WHO will be our "STAR LEAGUER?"

WHO will win the "Membership Oscar?"

WHO will bring fame to her local League?

YOU WILL!!

You, who as an individual, brings in the most new members to your local League and to our Texas League. You do not have to be a Board member. You do not have to have years of experience in League work. You only need to be a dedicated League member, who wishes to spread the word about the great work of the League of Women Voters.

SO! On that great night of our Convention banquet in 1971, when all the lights are centered on the head table, who will be seen sharing in the honors along with all the top echelon Leaguers -- why YOU the Star Leaguer - the brightest star of all because YOU alone were responsible for the growth in Membership which makes all the rest of League work possible.

THE CAMPAIGN STARTS NOW!



We will be supporting two amendments in November:

1. HJR 30 on removal, retirement or censure of judges - *TCR flyer urging vote.*
2. HJR 222 on consolidation of county offices and intergovernmental contracts.

The chairmen of the item will take care of these, but you need to be aware of what we are doing.





LWV of Texas  
June 1970

TO: State Board

FROM: Mrs. Richard Bury

RE: TCR - Rep. Government

TEXAS CONSTITUTIONAL REVISION - I feel a petition urging Constitutional Revision is out. The results from the D.C. Petitions in Texas were poor and so many citizens seem afraid or unwilling to sign any petition.

I haven't found time to write other states about a Mock Constitutional Convention yet. I've spent umpteen hours going through the files and still can't locate things well.

Does anyone know any details about HJR 30, one of the constitutional amendments to be on the ballot Nov. 3, 1970? It says, "Amending Sec. 1-a, Art. V, relating to removal, retirement or censure of justices, judges, and justices of the peace." Where can I get additional information about this amendment? Is it possible that our judiciary support positions might enable us to take a position on this amendment?

REPRESENTATIVE GOVERNMENT - Along with the letter I sent to each local League president was a simple form to be returned to me giving that Leagues D.C. Petition signature count. Only 22 of these were returned, and the signatures totaled only 13,381. Tyler, Brazos County and Hunt County did the best job. Why did our Texas Leagues do so poorly on this national project?

\* \* \* \* \*





May 20, 1970

TO: Bury co - Brasher, State office  
FROM: Martin  
RE: TCR matters: ~~frustration~~, discouragement, ACTION

I am sure all of us have shared the frustration that you mentioned in your recent note re going through the files. This TCR business has been with us for a long, long time and the voluminous stacks of paper do take a bit of time for familiarization. But I <sup>am</sup> sure that you will soon feel on top of all of the TCR angles.

Too, I am certain that most of us have at times experienced some degree of discouragement when hopes for accomplishment re certain revision goals are dashed to the ground by lack of legislative and/or voter support.

However, we always remember what has by now become a favorite by-word--"revision is not for the shortwinded"-- we dust off our goals and continue to try again and again.

You pose a good question by asking "What can we do now that we haven't tried before?" I suggest ~~xx~~ that you send this question to your committee as a part of your committee agenda for discussion at ~~xxx~~ your committee meeting. My opinion is that before we can ever get anything like general revision, we will have to somehow arouse the everyday voting citizen. We have had support from a governor, support of some legislators and from many more who say they want revision, but I do not believe they will ever really push for TCR until a high percentage of constituents demand revision. This adds up to a hard drive to educate the general public re why the creaking document should be revised. One thing we have talked about doing, but did not get it done, is to hold a mock CON CON. This might be a good time to again consider such project. Maybe we should concentrate on the schools-- from high schools through the universities--to get them excited about revision. They will all soon be eligible to vote and lobby. You might check through some of the out-of-state VOTERS that should be in your files to see what other state Leagues have done. If you find ideas that sound good, you may want to write those state Leagues for information about their projects.

ACTION- I included Chris on this memo for her reaction on whether we should support H.J.R. 30 in the November 1970 election. While this bill includes the entire judiciary down through the JP courts and our position states appellate judges, I think we could and should support it. This would fall under our #6 Judiciary position. We have a precedent: In 1965 we supported H.J.R 57 (amendment # 8) which called for certain retirement and removal provisions in district and appellate courts, but did not provide for censure in lieu of removal as does this new bill. Please read your copies of H.J.R.30. We should discuss this in both the TCR and Legislative committees. You should have a copy of COMMENT for September 1965 in your files. In it Judge Garwood explains the 1965 H.J.R. 57.

(R)



# League of Women Voters of Texas

612 NORTH 10TH STREET • WACO, TEXAS

June 1964

## S Y N O P S I S

(League of Women Voters concern for Constitutional provisions re the Texas Judiciary)

Aside from its broad position that the Texas Constitution should be generally revised, the League of Women Voters of Texas recognizes that substantive changes are necessary in most sections of the Constitution. League members believe such substantive changes should be based on broad principles (adopted in 1957-58), each pertaining to a particular area of the Constitution. Two such principles are applicable to the Constitutional provisions for the Texas judiciary: 1) a clear separation of powers with responsibility definitely assigned and 2) provisions for justice with a minimum of delay.

Provisions for no other branch of state government are so well confined to one Article in the 1876 Texas Constitution (Article V) as those setting up the Texas judiciary. The scope and form are defined in great detail and have not been basically altered since 1891.

The Texas judiciary cannot be termed correctly a "system" for this implies a consistent, coherent organization, direction and administration that scarcely characterizes the more than 1500 Texas courts (exclusive of corporation or municipal courts and of which some 400 are above the Justice of the Peace level).

The most notable and anomalous feature of the Texas judiciary is the presence of not one, but two final appellate courts, which can and have held differently on the same points of law. The SUPREME COURT has final jurisdiction over all civil cases (there is an intermediate Court of Civil Appeals in 13 districts) while the COURT OF CRIMINAL APPEALS has final jurisdiction over all criminal cases on direct appeal from the lower District Courts. In effect, excluding appeals from the lower courts, civil cases may be appealed twice while criminal cases can be appealed only once.

Another frequently discussed aspect of the Texas judiciary is its lack of coordinated planning for both rules of procedure and for the actual details of administrative operation. Aside from the Supreme Court's limited authority (granted by the legislature) to supervise some rules of procedure in the lower civil courts, Texas courts are for most purposes autonomous. Thus there are wide variations in procedure, staffing, and financing of parallel courts.

Of increasing importance are the problems arising from uneven case loads. Even more crowded dockets now mean an average of 2 years for getting a case to trial. Present law provides only a very limited transfer of judges to assist in reducing case loads.

Justice of the Peace Courts in Texas, as elsewhere in the United States, have become the target of speculation as to their place in an effective judicial structure. Texas law does not require JP courts to be courts of record, i.e., keep complete and legally valid transcripts of cases. There is no court reporter required to take down what is said and done. Cases appealed from these courts must be tried "de novo" - anew. This means an excessive number of cases are appealed and are tried as if no other trial had ever been held. In addition JP court justices do not have to have any definite qualifications or specialized training (legal education). Neither do county judges.



Awareness of these frequently suggested problems affecting the present Texas court structure led to the League's study of the provisions of Article V. Also, this was the only section of the Constitution which at the time, 1959, had had any substantial detailed study and where concrete recommendations for change had been proposed. The State Bar of Texas, the Advisory Civil Judicial Council and law schools throughout the state had given considerable time and attention to the problems of the Texas courts. Many proposals had been made, but judicial and legislative agreement on specific details was not prevalent enough to effect any substantive changes.

The League of Women Voters of Texas undertook its initial study of the judicial article of the Constitution in 1959 as part of its work for general revision of the Texas Constitution. Because this was the first attempt at study of substantive changes and the time we allowed ourselves was just a year, the project was limited to study of the Constitutional provisions for structure and administration. Consideration of the problems involved in selection and tenure of judges was not included. Thus the positions reached as a result of this limited study apply only to the structure and administration of the Texas courts. There has been no legislative action by the League on any proposals (there have been very few) relative to these positions.

The League was guided in its initial study of the Texas judiciary by the proposals of the State Bar, the Civil Judicial Council, the experiences of other states (using other state League and Bar research materials) and by the research and recommendations of Texas law schools. The League's positions are broad and relate to principles rather than specific reforms. It is on this basis that the League will take legislative action. The reform most persistently advocated is that of a unified court structure, which means that the judicial system would be defined, by law, as to its nature, scope, duties and powers. Such definition would also mean that it would be a cohesive and self-regulating whole. The courts would work as a team. Now, as one judge puts it, each likes to paddle his own canoe, can and does.

The 1964-66 study of selection and tenure of appellate judges will, in effect, complete the League's consideration of substantive changes in constitutional provisions for an effective judiciary. While this narrow study is a Current Agenda item for this biennium, any conclusions reached will become part of our judicial article positions relative to general revision of the Texas Constitution - a Continuing Responsibility; (the only other position the League has for substantive change is the recent, 1962-64, consensus on Special Districts; in 1961-62 League members agreed that the best method for accomplishing general revision is a CONstitutional CONvention).

The Texas Constitution now provides that selection of judges be by popular election and of course tenure is limited to the number of times a man can be elected. Vacancies are filled through appointment by the governor (the governor must get the consent of the Senate in filling the vacancies unless (a) the legislature is not in session and (b) an election is held to fill the vacancies before the legislature meets). Selection by direct popular vote is a reflection of the times - the 1876 Reconstruction Period - in which the present Texas Constitution was written. Texas had a rural, agriculture economy and the mood of the people was one of rebellion against Reconstruction abuses. In the judicial area it had been the corruption of justice through judicial gubernatorial appointments that made the framers of the 1876 Constitution determined to place control of the judiciary in the hands of the people (other state constitutions written in the same period also reflect this concern).

The U. S. Constitution of course provides for appointment only by the President for life with the advice and consent of the Senate. Many advocates of change in judicial selection suggest the federal method. However, other plans combine in some way both the elective and the appointive process. In this study, League members will consider each method and determine which would be best for Texas.



"Support of constitutional provisions for an effective judicial structure".

The following positions are part of the League's general position favoring complete revision of the Texas Constitution (Continuing Responsibility #1).

- A. A single system of centrally administered statewide courts with a uniform fiscal policy.

This means that the League believes that all courts in the state should be part of a single unified and coordinated system; that the financial needs of all state courts should be viewed as a whole under a central fiscal policy; and that administrative directors under the supervision of the Supreme Court should manage the non-judicial business of the courts.

- B. A uniform code of criminal and civil procedure formulated by the Supreme Court with legislative approval.

This means that administrative responsibility for the entire Texas court system should rest with the Supreme Court; that there should be a uniform code of procedure and practice for all courts; and that the Supreme Court and the Legislature should have responsibility for establishing this code of procedure.

- C. Assignment of judges according to special training and needs.

This means that judges should be freely transferable at the direction of the Supreme Court.

- D. A full-time judiciary whose members qualify to practice law in Texas.

This means that all judges should be licensed to practice law in Texas and that the position should be full-time with commensurate pay.

- E. Integration of Justice of the Peace Court functions into courts of record.

This means that JP courts should either become courts of record with upgraded status through uniform procedures or their functions absorbed into higher or parallel courts of record.

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#### P R I N C I P L E S

(by which to judge a good state constitution)

1. A framework of basic law.
2. A clear separation of powers with responsibility definitely assigned.
3. Provisions for justice with a minimum of delay.
4. Qualifications for voter eligibility and guarantees of fair elections.
5. A coordinated finance structure capable of flexibility.
6. Maximum home rule for municipal and county government with coordination of overlapping functions.
7. Provisions for support of public education.
8. Provisions for support of public health and welfare services.
9. Provisions for amendment and revision.
10. Basic policies regarding state employee selection, retention and promotion.



